

Dinsmôre

Religious Accommodation in the Workplace

A Guide for Employers





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Agenda:

- “Religion” under Title VII
- Religious accommodation
- Legal actions by employees
- Best practices



Religion

Title VII of the Civil Rights Act of 1964

“It shall be an unlawful employment practice for an employer . . . to discriminate against any individual . . . because of such individual’s race, color, religion, sex, or national origin . . .”

42 U.S.C.S. § 2000e-2

Religion

“The term “religion” includes all aspects of religious observance and practice, as well as belief...”

This is *VERY* broad.

42 U.S.C.S. § 2000e

Which Religions are Protected Under Title VII?

Traditional Organized Religions:

- Buddhism
- Christianity
- Islam
- Hinduism
- Judaism



But also...

Sincerely held religious beliefs that are “new, uncommon, not part of a formal church or sect, only subscribed to by a small number of people, or that seem illogical or unreasonable to others.”

What qualifies as a “religious” belief?

“A sincere and meaningful belief which occupies in the life of its possessor a place parallel to that filled by the God....”

This can include “moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views.”

Religious beliefs are “ultimate ideas” that “address fundamental questions about life, purpose, and death.”

United States v. Seeger, 380 U.S. 163, 176, 85 S. Ct. 850, 859 (1965); 29 C.F.R. § 1605;
United States v. Meyers, 906 F. Supp. 1494, 1502 (D. Wyo. 1995).

One note:

In most cases, the “sincerity” of an employee’s stated religious belief is assumed.

An employer may dispute the sincerity of an employee’s religious belief and seek additional supporting information when there is an objective basis for doing so. But, “an employer also should not assume that an employee is insincere simply because some of his or her practices deviate from the commonly followed tenets of his or her religion.”

Examples, cont.

A Seventh-day Adventist employee follows a vegetarian diet because she believes it is religiously prescribed by the scriptural passage “[b]ut flesh with the life thereof, which is the blood thereof, shall ye not eat,” (Genesis 9:4). Her vegetarianism is a religious practice, even though not all Seventh-day Adventists share this belief or follow this practice, and even though many individuals adhere to a vegetarian diet for purely secular reasons.

Examples, cont.

A Catholic employee requests a schedule change so that he can attend church services on Good Friday. A Muslim employee requests an exception to the company's dress and grooming code allowing her to wear her headscarf, or a Hindu employee requests an exception allowing her to wear her bindi (religious forehead marking). An atheist asks to be excused from the religious invocation offered at the beginning of staff meetings. An adherent to Native American spiritual beliefs seeks unpaid leave to attend a ritual ceremony. An employee who identifies as Christian but is not affiliated with a particular sect or denomination requests accommodation of his religious belief that working on his Sabbath is prohibited. Each of these accommodation requests relates to a "religious" belief or practice within the meaning of Title VII. By contrast, a request for a schedule change to help set up decorations or prepare food for a church event, for instance, typically does not involve a "religious" belief or practice within the meaning of Title VII.

Examples, cont.

Morgana asks for time off on October 31 to attend the “Samhain Sabbat,” the New Year observance of Wicca, her religion. Her supervisor refuses, saying that Wicca is not a “real” religion but an “illogical conglomeration” of “various aspects of the occult, such as faith healing, self-hypnosis, tarot card reading, and spell casting, which are not religious practices.” The supervisor’s refusal to accommodate her on the ground that he believes her religion is illogical violates Title VII unless the employer can show her request would impose an undue hardship. The law applies to religious beliefs even though others may find them “incorrect” or “incomprehensible.”

Examples, cont.

Edward practices the Kemetic religion, based on ancient Egyptian faith, and affiliates himself with a tribe numbering fewer than ten members. He states that he believes in various deities, and follows the faith's concept of Ma'at, a guiding principle regarding truth and order that represents physical and moral balance in the universe. During a religious ceremony he received small tattoos encircling his wrist, written in the Coptic language, which express his servitude to Ra, the Egyptian god of the sun. When his employer asks him to cover the tattoos, he explains that it is a sin to cover them intentionally because doing so would signify a rejection of Ra. These can be religious beliefs and practices even if no one else or few other people subscribe to them.

Examples, cont.

Sylvia wears several tattoos and has recently had her nose and eyebrows pierced. A newly hired manager implements a dress code that requires that employees have no visible piercings or tattoos. Sylvia says that her tattoos and piercings are religious because they reflect her belief in body art as self-expression and should be accommodated. However, the evidence demonstrates that her tattoos and piercings are not related to any religious belief system. For example, they do not function as a symbol of any religious belief, and do not relate to any “ultimate concerns” such as life, purpose, death, humanity’s place in the universe, or right and wrong, and they are not part of a moral or ethical belief system. Therefore, her belief is a personal preference that is not religious in nature.

Summary on Religion

Sincerely held religious beliefs are protected under Title VII.

Includes

- Traditional organized religion
- Non-theistic religious beliefs
- Moral or ethical beliefs that are sincerely held with the strength of traditional religious views

Excludes

- Social, political, and economic philosophies
- Personal preferences



Accommodation

The ADA and Religious Accommodation



Notice

An employer's obligation to provide a religious accommodation does not arise until the employer becomes aware of an employee's need for an accommodation.

The employee's notice to the employer need only provide "enough information about an employee's religious needs to permit the employer to understand the existence of a conflict between the employee's religious practices and the employer's job requirements."

Once an employer has notice, it should engage in an interactive process to determine whether an accommodation is possible.

Heller v. EBB Auto Co., 8 F.3d 1433, 1439 (9th Cir. 1993);
Ansonia Bd. of Educ. v. Philbrook, 107 S. Ct. 367 (1986).

Religious Accommodation

Title VII requires that employers provide a “reasonable accommodation” UNLESS the employer can show that the accommodation would impose an “undue hardship.”

An employer can show “undue hardship” if the requested accommodation poses “more than de minimis” cost or burden.

TWA v. Hardison, 432 U.S. 63, 97 S. Ct. 2264 (1977); 29 C.F.R. § 1605.2(e)

Reasonable Accommodations

A reasonable accommodation does not have to be the employee's preferred and/or proposed accommodation. It only needs to eliminate the conflict between the employee's job duties and religious beliefs.

Ansonia Bd. of Educ. v. Philbrook, 107 S. Ct. 367 (1986).

Common Accommodations

- Schedule Changes to Accommodate Religious Practices
- Exceptions from an Employer Dress Codes
- Grooming Exceptions
- Providing Space to Pray

Undue Hardship

When determining whether a religious accommodation would require more than a de minimis cost, courts consider “the identifiable cost in relation to the size and operating costs of the employer, and the number of individuals who will in fact need a particular accommodation.” Courts also look to the employer’s business operations and any legitimate safety concerns.

Generally, administrative cost necessary for an accommodation are not considered.

Examples

David wears long hair pursuant to his Native American religious beliefs. David applies for a job as a server at a restaurant which requires its male employees to wear their hair “short and neat.” When the restaurant manager informs David that if offered the position he will have to cut his hair, David explains that he keeps his hair long based on his religious beliefs, and offers to wear it in a pony tail or held up with a clip. The manager refuses this accommodation, and denies David the position based on his long hair. Since the evidence indicated that David could have been accommodated, without undue hardship, by wearing his hair in a ponytail or held up with a clip, the employer will be liable for denial of reasonable accommodation and discriminatory failure to hire.

Examples, cont.

Patricia alleges she was terminated from her job as a steel mill laborer because of her religion (Pentecostal) after she notified her supervisor that her faith prohibits her from wearing pants, as required by the mill's dress code, and requested as an accommodation to be permitted to wear a skirt. Management contends that the dress code is essential to the safe and efficient operation of the mill, and has evidence that it was imposed following several accidents in which skirts worn by employees were caught in the same type of mill machinery that Patricia operates. Because the evidence establishes that wearing pants is truly necessary for safety reasons, the accommodation requested by Patricia poses an undue hardship.

Examples, cont.

Rachel, who worked as a ticket agent at a sports arena, asked not to be scheduled for any Friday night or Saturday shifts, to permit her to observe the Jewish Sabbath from sunset on Friday through sunset on Saturday. The arena wanted to give Rachel only every other Saturday off. The arena's proposed accommodation is not reasonable because it does not fully eliminate the religious conflict. The arena may deny the accommodation request only if giving Rachel every Saturday off poses an undue hardship for the arena.

Examples, cont.

Tina, a newly hired part-time store cashier whose sincerely held religious belief is that she should refrain from work on Sunday as part of her Sabbath observance, asked her supervisor never to schedule her to work on Sundays. Tina specifically asked to be scheduled to work Saturdays instead. In response, her employer offered to allow her to work on Thursday, which she found inconvenient because she takes a college class on that day. Even if Tina preferred a different schedule, the employer is not required to grant Tina's preferred accommodation.

Examples, cont.

Harvinder, a baptized Sikh who works in a hospital, wears a small (4-inch), dull and sheathed kirpan (miniature sword) strapped and hidden underneath her clothing, as a symbol of her religious commitment to defend truth and moral values. When Harvinder's supervisor, Bill, learned about her kirpan from a co-worker, he instructed Harvinder not to wear it at work because it violated the hospital policy against weapons in the workplace. Harvinder explained to Bill that her faith requires her to wear a kirpan in order to comply with the Sikh Code of Conduct, and gave him literature explaining that the kirpan is a religious artifact, not a weapon. She also showed him the kirpan, allowing him to see that it was no sharper than butter knives found in the hospital cafeteria. Nevertheless, Bill told her that she would be terminated if she continued to wear the kirpan at work. Absent any evidence that allowing Harvinder to wear the kirpan would pose an undue hardship in the factual circumstances of this case, the hospital is liable for denial of accommodation.

Examples, cont.

Nasreen, a Muslim ticket agent for a commercial airline, wears a head scarf, or hijab, to work at the airport ticket counter. After September 11, 2001, her manager objected, telling Nasreen that the customers might think she was sympathetic to terrorist hijackers. Nasreen explains to her manager that wearing the hijab is her religious practice and continues to wear it. She is terminated for wearing it over her manager's objection. Customer fears or prejudices do not amount to undue hardship, and the refusal to accommodate her and the termination, therefore, violate Title VII. In addition, denying Nasreen the position due to perceptions of customer preferences about religious attire would be disparate treatment based on religion in violation of Title VII, because it would be the same as refusing to hire Nasreen because she is a Muslim.

Examples, cont.

An electrical utility lineman requests accommodation of his Sabbath observance, but because the nature of his position requires being available to handle emergency problems at any time, there is no accommodation that would permit the lineman to remain in his position without posing an undue hardship. The employer can accommodate the lineman by offering a lateral transfer to another assignment at the same pay, if available. If, however, no job at the same pay is readily available, then the employer could satisfy its obligation to reasonably accommodate the lineman by offering to transfer him to a different job, even at lower pay, if one is available.

Examples, cont.

An employee whose assigned work area is a factory floor rather than an enclosed office asks his supervisor if he may use one of the company's unoccupied conference rooms to pray during a scheduled break time. The supervisor must grant this request if it would not pose an undue hardship. An undue hardship would exist, for example, if the only conference room is used for work meetings at that time. However, the supervisor is not required to provide the employee with his choice of the available locations, and can meet the accommodation obligation by making any appropriate location available that would accommodate the employee's religious needs if this can be done absent undue hardship, for example by offering an unoccupied area of the work space rather than the conference room.

Summary on Accommodation

Employers must provide religious accommodations where the accommodation would not cause an undue hardship – i.e., more than a de minimis cost or expense.



Legal Action

***Prima Facie* Case**

To establish a *prima facie* case, a plaintiff must demonstrate that 1) he holds a sincere religious belief that conflicts with an employment requirement; 2) he has informed the employer about the conflict; and 3) he was discharged or disciplined for failing to comply with the conflicting employment requirement. Once the plaintiff has established a *prima facie* case, the burden shifts to the defendant employer to show that it could not reasonably accommodate the employee without undue hardship.

Virts v. Consol. Freightways Corp., 285 F.3d 508, 516 (6th Cir. 2002).

Statistics

In 2017, the EEOC received 3,436 religion based charges, resulting in 11.2 million dollars paid by employers.

Takeaway: failing to accommodate an employee's religion can cost employers.

Best Practices for Employers

Best Practices for Employers

- **Develop internal procedures for handling accommodation requests**
- **Notify employees that you will make reasonable accommodations**
- **Analyze each accommodation individually**
- **Avoid taking action based on stereotypes**
- **Train managers about religious accommodation**
- **Be accommodating**
- **Consult counsel**



Questions?

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