



Workplace Religious Accommodation Requests

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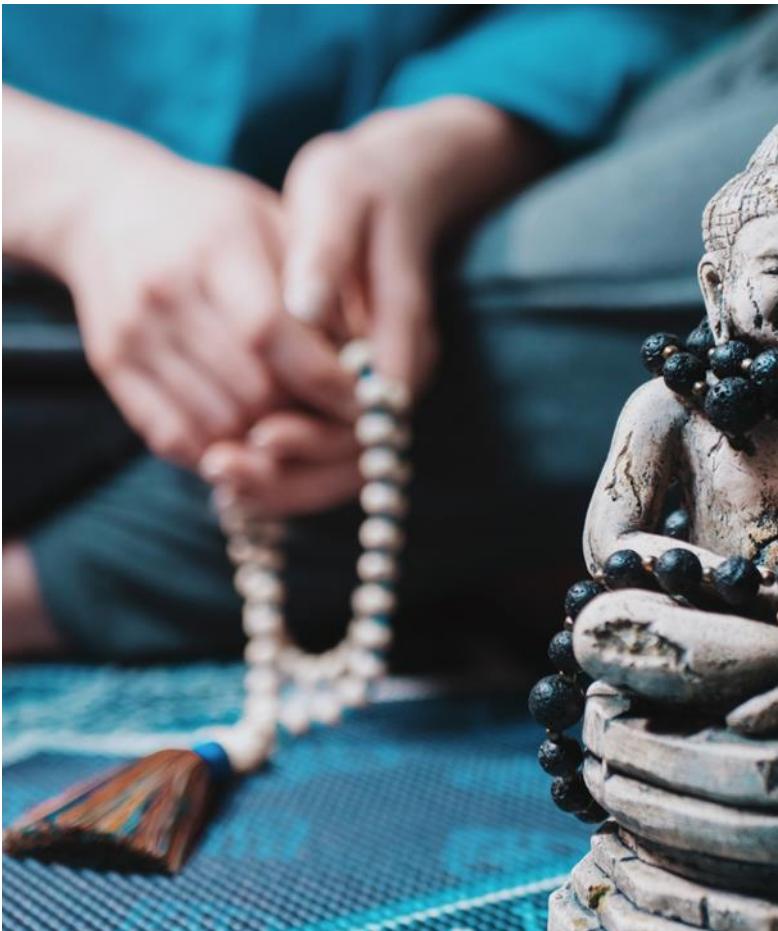
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Religion in the Workplace: Accommodation

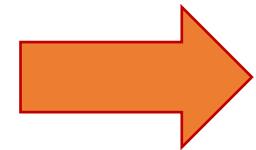


Religious Accommodation

- Title VII of the Civil Rights Act requires employers to accommodate sincerely held religious beliefs, observances, or practices unless doing so would cause an undue hardship on the employer.

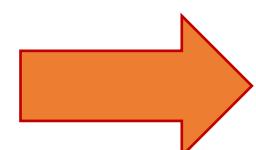
Increase in Religious Accommodation Cases

FY 2022



18.8% of EEOC charges allege religious discrimination
13,814 total charges were religious

Typical Year



3-4% of EEOC charges allege religious discrimination
Generally, less than 4,000 total charges

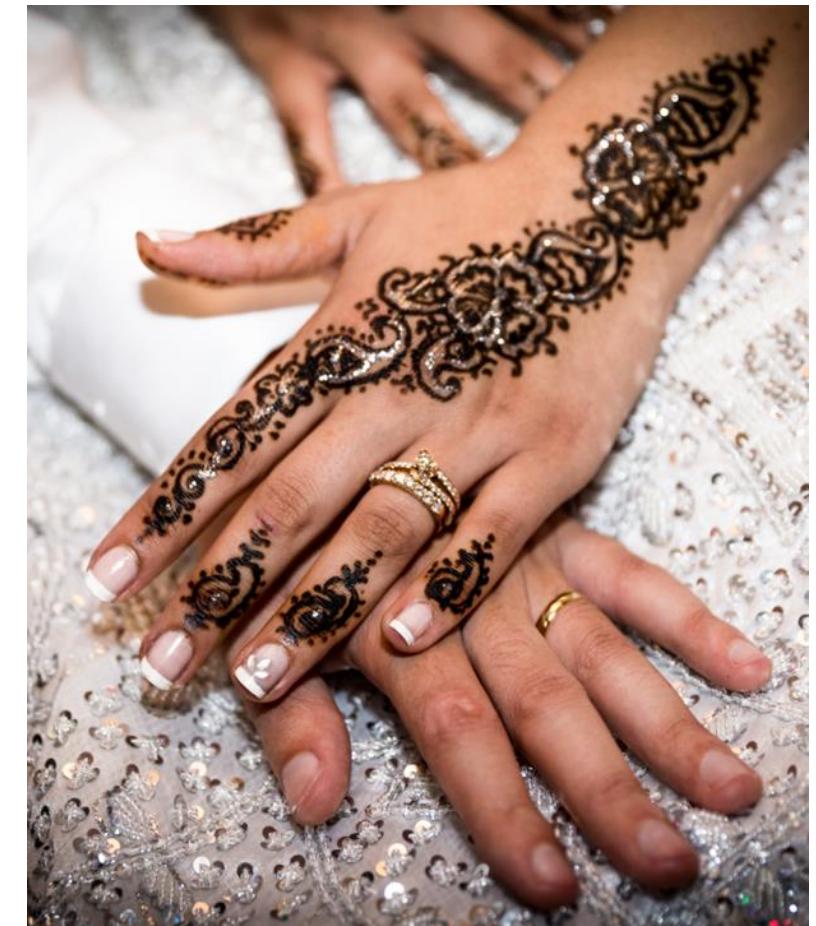


- After learning that a transgender employee had requested accommodations to facilitate a gender transition, company leadership decided that in addition to providing gender-neutral bathrooms, LGBTQ anti-discrimination training was necessary to maintain an inclusive environment for all. HR announced mandatory training facilitated by the local Pride Center on LGBTQ Cultural Competency.
- Mary emails her manager explaining that she will not attend because her beliefs regarding sexuality are dictated by scripture and she will not be forced to listen to indoctrination contrary to her faith.
- Mary asks for a meeting with HR and requests that all employees be required to attend training to teach cultural sensitivity towards people of the Christian faith.
- Can the Company discipline Mary for refusing to attend the training?
- What else does the Company have to consider?

	ADA	Title VII
What must be accommodated	Disability	Sincerely held religious belief, practice or observance
Proof	Doctor's note	Employee's say so
When is reasonable accommodation required	To enable employee to perform the essential functions of a job or enjoy equal benefits and privileges of employment	When sincerely held religious beliefs, practices or observances conflict with work requirements
Undue Hardship	Significant difficulty/expense	Substantial burden in the overall context of an employer's business

Common Requests for Religious Accommodation

- Not working a specific day of the week or time of day
- Time away for faith-related activities
- Time at work to observe practices mandated by faith
- Refusal or inability to perform job duties due to faith
- Religion-based tattoos, attire, jewelry, icons in the workplace



Analysis for Religious Accommodation

1. Has the employee indicated a sincerely held religious belief that qualifies for a reasonable accommodation?
Is it religious in nature?
Is it sincerely held?
2. Does that belief conflict with an employer policy or requirement?
3. What accommodation does the individual seek?
4. Would the requested accommodation cause an undue hardship, and if so, are there any alternatives that would not?



What is a Sincerely Held Religious Belief?

According to the EEOC:

- Title VII defines “religion” to include “all aspects of religious observance and practice as well as belief.”
- Does not have to be part of a traditional, organized religion.
- A belief is “religious” for Title VII purposes if it is “religious” in the person’s “own scheme of things,” i.e., it is a “sincere and meaningful” belief that “occupies a place in the life of its possessor parallel to that filled by . . . God.”
- An employee’s belief, observance, or practice can be “religious” under Title VII even if the employee is affiliated with a religious group that does not espouse or recognize that individual’s belief, observance, or practice, or if few – or no – other people adhere to it.
- Religious beliefs include theistic beliefs as well as non-theistic “moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views.”
- Social, political, or economic philosophies, as well as mere personal preferences, are not religious beliefs protected by Title VII. However, overlap between a religious and political view does not place it outside the scope of Title VII’s religion protections, as long as that view is part of a comprehensive religious belief system and is not simply an “isolated teaching.”

- An Orthodox Christian nurse at a Catholic hospital objects to signing the Hospital's Ethical Directives with references to the Roman Catholic Church.
- Human resources meets with the nurse.

What questions should HR ask the nurse?



Conflict with an Employer Policy or Requirement

- Employers can analyze the request to determine if there is actually a conflict between the individual's religious beliefs and the work policy.
- If there is no conflict, then there is no need to accommodate.



Questions for Employee

- Identify the religious belief, practice or observance causing you to ask for an accommodation.
- Describe the conflict between the religious belief, practice or observance and your work requirements.
- Describe the accommodation(s) you are requesting.
- Is the religious belief, practice or observance you identified based on an organized religious faith to which you belong? If so, please describe. If not, please describe the basis.

The BIG Question:

When does an accommodation present an undue hardship under Title VII?

Groff v. DeJoy

- In Groff, a unanimous Supreme Court “clarified” (changed) the undue burden test.
- According to the Court, it now “understands Hardison to mean that ‘undue hardship’ is shown when a burden is substantial in the overall context of an employer’s business.”
 - **Hardship**, at a minimum, means “**something hard to bear**.”
 - **Undue** means that the requisite burden, privation or adversity “must rise to an ‘**excessive**’ or ‘**unjustifiable**’ level.”
- According to the Court, “Courts must apply the test to take into account all relevant factors in the case at hand, including the particular accommodations at issue and their practical impact in light of the nature, size, and operating cost of an employer.”
- The Court declined to incorporate the undue hardship test under the Americans With Disabilities Act which requires “significant difficulty and expense.”

Groff v. DeJoy

- But the Court did opine: “A good deal of the EEOC’s guidance in this area is sensible and will, in all likelihood, be unaffected by the Court’s clarifying decision.”
- The Court declined to determine what facts would meet this new test and remanded the case back to the lower court to decide.
- Groff requires employers to consider alternative accommodations if there is an undue hardship.
- What’s next? Years of legal battles with courts attempting to apply this new standard.

What Does SCOTUS Say About Impact on Co-workers?

- To be an undue hardship, the accommodation must impact the conduct of the business.
- An accommodation's effect on co-workers may have ramifications for the conduct of the employer's business, but not all impacts on co-workers are relevant (it must impact the business).
- The concurring opinion recognized that "for many businesses, labor is more important to the conduct of the business than any other factor."
- A co-worker's animosity to a particular religion, to religion in general or the mere fact of an accommodation is not a factor in the undue hardship inquiry.

Undue Hardship Post Groff

Courts have found undue hardship in these situations:

- Allowing remote work where “fundamental aspect of the job was to be physically present” was an undue hardship.
- Hiring an extra employee for an indefinite period was an undue hardship.
- Allowing an unvaccinated employee on set of a TV show endangered safety of co-workers, jeopardized completion of show and presented an undue hardship.
- Inability to wear SCBA due to facial hair posed an undue hardship at fire department.
- Requiring employer to violate a state law is both "excessive" and "unjustifiable".
- Allowing unvaccinated firefighter to provide emergency services during pandemic would increase risk of spreading COVID-19.

No Undue Hardship Post Groff

Courts have declined to find undue hardship in these situations:

- 1.5 days of leave was not an undue hardship.
- Hypothetical policy reevaluation if everyone received an accommodation is not an undue hardship if employer grants one accommodation.

Evaluating Undue Hardship

1. Consider facts surrounding an employee's request for a religious accommodation when deciding whether the accommodation would impose an "undue hardship."
2. Consider unique facts related to the business, including the size of the business.
3. Assess the actual expense and hardship of implementing the request.
4. Consider reasonable alternatives beyond what is requested, and the impact.

What Should An Employer Do?

- 1 Be prepared for an increase in religious accommodation requests.
- 2 Consider whether recently denied accommodations should be reconsidered.
- 3 Be cautious about non-privileged communications about the Groff decision.
- 4 Update company policies/practices on religious accommodations.
- 5 Assess requests under the new undue hardship standard.
- 6 Consider undertaking similar analysis as under ADA.
- 7 Consider interactive process.
- 8 Look for alternative accommodations.
- 9 Be aware of the risk of negative comments, frustration, and potential harassment.
- 10 Train HR and managers.

Situation #1:

Style Shack (a retail clothing store) has a “Look Policy” requiring employees to adopt the Style Shack’s store image in their clothing and appearance. The policy applied to all employees, but job applicants are not required to comply while interviewing for a position.

Erin, who identifies herself as a Muslim, applied for a job. She reported to her interview in a head scarf.

While Erin had worn her head scarf for several years, it is not required by the Quran. Erin does not pray five times per day (as required by the Quran), but only a few times per month.

The company did not hire Erin because of her head scarf.

Is Erin's religious belief protected under Title VII?

Situation #2:

Nina asks permission to be absent for Ramadan, an Islamic holiday.

Nina follows her employer's procedures and submits the proper documentation.

The employer has adequate staffing for the day Nina requests to be absent.

Is this a reasonable accommodation?

Situation #3:

Gary, an installation technician, worked for a company for several years before becoming a Seventh Day Adventist. As a Seventh Day Adventist, Gary was required to abstain from working on Saturdays and attend Sabbath services.

After informing his employer, the company offered him two different positions, neither of which would require Saturday work. However, Gary would not be entitled to additional compensation via commission, which he received in his current position. Then Gary rejected both positions.

He attempted to swap time with other employees unsuccessfully. Eventually, he began missing work. The company did not discipline him immediately, but after several missed Saturdays, the company moved forward with corrective action.

Is this a reasonable accommodation?

Situation #4:

Amita asks permission to wear a sari to work.

She follows all procedures for this request and even submits documentation from her religious leader.

Is there any additional information the employer should evaluate before deciding whether this is a reasonable accommodation?

Situation #5:

Joe is Muslim and requests to organize a prayer group with colleagues and conduct meetings in a conference room during part of their lunch break. Other groups of employees gather in conference rooms during lunch to do yoga and meet as a book club.

If Joe and his manager follow all procedures for this request, is this a reasonable accommodation that does not create an undue hardship?

Situation #6:

Tina is a newly hired part-time teller.

Her sincerely held religious belief is that she should refrain from work on Sunday as part of her Sabbath observance. She 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.

Is this a reasonable accommodation?

Situation #7:

Yesterday, during a team meeting, one of your employees had a Pray for Israel sign on their zoom background and another showed up to the same online meeting wearing a Free Palestine t-shirt. Both complain to you today that they were offended by the other's conduct.

What should you do? What if when you talk with them, each requests a religious accommodation that would allow them to continue to express their beliefs in the workplace?

Questions?

Thank you!