



**WHEN AND HOW MUST AN EMPLOYEE'S  
RELIGIOUS BELIEFS BE ACCOMMODATED?**

**HEALTH DIRECTORS LEGAL CONFERENCE  
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## THE LAW

### Federal

- First Amendment to U.S. Constitution
- Title VII of the Civil Rights Act of 1964

### State

- North Carolina Constitution
- North Carolina General Statutes

## THE FIRST AMENDMENT

Congress shall make no law respecting an **establishment of religion**, or prohibiting **the free exercise** thereof . . .

## TITLE VII (42 U.S.C. § 2000E-2)

It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, **religion**, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, **religion**, sex, or national origin.

## NORTH CAROLINA CONSTITUTION

### **Article I, Section 13. Religious Liberty**

“All persons have a natural and inalienable right to worship Almighty God according to the dictates of their own consciences, and no human authority shall, in any case whatever, control or interfere with the rights of conscience.”

### **Article I, Section 19. Equal Protection of the Laws**

“ . . . . No person shall be denied the equal protection of the laws; nor shall any person be subjected to discrimination by the State because of race, color, **religion** or national origin.”

## NORTH CAROLINA GENERAL STATUTES

### **State Human Resources Act (N.C.G.S. §§ 126-16)**

“All state departments and agencies and all local political subdivisions of North Carolina shall give equal opportunity for employment and compensation, without regard to race, religion, color, creed, national origin, sex, age, or handicapping condition as defined in G.S. 168A-3 to all persons otherwise qualified . . . .”

## TITLE VII DEFINITIONS [42 U.S.C. § 2000e(j)]

“The term ‘religion’ includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee’s or prospective employee’s religious observance or practice without undue hardship on the conduct of the employer’s business.”

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## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)

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

## RELIGION UNDER TITLE VII

- Concept of religion is very broad
- Includes all aspects of religious observance and practice, as well as belief.
- Protects an individual’s sincerely-held religious, ethical and moral beliefs, whether it is part of an organized religion or not.

## RELIGION UNDER TITLE VII

“A religious belief excludes mere personal preference grounded upon a non-theological basis, such as personal choice deduced from economic or social ideology. Rather, it must consider man’s nature or the scheme of his existence as it relates in a theological framework.”

## RELIGION UNDER TITLE VII

Protects religious beliefs and practices even if they are:

- Newly adopted
- Not consistently observed
- Only subscribed to by a small number of people
- Different from commonly-followed tenets of the individual’s religion
- Illogical or unreasonable to others

## SUMMARY OF EMPLOYER OBLIGATIONS

**Not to discriminate or harass employees or applicants because of their religious beliefs or religious practices**

**Disparate Treatment or Intentional Discrimination Claim**

**To reasonably accommodate an employee's religious beliefs or practices**

**Failure to Accommodate Claim**

## THE FAILURE TO ACCOMMODATE RELIGIOUS DISCRIMINATION CLAIM

1. Employee had a **bona fide belief** that complying with a job duty or requirement would violate his or her religious beliefs or practices; and
2. Employee informed the employer about the conflict; and
3. Employee suffered an adverse employment action because he or she did not comply with the job duty or requirement that conflicted with the religious belief.

## VALIDITY

Do not question the validity of an employee's religious beliefs unless the beliefs are personal ideas and do not implicate "theological" issues or issues involving the meaning of life.





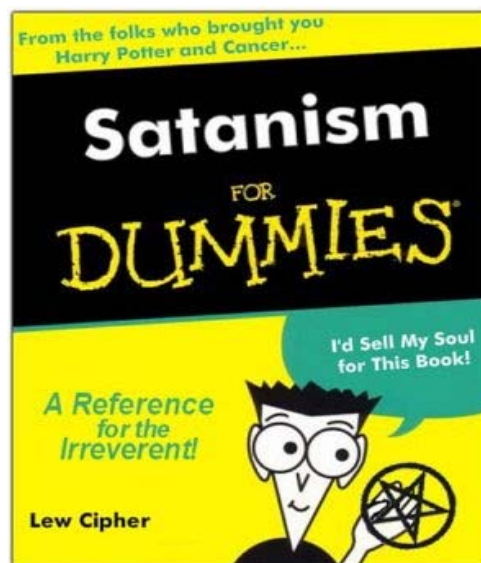




## SINCERITY

1. Has the employee behaved in a manner markedly inconsistent with the professed belief?
2. Is the accommodation a particularly desirable benefit likely to be sought for secular reasons?
3. Does the timing of the request make it suspect (after denial of similar request for secular reasons)?
4. Are other reasons for thinking the accommodation is being sought for non-religious reasons?

## SINCERITY



Cannot work on the Sabbath

"Remember the Sabbath day by keeping it holy."  
—Exodus 20:8

SINCERITY



## TWO KINDS OF EMPLOYER RESPONSES

1. Accommodation in current position by change in working conditions
2. Transfer to a reasonably comparable position where conflicts are less likely to arise

## EMPLOYEE RIGHTS AND RESPONSIBILITIES

1. Employee has duty to cooperate
2. Employee doesn't get to choose among different accommodations

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## WHAT IS UNDUE HARDSHIP?

Undue hardship if the accommodation is:

1. Costly
2. Compromises workplace safety
3. Infringes on fundamental rights of other employees
4. Requires others to do more than their share of potentially hazardous or burdensome work

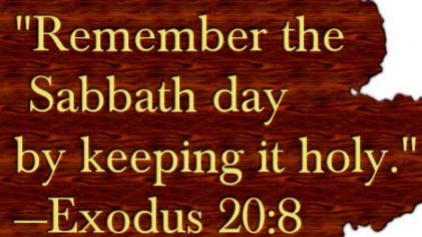
Employer must be able to show actual hardship, not just speculation about hardship (loss of business v. fear of loss of business)

## THE FIRST AMENDMENT

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## TYPICAL ACCOMMODATION CLAIMS

Cannot work on the Sabbath



"Remember the Sabbath day by keeping it holy."  
—Exodus 20:8

## TYPICAL ACCOMMODATION CLAIMS









**WEATHER FORECAST**

**GOD REIGNS**  
and the  
**SON SHINES**  
EXPECT  
**SHOWERS**  
OF  
**BLESSINGS!**



✓ Every day  
GOD is good!

*The LORD is my Shepherd*



FILE MESSAGE INSERT OPTIONS FORMAT TEXT REVIEW

Cut Copy Paste Format Painter Clipboard Basic Text Add Bc

To... [Sally\\_Smith@ParadiseHealth.gov](mailto:Sally_Smith@ParadiseHealth.gov); [jjrice@gmail.com](mailto:jjrice@gmail.com)

Cc...

Subject Tomorrow's Meeting w/ Stakeholders

Send

Just confirming that 11 am still works for you . . . .

Pat Atwood  
Nurse Practitioner  
Women's Health Clinic  
Paradise County Dept. of Health  
Paradise, N.C. 12345

*Have a **Blessed Day!***

## EXAMPLES

### THE NURSE WHO NEEDS TO WITNESS

- Christine is a nurse in one of the local health dep't clinics.
- She says she is a "deeply religious Christian" and regularly witnesses to co-workers and at least one patient of the clinic.
- She hands out pamphlets that say only believers go to Heaven.
- Christine says that all Muslims are terrorists who are going to hell.
- Two Muslim employees ask the clinic manager to intervene and/or speak with the health director.
- Other employees complain to county HR about Christine's proselytizing at work. The HR director tells the health director about the complaints.

## WHAT SHOULD THE HEALTH DIRECTOR DO?

1. Assume that Christine is counseled to stop making offensive statements that might violate the county's anti-harassment policy.  
Christine refuses in the name of her "duty to witness."  
May and should the health director terminate her employment?
2. What if the pamphlets did not include statements about non-believers not going to heaven and Christine had not called Muslims "terrorists?"
3. Should Christine be warned to cease all proselytizing? Or would she have a claim of religious discrimination?
4. Is there a way to accommodate Christine's expression of her religious beliefs?

## INVITATION TO PRAYER

1. The Paradise County Health Dep't has a policy prohibiting supervisors from fraternizing with subordinates outside of work.
2. Matthew, who supervises the Environmental Health Division, holds weekend prayer meetings at his home that some of his subordinates in the EH division attend voluntarily.
3. Matthew invites all employees to attend those meetings by sending mass emails to his coworkers through the county's server and by posting on FB.
4. He also asks employees to "like" his own and his church's FB pages.
5. Matthew posts daily musings on current events and political happenings on his FB page. He usually ends each post with a relevant scripture.
6. Matthew has been urging his followers to have tolerance for the new presidential administration and says that the new president is "part of God's plan" for the U.S.
7. Another division head heard about the meetings and has raised concerns with management that the dep't is now ignoring its fraternizing policy, which it had previously strictly enforced.

## INVITATION TO PRAYER

8. Although some employees in the EH division and some in other divisions of the health dep't follow Matthew and his church on FB, some employees have asked Matthew not to email them or invite them to his church.
9. Matthew apologized for any offense and refrained from emailing or asking those coworkers after they requested that he not do so.
10. Matthew consulted with county HR about his desire to continue spreading the work about God, his church and Christianity.
11. HR advised Matthew, a stellar employee, that he could continue talking to employees about his beliefs and his church as long as other employees welcomed such expression and there were no offensive comments regarding other religions.

## WHAT SHOULD THE HEALTH DIRECTOR DO?

1. Was HR's response to Matthew correct?
2. Should the Health Director instruct Matthew to stop sending the mass emails?
3. Are Matthew's political musings/statements political speech entitled to protection?

## “PLEASE DON’T SWEAR!”

1. Candy Kane complained to her supervisor that nearly all of her co-workers constantly used profane language and engaged in vulgar conduct in the workplace, which deeply offended her religious beliefs and values. Her supervisor ignored her concerns. Candy appealed to the health director.
2. The health director told Candy that she could not discipline employees for using foul language unless they did so in the presence of patients or clients and told her just to ignore it.
3. Candy brought a Title VII religious discrimination claim against the county.

What do you think the outcome will be?

## VACCINATION NATION

The Paradise County Health Dep’t requires all employees to have current vaccinations for whooping cough, measles, mumps and rubella, as well as to receive annual flu vaccines.

The Health Dep’t wants to ensure that its employees do not transmit the flu or other viruses to patients and also wants to reduce the risk that employee will become ill and miss work.

## PARADISE COUNTY'S VACCINE ISSUES

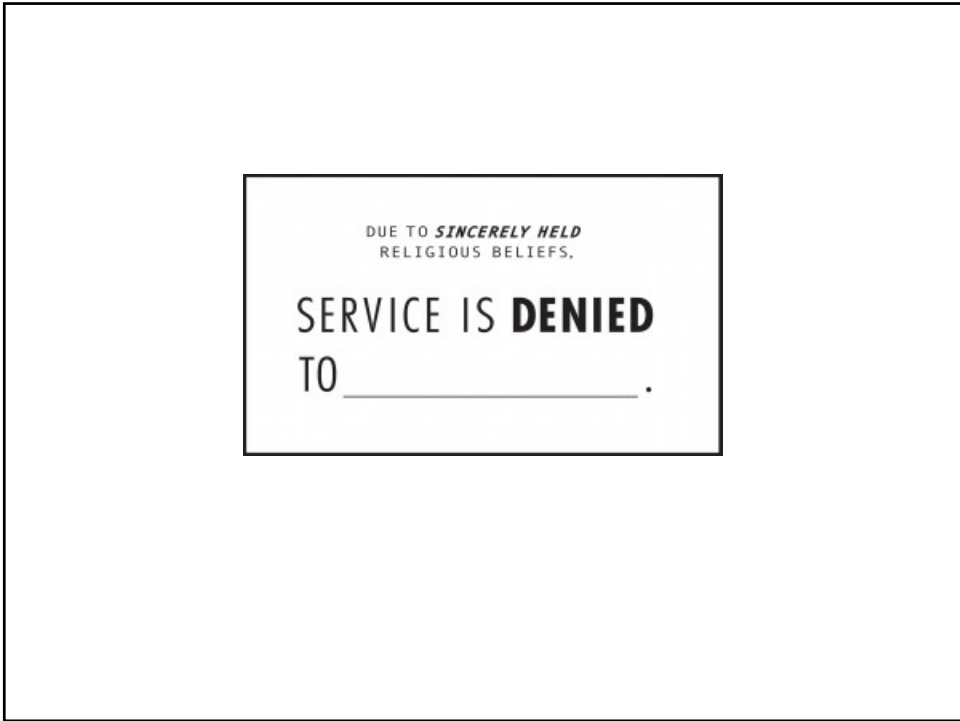
Three employees refuse to be vaccinated:

1. Angela: "I strongly believe that the introduction of these substance into my body is harmful both to me and any future child I may have. I won't allow my kids to be vaccinated either."
2. Bill: "I am a strict vegan. I do not consume any animal byproducts. I won't take or use an egg-based vaccine."
3. Cecelia: "I am a Jehovah's Witness and my faith prohibits me from being vaccinated."

## QUESTIONS

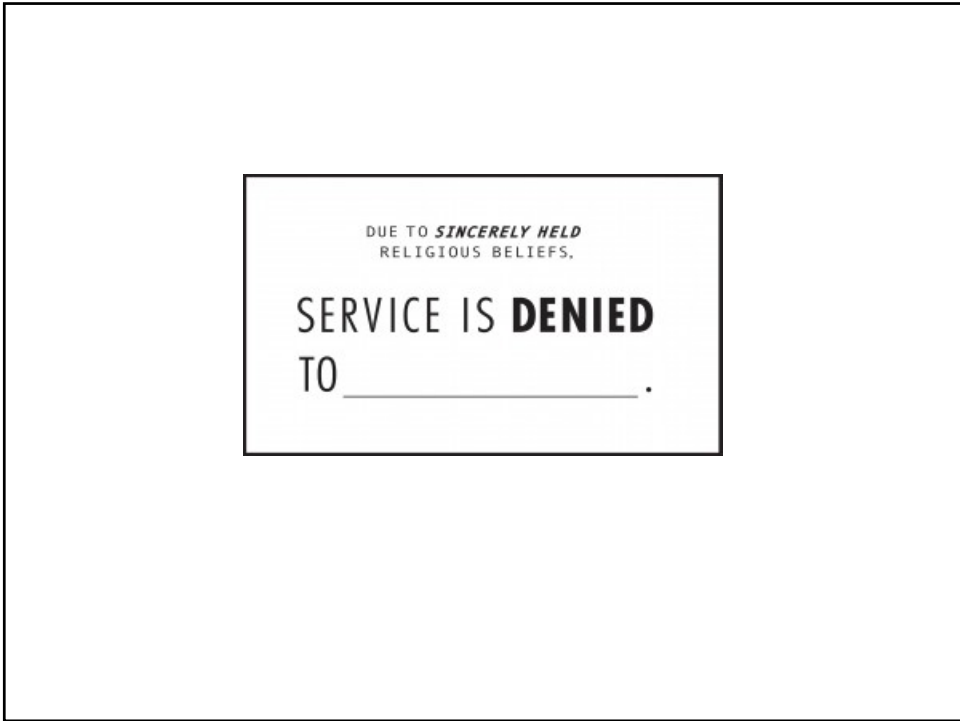
1. Is the Health Dep't required to accommodate any of these three individuals? How should the Health Dep't evaluate these employees' refusal to be vaccinated?
2. How can the Health Director know whether the religion identified by the employee actually speaks to the vaccination issue?
3. Does the analysis change if all three of these individuals work in the same department? What if they are all are nurses in the county's walk-in medical clinic and have extensive patient contact?





## PHARMACISTS AND RELIGIOUS OBJECTIONS

1. One of the pharmacists working in the Paradise County health department pharmacy began refusing to dispense contraceptives or even to talk to patients requesting them. The pharmacist was Catholic but had previously dispensed birth control.
2. The pharmacy manager offered to have one of the other pharmacists fill prescriptions for contraceptives, but the pharmacist demanded that he not be required even to speak with customers with prescriptions for or seeking advice about birth control.
3. The health director concluded that this was an unreasonable request and an undue hardship and fired the pharmacist for insubordination.



“I CAN’T TREAT *THEM* . . .”

1. An employee hired by the Paradise County Health Dep’t to counsel patients who have tested positive for HIV tells her supervisor that she cannot continue working with a patient who has revealed that he is gay.
2. The employee says that she is an evangelical Christian and that her beliefs prohibit her from counseling or treating anyone who is sexually active outside of a traditional heterosexual marriage. She considers sexual activity outside of heterosexual marriage to be sinful.
3. The health director offers to let the employee refer patients who want counseling on safe sexual practices outside of marriage to the other counselor in the clinic, but tells her that she must offer counseling on further testing and medical information on the course of the disease to all patients regardless of the sexual orientation or relationship status.
4. The employee rejects that accommodation. The health director fires her.

## QUESTION

Could the health director have refused to discuss the employee's religious conflict because she did not mention it during her interview?

## REFUSAL TO PROVIDE SOCIAL SECURITY NUMBER



"What are the last four digits of your Social Security number?"



women aren't supposed  
to make coffee...  
the Bible says



**HE BREWS**  
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FYI: THERE'S A T000000N OF PEOPLE DOWN THERE THANKING YOU THAT IT IS FRIDAY

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"Wireless communication is nothing new.  
I've been praying for 75 years!"