

When and How Must Employees' Religious Beliefs Be Accommodated? Health Directors Legal Conference June 2017

**Diane M. Juffras
School of Government**

THE LAW: TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 (42 U.S.C. § 2000e-2)

Title VII makes it unlawful for public employers 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 his/her race, color, religion, gender or national origin. These categories are referred to as “protected classes. See also G.S. 126-16.

Title VII also requires employers to reasonably accommodate an employee's religious beliefs or practices, unless doing so would cause more than a minimal burden on the operations of the employer's business. This means an employer may be required to make reasonable adjustments to the work environment that will allow an employee to practice his or her religion.

Examples of some common religious accommodations include flexible scheduling, voluntary shift substitutions or swaps, job reassignments, and modifications to workplace policies or practices.

SOME EEOC QUESTIONS AND ANSWERS (annotated)

1. When must an employer to accommodate an applicant or employee’s religious belief, practice, or observance?

Title VII requires an employer, *once on notice that a religious accommodation is needed*, to reasonably accommodate an employee whose sincerely held religious belief, practice, or observance conflicts with a *work requirement*, unless doing so would pose an *undue hardship*. Under Title VII, the undue hardship defense to providing religious accommodation requires a showing that the proposed accommodation in a particular case poses more than a minimal cost or burden. This is a lower standard for an employer to meet than undue hardship under the Americans with Disabilities Act (ADA) which is defined in that statute as “significant difficulty or expense.”

2. How does an employer learn that accommodation may be needed?

An applicant or employee who seeks religious accommodation *must make the employer aware* both of the need for accommodation and that it is being requested due to a conflict between religion and work.

Employer-employee cooperation and flexibility are key to the search for a reasonable accommodation. If the accommodation solution is not immediately apparent, the employer should discuss the request with the employee to determine what accommodations might be

effective. If the employer requests additional information reasonably needed to evaluate the request, the employee should provide it. For example, if an employee has requested a schedule change to accommodate daily prayers, the employer may need to ask for information about the religious observance, such as time and duration of the daily prayers, in order to determine whether accommodation can be granted without posing an undue hardship on the operation of the employer's business. Moreover, even if the employer does not grant the employee's preferred accommodation, but instead provides an alternative accommodation, the employee must cooperate by attempting to meet his religious needs through the employer's proposed accommodation if possible.

3. Does an employer have to grant every request for accommodation of a religious belief or practice?

No! Title VII requires employers to accommodate *only those religious beliefs that are religious and "sincerely held,"* and that can be accommodated without an undue hardship. Although there is usually no reason to question whether the practice at issue is religious or sincerely held, if the employer has a bona fide doubt about the basis for the accommodation request, it is entitled to make a limited inquiry into the facts and circumstances of the employee's claim that the belief or practice at issue is religious and sincerely held, and gives rise to the need for the accommodation.

4. When does an accommodation pose an "undue hardship"?

An accommodation would pose an undue hardship if it would impose more than a minimal cost on the operation of the employer's business. *Factors* relevant to undue hardship may include the type of workplace, the nature of the employee's duties, the identifiable cost of the accommodation in relation to the size and operating costs of the employer, and the number of employees who will in fact need a particular accommodation.

Costs to be considered include not only direct monetary costs but also *the burden on the conduct of the employer's business*. For example, courts have found undue hardship where the accommodation diminishes efficiency in other jobs, infringes on other employees' job rights or benefits, impairs workplace safety, or causes co-workers to carry the accommodated employee's share of potentially hazardous or burdensome work. Whether the proposed accommodation conflicts with another law will also be considered.

5. What are common methods of religious accommodation in the workplace?

Some of the most common methods of providing reasonable accommodation are:

Scheduling Changes, Voluntary Substitutes, and Shift Swaps

Although it would pose an undue hardship to require employees involuntarily to substitute for one another or swap shifts, the reasonable accommodation requirement can often be satisfied without undue hardship where a *volunteer* with substantially similar qualifications is available to cover, either for a single absence or for an extended period of time. An employer does not have to permit a substitute or swap if it would result in the employer having to pay premium wages

(such as overtime pay) for an extended period of time, although the frequency of the arrangement will be relevant to determining if it poses an undue hardship.

Changing an employee's job tasks or providing a lateral transfer

When an employee's religious belief or practice conflicts with a particular task, appropriate accommodations may include relieving the employee of the task or transferring the employee to a different position or location that eliminates the conflict. Whether such accommodations pose an undue hardship will depend on factors such as the nature or importance of the duty at issue, the availability of others to perform the function and the availability of other positions.

The employee should be accommodated in his or her current position if doing so does not pose an undue hardship. If no such accommodation is possible, the employer needs to consider whether lateral transfer is a possible accommodation.

Accommodating prayer, proselytizing, and other forms of religious expression

Some employees may seek to display religious icons or messages at their work stations. Others may seek to proselytize by engaging in one-on-one discussions regarding religious beliefs, distributing literature, or using a particular religious phrase when greeting others. Still others may seek to engage in prayer at their work stations or to use other areas of the workplace for either individual or group prayer or study. In some of these situations, an employee might request accommodation in advance to permit such religious expression. In other situations, the employer will not learn of the situation or be called upon to consider any action unless it receives complaints about the religious expression from either other employees or customers.

Employers should not try to suppress all religious expression in the workplace. Title VII requires that employers accommodate an employee's sincerely held religious belief in engaging in religious expression in the workplace to the extent that they can do so without undue hardship on the operation of the business. In determining whether permitting an employee to pray, proselytize, or engage in other forms of religiously oriented expression in the workplace would pose an undue hardship, relevant considerations may include the effect such expression has on co-workers, customers, or business operations.

For example, if an employee's proselytizing interfered with work, the employer would not have to allow it. Similarly, if an employee complained about proselytizing by a co-worker, the employer can require that the proselytizing to the complaining employee cease. Moreover, if an employee was proselytizing an employer's customers or clients in a manner that disrupted business, or that could be mistaken as the employer's own message, the employer would not have to allow it. Where the religiously oriented expression is limited to use of a phrase or greeting, it is more difficult for the employer to demonstrate undue hardship. On the other hand, if the expression is in the manner of individualized, specific proselytizing, an employer is far more likely to be able to demonstrate that it would constitute an undue hardship to accommodate an employee's religious expression, regardless of the length or nature of the business interaction. An employer can restrict religious expression where it would cause customers or co-workers reasonably to perceive the materials to express the employer's own message, or where the item or message in question is harassing or otherwise disruptive.