



Legal Protections Against Religious Discrimination in the Workplace

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The EEOC is tasked by Congress to enforce Title VII of the Civil Rights Act which makes it illegal to consider religion when making employment-based decisions and requires employers to provide employees with reasonable religious accommodations absent undue hardship.





What is Religion



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Religious beliefs include theistic beliefs (e.g., those that include a belief in God) 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.”

- Beliefs must be both religious and sincerely held.
- Beliefs based on political or social views are not covered.
- Beliefs typically incorporate ultimate ideas about right and wrong, life, purpose, and death, but need not be a parochial or traditional concept of religion.
- Religious observances or practices are actions supporting, manifesting, or required by the employee’s beliefs (e.g., praying to show belief in one’s deity).



Understanding an employee's sincerely held religious belief

- Employer may inquire whether a belief is sincere (or “bona fide”) but usually may not question the validity of belief.
- An employee may have become more religious so past conduct of the employee may not show lack of a sincerely held religious belief.
- Religion is broadly defined and not limited to traditional organized religions.



Sincere beliefs and related practices need not be required by a given faith or widely accepted

- The belief does not have to be widely held, recognized, or accepted by others.
- The belief (or practice related to such belief) does not have to be required by a church or sect.
- The belief does not have to appear reasonable or valid to non-believers.
- The belief need only incorporate a moral or ethical component and be *sincerely* held with the *strength* of traditional religious views.



Example: Religious Practice Not Widely Followed

- Employee was fired for refusing to cover his religious Coptic-language tattoos in “family-oriented” restaurant.
- Employee followed Kemetecism, an ancient Egyptian religions.
 - devoted to the worship of Egyptian sun god, Ra
 - considered a sin to cover tattoos including name “Ra”
 - Had fewer than ten adherents in sect
- Defendant moved for summary judgment on ground that employee lacked a *sincere* belief, and the tattoos were inconsistent with the company’s image.
- Court denied motion where employee’s belief was sincere and no evidence of alleged undue hardship of customers viewing tattoos as detracting from company’s “family-oriented” image.



Religious tattoos of employee *EEOC v. Red Robin Gourmet Burgers*



EEOC v. Red Robin Gourmet Burgers, 2005 WL 2090677 (W.D. Wash. Aug. 29, 2005)



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Notice of Religious Accommodation Request



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Notice of A Conflict between a Work Rule and Religious Belief or Practice

- There are no magic words an applicant or employee must say to put an employer on notice.
- Generally, an applicant or employee must provide sufficient information for employer to be aware of a conflict between a work rule and religious need.
- But an employer may be considered on notice if it observes or suspects an applicant, or employee may need a religious accommodation (especially if that applicant or employee is unaware of the work rule).



Example: Suspicion of Need for Accommodation

Samantha applied for a position with a large retailer. During her interview she wore a headscarf. That prompted Assistant Store Manager to suspect a Muslim religious practice in conflict with “Look Policy” prohibiting all headwear.

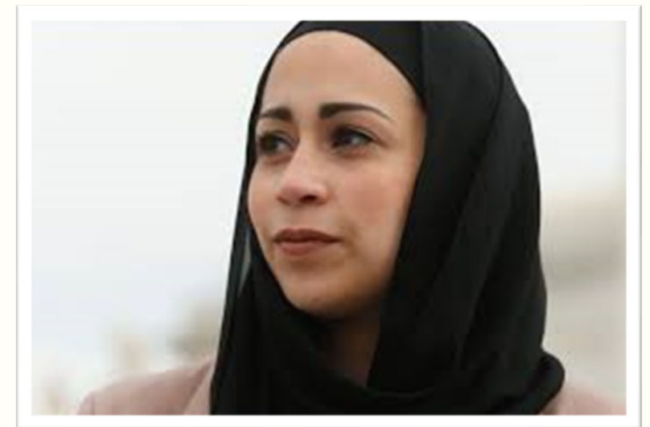
Samantha did not know of conflict and did not request an accommodation of religious need to wear a headscarf.

District Manager directed Assistant Store Manager not to hire applicant.



EEOC v. ABERCROMBIE & FITCH STORES, INC (2015)

In an 8-1 Ruling, the Court agreed with the EEOC that an employer violates Title VII when a motive for not hiring an applicant is to avoid providing religious accommodation, even if the employer does not know whether or not the employee will need one.





What is a Reasonable Accommodation



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- Not defined under Title VII so must consider on case-by-case basis.
- The process should be interactive and bilateral cooperation is expected.
- Employee's requested accommodation is not required as long as the offered accommodation eliminates the conflict.
- However, if more than one possible accommodation, the employer must offer one that "least disadvantages the individual's employment opportunities." 29 C.F.R. § 1605.2 (c)(2)(ii).
- It must eliminate the conflict between the practice and rule, otherwise the employer must prove undue hardship.





Common Accommodations



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For appearance:

- religious garb (e.g., turban, modest clothing, yarmulke)
- religious symbols (e.g., cross, star of david, kirpan)
- body adornments (e.g., tattoos, piercings)

For prayer/worship:

- breaks for praying at work, shift change for attending services, time off for religious holidays, rescheduling



For activity restrictions:

- allow special foods (e.g., kosher, no pork)
- schedule certain days/hours (e.g., Sabbath)
- use a substitute employee for certain activities (e.g., to avoid filling prescription for morning-after pill)



Example: Time Off for Religious Holidays/Holy Days

At hire, Ford tells his employer that he practices Messianic Judaism and that his religious practice does not allow him to work on the religious holidays/holy days or the Sabbath and that he would need to wear a kippah. The company says that's no problem.

When Ford took off his first religious holiday, Rosh Hashana, work gave him disciplinary points for missing work during his probationary period. The company then required that Ford provide notice from his religious leader on official religious organization letterhead outlining his need for an accommodation. Ford could not provide this as his congregation had disbanded.

Ultimately, Ford felt that he had no choice but to leave his job because they could not accommodate his religious accommodation requests.



Example: Biometrics Scanning

David worked for a mining company for 35 years. The company made the decision to install biometric hand scanners to track employee time and attendance for payroll purposes.

David is an Evangelical Christian who's sincerely held religious belief is that he is not permitted to submit his hands for biometric scanning as it would violate the requirements of his religion. David requested to go back to manually submitting his time and attendance as he had previously done.

The mining company refused to provide an effective accommodation to David and David felt that he had no choice but to retire from the company.



Example: Drug Screening

Four Sikh individuals applied to be truck drivers for a major national trucking company. As part of the application process, the company requires drivers to submit to drug screening. The company's drug screening process is to take a hair clipping for analysis.

The applicants asked for a religious accommodation as their religious practice does not allow for cutting hair.

The company denied any other form of drug screening and denied them hire.



Example: Garb/Groom Policy Exception

Malinda was recently offered a position as a nurse through a health services provider to work a correctional facility. She requested an accommodation to wear a scrub skirt instead of scrub pants to comply with her sincerely held Apostolic Pentecostal Christian beliefs. The health services provider denied Malinda's request and rescinded its job offer.

Malinda had years of experiences wearing a scrub skirt in lieu of scrub pants for other employers, including inside a juvenile correctional facility.



Example: Substituting one religious program for another

Disbrow has been employed with a major commercial airline company for over 30 years when he was diagnosed with alcohol dependency and entered into a residential alcohol treatment program. Disbrow is a practicing Buddhist.

The airline company utilizes a program designed for pilots who have lost their FAA medical certificate due to drug or alcohol dependency that their employees must work through to return to work. One requirement of this program is that participating pilots must regularly attend AA meetings.

Disbrow asked to substitute a program called Refuge Recovery, based on Buddhist principles, for AA meetings.

He was denied this option.



Accommodations Through Scheduling, Assignments, Duties, and Transfers

Possible Accommodations:

- Flexible Scheduling (e.g., arrival, departure, breaks)
- Voluntary Substitutes or Shift Swaps
- Lateral Transfers
- Modified job assignments or duties

Be aware of the following:

- Involuntary swaps are unnecessary and should be avoided
- An employee's religious belief may prohibit an accommodation that induces another to violate his/her religious tenet (e.g., working on a Saturday)





Undue Hardship



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Undue Hardship after Groff v. DeJoy (2023)

Employers can deny an accommodation if they can show the burden to provide it is substantial in the overall context of their business.

Employers need to consider all relevant factors in the case at hand, including the accommodations at issue and their practical impact in light of the nature, size and operating cost of the employer.





Best Practices



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Best Practices for Employers

- Inform employees that employer will make good faith, reasonable efforts to accommodate employees' religious practices.
- Train managers on accommodation needs and responding to requests.
- Develop internal policies procedures for addressing religious accommodation requests and monitoring compliance.
- Assess each request individually.
- Avoid assumptions about a belief or practice, or the “best” accommodation.
- Once on notice, initiate good faith efforts to accommodate.



Best Practices for Employers

- Confer with employee about his/her religious needs and proposed accommodation.
- Consider all possible accommodations and choose employee's preference, if possible.
- Train employees about the employer's obligation to provide reasonable accommodations.
- Train employees to avoid stereotyping based on dress, grooming, appearance, diet.



Best Practices for Employers Dress Codes & Grooming Standards

- Allow employees to wear a yarmulke, headdress, hijab, or other religious garb even if it is an exception to a dress policy.
- Do not assign employee with religious garb to a non-contact position because of “customer preference” concerns.
- Do not assume that atypical dress or an unusual practice will create an undue hardship.
- Be flexible and open to making exceptions to policies and practices.
- Be creative regarding work schedules, work duties, and selection procedures.



Best Practices for Employers Unionized Workplace

- Employer should confer with union reps about accommodations and educating employees about obligation to provide reasonable accommodations.
- Do not assume that an accommodation will conflict seniority system or collective bargaining agreement.
 - Title VII requires that if CBA provides for assignments based on seniority, the employer can still allow voluntary shift substitutes and swaps among employees as a religious accommodation.
 - Some CBAs have strong management-rights clauses with wide discretion to provide accommodations.





Thank You!



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