



This white paper was composed by FrameWright Principal Tom Schierholz, working as a ghostwriter for a licensed attorney. Tom met with the attorney for approximately one hour – to talk through the subject matter and structure of the paper. Based on notes from that conversation, Tom composed a first draft. After reviewing the draft and making minor corrections and changes, the paper was finalized in the language shown here and sent to the attorney's clients.

Religious Discrimination and Religious Accommodation in the Workplace

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Sensitivity to religious issues in the workplace is growing. Consider the following scenarios:

1. An employee who wears a thick beard is unable to don a safety mask and have it seal properly on his face to protect him from dangerous chemical vapors in the workplace. He refuses to shave his beard because he wears it for religious reasons.
2. An employee complains that she faces religious harassment and discrimination because a coworker casually spoke to her about the coworker's evangelical Christian religious beliefs and because the coworker posted religious sayings in the coworker's own cubicle.
3. A Muslim employee who works on a 24/7 assembly line requests to be excused from work briefly several times a day so that he may pray.
4. Another employee who works on the same assembly line requests not to be assigned Saturday shifts because his Seventh Day Adventist religious beliefs do not allow work on Saturdays.

In each instance, what legal obligations does an employer have to address employee complaints of religious harassment and discrimination, on the one hand, and employee requests for religious accommodation, on the other? The legal issues involved are complex, and assessing the legal obligations of an employer in such situations requires careful review of the facts of the individual case and the employer's existing employment practices. However, the relevant statutes and case law offer some guidance to employers.

This article will first discuss how religion has been defined by statute and case law. Second, it will discuss in general terms what may and may not constitute religious discrimination or harassment in the workplace. Finally, it will discuss in general terms what accommodations employers may be obligated to make for employees with respect to religion.

Religion and the Law

As used in Title VII (the federal law that prohibits discrimination on the basis of religion, among other factors), the "term 'religion' includes all aspects of religious observance and practice, as well as belief. . ." 42 U.S.C. § 2000e(j). This definition is broad and has led courts to address a wide variety of employment situations involving religious belief and practice.

Courts have trouble setting the outer limits of the definition of "religion" and try to decide cases in ways that do not require a ruling as to whether a person's beliefs are sincerely held religious ones. When they have had to address the issue, some courts have said that a belief or practice that is religious in the individual's



"own scheme of things" may be adequate to obtain protection under Title VII. The guidelines of the United States Equal Employment Opportunity Commission go so far as to define "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."

Religious Discrimination and Harassment

Federal, state, and local laws prohibit discrimination on the basis of religion with respect to the terms and conditions of employment, just as they prohibit discrimination on the basis of sex or race. For example, an employer may not condition hiring, promotion, a pay raise, continued employment, or other benefits of employment on an employee's acceptance of a supervisor's religious beliefs. (There are exceptions for employment by religious organizations.) Supervisors must be careful not to express their religious and moral beliefs to their subordinates in ways that might suggest that adherence to those beliefs is necessary to success in their jobs. For example, a supervisor's keeping a Bible on his office shelf next to a dictionary and other reference books would probably not be seen as evidence of an intention to discriminate on the basis of religion. However, if at the beginning of a meeting to discuss a subordinate's annual review the supervisor cited portions of Scripture as a guide to the employment relationship, the employee, who then received a bad review, might conclude that it was because he did not accept the supervisor's religious beliefs and that he therefore was the victim of religious discrimination.

Part of the employer's duty not to discriminate on the basis of religion is a duty to stop harassment because of religion. The definition of religious harassment is parallel to that of sexual harassment. A hostile work environment can be created by offensive conduct directed at an employee because of that employee's religion if the conduct is so severe and pervasive that it affects a term or condition of employment and the employer fails to take reasonable steps to stop the conduct. However, conduct that is offensive to a person of religious sensibilities (such as frequent use of profanity) is not necessarily conduct directed at an employee because of the employee's religion.

At the same time, private employers have no duty to prevent all expressions by employees of religious belief, and employees have no right to be free from exposure to all religious expressions. Thus, for example, in situations similar to scenario 2, courts have found there is no basis for employees to claim they were harassed or discriminated against on account of their religion. Nonetheless, employers remain free to establish nondiscriminatory rules against conduct, such as religious proselytizing, that could be disruptive to the smooth operation of the workplace.



Demands for Religious Accommodation

Not only do employers have a duty not to allow religious discrimination or harassment but they also face a legal obligation to accommodate the religious beliefs and practices of their employees. However, that obligation is not absolute or open-ended. To get a better sense of the obligation, it may be useful to examine the legal criteria for a failure to accommodate claim.

Failure to Accommodate Claim

In order to establish a claim that his employer failed to accommodate religious belief or practice, a plaintiff must prove that:

- 1) he has a bona fide religious belief that conflicts with an employment requirement;
- 2) the employer was made aware of the conflict; *and*
- 3) the plaintiff was subjected to an adverse action (such as discharge) for not complying with the employment requirement.

If a plaintiff proves these three elements, an employer, to avoid liability, must show that:

- 1) it offered a reasonable accommodation (even if the accommodation was not necessarily the first choice of the employee); or
- 2) no accommodation is possible that would not cause an undue hardship to the employer.

Reasonable Accommodation

"Reasonable accommodation" is a term that should be familiar to people who work with the requirements of the Americans with Disabilities Act (ADA). In the context of religious issues, a reasonable accommodation is some arrangement that allows the employee to comply with an employment requirement while acting consistently with his religious beliefs. For example, the needs of the employee in scenario 3 above for time to pray during the workday might be met by allowing the employee to use his breaks for that purpose. The desire of the employee in scenario 4 not to work on Saturday might be met by allowing that employee to find another employee willing to switch workdays with him whenever the rotation scheduled the first employee to work on Saturdays.



Undue Hardship

Many religious accommodation claims turn on the question of whether an employer would face an "undue hardship" in accommodating an employee's religious beliefs and practices. Although the term "undue hardship" appears in both the ADA and in the Title VII provisions about religion, the term has been applied quite differently in the two contexts.

In the disability setting, the burden on an employer of a proposed accommodation would have to be large in order to constitute an undue hardship, and undue hardships within the meaning of the ADA are uncommon. According to the ADA, the "term 'undue hardship' means an action requiring significant difficulty or expense when considered in light of factors" such as the overall financial resources of the employer.

In the context of accommodating an employee's religious beliefs and practices, however, the courts have given the phrase a significantly different meaning. Many types and levels of burden can constitute an undue hardship in the religious accommodation setting. Something that imposes a more than de minimus cost on an employer is an undue hardship. A cost can be economic, such as lost business or the cost of paying additional workers (or overtime to current employees). A cost can also be noneconomic, such as compromising a neutral scheduling or job-assignment system (which would affect other employees), impairing customer service or customer relations, compromising the integrity of a manufacturing process, or compromising the safety of the employee in question or other employees.

Thus, in scenario 1 above, considerations of safety might make the employee's request that he be allowed not to wear the mask or to wear it with an incomplete seal an undue hardship. To remove the employee in scenario 4 from the normal rotation so that he is never scheduled on Saturdays or to pay overtime to another employee to cover the employee's Saturday absences might, similarly, impose an undue hardship on an employer.

Handling Religion Issues in the Workplace

Employers who become aware that an employee wants an accommodation of his religious beliefs or practices should have a discussion with that employee to explore possible accommodations. Employers should have written policies prohibiting discrimination and harassment, and those policies should explicitly include religion as one of the protected categories. These policies should include a procedure by which employees who have issues of discrimination or harassment can report the problem and seek a resolution. Of course, policies and procedures must be applied in light of the facts of a specific situation. Supervisors facing workplace religion issues should consult human resources personnel or legal counsel about how to respond.

