

RELIGIOUS ACCOMMODATION IN THE WORKPLACE . . . FOR ALL

As the holiday season approaches, employers must be mindful that not all employees celebrate the same holidays or, for that matter, celebrate holidays at all. Although Christmas, Chanukah, and Kwanza generally fall around the same time of the year, other employees' holidays or religious rites fall at other times of the year. Increasingly, employees are making demands on their employers to accommodate their religious beliefs.

Title VII of the Civil Rights Act of 1964 ("Title VII") prohibits workplace discrimination and harassment based on religion and protects "all sincerely held religious beliefs." Unlike most other areas of discrimination (race, age, national origin, gender), Title VII requires that employers make reasonable accommodation for religious practices unless doing so would result in undue hardship to the employer. Finally, Title VII prohibits retaliation against someone who complains about an employer's discriminatory practices, files a charge, or assists in an investigation of discrimination. Employers with 15 or more employees are required to comply with Title VII. The Illinois Human Rights Act and other state fair employment statutes contain protections against religious discrimination similar to Title VII.

Religious discrimination can be found in the following contexts:

- Failure to hire.
- Negative reaction to mode of dress or grooming, i.e., uncut hair/turban for male a Sikh, yarmulke for a male Jew, hijab or other face or body covering for a practitioner of Islam or other Mid-Eastern/Asian religions.
- Stereotyping.
- Comments, jokes, or harassment about or in reference to an employee's religion or religious practices.
- Failure to reasonably accommodate a requested schedule or change of schedule based on day of worship, i.e., employee unable to work on his/her day of rest or holiday.
- Failure to reasonably accommodate requests for prayer periods or a place to pray.
- Failure to reasonably accommodate requests for time off for religious observances.

As long as an employer has reasonably accommodated an employee's religious needs, the employer need not consider the employee's alternative suggested accommodations even if the employee's preference would not cause undue hardship to the employer. Possible accommodations may include shift swaps between employees, flexible scheduling (four ten-hour days instead of five eight-hour days), lateral transfers to other positions that can better accommodate the employee's religious needs, shortening lunch periods to allow for early departures, not mandating attendance at holiday parties when certain employees do not celebrate holidays, and not always scheduling training or important meetings that preclude a religious employee's participation.



An employer is not required to pay employees for time taken off for religious observances. Employees can use vacation or personal days for religious holidays.

Employees seeking accommodation for religious beliefs and practices are responsible for minimizing conflicts between job duties and religious needs. Employees should tell employers about religious needs upfront when they accept the offer of employment. (Employers cannot ask questions about an applicant's religion before offering the applicant a job.) Employees should notify employers as far in advance as possible of needed time off for religious observances.

Employees do not have to justify or prove anything about their religious belief to the employer, such as bringing in a note from a clergyperson. On the other hand, employers do not have to blindly accept unusual requests. (Several courts have recently ruled that the Church of Body Modification is not a legitimate religious practice which would allow multi-pierced employees to violate an employer's dress or grooming codes.) Employers also do not have to allow employees to post religious symbols in the workplace or proselytize other employees or customers if doing so would be offensive to other employees or customers' beliefs or practices.

For further information regarding religious accommodation in the workplace, please contact Joan M. Eagle at (312) 845-5439 or jeagle@schwartzcooper.com or any other member of Schwartz Cooper's Employment Practice Group.