

Webinar: Religion in the Workplace

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Religion in the Workplace

- Religious Accommodation/Discrimination
- Affinity Groups
- Hypotheticals

Religion in the Workplace

Religious Accommodation:

- An employer is required to accommodate the sincerely held religious beliefs of its employees if the belief conflicts with a job requirement and the employer can reasonably accommodate the employee without undue hardship.
- Undue hardship has been defined as any cost that is more than de minimis.

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What are Reasonable Accommodations?

- No work on Sabbath?
- Allowing religious dress?
- Extra breaks for prayer?
- Flexible Schedules?
- Unpaid Leave?
- Religious displays in work areas?

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TransWorld Airlines v. Hardison, 432 U.S. 63 (1977)

- An employee worked as a clerk in the employer's sales department. During the course of his employment, the employee developed religious beliefs that required him to observe the Sabbath by not working from sunset on Friday until sunset on Saturday. Under the applicable collective bargaining agreement, the employee could choose the shifts he needed to avoid working on the Sabbath. However, when the employee transferred to a new group in the department, he lost his seniority status. Under the collective bargaining agreement, the employee's lower status meant that he could no longer select his shift. The employer could accommodate the employee's requests for religious holidays but not Sabbath days. Accommodating the employee's requests regarding the Sabbath would have required the employer to replace the employee with a supervisor or other worker on duty. Either choice would have caused the employer to lose efficiency in other jobs or pay higher wages.

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Baker v. Home Depot, 445 F.3d 541 (2d Cir. 2006)

- An employee alleged that he was discriminated against by his employer for failing to work on Sundays. The employee attended Gospel Fellowship Church where church leaders taught that the Bible prohibits working on the Sabbath. Initially, the employer accommodated the employee's request to not work on Sundays. However, when a new store manager took over, the new manager insisted that the employee work on Sundays. The new manager offered to give the employee a later shift on Sunday so that he did not miss his church service. However, the employee declined because he was not permitted to work on Sundays at all. When the manager offered the employee part-time employment that excluded Sundays, the employee declined because his wife was expecting a baby and the couple needed health benefits. An affidavit submitted by the employer alleges that the employee also declined the accommodation of finding another sales associate to swap shifts with him. Ultimately, the manager terminated the employee for unexcused absences.

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Miller v. Drennon, 1992 WL 137578 (4th Cir., 1992)

- Due to his religious beliefs, a male paramedic could not work scheduled 24-hour shifts in single bedroom substations with a female partner. The employer attempted to accommodate the paramedic by allowing him to swap shifts and by spending \$5,000 on wall-barriers. However, the paramedic was not satisfied with these accommodations.

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Recommendations:

- Be proactive
- Schedule celebrations with sensitivity
- Have a flexible holiday schedule
- Create a quiet space
- Create a process for requesting accommodations
- Set clear religious expression policy/guidelines
- Train Managers

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Affinity Groups:

- Forums in which members share common interests, issues, or concerns
- Often divide employees by protected class
- Target meeting or events to members of the protected class

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General Recommendations:

- Establish clear criteria for forming affinity groups
- Open membership and participation to all employees interested in joining the group
- Ensure goal of each group is linked to a strategy or business objective

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Schwartzberg v. Mellon Bank, 2008 U.S. Dist. LEXIS 1180 (W.D. Pa. Jan. 8, 2008)

- An employer accommodated the religious needs of an Orthodox Jew by allowing him to bring religious articles to work, including candles, and allowing him to take leave for the Sabbath and religious holidays. The employee was a member of a disability affinity group called HEART. There were no religious accommodation issues until the employee was invited to a luncheon by PRISM, the employer's gay, lesbian, bisexual, and transgender affinity group. Members of HEART were sent an email asking them to "[p]lease try to support this if your schedule permits." The employee responded saying that he strongly resented the lumping of affinity groups together and asserted "[if you] happen to have this sickness called gay or lesbian, just do your job." The recipient of the email found the email offensive and forwarded it to high level managers. The managers informed the employee of its company policy and a city ordinance prohibiting sexual orientation discrimination. The managers gave the employee a verbal warning and, less than a week later, the employee presented a manager with a postcard and letter explaining his religious opposition to homosexual relations. A portion of the letter stated "Someone can argue this back and forth if they want to, but let them argue with AIDS, etc. The real BOSS is sending us a message!" The employee was warned a second time and was told that any further violations would result in termination of employment. In the next few months that followed, the employee was found asleep at his desk. As a result, the employee was terminated.

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Moranski v. General Motors Corp., 433 F.3d 537 (7th Cir. 2005)

- A GM employee wanted to start a non-denominational “Christian Employee Network” and requested affinity group recognition. GM denied the employee’s request. While GM recognized groups based on disability, veteran status, ancestry, ethnicity, and sexual orientation. GM had a policy of not recognizing groups that promote particular religious or political positions or groups organized as the result of a common interest or activity, such as dance or art.

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Additional Recommendations:

- Ensure company culture is supportive
- Create defined policy
- Don't discriminate

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- A Muslim employee requests weekly leave on Fridays from 1:00-2:15pm to attend a congregational prayer meeting at a local mosque. The employee works for a public transit authority as a train conductor. The public transit authority generally has many train conductors that are available to work on Friday afternoons but occasionally the authority is short-staffed. Can the employee be required to work on Friday afternoons?

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- A Jehovah's Witness employee is a nurse who cannot work on Saturdays. The employer is a hospital that regularly schedules nurses for Saturday shifts. Initially her supervisor accommodates the nurse's request but after other employees begin complaining of unfair treatment, the supervisor leaves it to the employee to swap shifts herself. If no one volunteers to swap shifts, can the employer require the nurse to work on Saturdays?

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- An Orthodox Jew works in marketing. She is asked to create an advertisement for the a gay pride dinner sponsored by the employer. The employee respects her co-workers as individuals but does not support same-sex relationships. Does the employee have to create the advertisement?

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- A female employee requests to wear religious garb, including a head covering and facial veil. The employee works in a daycare center with small children and the daycare has a policy of not permitting any head-gear, hoods, or dangling jewelry for safety purposes. Can the daycare terminate the employee for wearing a religious head covering?

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- A car manufacturer chooses to support a variety of affinity groups based on race, ethnicity, gender, veteran status, sexual orientation, and disability status but not affinity groups based on religion. An evangelical Christian asks if he can start a “Christian Employee Network” affinity group. Is the employer required to recognize the Christian group?