



# Best Practices for Eradicating Religious Discrimination in the Workplace

This technical assistance document was issued upon approval of the Chair of the U.S. Equal Employment Opportunity Commission.

**OLC Control Number:** EEOC-NVTA-2008-1

**Number:**

**Concise Display Name:** Best Practices for Eradicating Religious Discrimination in the Workplace

**Name:**

**Issue Date:** 07-22-2008

**General Topics:** Religion

**Summary:** This document provides best practices for employers and employees on rights and responsibilities with respect to religious discrimination, including employment decisions, harassment, accommodation, and retaliation.

**Citation:** Title VII, 29 CFR Part 1605

**Document Applicant:** Employers, HR Practitioners

**Applicant:**

**Previous Revision:** No

**Revision:**

The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

## Disparate Treatment Based on Religion

### Employer Best Practices

- Employers can reduce the risk of discriminatory employment decisions by establishing written objective criteria for evaluating candidates for hire or promotion and applying those criteria consistently to all candidates.
- In conducting job interviews, employers can ensure nondiscriminatory treatment by asking the same questions of all applicants for a particular job or category of job and inquiring about matters directly related to the position in question.
- Employers can reduce the risk of religious discrimination claims by carefully and timely recording the accurate business reasons for disciplinary or performance-related actions and sharing these reasons with the affected employees.

- When management decisions require the exercise of subjective judgment, employers can reduce the risk of discriminatory decisions by providing training to inexperienced managers and encouraging them to consult with more experienced managers or human resources personnel when addressing difficult issues.
- If an employer is confronted with customer biases, e.g., an adverse reaction to being served by an employee due to religious garb, the employer should consider engaging with and educating the customers regarding any misperceptions they may have and/or the equal employment opportunity laws.

## Religious Harassment

### Employer Best Practices

- Employers should have a well-publicized and consistently applied anti-harassment policy that: (1) covers religious harassment; (2) clearly explains what is prohibited; (3) describes procedures for bringing harassment to management's attention; and, (4) contains an assurance that complainants will be protected against retaliation. The procedures should include a complaint mechanism that includes multiple avenues for complaint; prompt, thorough, and impartial investigations; and prompt and appropriate corrective action.
- Employers should allow religious expression among employees to the same extent that they allow other types of personal expression that are not harassing or disruptive.
- Once an employer is on notice that an employee objects to religious conduct that is directed at him or her, the employer should take steps to end the conduct because even conduct that the employer does not regard as abusive can become sufficiently severe or pervasive to affect the conditions of employment if allowed to persist in the face of the employee's objection.
- If harassment is perpetrated by a non-employee assigned by a contractor, the supervisor or other appropriate individual in the chain of command should initiate a meeting with the contractor regarding the harassment and demand that it cease, that appropriate disciplinary action be taken if it continues, and/or that a different individual be assigned by the contractor.
- To prevent conflicts from escalating to the level of a Title VII violation, employers should immediately intervene when they become aware of objectively abusive or insulting conduct, even absent a complaint.
- Employers should encourage managers to intervene proactively and discuss with subordinates whether particular religious expression is welcome if the manager believes the expression might be construed as harassing to a reasonable person.
- While supervisors are permitted to engage in certain religious expression, they should avoid expression that might – due to their supervisory authority – reasonably be perceived by subordinates as coercive, even when not so intended.

### Employee Best Practices

- Employees who are the recipients of unwelcome religious conduct should inform the individual engaging in the conduct that they wish it to stop. If the conduct does not stop, employees should report it to their supervisor or other

appropriate company official in accordance with the procedures established in the company's anti-harassment policy.

- Employees who do not wish to personally confront an individual who is directing unwelcome religious or anti-religious conduct towards them should report the conduct to their supervisor or other appropriate company official in accordance with the company's anti-harassment policy.

## Reasonable Accommodation of Religious Beliefs and Practices

### Employer Best Practices

#### Reasonable Accommodation - Generally

- Employers should inform employees that they will make reasonable efforts to accommodate the employees' religious practices.
- Employers should train managers and supervisors on how to recognize religious accommodation requests from employees.
- Employers should consider developing internal procedures for processing religious accommodation requests.
- Employers should individually assess each request and avoid assumptions or stereotypes about what constitutes a religious belief or practice or what type of accommodation is appropriate.
- Employers and employees should confer fully and promptly to the extent needed to share any necessary information about the employee's religious needs and the available accommodation options.
- An employer is not required to provide an employee's preferred accommodation if there is more than one effective alternative to choose from. An employer should, however, consider the employee's proposed method of accommodation, and if it is denied, explain to the employee why his proposed accommodation is not being granted.
- Managers and supervisors should be trained to consider alternative available accommodations if the particular accommodation requested would pose an undue hardship.
- When faced with a request for a religious accommodation which cannot be promptly implemented, an employer should consider offering alternative methods of accommodation on a temporary basis, while a permanent accommodation is being explored. In this situation, an employer should also keep the employee apprised of the status of the employer's efforts to implement a permanent accommodation.

#### Undue Hardship – Generally

- The de minimis undue hardship standard refers to the legal requirement. As with all aspects of employee relations, employers can go beyond the requirements of the law and should be flexible in evaluating whether or not an accommodation is feasible.
- An employer should not assume that an accommodation will conflict with the terms of a seniority system or CBA without first checking if there are any exceptions for religious accommodation or other avenues to allow accommodation consistent with the seniority system or CBA.

- An employer should not automatically reject a request for religious accommodation just because the accommodation will interfere with the existing seniority system or terms of a CBA. Although an employer may not upset co-workers' settled expectations, an employer is free to seek a voluntary modification to a CBA in order to accommodate an employee's religious needs.
- Employers should train managers to be aware that, if the requested accommodation would violate the CBA or seniority system, they should confer with the employee to determine if an alternative accommodation is available.
- Employers should ensure that managers are aware that reasonable accommodation may require making exceptions to policies or procedures that are not part of a CBA or seniority system, where it would not infringe on other employees' legitimate expectations.

### **Schedule Changes**

- Employers should work with employees who need an adjustment to their work schedule to accommodate their religious practices.
- Notwithstanding that the legal standard for undue hardship is "more than de minimis," employers may of course choose voluntarily to incur whatever additional operational or financial costs they deem appropriate to accommodate an employee's religious need for scheduling flexibility.
- Employers should consider adopting flexible leave and scheduling policies and procedures that will often allow employees to meet their religious and other personal needs. Such policies can reduce individual requests for exceptions. For example, some employers have policies allowing alternative work schedules and/or a certain number of "floating" holidays for each employee. While such policies may not cover every eventuality and some individual accommodations may still be needed, the number of such individual accommodations may be substantially reduced.

### **Voluntary Substitutes or Swaps**

- An employer should facilitate and encourage voluntary substitutions and swaps with employees of substantially similar qualifications by publicizing its policy permitting such arrangements, promoting an atmosphere in which substitutes are favorably regarded, and providing a central file, bulletin board, group e-mail, or other means to help an employee with a religious conflict find a volunteer to substitute or swap.

### **Change of Job Assignments and Lateral Transfers**

- An employer should consider a lateral transfer when no accommodation which would keep the employee in his or her position is possible absent undue hardship. However, an employer should only resort to transfer, whether lateral or otherwise, after fully exploring accommodations that would permit the employee to remain in his position.
- Where a lateral transfer is unavailable, an employer should not assume that an employee would not be interested in a lower-paying position if that position would enable the employee to abide by his or her religious beliefs. If there is no accommodation available that would permit the employee to remain in his current position or an equivalent one, the employer should offer the available position as an accommodation and permit the employee to decide whether or not to take it.

### **Modifying Workplace Practices, Policies, and Procedures**

- Employers should make efforts to accommodate an employee's desire to wear a yarmulke, hijab, or other religious garb. If the employer is concerned about uniform appearance in a position which involves interaction with the public, it may be appropriate to consider whether the employee's religious views would permit him to resolve the religious conflict by, for example, wearing the item of religious garb in the company uniform color(s).
- Managers and employees should be trained not to engage in stereotyping based on religious dress and grooming practices and should not assume that atypical dress will create an undue hardship.
- Employers should be flexible and creative regarding work schedules, work duties, and selection procedures to the extent practicable.
- Employers should be sensitive to the risk of unintentionally pressuring or coercing employees to attend social gatherings after the employees have indicated a religious objection to attending.

#### **Permitting Prayer, Proselytizing, and Other Forms of Religious Expression**

- Employers should train managers to gauge the actual disruption posed by religious expression in the workplace, rather than merely speculating that disruption may result. Employers should also train managers to identify alternative accommodations that might be offered to avoid actual disruption (e.g., designating an unused or private location in the workplace where a prayer session or Bible study meeting can occur if it is disrupting other workers).
- Employers should incorporate a discussion of religious expression, and the need for all employees to be sensitive to the beliefs or non-beliefs of others, into any anti-harassment training provided to managers and employees.

### **Employee Best Practices**

- Employees should advise their supervisors or managers of the nature of the conflict between their religious needs and the work rules.
- Employees should provide enough information to enable the employer to understand what accommodation is needed, and why it is necessitated by a religious practice or belief.
- Employees who seek to proselytize in the workplace should cease doing so with respect to any individual who indicates that the communications are unwelcome.

## **Retaliation**

### **Employer Best Practices**

- Employers can reduce the risk of retaliation claims by training managers and supervisors to be aware of their anti-retaliation obligations under Title VII, including specific actions that may constitute retaliation.
- Employers can help reduce the risk of retaliation claims by carefully and timely recording the accurate business reasons for disciplinary or performance related actions and sharing these reasons with the employee.