

RELIGION IN THE U.S. WORKPLACE

A GUIDE TO RELIGIOUS DIVERSITY, EQUITY AND INCLUSION



COMMON QUESTIONS

RELIGION IN THE U.S. WORKPLACE:

A Guide to Religious Diversity, Equity and Inclusion

This guide is designed to give employers a clear overview of basic religious freedom rights in the workplace. It highlights questions employers may face as their employees seek to practice their religious beliefs in the workplace. In addition, it provides basic guidance for formulating reasonable workplace policies that will help avoid or minimize problems, thus contributing to the general benefit of employees, employers and overall productivity.

This guide is not comprehensive and not legal advice. The law varies somewhat from state to state and is modified from time to time through legislation and court interpretation.

Those with specific legal questions should seek advice from a competent lawyer.

**WE PROVIDE CUSTOMIZED TRAINING
ON MAKING WORKPLACES RELIGIOUSLY INCLUSIVE**

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WHAT IS MEANT BY THE PHRASE “RELIGIOUS FREEDOM” AS IT APPLIES TO THE WORKPLACE?

The Constitution of the United States, many state constitutions and various state and federal laws provide special protections for the fundamental rights of individuals. The First Amendment to the Constitution specifies rights that protect the vitality of our democracy. Among our First Amendment rights are freedom of religion, freedom of speech, freedom of the press and freedom of assembly.

Religious freedom means more than just freedom to believe what you want. It is also freedom to talk about and act on your beliefs without coercion or interference. As with any right, religious freedom is not absolute, but limits to it are justified only if they are narrowly tailored and truly necessary, such as to protect public safety and health.

When considered in relation to the workplace, religious freedom simply means the ability of an individual to believe and act consistently with deeply held religious beliefs while in the workplace.

The Constitution prevents the government from enforcing laws that restrict these rights. In addition, federal law prevents both public and private employers from discriminating against employees based on religion and even requires employers to “reasonably accommodate” an employee’s exercise of their religious beliefs.

2

IS THERE GENERAL AGREEMENT ABOUT HOW RELIGIOUS FAITH SHOULD BE TREATED IN THE WORKPLACE UNDER THE FIRST AMENDMENT?

Yes. As a fundamental right guaranteed by the First Amendment, employers must respect all religious beliefs and reasonably accommodate the religious needs of all employees. In support of this right, Congress included language in Title VII of the 1964 Civil Rights Act which, among other things, requires that employers not discriminate on the basis of religion. It applies to any employer that has 15 or more employees for at least 20 weeks during the year.

Under Title VII, employers must not treat employees (or applicants for employment) differently because of religious beliefs or practices, or lack of religious beliefs or practices. Employees cannot be required to participate or refrain from participating in a religious activity as a condition of employment.

Title VII also requires that employers try in good faith to accommodate the religious needs of their employees upon request, unless it would cause an “undue hardship” to the employer. Title VII prohibits harassment because of religious beliefs or practices and forbids an employer from retaliating against an employee for asserting rights under Title VII.

3

MAY EMPLOYEES EXPRESS THEIR RELIGIOUS BELIEFS OR PRACTICES AT WORK?

Yes, although reasonable limits may apply, as discussed in answers to the following questions.

4

MAY EMPLOYEES SHARE THEIR RELIGIOUS BELIEFS WITH COLLEAGUES?

Yes, but not to the detriment of either the work for which the employee has been hired, or to the irritation of colleagues. If one worker asks about the religious belief of another worker, a free exchange of ideas between them is protected.

Respectful conversation about religion while at work is certainly not less protected than conversations about other topics. These protections do not mean, however, that the discussion is allowed to interfere with the assigned work of either worker, or to disrupt other workers in the vicinity.

5

MAY EMPLOYEES WEAR CLOTHING OR HAIRSTYLES THAT ARE REQUIRED BY THEIR SINCERELY HELD RELIGIOUS BELIEFS WHILE ON THE JOB?

Yes, unless the clothing or hairstyle presents a safety or health risk to the employee or others. Under most circumstances, the law requires employers to make a reasonable effort to accommodate religious symbols (such as a Christian cross), clothing (such as a Jewish yarmulke or Muslim headscarf) and hairstyles, including facial hair (such as Sikh uncut hair and beards).

If the employer's dress or grooming standards prohibit such things, the employee may ask for an exception, known as a "reasonable accommodation." The employer may not simply refuse the request, but must work in good faith to arrive at a reasonable accommodation, unless it would cause an undue hardship on the employer.

The employer has the burden of proving undue hardship in these circumstances. However, the law does not require the employer to adopt the specific accommodation that the employee has requested, even if it is a reasonable one. Rather, the employer is free to come up with its own reasonable accommodation. Courts have decided cases concerning religious clothing and hairstyles in the workplace in a variety of ways, not always in favor of the employee.



6

MAY AN EMPLOYEE HAVE A BIBLE, A RELIGIOUS PICTURE, OR OTHER RELIGIOUS ITEM ON DISPLAY IN THE EMPLOYEE'S PERSONAL WORKSPACE?

Yes, but it depends on the nature of the workspace and the policy of the employer toward all employees. If the employer allows employees to have non-work-related items in personal workspaces, such as photos, posters or other items, then religious items should be allowed as well.

7

HOW SHOULD AN EMPLOYEE'S SINCERELY HELD BELIEFS ABOUT RELIGIOUS DAYS OF REST OR RELIGIOUS HOLIDAYS BE TREATED IN THE WORKPLACE?

Federal and state law designate certain holidays for which employees are to be given paid time off. Some of these legal holidays are also religious holidays, such as Christmas Day. Federal law does not currently require employers to give time off, paid or unpaid, for other religious observances not included in the list of legal holidays.

However, under Title VII, an employer is required to reasonably accommodate an employee's request for time off to meet the obligations of the employee's sincerely held religious beliefs, unless it would cause the employer undue hardship.

The employer may not simply refuse to accommodate an employee's request. Reasonable accommodations might include flexible scheduling, shift swaps, agreeing to work other holidays and the like. An employer may require the employee to use paid time off as part of the accommodation.



8

MAY EMPLOYEES OR EMPLOYERS DISTRIBUTE RELIGIOUS LITERATURE IN THE WORKPLACE?

Employers may allow, but are not required to allow, the distribution of literature in the workplace. This includes religious literature.

Remember that Title VII says that employers may not treat employees differently because of religion. This means that if an employer allows employees to distribute or post personal items in the workplace of a non-religious nature, then the employer should also allow similar actions by religiously motivated employees.

9

MAY EMPLOYEES DISCUSS RELIGIOUS VIEWS WITH CUSTOMERS?

Not unless the employer permits it. An employer may prohibit an employee from discussing religious views with customers. An employer may, however, require the employee to greet customers with “Merry Christmas” or certain other generic religious expressions.

10 MAY AN EMPLOYER REQUIRE EMPLOYEES TO ATTEND A COMPANY-SPONSORED RELIGIOUS EVENT?

No.

11 WHAT IS AN EMPLOYER'S RESPONSIBILITY REGARDING HARASSMENT BASED ON RELIGION?

An employer has an affirmative obligation to maintain a work environment free from harassment based upon religious beliefs or practices, once the employer is made aware of the offensive conduct. This includes offensive remarks, as well as verbal or physical threats or abuse. The obligation on the employer is not limited to employee behavior only, but also covers others in the workplace, such as owners, supervisors, co-workers and even customers or others regularly within the workplace.

It is important also to realize that this protection extends to an employee's co-workers and others who have indicated a preference not to receive the employee's unsolicited religious communications.

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WHAT ARE THE MOST EFFECTIVE STRATEGIES FOR “FINDING COMMON GROUND” REGARDING RELIGIOUS FREEDOM IN THE WORKPLACE?

Employees and employers in many companies have had success in finding common ground using the following strategies:

i

Include all stakeholders

Success in any enterprise depends on the joint efforts of both employees and employers. Policy decisions should only be made after appropriate involvement of those affected by the decisions and with due consideration of those holding dissenting views.

ii

Listen to all sides

If we are to build trust and truly listen to one another, we must all acknowledge a valid criticism of policies and practices, particularly concerning the treatment of religion and religious perspectives. At the same time, those with sincere religious convictions need to acknowledge that the rights of others are equally important and that the task of employers is to see that all are treated with respect.



iii

Work for comprehensive policies

Adopting clear policies that uphold religious freedom in the workplace can contribute to greater harmony and productivity. On the other hand, failure to have such policies can lead to confusion, conflict, and even legal disputes. By working together to develop comprehensive policies, employers and employees demonstrate that they take religious inclusion seriously.

iv

Be proactive

Waiting for a problem to arise before taking action increases the likelihood of strife in the workplace, legal challenges and mistrust. Acting before problems arise, such as by adopting clear policies, will minimize problems and maybe even avoid them altogether.

v

Commit to civil debate

Being able to express and discuss differing views on important issues is vital to free society. It is equally important that those expressions and discussions be conducted in a way that is constructive, not destructive. Personal attacks, name-calling, ridicule and similar tactics destroy the fabric of our society and undermine the success of any enterprise. We must treat each other with respect and courtesy and strive to be fair and accurate.

Deeply held beliefs may prevent full agreement, but civil and courteous debate will allow us to live more peacefully with those differences.

13

GUIDING PRINCIPLES OF ACCOMMODATION FOR EMPLOYEES

Every workplace is different, as is every employee. Accordingly, there are no magic formulas or equations that outline exactly how to establish an environment of accommodation in every workplace situation. Rather, there are principles that, if applied, will guide employees and managers toward accommodation, regardless of the specific details or complexity of a given situation. Further detail and examples of each of these principles are available through training (<https://www.religiousfreedomcenter.org/programs/business-leaders>)

1. Know the Policies: In every situation, it is critical that employees and managers understand their company's policies regarding faith and belief at work. Such policies are the existing lines by which behavior and reactions must be measured. It is critical that human resources and diversity, equity and inclusion officers ensure such policies are clearly communicated thoroughly throughout the organization.

2. Apply Consistency and Equity: Every situation is different, as is every person's perspective that is involved, be that an employee, a manager or a human resources professional. It is critical that reactions to a given situation are consistent and equitable and not based on one's perspective. Maintain a standard that does not change based on a situation.

3. Acknowledge Religion: Faith and belief are personal. It can be tempting to tiptoe around them or ignore their role in a given workplace situation. Don't! If faith and belief are involved, address them. Talk about it directly. Real solutions will only come after addressing the core components of the situation. By not addressing issues of faith and belief directly, you send a message that an employee's faith and belief are not welcome.

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GUIDING PRINCIPLES OF ACCOMMODATION FOR EMPLOYEES

4. Be Proactive in Understanding: Faith and belief are complex issues and are understood and experienced differently by every person. It is critical to proactively listen with intent to understand. Include all stakeholders, listen to all sides and commit to civil discourse.

5. Seek Counsel: When situations arise that involve faith and belief, seek support from those in your organization who are trained to address such situations. Human resources and legal professionals can help you understand the boundaries, policies and laws that apply to a given situation.

6. Consider Unconscious Bias: Everyone has unconscious bias. It is important to ask what assumptions might be at play in a given situation. Address those possible assumptions as part of the solution.

7. Address Problems Immediately: It is critical to address problems quickly. The more time passes between a conflict or misunderstanding and acknowledging said conflict or misunderstanding, the more time there is for the problem and emotions to grow. Waiting to address the problem may also send a message that the behavior in question is acceptable. It may not be possible to identify a solution immediately, but starting the process of addressing the problem quickly will help defuse the situation and move involved parties toward a solution.

14 BEST PRACTICES

Adopting the following practices — which support religious diversity and freedom in the workplace — sends two clear messages to current and prospective employees: (1) You can work here without changing who you are; and (2) the company respects all employees and will not favor certain employees over others, and that’s good for the business of all.

i

Religious Non-Discrimination and Non-Harassment

- A company should not discriminate against a job applicant if the applicant includes religious experience on a resume.
- A company may choose to integrate its religious non-discrimination and non-harassment policy with its general non-discrimination and non-harassment policies. This may include establishing a safe, anonymous reporting system for employees who feel they have been discriminated against or harassed, including for reasons related to an employee’s religion or belief.

ii

Religious Accommodation and Inclusion

- A company should consider freedom of religion and belief when implementing other policies and programs. For example:
 - › A company should ensure that its dress code policy allows an employee to request a reasonable accommodation if the employee’s religious beliefs require certain grooming and dress practices.
 - › A company may ensure that its cafeterias provide menu options for employees whose religious beliefs require certain dietary restrictions.
 - › A company may consider allowing employees to take a “floating holiday” that may be used on a date of the employee’s choice, which may include a religious holiday.

14 BEST PRACTICES

- A company should welcome inclusiveness in religion and belief, without making religion or belief a matter of coercion. For example:
 - › A company may consider allowing employees to form religious or faith-based employee groups, provided that the company does so on a non-discriminatory basis.
 - › A company may consider creating designated spaces that employees may use for prayer or other religious devotional practices.
 - › A company should never allow employees to feel compelled or pressured to participate in religious or faith-based observances or activities. For example, if a group of employees in a religious or faith-based group chooses to have a prayer meeting on company premises, other employees should not be implicitly or explicitly pressured to attend the meeting.

iii

Protect and Promote These Values in Our Communities

- A company may integrate its religious inclusion and freedom policy with its corporate social responsibility program. For example:
 - › A company may make religious freedom protections part of contracts for organizations that are part of the supply chain.
 - › A company may choose to pull direct foreign investment out of countries that abuse human rights, including the right to freedom of thought, conscience and religion.
 - › A company may provide resources and fundraising for non-governmental organizations that promote religious freedom.
 - › A company may approach governments about creating social or political situations that are more favorable to expatriate employees who will be religious minorities.
- A company may consider making religious freedom initiatives part of its disclosures in its annual statements.



The Religious Freedom & Business Foundation (RFBF) is the preeminent organization dedicated to educating the global business community, policy-makers, non-government organizations and consumers about the positive power that faith and religious freedom *for all* (including those with no religious faith) has on workplaces and the economy.

The Religious Freedom & Business Foundation (RFBF) works globally with the mission of demonstrating the economic value and social benefits of robust religious diversity and liberty for all are tremendous. RFBF believes that business and religious freedom for all combine to form a powerful force for a better world.

Through groundbreaking expert research, training programs, practical business tools and convening interfaith business forums, RFBF helps demonstrate the critical link between respect for faith, successful enterprise and dynamic national economies. RFBF's pioneering work serves as a catalyst for executives to promote Freedom of Religion or Belief for all people through employee programing, customer-facing policies, and leveraging their broader societal influence.

RFBF is a non-partisan, non-political, non-profit organization in the United States. It does not take a position on current political debates.

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