



Religion in the Workplace

The challenges of balancing productivity and employment rights

RELIGIOUS FREEDOM IS A CORE VALUE OF American law and culture. Just as many early settlers came to this country seeking asylum from religious persecution, immigrants continue to enter the United States drawn by this ideal. The federal discrimination law reflects the importance of religious freedom by making it a protected category to prohibit employer discrimination.

These laws hold employers responsible for not discriminating on the basis of religion, for providing reasonable accommodation of religious beliefs and practices, and for preventing and correcting religious harassment. In these times of increasing expression of religious faith and religious speech, maintaining this harassment-free environment is a tall order for employers.

RELIGIOUS ACCOMMODATION

Unique among “protected categories,” religious believers carry special status: They must be “reasonably accommodated” as well as free from discrimination and harassment. Neither race, gender, nor other categories protected from discrimination are required to be affirmatively addressed in the same way. For example, if an employee says, “I must take Sunday off for religious reasons,” that demand must be carefully considered by the employer, but a similar request based on race or gender need not be accommodated.

For decades, the majority of federal religious discrimination cases primarily analyzed time-off requests for the Sabbath days or other religious holidays. If granted, the employee’s accommodation was mostly enjoyed outside the workplace, participating in religious observances with fellow believers. In today’s increas-

ingly diverse environment, new situations involve practices inside the workplace, such as clothing requirements, prayer time, sanitary rituals, headgear, dietary restrictions, and other religious observances during the workday.

As immigrant groups find jobs in an employer’s facility and encourage others to apply, they may create a sizable number of employees requesting the same accommodation at the same time, such as a request to rearrange shifts to allow for daily prayers. These requests challenge employers to weigh carefully their options to maintain both productivity

and employee morale. Often, employers may make arrangements that are above the law’s requirements in order to retain good workers.

As if the increasing diversity fostered by other faiths were not enough to challenge employers, segments of America’s majority religion, Christianity, are asking for accommodation as well. Those who are told the Christmas tree has become too sectarian begin to notice the “special consideration” being given to adherents of other religious traditions in the workplace. When Muslim employees are allowed to take time off for Friday afternoon religious services, Christian employees may wonder: Do I have a right to leave early for Wednesday night prayer meeting? Or if

Muslim employees have an imam coming to lead Friday services, may we have a Bible study? In an effort to support employees’ religious needs, the employer may have previously provided Muslim employees the requested time off, even though undue hardship could have been proven.

But now that other religions are weighing in with their requests, where will it end? Having established a standard “above undue hardship” in dealing with one group, denying another group for a similar accommodation is unlawful discrimination—treating employees differently because of religion. Suddenly, the first accommodation offered becomes a slippery slope for the employer.

The simplest response to this dilemma might be to deny all requests. After all, the legal standard of undue hardship is low and not all that difficult to establish. Why not take your chances on being sued on that basis, rather than accommodating more than necessary and losing control of the workplace and the production schedule?

Beyond the obvious requirement of obeying the law, the answer is simple: The increasingly religious culture inside the workplace cannot be ignored. The old convention about not discussing religion or politics in polite society, and certainly not in the work-

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place, no longer prevails. Even before September 11, 2001 (an event that took place inside the workplace as employees stayed glued to television, radio, or telephone updates), national media reported the rise in spirituality and CEO-led Bible studies in boardrooms.

On September 11, spontaneous group prayers broke out as employees followed the events during the workday, and prayer groups sprung up. Since 2001, a loosely affiliated “marketplace ministry” movement among Christian organizations has sought to reach believers and potential believers where they are—not in church, but in the workplace. The trend in corporations to foster “affinity groups” for employees to connect with like-minded persons based on race, sexual preference, or other characteristics increasingly includes religious groups. Organizations such as the Council on American Islamic Relations encourage employees to assert their religious accommodation rights.

In this cultural atmosphere, a blanket “no” to all accommodation requests, even if each refusal could be supported by an undue hardship analysis, is likely to be considered bad employee relations.

RELIGIOUS HARASSMENT

As the “right to be free from workplace harassment” began to develop in the religious discrimination category, early cases set forth classic scenarios of jokes, slurs, and unwelcome and inappropriate comments about the employee’s religion. As the law has developed, more subtle forms of religious conduct are alleged as harassment. Recent cases have highlighted actions by company leaders, from CEOs to supervisors, who have strong personal religious beliefs and encourage employees to follow suit. Harassment law mandates that each supervisor, manager, and CEO is an “agent,” and if any agent harasses an employee, the employer must prove a specific affirmative defense to win the case. Therefore, whether CEO or line supervisor, harassment liability potential is greater whenever an employee feels he or she has been coerced to follow the leader’s religion, or cursed by rejecting it.

Courts do not require that a company leader abstain from having or expressing any

religious views; they have rights, like other employees, to express their opinions in an appropriate manner. However, the executive must realize that the law assumes a certain degree of coercion is attached to every statement by a “boss,” due to the inherent imbalance of power between employer and employee. A manager who expresses religious views must bend over backwards, or look at things “upside down,” to be sure he or she is not giving the message that employees must follow his or her religious views in order to work for the company.

A supervisor may identify certain religious ideals that underlie the company’s ethics policy and require employees to adhere to that policy; however, that manager may not ask workers to sign off personally on the underlying religious principles. For example, a CEO may give an invocation or prayer in a meeting, but should not risk requiring an employee who is uncomfortable to attend that part of the meeting. Requiring attendees to pray individually or to approve a written version of the prayer could constitute harassment. Leaders must understand that employees may perceive a “stained glass ceiling” that puts promotion out of reach for those who do not share the manager’s view.

EFFECTIVE POLICIES AND TRAINING

Americans cherish their right to practice, or not practice, religion as they see fit. The new global culture values diversity and employees are not afraid to talk about differences and similarities in religion in the workplace. Teamwork is essential in successful business culture. To create effective working groups from diverse backgrounds, sharing opinions on matters of importance to the individual is necessary. Obviously, the law does not permit a total prohibition on discussion about reli-

gious beliefs and practice. The effective answer is to manage the workplace in a way that allows for sharing ideas and beliefs without coercing, deriding, intimidating, or otherwise harassing co-workers and subordinates.

For example, because religion must be accommodated, “zero tolerance” policies that would prohibit religious speech altogether (as a zero tolerance sexual harassment policy might prohibit any sexually oriented language) would be too draconian. An accommodation policy and directions for supervisors to work through requests with employees can minimize the risk of legal claims. Mandatory harassment training should include religion, to ensure that employees and company leaders understand the limits in the workplace. By incorporating such changes and additions, the effective company should be able to manage religious issues under the same policies and practices used to avoid discrimination and harassment based on race, gender, and other protected categories. ■

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