



Religious practices in the workplace

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More workers are expressing their religious beliefs at work, according to the U.S. Equal Employment Opportunity Commission. The most common types of religious expression at work involve requests for accommodations for religious holidays, exceptions from appearance rules such as requirements to be clean shaven or prohibitions on wearing head coverings, or promoting religion or religious practices in the office.

Legal issues arise when an employee requests an accommodation for religious practices at work and an employer must determine whether and how to accommodate the employee's request.

Congress is considering the Workplace Religious Freedom Act which would amend Title VII of the Civil Rights Act of 1964 to make it easier for employees to receive accommodations more to their liking for their religious practices at work.

Support is bipartisan with 18 co-sponsors in the House of Representatives and 16 co-sponsors in the Senate. Interestingly, neither Maryland senator has signed on as a co-sponsor and only Roscoe Bartlett and Chris Van Hollen have signed on the House side. A spokesperson for the American Jewish Committee spoke in favor of the bill.

Title VII of the Civil Rights Act of 1964 protects against discrimination in the workplace, including discrimination based upon religion. Title VII makes it unlawful for a private, nonsectarian employer to discriminate against any employee or applicant on the basis of their religious beliefs. Title VII further protects employees who wish to adhere to their religious faith or practices in the workplace so long as it doesn't interfere with an employer's legitimate right to run a successful business.

Accommodations by an employer are not unusual in the workplace as, for example, accommodations for employees with disabilities. However, an employer's obligation to accommodate the religious practices of employees is not as strong as an employer's obligation to accommodate employees with disabilities.

The Supreme Court has limited an employer's obligations to accommodate an employee's religious belief and practices at work. For example, an employer is not required to bear an "undue hardship," or more than a minimal cost, in accommodating an employee's religious belief or practice. In addition, under current law, employers do not have to choose the accommodation favored by the employee. Rather, an employer has the right to make the choice of which accommodation it will provide to the employee where there are several options available.

The proposed Workplace Religious Freedom Act would profoundly change the rules with regard to religious accommodation in the workplace.

First, the proposed legislation would require an employer to engage in an "affirmative and bona fide effort" to find an accommodation, which means that the employee would have a greater input into finding a reasonable accommodation than under existing legislation.

Second, the proposed legislation would redefine "undue hardship" as requiring "significant difficulty or expense" for the employer.

Third, the proposed legislation would remove from the so-called "essential functions" of a job an employer's dress code or leave policies. This means that an employee who can perform the "essential functions" of his or her job must be accommodated with regard to issues of clothing, grooming, and observance of the Sabbath or holy days unless the accommodation would require "significant difficulty or expense" on the part of the employer.

Employees still would not have carte blanche to wear whatever they want or to take off whatever time they want based on religious preferences. The congressional discussions recognized that there are instances where dress codes and scheduling are essential functions of a job, for example, the necessity of working seven days a week in the busy pre-Christmas shopping season. Likewise, dress and grooming rules for certain jobs may be required for safety or marketing reasons.

The proposed legislation would not apply to employers who have fewer than 50 employees so that small businesses would be spared the heightened obligations to make accommodations for religious practices in the workplace.

One subject that provoked some discussion at the congressional hearings dealt with conscience-based objections to certain work activities. For example, some civil rights and women rights groups questioned whether a nurse or health care worker could refuse, based on conscience-based religious reasons, to assist in an emergency abortion or in dissemination of birth control medication or emergency contraceptives.

But it was clarified that a nurse who refuses to participate in an emergency abortion would not be protected by the legislation. Likewise, a police officer who has a religious objection to guarding an abortion clinic would have to accept the assignment if no replacement were available.

A pharmacist would be allowed to refuse to fill prescriptions for contraceptives only so long as another pharmacist is available to provide the service. Performing emergency surgery is an essential function of the nurse's job and the nurse would have to perform that essential function. The same is true for the police officer and the pharmacist who must fulfill the essential obligations of their positions.

Concerns also were raised about how religious practices in the workplace might affect other employees. Employees have a right to be free from unlawful harassment, which includes harassment based on religion.

For example, some employers may permit employees to conduct prayer meetings at the employer's premises. If the meetings are sponsored by the employer, the employer must take care not to offend or harass other employees who do not wish to participate. Generally, an employer can locate a private place for employees to pray during the workday away from other employees who might be offended. Where the promotion of religion becomes unwanted and offensive to co-workers, it must stop.

One problem for employers in making accommodations for religious practices is to determine whether the employee's religious practice is sincerely held. According to the EEOC, a belief in a deity or in organized structure is sufficient, but not necessary, to constitute a religion for the purposes of Title VII.

Given this very broad definition, a religious practice can be whatever an employee says it is, except, for example, if it espouses racial and other discrimination in the workplace. The Supreme Court has said that a religious belief need not include a concept of God, or an afterlife, or a supreme being. A purely moral or ethical belief that is sincerely held with the strength of a religious belief, whether or not the belief itself is religious, is sufficient.

Questioning an employee's religious belief can be a very delicate subject. The courts have made clear that these sorts of inquiries are so sensitive that it is better to err on the side of giving the employee the benefit of the doubt that what they are expressing is generally a religious belief. This avoids an even more serious problem of sorting out as to what counts as truly religious.

Generally, an employer can challenge an employee's asserted sincerity in a religious belief by obtaining evidence of actions by the employee that are inconsistent with the professed belief. For example, an employee requesting time off for the Sabbath or a religious holiday need not be accommodated if it can be shown that the employee had worked in the past on the Sabbath or the religious holiday.

It should be noted that the same legislation as is presently proposed was introduced in the last session of Congress and died. This time, however, there appears to be more widespread and bi-partisan support for the legislation in both chambers Congress.

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