

Roadmap

for Responding to an
EMPLOYEE'S
REQUEST
for Religious
Accommodation

By Dawn Reddy Solowey



Let's say that an employee just asked to be taken off the schedule for the Sabbath. Or to hold a prayer meeting in the office conference room. Or to take a leave of absence for a religious pilgrimage. Or to wear an item of clothing that conflicts with the employer's uniform or dress code.

Now what? Most human resources professionals know how important it is to be sensitive when an employee's religious beliefs are concerned, but many may not know precisely *how* to go about handling a request for religious accommodation, and where the potential pitfalls are.

Here is a practical roadmap for how to respond to an accommodation request in a way that respects the employee, meets the company's business needs, and minimizes legal risk.

TEN-SECOND PRIMER ON THE LAW

While there are many complexities to the law of religious accommodation, the essence of the employer's obligation is straightforward. When an employee advises an employer of a sincere religious belief that conflicts with a job requirement, the employer must:

- Engage in an interactive process with the employee to explore reasonable accommodations
- Either provide a reasonable accommodation or be able to show that it cannot do so without undue hardship to its business
- Avoid discriminating against the employee based on religion, or retaliating against the employee for requesting an accommodation

Keep these broad principles in mind when handling any religious accommodation request.

DOS & DON'TS

WHAT TO DO AND WHAT NOT TO DO

Following these "Dos and Don'ts" will help you navigate the process:

Don't Question the Employee's Sincerity

Take the employee's word that the religious belief is sincere. Under the law, a "sincere religious belief" does not necessarily need to be from an organized religion, or practiced by many people, or long-held by the employee. Therefore, resist the urge to conduct your own research in order to make your own determination about sincerity. That means don't Google a religion's requirements, ask your clergy member, or ask other employees' opinions.

If this is the rare case where there is specific evidence that the employee's stated belief is insincere, or the request truly appears to be a purely secular preference, get advice from counsel. Until you consult with counsel, keep any concern about the sincerity of the belief to yourself.

Do Document the Interactive Process

Document all stages of the interactive process, including the request, the accommodations you offered, and the employee's response. Keep track of the timing of each, so that you can later show that your response was appropriately prompt. If you reject a request, document why you did so, and what alternative(s) you offered.

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When drafting such documentation, remember that it may be discoverable in any future litigation. Also potentially discoverable are any documents about the request (including emails).

It is important to keep the process moving, and to keep the employee informed about the status. Document that you have done so in writing.

Don't Be Closed-Minded

Engage in a dialogue with the employee about possible accommodations. Ask the employee what he or she thinks an appropriate accommodation might be; even if the company cannot agree to that specific accommodation, it can serve as a good first step in thinking about what might work. During the interactive process, it is important to think creatively. An employee observing the Sabbath might be able to swap shifts with a co-worker or be scheduled around religious services. A worker seeking a religious exemption to a grooming policy forbidding long hair could be allowed to tie his or her hair up. Creative thinking may help you arrive at a solution that works for both the employee and the company. Further, even if you cannot find a mutually agreeable solution, you will be able to show that the company earnestly tried to do so.

Do Weigh the Impact on Other Employees and the Company

Weigh the impact of the requested accommodation on other employees and the company. Will it impact other employees' schedules? Will it infringe on other employees' religious beliefs? Will it cost money, and if so, how much? Will it impact customer service?

Ground your assessment in quantifiable facts, rather than speculation or assumptions, as much as possible. Keep in mind that an unspecified negative impact on morale may not be enough to justify denying a requested accommodation.

Don't Be Inconsistent

Aim for a consistent approach. Do not reject a request for a policy exception based on religion, but then allow the exception for secular reasons. For example, if you permit one employee to have Sundays off for a reason unrelated to religion, proceed

with caution before rejecting an employee's request for Sundays off in observance of the Sabbath. Similarly, do not permit an accommodation for one religion, but reject the same accommodation for another.

At the same time, when granting a request for religious accommodation, keep in mind that you may be setting a precedent for other requests. For example, if you allow a Christian prayer group to meet in the breakroom before work, you may invite similar requests from employees of different religions, and you will have set a precedent for granting such requests.

Do Be Respectful

Respect the employee's religious practice, regardless of your own beliefs about that practice. Do not argue with the employee about his practice or belief, or try to persuade him or her not to follow that practice when it conflicts with a work requirement. Don't compare the employee's religious belief or practice with your own, or those of other employees, or cite a clergy member's advice.

Respect is a cornerstone of the interactive process. An employee who feels disrespected is far more likely to sue. Worse still, he or she can cite any statements perceived to be disrespectful as evidence of religious discrimination or retaliation.

Don't Allow Retaliation

Ensure that there will be no retaliation against the employee for requesting an accommodation. Ideally, your company has strong anti-retaliation policies that are published for new employees and re-published for all employees on a periodic basis, as well as training regarding how to avoid retaliation.

When you receive a request for religious accommodation, remind the employee of those anti-retaliation policies and ask that he or she advise you immediately if there is any concern about retaliation. Also remind managers about the anti-retaliation policies. Explain to managers that many actions that impact the employee negatively — beyond just termination or demotion — may be viewed by an employee as retaliatory adverse actions.

If you learn from the employee requesting the accommodation, or from any other source, that managers or coworkers are reacting negatively as a result of the request, conduct an immediate investigation and take any appropriate corrective action.

Do Get Advice from Counsel

The best practice is to involve an attorney with specific experience in religious accommodations as soon as you get a request from an employee. An attorney who specializes in this area can help you navigate the many potential pitfalls in responding to a request for accommodation. For example, counsel can help you implement and document the interactive process, and assess what is considered a reasonable accommodation or undue hardship, while taking into account any specialized legal requirements in your jurisdiction. ■

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