

Retail Detail



Roadmap for Responding to an Employee's Request for Religious Accommodation

An employee just asked to be taken off the schedule for the Sabbath. Or to hold a prayer meeting in the store break-room. Or to take a leave of absence for a religious pilgrimage. Now what? Here's a roadmap for how to respond in a way that respects the employee, meets the company's business needs, and minimizes legal risk.

Ten-Second Primer on the Law

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.

What to Do and What Not to Do

- **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" doesn't necessarily need to be from an organized religion, or practiced by many people, or long-held by the employee. Don't Google a religion's requirements, or ask other employees' opinions. If this is the rare case where there is specific evidence of insincerity, or the request seems to be a purely secular preference, get advice from counsel.

- **Do** Document The Interactive Process.

Document all stages of the interactive process, including the request, the accommodations you offered, and the employee's response. If you reject a request, document why. Remember that such documentation, and any documents about the request (including e-mails) may be discoverable in any litigation. Keep the process moving, and the employee informed about the status.

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- **Don't** Be Closed-Minded.

Engage in a dialogue with the employee about possible accommodations. Think creatively. An employee observing the Sabbath might be able to swap shifts with a co-worker or be scheduled around services. A worker seeking a religious exemption to a grooming policy forbidding long hair could be allowed to tie his hair up.

- **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, as much as possible.

- **Don't** Be Inconsistent.

Do not reject a request for a policy exception based on religion, but allow the exception for secular reasons. Do not permit an accommodation for one religion, but reject the same accommodation for another. Aim for a consistent approach.

- **Do** Be Respectful.

Respect the employee's religious practice. Do not argue with the employee about his practice or belief. Don't compare the employee's religious belief or practice with your own, or those of other employees, or cite a priest or rabbi's advice. An employee who feels disrespected is more likely to sue, and can cite statements perceived to be disrespectful as evidence of discrimination or retaliation.

- **Don't** Allow Retaliation.

Ensure that there will be no retaliation against the employee for requesting an accommodation. Remind managers of anti-retaliation policies. Explain that many adverse actions -- beyond just termination or demotion -- can be viewed as retaliatory. If you learn that managers, or coworkers, are reacting negatively as a result of the request, investigate and take appropriate corrective action.

- **Do** Get Advice from Counsel.

Involve an attorney with experience in religious accommodations as soon as you get a request. An attorney can help you implement and document the interactive process, and assess what is a "reasonable accommodation" or "undue hardship," taking into account any specialized legal requirements in your jurisdiction.

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