

SCHOOL & WORKPLACE ACCOMMODATIONS FOR THE JEWISH HIGH HOLIDAYS:

KNOW YOUR RIGHTS & OBLIGATIONS

PUBLIC & PRIVATE EMPLOYERS

Federal law – Title VII of the 1964 Civil Rights Act (“Title VII”) - requires both public and private employers to provide employees religious accommodations for the High Holidays under certain circumstances. The Free Exercise Clause of the First Amendment, as well as state laws, provide public employees with additional religious accommodation rights. An in-depth discussion on employees’ religious accommodation rights can be found in the ADL publication [*Religious Accommodation in the Workplace: Your Rights and Obligations*](#).

What Are Employees’ Religious Accommodation Rights and Obligations Under Title VII?

Title VII requires private and public employers with fifteen or more employees to reasonably accommodate an employee’s religious practices, including observance of the High Holidays, unless to do so would create an undue hardship upon the employer. Certain states have laws placing similar legal obligations on private and public employers with less than fifteen employees.

A reasonable accommodation is one that eliminates the conflict between an employee’s religious practices and work requirements. So for example requiring an employee to take a vacation day or unpaid leave to observe the High Holidays could be a reasonable accommodation under Title VII.

An undue hardship is any act requiring an employer to incur more than minimal costs in order to accommodate an employee's religious practices. A requested accommodation can cause an undue hardship if it requires anything more than ordinary administrative costs, diminishes efficiency in other jobs, infringes on other employees' job rights or benefits, impairs workplace safety, causes co-workers to carry the accommodated employee's share of potentially hazardous or burdensome work, or if the proposed accommodation conflicts with another law or regulation.

An employee seeking a religious accommodation to observe the High Holidays must tell an employer about the religious commitment at the time he or she becomes aware of the need for an accommodation. Given that the dates of the High Holidays are known years in advance, an

employee should alert his or her employer of the need for a religious accommodation weeks or even months before the holidays. Employees must also be clear in explaining why they need an accommodation. Vague requests or objections such as an employee saying that he or she cannot work on a particular day because of cultural tradition will not suffice. Rather, the employee must clearly state that he or she is required not to work because of religious observance for the High Holidays.

What Religious Accommodation Rights Do Public Employees Have Under Other Laws?

In addition to Title VII, public employees can seek a religious accommodation for observance of the High Holidays under the First Amendment and other state laws. The First Amendment's Free Exercise clause may require a public employer to accommodate an employee's religious observance. If the employer adversely treats religiously-motivated conduct compared to similar secular conduct, it can only justify its actions by demonstrating a compelling reason, which is called the "strict scrutiny" standard. Demonstrating this standard – the most stringent of all constitutional standards - is much more difficult than establishing an undue hardship under Title VII. Under such circumstances, a public employer that fails to meet this standard will be required to accommodate an employee's observance of the High Holidays.

Additionally, twenty-eight states have laws called Religious Freedom Restoration Acts (RFRAs)¹. State courts have generally not ruled on whether or not RFRAs are applicable to the public workplace. Therefore, they may be another avenue for public employees to seek religious accommodations. If applicable to the public workplace, these laws also would require an employer to demonstrate a compelling reason where it denies a religious accommodation to an employee who observes the High Holidays. For the purposes of these laws, it is irrelevant whether the denial of the accommodation is based on a rule or practice that is neutral towards religion - meaning that it does not differentiate between religious and secular activity. So the stringent "strict scrutiny" standard would apply to the denial even where a public employer does not allow employee absences without penalty for sickness, a death in the family, or any other secular reason.

For more information about your religious accommodations rights and responsibilities in the workplace, visit the web-site of the [U.S. Equal Employment Opportunity Commission](http://www.eeoc.gov).

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¹ The twenty-eight states are Alabama, Alaska, Arizona, Arkansas, Connecticut, Florida, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, New Mexico, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Virginia, Washington, and Wisconsin.