## RELIGIOUS ACCOMMODATION IN THE WORKPLACE:

**Creating an Inclusive Environment** 



#### **TABLE OF CONTENTS**

Understanding the Why	3
A Historical Perspective	<b>4</b>
Overview of the Law — Title VII	<b>7</b>
Compliance With Title VII	15
Going Beyond the Law	17
Thank You	22
2023 Religious Holidays	<b>23</b>



#### UNDERSTANDING THE WHY

Policies that provide accommodations to employees who observe any faith or religious belief promote a greater sense of acceptance in the workplace as well as increased productivity and talent retention. By implementing best practices on religious inclusion, the burden is shifted off the individual.

As an organization, it is important to review your policies on religious inclusion and accommodation of observances so that people of all religions or no religion do not have to choose between their convictions and their job.

#### A HISTORICAL PERSPECTIVE

Largely because of the First Amendment's prohibition against government-sponsored or favored religion and its companion guarantee of individual free exercise of religion, diverse faiths have flourished in America since the earliest days of the republic.

The Founding Fathers wrote the First Amendment in response to religious coercion and oppression by English-chartered colonial governments during America's colonial period, and with a keen understanding of the religious persecution in European nations resulting from official state religions and religious wars.

The first sixteen words of the First Amendment, called the Establishment Clause and the Free Exercise Clause, provide Americans of all faiths or no faith with the right to religious freedom. Together they state: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." These clauses have traditionally been understood to mandate the separation of church and state and to ensure the autonomy of houses of worship and other religious institutions.

In 1790, two years after the U.S. Constitution was ratified and a year before the Bill of Rights was enacted, President George Washington expressed his aspirations for how the freedoms that would come to be inscribed in the First Amendment would create a religiously inclusive nation. In his famous letter to the Hebrew Congregation of Newport, Rhode Island, he wrote:

The citizens of the United States of America have a right to applaud themselves for having given to mankind examples of an enlarged and liberal policy—a policy worthy of imitation. All possess alike liberty of conscience and immunities of citizenship.

It is now no more that toleration is spoken of as if it were the indulgence of one class of people that another enjoyed the exercise of their inherent natural rights, for, happily, the Government of the United States, which gives to bigotry no sanction, to persecution no assistance, requires only that they who live under its protection should demean themselves as good citizens in giving it on all occasions their effectual support...

May the children of the stock of Abraham who dwell in this land continue to merit and enjoy the good will of the other inhabitants—while every one shall sit in safety under his own vine and fig tree and there shall be none to make him afraid.

Today, over 230 years later, George Washington's vision for a pluralistic nation is flourishing. Numerous faiths both in majority and minority thrive in America. They are represented throughout our communities and workplaces. While the First Amendment does not apply to private employers, their employees' free exercise of religion is protected by Title VII of the Civil Rights Act of 1964 as well as similar state and local laws. These statutes prohibit religious discrimination in the workplace, and recognize the right to a "reasonable accommodation" of religion where there is conflict between an employee's religious obligations and job duties.

A growing list of companies recognize that creating and managing a diverse workplace is not just the right thing to do, but a business imperative for organizations seeking to be competitive, productive, and successful in today's marketplace. Yet some employers overlook religious diversity as part of their broader diversity, equity and inclusion initiatives and programs.

Central to employers embracing religious diversity and creating religiously inclusive workplaces is providing religious accommodations to employees from many different faith backgrounds. That often means going beyond legal requirements and instituting best practices to ensure employees of all religions or no religion are welcomed, valued, and included.

#### OVERVIEW OF THE LAW — TITLE VII

Title VII of the federal Civil Rights Act of I964 ("Title VII"), among other things, prohibits employers, except religious organizations<sup>1</sup> from discriminating against individuals based on religion in hiring, firing, and other terms and conditions of employment.<sup>2</sup>

Title VII—and many state and local laws — require employers to reasonably accommodate the religious practices of employees or prospective employees when there is conflict between their employment duties and religious obligations — unless to do so would cause an "undue hardship on the conduct of the employer's business."<sup>3</sup>

The U.S. Equal Employment Opportunity Commission ("EEOC") is the federal agency responsible for enforcing Title VII. This federal law applies to companies with 15 or more employees. However, many analogous state and local employment laws prohibit even smaller companies from discriminating on the basis of religion and include the requirement of providing reasonable religious accommodations.

<sup>1.</sup> According to the EEOC Compliance Manual, "[t]his 'religious organization' exemption applies only to those organizations whose 'purpose and character are primarily religious,' but to determine whether this statutory exemption applies, courts have looked at 'all the facts,' considering and weighing 'the religious and secular characteristics' of the entity. Courts have articulated different factors to determine whether an entity is a religious organization. "See U.S. Equal Employment Opportunity Commission, EEOC Compliance Manual, Section 12: Religious Discrimination, Directives Transmittal Number 915.063 (Jan. 15, 2021), https://www.eeoc.gov/laws/guidance/section-12-religious-discrimination #h\_43047406513191610748727011.

<sup>2.</sup> See Section 702(a) of Title VII, 42 U.S.C. Sec. 2000e-1(a); Section 703(e)(2) of Title VII, 42 U.S.C. Sec. 2000e-2(e)(2).

<sup>3.</sup> Section 701(j) of Title VII, 42 U.S.C. Sec. 2000e(j).

#### WHAT IS A "REASONABLE ACCOMMODATION?"

A **reasonable accommodation** is one that eliminates the employee's conflict between their religious practices and work requirements and does not cause an undue hardship for the employer.

Requested accommodations vary — an employee may need a particular day off each year for a religious holiday; or to refrain from work every week on his or her Sabbath; or to wear religious apparel; or to have a place to pray. An employer must try to make arrangements to allow the employee to meet these religious obligations.

Examples of possible accommodations may include shift swaps between employees, voluntary assignment substitutions, flexible scheduling (allowing an employee to work on Sundays, Christmas, or another national holiday in place of the day they need off), lateral transfers to other positions in the company, or use of lunch time in exchange for early departure. An employer could allow an employee who is a Friday-night Sabbath observer to work longer hours on Monday through Thursday to enable the employee to leave early on Friday to be home for the Sabbath. An employer may require an employee to use paid time off, such as personal or vacation days, to meet an employee's required accommodation.

An employer may not simply refuse to accommodate an employee. Indeed, an employer may be in violation of Title VII where it refuses to hire an applicant or fires an employee based on "... the motive of avoiding accommodation ... even if [it] has no more than an unsubstantiated suspicion that accommodation would be needed." Engaging in accommodation discussions is not an absolute requirement even when an applicant or employee asks for a religious accommodation. However, practically speaking, it is worth seeking legal guidance in such situations because an employer's failure to engage in such discussions when an accommodation has been requested could open the door to potential legal problems.

If an employer claims that an accommodation is not feasible because it would result in an undue hardship (see below), the employer must demonstrate the effect an accommodation would have on the business; that is, the employer must prove the undue hardship. Therefore, employers are obligated to (1) try in good faith to resolve the conflict between the employee's religious needs and job requirements; and (2) where an accommodation cannot be granted, identify an actual monetary or administrative expense that would result in substantial increased costs in relation to the conduct of its particular business and thus constitute an undue burden.

An employer is not mandated to provide the specific accommodation requested by the employee. As long as the employer has reasonably accommodated an employee's religious needs, the employer need not consider the employee's alternative suggested accommodations even if the employee's preferred accommodation would not cause undue hardship to the employer.<sup>5</sup>

An employer should not schedule tests or training in a manner that totally precludes the observance of the Sabbath or religious holidays. As with the scheduling of work, the employer must attempt to accommodate the religious needs of the employee. At the same time, the employee cannot be unreasonable in demanding accommodation. For example, if the same test or training is being given at another location on another day, the employee may be required to take it elsewhere. In addition, the employee may be required to use personal time to take the test or training.

#### WHAT IS AN "UNDUE HARDSHIP?"

An employer is not required to provide an accommodation that causes it an **undue hardship**. In June 2023, the U.S. Supreme Court ruled that this means that an employer must accommodate an employee's religious practices unless the burden of granting an accommodation would result in substantial increased costs in relation to the conduct of that employer's particular business. Relevant factors include the particular accommodations at issue and their practical impact in light of the employer's nature, size and operating costs.<sup>6</sup>

Employers should be aware that certain state or local laws have a higher standard for demonstrating undue hardship.<sup>7</sup>

As the law in this area has recently changed, it is especially important to check in with your legal and/ or human resources departments for the latest updates. Many resources are still being revised to reflect this change. In addition, there are still some open questions that will likely be resolved through guidance from government agencies and litigation in the coming years.

#### WHAT ARE THE EMPLOYEE'S RESPONSIBILITIES?

Employees seeking to observe their religious beliefs and practices have a responsibility to do their part to help resolve conflicts between job duties and religious needs. To this end, an employee must tell their employer about the religious commitment at the time the job is accepted or immediately upon becoming observant or aware of the need for an accommodation. Employees must also be clear when explaining why they need an accommodation. Vague objections such as saying that they cannot work on a particular day because of cultural tradition will not suffice; the employee must clearly state that they are required not to work because of religious beliefs. Employees do not have to justify or prove their religious belief to the employer (for example, the employee need not provide a note from clergy): an employer is required to accommodate sincerely held religious beliefs, subject to the undue hardship rule.

## WHAT COUNTS AS A "SINCERELY HELD" RELIGIOUS BELIEF THAT NEEDS TO BE ACCOMMODATED?

Although the law requires that employers must accommodate **sincerely held** religious beliefs that conflict with work requirements, courts rarely question either the sincerity or religiosity of a particular belief. The law's intention is to provide protection and accommodation for a broad spectrum of religious practices and beliefs — not merely those beliefs based upon organized or recognized teachings of a particular religion. Therefore, religious beliefs need not be acceptable, logical, consistent, or comprehensible to others to be entitled to protection and courts must not presume to determine the place of a particular belief in a religion or the plausibility of a religious claim.

In short, the fact that no religious group espouses such beliefs or the fact that the religious group to which the individual professes to belong may not accept such belief will not determine whether the belief is a religious belief.

However, it is equally clear that Title VII was intended only to protect and accommodate individuals with sincere religious beliefs and not those with political or other beliefs unrelated to religion. Thus, the religious accommodation rules do not apply to requirements based on personal preferences rooted in non-theological bases such as culture, heritage, or politics.

## MAY AN EMPLOYEE WEAR RELIGIOUS APPAREL OR SYMBOLS TO WORK?

Employers must attempt to accommodate employees who, for religious reasons, must maintain a particular physical appearance or manner of dress in keeping with the tenets of their religion. Again, accommodation is required only if it can be made without undue hardship to the employer. When it comes to religious apparel, typically only safety concerns constitute undue hardship.

## CAN AN EMPLOYER ASK ABOUT RELIGION ON A JOB APPLICATION?

No. Questions concerning an applicant's religion or the religious holidays observed by an applicant are impermissible. For example, an employer may not ask an applicant: "does your religion prevent you from working weekends or holidays?" or "what church do you attend?" However, during an interview (and in a job description or other recruitment documents) an employer may describe the regular days, hours, or shifts of the job or, for example, whether a core responsibility of the job may involve travel or work on weekends that include the sabbaths of different faiths. Again, it is the employee's responsibility after they are hired to alert the employer of religious observances which require an accommodation.

#### **COMPLIANCE WITH TITLE VII**

According to the EEOC, employers whose size makes them subject to Title VII should engage in the following best practices to help ensure compliance with reasonable accommodation requirements:

- The policies set out by employers should inform employees and applicants that the employer will make reasonable efforts to accommodate religious practices.
- Employers should train managers and supervisors on how to recognize religious accommodation requests from employees. Many employers with Human Resources departments instruct individual managers and supervisors to refer accommodation requests to HR, which usually has a better and broader understanding of the law, the company's policies, and the way in which they have been implemented in similar situations within the organization.
- Employers should consider developing internal procedures for processing religious accommodation requests. Where the employer relies on a staffing firm or other entity for any of its staffing needs, the employer and the staffing entity should coordinate in advance how they will handle accommodating applicants' or employees' religious beliefs or practices, consistent with these best practices.

- Employers should individually assess each request and avoid assumptions or stereotypes about what constitutes a religious belief or practice or what type of accommodation is appropriate.
- Employers and employees should confer fully and promptly to the extent needed to share any necessary information about the employee's religious needs and the available accommodation options.
- An employer is not required to provide an employee's preferred accommodation if there is more than one reasonable alternative. An employer should, however, consider the employee's proposed method of accommodation, and if it is denied, explain to the employee why their proposed accommodation is not being granted.
- Although it is a best practice for an employer's human resources and legal departments to be consulted on all accommodation requests, managers and supervisors should be trained to consider alternative available accommodations if the particular accommodation requested would pose an undue hardship.
- · When faced with a request for a religious accommodation which cannot be promptly implemented, an employer should consider offering alternative methods of accommodation on a temporary basis while a permanent accommodation is being explored. In this situation, an employer should also keep the employee apprised of the status of the employer's efforts to implement a permanent accommodation.

Additional information about Title VII reasonable accommodation requirements and best practices can be found on the EEOC website.

#### GOING BEYOND THE LAW

Take Action to Create a Religiously Inclusive Work Environment

Many employers have come to realize that in addition to legal religious accommodation requirements, a strong commitment to religious accommodation and inclusivity can improve employee morale and help retain valued employees who are religious. Here are four ways that employers can make their workplaces more welcoming of all faiths and religious beliefs.

#### 1) OBSERVANCE OF RELIGIOUS MINORITY HOLIDAYS

For employees who are members of minority faiths, getting time off to observe their holidays can be burdensome and frustrating. Oftentimes, such employees must use many or even all their vacation or personal days simply to observe their faith traditions.

#### **HOW CAN YOU HELP?**

Human resources departments should have and use an interfaith calendar to proactively work together with personnel who are religiously observant to create schedules and time-off policies that maintain the organization's effectiveness while being inclusive of employees' religious requirements. Such practices make it clear to employees who are members of minority faiths that observance of their religious holidays is welcomed and encouraged by the organization.

#### 2) FOOD AND DIETARY RESTRICTIONS

Employer luncheons, dinners or parties are great opportunities to foster team-building and workplace camaraderie, but employees who have religious dietary restrictions, may all too often find themselves without food they can eat at these events. While workplace dietary restriction forms typically list checkboxes for allergies, vegetarianism, or veganism, they often do not include options for religious dietary restrictions. Unfortunately, this can convey an exclusionary message that accommodating religiously observant employees' dietary restrictions at company events is of little importance.

#### **HOW CAN YOU HELP?**

Before deciding what food to serve at company-sponsored events, ask employees about any dietary restrictions. One simple way to do this is to use dietary restriction forms that include religious food restriction check box options. This practice makes it easy for employees to let you know that they have religious food restrictions. Adding these checkboxes will also send your employees a strong message that they are welcomed at company events where food will be provided. Where that is not possible, providing employees who have religious dietary restrictions with the option of ordering their own food in advance through meal cards would be a next best option.

## 3) RELIGIOUS APPAREL AND GROOMING REQUIREMENTS

Understanding that some religious minority employees may have certain attire, grooming styles, and hair coverings as part of their faith requirements or customs is essential to providing a safe space for all your staff. For example, religiously observant Jewish men and some Jewish women and nonbinary people wear a head covering called a *yarmulke* or a *kippah* and many observant women wear a wig or scarf; in the Sikh faith observant men wear a turban; and many observant Muslim women wear a head covering called a *hijab*. Also, some observant Jewish men wear sidelocks called *peyot*, and in Judaism, Islam and the Sikh faith religiously observant men often wear beards. Such practices hold deep significance and meaning for those who follow them. However, religiously observant people who abide by attire or grooming requirements can and have faced hiring or workplace discrimination. Even where there is no overt discrimination, employees who are members of minority faiths may find themselves uncertain if their workplace truly welcomes their religious requirements and traditions.

#### **HOW CAN YOU HELP?**

Move beyond tolerance to embracing inclusion, equity and diversity. Make it clear to religiously observant employees that in your workplace following religious attire and grooming requirements is welcomed. In workplaces where such religious requirements conflict with safety standards, make ample efforts to accommodate these requirements while maintaining safety. If you are not aware of personnel who follow religious apparel or grooming requirements, do not assume that no employees want to abide by them in the workplace; some employees may simply feel the need to hide that important part of their traditions because it has not been made clear that they are welcomed. Revise language in your dress code policy that simply tolerates employees who have religiously-based attire or grooming requirements to language that welcomes this diversity. Review the wording and imagery used in company literature to reflect the diversity you celebrate in your workplace. For example, including individuals with a *yarmulke*, *hijab*, *turban*, etc. in your brochures, on the website, or in other company material, can be a small important step in affirming inclusive representation.

#### **4) DAILY RELIGIOUS PRACTICES**

Some religiously observant employees, whether in the minority or majority, have required daily religious practices, such as prayer or meditation, that can only be done at certain times or locations. Many workplaces do not have the proper space required to accommodate these practices, making it virtually impossible for employees to abide by their faith. And some organizations may not offer employees the time they need to partake in these practices.

#### **HOW CAN YOU HELP?**

Create "quiet rooms" open to all employees which personnel can use for prayer or other silent activities. Making such rooms available gives religious employees the proper space to perform their daily rituals. And they provide non-religious employees spaces where they can go to relax and take a quick break from work to recharge.

Encourage employees to use these rooms. Some employees may not feel like they are allowed to take breaks, whether for religious reasons or non-religious reasons. To avoid this situation, make it clear to all employees that they are allowed to take breaks and are encouraged to use these rooms, whether it be for religious or non-religious reasons.

#### **THANK YOU**

Thank you for your commitment to making your workplace inclusive for people of all faiths and religious beliefs. While this list is a good starting point, it is not comprehensive. Keep in mind that no religious group is monolithic, even if they are often stereotyped or depicted as such. Traditions, practices, intersectional identities, and experiences are varied. Being inclusive means appreciating and approaching an inclusive workplace through the lens of individual religious practices and observances.

Note that religiously inclusive workplace policies that go beyond the requirements of Title VII or analogous laws may be impacted by other federal, state, or local laws. Be sure to have your legal or human resources departments review them. This toolkit is not intended as legal guidance, and any decisions involving legal issues should be made in consultation with appropriate legal departments and advisors.

If you are looking for guidance on these topics, please reach out to ADL. Let's continue working towards an Open to All community where we can all thrive.



## 2023 RELIGIOUS HOLIDAYS

#### **JANUARY**

1/1 - Gantan-sai (Shinto)
1/6 - Christmas
(Armenian Orthodox Christian)
1/6 - Epiphany/Twelfth Night/Three Kings Day
(Catholic and Protestant Christian)
1/7 - Coptic Orthodox Christmas
(Eastern Orthodox Christian)
1/7 - New Year (Buddhist Mahayana)
1/14 - Eastern Orthodox New Year
(Eastern Orthodox Christian)
1/15 - Makar Sankranti (Hindu)
1/20 - Guru Gobindh Singh Birthday (Sikh)
1/22 - Lunar New Year
(Confucian, Taoist, Buddhist)

#### **FEBRUARY**

2/2 - Imbolc (Wiccan/Druid/Pagan)
2/2 - Candlemas (Christian)
2/3 - Setsubun-sai (Shinto)
2/5 - 2/6 - Tu B'ishvat (Jewish)
2/15 - Parinirvana/Nirvana day (Buddhist)
2/17 - 2/18 - Lailat al Miraj (Muslim)
2/18 - Maha Shivaratri(Hindu)
2/18 - Shrove Tuesday
(Catholic and Protestant Christian)
2/19 - Ash Wednesday (Catholic and Protestant Christian)
2/26 - 3/1 - Ayyám-i-Há (Bahá'í Faith)
2/27 - Clean Monday
(Eastern Orthodox Christian)



#### MARCH

- 3/2 3/20 The Month of Fasting (Bahá'í Faith) 3/6 - Magha Puja Day (Buddhist)
  - **3/6 3/7** Purim (Jewish)
    - **3/8** Holi (Hindu)
- **3/8 3/10** Hola Mohalla (Sikh)
- **3/19** Mid Sha'ban (Shi'a and Sufi Muslims)
  - **3/20** Ostara (Wiccan/Druid/Pagan)
- **3/21** Naw-Rúz (Bahá'í Faith/Zoroastrian)
  - **3/23** Ramadan begins (Muslim)
  - **3/26** Khordad Sal (Zoroastrian)

#### APRIL

- **4/2** Palm Sunday (Christian)
- 4/4 Mahavir Jayanti (Jain)
- 4/4 Lord's Evening Meal
- (Christian, Jehovah's Witness)
- **4/5 4/13** Passover (Jewish)
- **4/6** Holy Thursday (Christian)
  - 4/6 Theravada New Year
    - (Theravada Buddhist)
- **4/7** Good Friday (Christian)
- 4/8 Visakha Puja (Buddhist)
  - **4/9** Easter (Christian)
- 4/14 Baisakhi/Vaisakhi (Sikh)
- **4/18** Lailat al-Qadr (Muslim)
- **4/21** First Day of Ridván (Bahá'í Faith)
  - **4/21** Eid al Fitr (Muslim)
- 4/29 Ninth Day of Ridván (Bahá'í Faith)
  - 4/30 Rama Navami (Hindu)



#### MAY

# 5/1 - Beltane (Wiccan/Druid/Pagan) 5/2 - Twelfth Day of Ridván (Bahá'í Faith) 5/9 - Lag B'Omer (Jewish) 5/18 - Ascension Day (Christian) 5/24 - Declaration of Báb (Bahá'í Faith) 5/27 - 5/29 - Shavuot (Jewish) 5/28 - Pentecost (Christian) 5/29 - Ascension of Bahá'u'lláh (Bahá'í Faith) 5/30 - All Saints' Day (Eastern Orthodox Christian)

#### JUNE

6/24 - Litha (Wiccan/Druid/Pagan) 6/29 - 6/29 - Eid al-Adha (Muslim)



#### JULY

7/3 - Dharma Day/Asalha Puja (Buddhist)
7/10 - Martyrdom of the Báb (Bahá'í Faith)
7/13-7/15 - Obon (Buddhist)
7/26 - 7/27 - Tish'a B'Av (Jewish)
7/27 - 7/28 - Ashura (Muslim)
7/29 - Muharram (Muslim)

#### **AUGUST**

8/1 - Lughnasadh (Wiccan/Druid/Pagan)
8/30 - Raksha Bandhan (Hindu)
8/30 - Ghost Festival (Taoist/Buddhist)



#### SEPTEMBER

9/6 - 9/7 - Krishna Janmashtami (Hindu) 9/15 - 9/17 - Rosh Hashanah (Jewish) 9/19 - Ganesh Chaturthi (Hindu) 9/21 - 9/22 - Mabon (Wiccan/Druid/Pagan) 9/24 - 9/25 - Yom Kippur (Jewish) 9/26 - 9/27 - Mawlid al-Nabi (Sunni Muslim) 9/29 - 10/6 - Sukkot (Jewish)

#### **OCTOBER**

10/6 - 10/8 - Shemini Atzeret/Simchat
Torah (Jewish)
10/15 - 10/24 - Navaratri (Hindu)
10/16 - Birth of the Báb (Bahá'í Faith)
10/17 - Birth of Bahá'u'lláh (Bahá'í Faith)
10/24 - Dussehra (Hindu)
10/31 - 11/1 - Samhain
(Wiccan/Druid/ Pagan)
10/31 - Reformation Day
(Protestant Christian)



#### **NOVEMBER**

11/1 – All Saints' Day (Catholic and Protestant Christian) 11/2 – All Souls' Day (Christian) 11/12 – Diwali (Hindu) 11/12 – Bandi-Chhor Divas (Sikh)

11/26 - Day of the Covenant (Bahá'í Faith)11/27 - Birthday of Guru Nanak Dev Sahib

(Sikh)

**11/28** – Ascension of 'Abdu'l-Bahá (Bahá'í Faith)

#### **DECEMBER**

12/3 - 12/24 - Advent (Christian)
12/8 - Bodhi Day (Buddhist)
12/12 - Our Lady of Guadalupe (Christian)
12/7 - 12/15 - Chanukah (Jewish)
12/21 - Yule (Wiccan/Druid/Pagan)
12/24 - Christmas Eve (Christian)
12/25 - Christmas
(Catholic and Protestant Christian)
12/26-1/1 - Kwanzaa
(African American Heritage)

