

Religion in the Workplace

by Susan Boyd, J.D.

Imagine this: You have opened a restaurant. Like many others, your restaurant obnoxiously acknowledges customer birthdays with singing "Happy Birthday" by your wait staff. One of your employees tells you that her religion doesn't celebrate birthdays, so she won't sing. You think, "Well, this is **my** restaurant, and singing "Happy Birthday" is part of the job. If she won't do her job, she deserves to be fired!"

Not so fast... That's exactly what a restaurant owner did in a recently decided case. And he ended up having to pay his former employer about \$58,000 for religious discrimination!

As an employer, you are prohibited by Title VII of the Civil Rights Act of 1964 from making discriminatory employment decisions based on your employee's religious practices or beliefs. However, Title VII is not an ABSOLUTE prohibition against religious discrimination. Instead, if your employee has a conflict with something you require at work, you have a duty to REASONABLY ACCOMMODATE the employee UNLESS doing so would cause you an UNDUE HARDSHIP.

Let's say that your employee comes to you with a conflict about your requirement that employees with long hair must keep it tied back or under a hat. Your employee says that his religion requires that his hair remain unbound. If your requirement is due to safety reasons because the employee's hair could become caught in dangerous machinery, you do not have to accommodate him. In fact, you can't! You must maintain a safe working environment.

On the other hand, if your requirement regarding your employees' hair is just a personal preference on your part, then you should accommodate his religious practice.

Other frequent religious conflicts include dressing in religious garments, not working on certain days of the week, and not working on religious holidays. No matter what the conflict involves, as an employer you are expected to seriously consider what accommodations you can reasonable make for your employees.

What Is Considered a Religion? Originally Title VII did not define religion. In 1972, Congress amended Title VII to say, The term 'religion' includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate an employee's or prospective employee's religious observance or practice without undue hardship on the employer's business.

The bottom line on whether the employee's beliefs constitute a religion is:

1. whether the belief is "closely held", meaning very important to the employee, and
2. whether it takes the place of religion in his life, meaning that even atheism can be considered a "religion" under Title VII.

Your employee's religious beliefs do not have to include belief in a religious *deity* as is customary in many of the world's religions in order to be considered his religion.

It does not matter whether *you* have ever heard of this religion, nor does it matter that the employee's religion appears unorthodox to you. Further, the U. S. Supreme Court has held that an employee's religion has to be reasonably accommodated even though the employee is not a member of any organized religion. For example, an employee who states that his religion is Christianity does not have to be a member of any particular sect or church to be protected.

What if your employee didn't have this religious conflict when you hired him? Now, he tells you that he has accepted a religion that requires him to meditate for 1 1/2 hours at lunch. Your employees only get 45 minutes for lunch. Must you accommodate his need for a longer lunch break since this conflict has arisen since he's been hired?

The answer depends.... Yes, you must attempt to accommodate any employee's religious conflict, no matter when it develops. It absolutely makes no difference that this employee did not have this problem when he was hired. The duty to accommodate is related to the religious conflict; not when it arose.

As to whether you must give this employee extra time at lunch, the answer depends on whether you can do so without causing an undue hardship for your business.

If this employee is willing to make up the time by coming in early or staying late, and if it makes no difference to your business when he does his job so long as it gets done, then you should give him the extended lunch. On the other hand, if he is a critical part of a team that can't work without him, then you should ask the team members if they are willing to adjust their schedules to come in early or stay late. If they can't or won't, then you don't have to accommodate the employee who wants the longer break because to do so would be an undue hardship.

If your employee claims that you have discriminated against him based on religion, he has to prove the following: (This is called making a prima facie case)

1. he/she has a bona fide religious belief that conflicts with one of your requirements at work (as to whether it's bona fide, the employee will have to show that the belief is very important and fills the place of religion in his/her life);
2. he/she informed you of the conflict with his religious belief; and

3. he/she experienced discipline or loss of the job or some other negative consequence because he/she failed to comply with your employment requirement.

Reasonable Accommodation: If your employee can prove the three factors above, you will have to be able to show that you attempted to accommodate the employee. This means that you seriously considered all possible solutions to the conflict and then determined the impact that these solutions would have on your business. If there was NO accommodation you could make without undue hardship, you are not guilty of discrimination if you failed to do anything for the employee.

If you determined that there were several possible accommodations, YOU have the right to choose which one you will make for the employee. The U.S. Supreme Court has held that Title VII requires an employer make ANY reasonable accommodation. It does not have to be the MOST reasonable accommodation or the one that the employee requested. The employee also has to act reasonable in accepting alternative accommodations.

The EEOC and the courts will consider the following factors, among possible others, in determining whether an employer has reasonably accommodated an employee:

- did the employer make any attempt to accommodate the employee (a knee-jerk "NO" said to an employee requesting accommodation will get you into trouble!)
- how big is the workforce (smaller businesses will be more affected by an accommodation than larger ones)
- what type of job does the employee seeking accommodation hold (some jobs are easily changed; others are tough)
- did the employer ask other employees if they would be willing to assist in making an accommodation (like trading shifts)
- how much is the accommodation going to cost the business (the smaller the cost, the more reasonable it is to implement)
- will the accommodation require administrative changes (the more administrative hassles the accommodation requires, the less reasonable the accommodation will be considered)

Undue Hardship: What will constitute an undue hardship?

- The fact that the accommodation is merely inconvenient does not make it an undue hardship.
- The fact that you don't want to make any changes does not make it an undue hardship.
- The fact that you don't like this employee or his religious beliefs does not make it an undue hardship.

The EEOC offers the following guidelines to consider. You'll notice that these are sort of the flip side of the reasonable accommodation factors!

- what is the nature of the workplace
- what is the type of job needing accommodation
- cost
- willingness of other employees to assist
- possibility of transfer and the affects of such transfer
- what is done by employers similar to you (this is an important one! If you can show that no other business like yours is making the requested accommodation, the court will listen. On the other hand, if your employee can show lots of businesses like yours making the requested accommodation, you lose!)
- how many employees need accommodation
- will there be a burden on the union, if the employees are unionized

A final note: Remember that religion can be a BFOQ. This means that you **can** discriminate against some religions by only hiring employees of a particular religion IF you can show that religion is a bona fide occupational qualification (BFOQ). For example, a Baptist church can legally discriminate against Catholics, Jews, and any other religions by requiring its preacher to be Baptist. That's because being Baptist is an absolutely necessary qualification. On the other hand, if that church runs a day-care facility as a way of earning additional revenue, the church may not be able to discriminate when it hires child-care workers since a particular religion isn't essential to being a good care-giver.

This article originally appeared in the Summer 2002 (Vol. 6, Issue 2) Family-Owned Business Institute newsletter, Heritage. Susan Boyd is an Applied Assistant Professor of Business Law at the University of Tulsa and the Director of the Genave King Rogers Business Law Center. You can email her at: susan-boyd@utulsa.edu.