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## IN THIS ISSUE

*Avoiding Religious  
Discrimination in the  
Workplace*

*Employer Rights Blog*

### RELIGIOUS DISCRIMINATION

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- Inform employees the employer will make reasonable efforts to accommodate the employees' religious practices.
- Train managers and supervisors on how to recognize employees' religious accommodation requests and to always consider alternative available accommodations if the particular requested accommodation would pose an undue hardship.
- Develop internal procedures for processing religious accommodation requests.
- Individually assess each request and avoid

assumptions or stereotypes about what constitutes a religious belief or practice or what type of accommodation is most appropriate.

- Confer with the affected employee fully and promptly to the extent needed to share any

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necessary information about the employee's religious needs and available accommodation options.

- Consider the employee's proposed method of accommodation and, if denied, explain why the company is not granting it.
- Offer temporary accommodation while exploring a more permanent accommodation solution.

- Make managers aware that reasonable accommodation may require making exceptions to policies or procedures where such exceptions would not infringe on other employees' rights. See EEOC Manual, Section 12, pp. 86-87.

### EMPLOYER RIGHTS BLOG

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developments of interest to employers, and separate myth from fact in the often-confusing hype surrounding employment law topics. Your review and comments are, of course, welcome.

The Law Offices of Timothy Bowles has also launched an additional web-

site, <http://www.employerslawoffice.com>. Affiliated with the renowned and well-respected lawyers.com, this new web site includes a video introduction to the firm, employment-related frequently asked questions and articles on relevant employment law topics.

For more information, please contact Pat Morris at [pat@tbowleslaw.com](mailto:pat@tbowleslaw.com).

# Law Report

LEGAL NEWSLETTER

VOLUME 9, ISSUE 4

## AVOIDING RELIGIOUS DISCRIMINATION IN THE WORKPLACE:

### *How to Accommodate Employees' Religious Beliefs Without Imposing Undue Hardship on the Company's Business*

Bill, a hospital supervisor, learned that one of his subordinates, Harvinder, has been wearing a miniature sword strapped to and hidden underneath her clothing. Harvinder is a Sikh who wears the four-inch dull and sheathed sword (called a kirpan) as a symbol of her religious commitment to defend truth and moral values. Bill instructed Harvinder not to wear the kirpan at work because it violated hospital policy against bringing weapons into the workplace. Harvinder explained to Bill that her faith requires her to wear a kirpan in order to comply with the Sikh Code of Conduct, and gave him literature explaining the kirpan is not a weapon. Harvinder also allowed Bill to examine the kirpan so he could see it was no sharper than a butter knife. How should Bill address the conflict between Harvinder's religious practice and the workplace ban on all weaponry? Should he accommodate Harvinder's

request to continue wearing the kirpan? Can Bill make an exception under these circumstances to hospital policy banning weaponry on the premises? What should Bill do next?

It may be surprising to learn that if Bill were to inform Harvinder she would be terminated if she contin-

***Along with the rise in religious diversity, the number of religious discrimination charges filed with the EEOC has more than doubled from 1992 to 2007***

ued to wear the kirpan at work, then the Equal Employment Opportunity Commission (EEOC) would consider the hospital liable for religious discrimination. See Equal Employment Opportunity Commission Compliance Manual (EEOC Manual) (July 22, 2008) Section 12: Religious Discrimination at pp. 64-65.

***Religious Accommodation Claims*** As religious diversity in the American workplace increases, many employers understandably seek legal guidance in addressing religious conflicts at work. Along with the rise in religious diversity, "the number of religious discrimination charges filed with the EEOC has more than doubled from 1992 to 2007." EEOC Manual, Section 12 at p. 2.

The EEOC enforces federal laws prohibiting workplace discrimination, such as Title VII. Although the EEOC Manual is not California state law, California courts can and do turn to the EEOC Manual for guidance. The 2008 version of the EEOC Manual provides newer examples and instruction to assist employers on how and when to attempt to accommodate an employee's religiously based conflict with a workplace requirement.

Under California and federal law, an employee may

Please see "RELIGIOUS DISCRIMINATION" page 2

## EMPLOYER RIGHTS BLOG AND EMPLOYERS LAW OFFICE WEBSITE LAUNCHED

The Law Offices of Timothy Bowles has launched a new blog addressing legal topics of interest to human resource managers. The "Employer Rights Blog" is available for free at <http://www.tbowleslaw.com/blog>.

Contributing firm attorneys will draw on their decades of combined experience in the practice of employment law. The Employer Rights Blog will track breaking employment-related legislation, analyze latest news and

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*The Law Offices of Timothy Bowles work primarily in employment; mediation; arbitration; and civil litigation. While published articles convey the firm's views on topics it has found concern many of its clients, the articles are not intended and should not be considered legal advice. Such professional advice requires full disclosure to an attorney of a client's circumstances and that attorney's opportunity to analyze those circumstances against applicable law.*

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**“RELIGIOUS DISCRIMINATION”**  
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bring a religious accommodation claim which could require an employer to prove that it either attempted to reasonably accommodate the employee’s expressed religiously based conflict or that any accommodation of the employee’s needs would result in the company’s undue, substantial economic hardship.

***The 2008 version of the EEOC Manual provides new examples and guidance to assist employers on how and when to attempt to accommodate an employee’s religiously based conflict with a workplace requirement***

***What is a reasonable accommodation?*** A reasonable accommodation would eliminate the employee’s conflict without either (a) unnecessarily disadvantaging the employee’s terms, conditions or privileges of employment, or (b) imposing an undue hardship on the employer. Common methods of accommodating employees’ religious beliefs can include (1) flexible work shift scheduling; (2) voluntary shift or assignment swaps with other co-workers; (3) lateral transfer and/or change of job assignment; and (4) modifying workplace practices, policies, and/or procedures. EEOC Manual, Section 12 at p. 65. Minimally, the employer must negotiate

with the employee in an effort to reasonably accommodate the employee’s religious beliefs. *Balint v. Carson City, Nevada* (Ninth Circuit Court of Appeals [9th Cir] 1998) 180 Federal Reporter, Third Series (F.3rd) 1047, 1051, note 4.

**EEOC MANUAL EXAMPLE 32**

*Employer Violates Title VII if it Offers Only Partial Accommodation Where Full Accommodation Would Not Pose an Undue Hardship*

“Rachel, who worked as a ticket agent at a sports arena, asked not to be scheduled for any Friday night or Saturday shifts, to permit her to observe the Jewish Sabbath from sunset on Friday through sunset on Saturday. The arena wanted to give Rachel only every other Saturday off. The arena’s proposed accommodation is not reasonable because it does not fully eliminate the religious conflict. The arena may deny the accommodation request only if giving Rachel every Saturday off poses an undue hardship for the arena.”

On the other hand, the employer need not adopt the most reasonable accommodation or the accommodation preferred by the employee. Employees must participate in an interactive process with the employer to reach a reasonable accommodation. An employee’s failure or refusal to participate in this interactive process to reach a mutually acceptable reasonable accommodation defeats this type of claim. *Shelton v. University of Medicine & Dentistry of New Jersey* (10th Circuit 2000) 223 F.3rd 220, 227. “The obligation to search for an acceptable solution is bilateral. Employees also have the

obligation to make a good faith effort to explore alternatives.” *Soldinger v. Northwest Airlines* (1997) 51 California Appellate Reporter (Cal. App.) 4th 345, 370.

***Employees must participate in an interactive process with the employer to reach a reasonable accommodation***

**EEOC MANUAL EXAMPLE 33**

*Employer Not Obligated to Provide Employee’s Preferred Accommodation*

“Tina, a newly hired part-time store cashier whose sincerely held religious belief is that she should refrain from work on Sunday as part of her Sabbath observance, asks her supervisor never to schedule her to work on Sundays. Tina specifically asks to be scheduled to work Saturdays instead. In response, her employer offered to allow her to work on Thursday, which she found inconvenient because she takes a college class on that day. Even if Tina preferred a different schedule, the employer is not required to grant Tina’s preferred accommodation.”

Additionally, these discussions may need to continue over time. Employers should be aware that an employee’s religious beliefs and practices may evolve over time, and that this may result in requests for additional or different accommodations. Likewise, the employer may have the right to discontinue a previously granted accommodation that no longer pertains to

religious accommodation or now poses an undue hardship. EEOC Manual, Section 12 at p. 56.

***What Constitutes an Undue Hardship?*** An employer is not required to attempt or negotiate an accommodation when the employer “can show that any accommodation would impose hardship” and that “[i]f an employer can show that no accommodation was possible without undue hardship, it makes no sense to require that he engage in a futile act.” *Balint v. Carson City, Nevada* at 1051, note 4.

An undue hardship is found where the proposed accommodation imposed more than a “de minimus” (trifling or minimal) cost to the employer. Examples where courts have found accommodations imposed undue hardship include: “additional costs in the form of lost efficiency or higher wages” (*Balint v. Carson City, Nevada* at 1055).

Resolving the issue is a case-by-case proposition. Relevant factors may include the type of work-

***Employers should be aware that an employee’s religious beliefs and practices may evolve over time, and that this may result in requests for additional or different accommodations***

place, the nature of the employee’s duties, the quantifiable cost of the accommodation in relation to the employer’s size and operating costs, and the number of employees who will, in fact,

need a particular accommodation. Courts have also found undue hardship where the proposed accommodation diminishes efficiency in other jobs, infringes on other employees' job rights or benefits, or impairs workplace safety.

The "Saturday work" cases are good illustrations. In the event of an employee's religiously based claim that he/she cannot work on that day, an employer open for business Saturdays must undertake to move its employee scheduling so as to accommodate

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that conflict. In a smaller company, where no employee can be spared from working Saturdays, the business might be unable to grant such a request without incurring substantial economic hardship. A larger business might well be able to accommodate and resolve such a conflict by adjusting the schedules of various employees.

**EEOC MANUAL EXAMPLE 42**  
*Restaurant Server Excused from Singing Happy Birthday*

"Kim, a server at a restaurant, informed her manager that she would not be able to join other waitresses in singing 'Happy Birthday' to customers because she is a Jehovah's Witness whose



*"Are these just guidelines, or are they actual new policies?"*

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religious beliefs do not allow her to celebrate holidays, including birthdays. There were enough servers on duty at any given time to perform this singing without affecting service. The manager refused any accommodation. If Kim files a Title VII charge alleging denial of religious accommodation, she will prevail because the restaurant could have accommodated her with little or no expense or disruption."

**Employer-Sponsored Training Programs** If an employee expresses a religious conflict with an employer-sponsored training program and/or its materials, "an employer is required, absent undue hardship, to excuse an employee from compulsory personal or professional development training where it conflicts with the employee's sincerely held religious beliefs or prac-

tices." EEOC Manual, Section 12 at p. 83.

"There may be cases, however, where an employer can show that it would pose an undue hardship to provide an

***Courts have also found undue hardship where the proposed accommodation diminishes efficiency in other jobs, infringes on other employees' job rights or benefits, or impairs workplace safety***

alternate training program or to excuse an employee from participating in a particular training, even if the employee asserts it is contrary to his religious beliefs to attend (e.g., where the training provides information on how to

perform the job..., or on other workplace policies, procedures, or applicable legal requirements)." EEOC Manual, Section 12 at p. 83.

Courts have found that the following accommodations impose an undue hardship: "[s]elective objection to some of the employer's goals" (*Enres v. United States of America* (7th Cir. 2003) 349 F.3rd 922, 925); and imposing of "undue financial and administrative burdens on [an agency] or requir[ing] a fundamental alteration in the nature of [its] program" (*Barth v. Gelb* (D.C. Circuit 1993) 2 F.3d 1180, 1187). Thus, any expressed religious conflict with an employer's training program should be assessed on a case-by-case basis.

**Conclusion** Minimally, companies should implement these best practices regarding reasonable religious accommodation and undue hardship: