Religious Discrimination and Accommodation in the Workplace

YOUR LEGAL RIGHTS

1. How are religious beliefs protected in the workplace?

   Both the Civil Rights Act of 1964 (Title VII) and the California Fair Employment and Housing Act (FEHA) make it unlawful for an employer to: discriminate, or take an adverse employment action, against an employee based on religion or religious attire. The employer also must "reasonably accommodate" an employee's religious belief or practice, so long as such accommodation does not present an undue hardship on the employer's business.

2. What qualifies as a religion or a religious belief or practice?

   Under both Title VII and the FEHA, the term "religion" is broadly defined. Under Title VII, the term "religion" refers to moral or ethical beliefs as to what is right or wrong, as long as those beliefs are sincerely held with the strength of traditional religious views. Similarly, under the FEHA, the term "religion" encompasses both traditionally recognized religions, as well as beliefs, observances, or practices which an employee sincerely holds and which occupy in his or her life a place of importance parallel to that of traditionally recognized religious creed. The focus of these definitions is on what the particular *employee* believes as part of his religious conviction, not what others who share his general faith would believe. Courts have applied these definitions broadly, but have stopped short of permitting *social* or *political* belief structures and organizations (such as the Ku Klux Klan) from receiving protection as religions.

3. How am I protected against discrimination based on religion?

   If you are covered by Title VII or the FEHA, your employer cannot refuse to hire, refuse to promote, demote, reduce pay, sanction, or terminate you based solely on your religion or your religious practice.

4. Can my employer treat me differently because of my religious attire?

   Illegal discrimination can occur when an employer or potential employer treats a person differently because that person wears an item (or items) of clothing in accordance with that person's religious beliefs. For example, if a prospective employer tells a Jewish man that he will only be hired if he removes his yarmulke, and the man is unwilling to do so because wearing a yarmulke is an integral part of his religious practice, the employer's subsequent refusal to hire the Jewish man may be unlawful *religious* discrimination. In addition, when religious attire is strongly associated (or perceived to be associated) with a specific country or region, discrimination against an individual wearing that attire may also be discrimination based on national origin. For example, an employer's decision to terminate a Sikh man because the man's turban was indicative of his South Asian or Afghan national origin may be unlawful *national origin* discrimination. Finally, when certain types of religious attire are worn by women but not by men, discriminating against individuals on the basis of that attire may essentially be the same as discrimination based on sex. For example, if Muslim women apply for positions with a company and their applications are rejected and men are hired instead, if the employer claims that the women were not hired because they wear headscarves, this may be *sex-based* discrimination.

   To prove you have been discriminated against because of your religious attire, you first have to show three things: 1) your sincere religious belief requires you to wear certain attire, 2) your employer (or potential employer) has indicated that wearing the religious attire conflicts with a job requirement, and that you informed the employer (or potential employer) of that conflict and 3) you were disciplined, dismissed, not hired or otherwise discriminated against for failing to agree to remove the religious attire.

   Once you have proved those three things, your employer (or potential employer) must then show either that it made good faith efforts to accommodate your religious practice—i.e., to find a way to allow you to wear your religious attire and continue in your job—or that allowing you to do so would constitute an "undue hardship" to the employer's business. Fears about how other employees or customers would react to

your religious attire are not enough to demonstrate “undue hardship.” For example, an employer’s assertion that a Muslim woman should not work as a receptionist because her headscarf would “project the wrong image” and therefore be “bad for business” would not demonstrate “undue hardship,” since doing so would be catering to discriminatory attitudes.

5.

When does my employer have to provide a “reasonable accommodation” to me?

If you have a bona fide religious belief or practice that conflicts with the performance of your employment responsibilities, then you are entitled to a “reasonable accommodation.” A reasonable accommodation is a solution that eliminates the conflict between your religious beliefs or practices and your employment responsibilities. For example, if your religion requires you to refrain from work on Sundays, then an accommodation might involve shifting your schedule to allow you to work on Saturdays instead of Sundays.

The burden is on your employer to find you a “reasonable accommodation,” working in cooperation with you. You do not have to propose such an accommodation yourself. On the other hand, if you and your employer each propose a different reasonable accommodation, your employer does not have to select your proposed solution. Instead, it can choose to provide any “reasonable accommodation” it sees fit.

6.

Can my employer refuse to provide me with a “reasonable accommodation”?

Your employer is not required to provide reasonable accommodation if it presents an “undue hardship” to the employer. An “undue hardship” is anything that would impose more than a very small cost or burden upon the employer given the context of the employer’s business. Whether an accommodation is an “undue hardship” depends on a number of factors such as: the size of the employer, the net-income of the employer compared to the cost of the reasonable accommodation, the nature and cost of the accommodation involved, and reasonable alternatives to the proposed accommodation. Referring again to the example where the employee’s religious beliefs prohibit working on Sundays, it may be an undue hardship on the employer to force another employee in the same working role to switch working days with the conflicted employee, but it would not be an undue hardship if those same employees voluntarily agree to switch working days with one another.

7.

Can my employer require me to observe its religious practice?

No. An employer may not require an employee to engage in any behavior or observe any religious practice that would conflict with the employee’s own religious beliefs. For example, an employer may not demand that an atheist employee attend company non-denominational Christian prayer sessions. However, the same employer might be able to compel a reluctant Christian employee to attend the prayer sessions if doing so conflicted only with the employee’s preference, but not with the employee’s individual religious beliefs.

8.

Is my employer required to allow me to discuss and share my religious beliefs with co-workers or clients?

No. Courts have routinely dismissed cases where people’s religious beliefs demand that they share their beliefs with others in order to spread their faith. These courts have reasoned that allowing employees to spread their faith in the workplace would present undue hardships on the employers.

9.

What can I do if I have a complaint regarding religious discrimination or accommodation in the workplace?

If you think your employer has discriminated against you based on your religion (including because of your religious attire) or refuses to reasonably accommodate your religious beliefs, and your employer has more than 15 employees, you may file a charge of religious discrimination with the U.S. Equal Employment Opportunity Commission (“EEOC”) (www.eeoc.gov). In California, you must do this within 300 days of the discriminatory act, and in other states, you may have only 180 days to do so. If the discrimination took place in California (and your employer has at least 5 employees), you may instead file a charge of religious discrimination with the California Department of Fair Employment and Housing (“DFEH”) within one year of the discriminatory act. Filing a charge of religious discrimination is the only way you can protect your right to sue your employer in court under federal and California law. (If your employer has fewer than 5 employees, or if you are employed by the federal government, you should consult an attorney.)

For further information about your employment rights, contact the Workers' Rights Clinic.

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