

Employment Law for Business, 6th ed.
 Bennett-Alexander

Chapter 9

Religious Discrimination

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Statutory Basis

It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's . . . religion . . . or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's religion . . .

Title VII of the Civil Rights Act of 1964, as amended; 42 U.S.C. 20002-2(a).

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . First Amendment to the U.S. Constitution.

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This is Not Your Forefather's Religious Discrimination

- Religious discrimination has come a long way from what was likely envisioned by our forefathers.
- Henry VIII
 - State-imposed religion
- Title VII prohibits discrimination in employment based on religion—either its beliefs or practices
- The small percentage of claims is on the rise

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This is Not Your Forefather's Religious Discrimination (continued)

- Fundamentalist Christianity
 - Sharing their faith
- Middle Eastern religions
 - Clothing and required prayer
- Duty to reasonably accommodate
- Undue hardship
- Religion is recognized as a basis for BFOQ
- Conflict of religious practice and workplace policies

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World Religions

Group	Adherents	% of World Pop.
Major World Religions		
Christianity	2 billion	33.0%
Islam	1.3 billion	22.0
Hinduism	900 million	15.0
Buddhism	360 million	6.9
Other Broad Religious Groups		
Chinese folk religions	225 million	4.0%
African traditional and diasporic religions	95 million	3.0
Unaffiliated		
Secular/Nonreligious/Agnostic/Atheist	850 million	16.9%

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Major Religions in the U.S., 2001

Top Organized Religions	
Christianity	76.5%
Judaism	1.3
Islam	0.5
Buddhism	0.5
Hinduism	0.4
Unitarian Universalist	0.3
Wiccan/Pagan/Druid	0.1

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What is Religion?

- Unknown religion accommodation considerations:
 - Is the belief closely held?
 - Does it take the place of religion in the employee's life?
- Employer duty to accommodate:
 - Attaches to the conflict itself, not to when the conflict arises
 - Applies to religious **practices**, not religious **beliefs**
- Undue hardship

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Religious Conflicts

- An employee engaging in some religious practice that is not perceived to be compatible with the workplace.
- Sometime the conflict is with the **employer's** religion
- Key:
 - Make sure that the basis for the conflict is a religious one
 - Try to work out an accommodation

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Religious Conflicts (continued)

- Once an employer is aware of the conflict:
 - The **employer** must attempt a good-faith accommodation
 - The **employee** must assist in the attempted accommodation
- Limitations to the right to be free of religious discrimination

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Employer's Duty to Reasonably Accommodate

- An employer can discriminate against an employee for religious reasons if to do otherwise causes the employer undue hardship.
 1. Conflict discovered.
 2. Employer attempts to accommodate.
 3. If accommodation is not possible, employer can implement the policy.

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Employer's Duty to Reasonably Accommodate (continued)

- There is not one single action an employer must take to show reasonable accommodation
 - Circumstances vary from situation to situation
- If accommodation cannot be found, the employer's duty is discharged.
- The important factor is to attempt an accommodation rather than simply dismissing the conflict.

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Employee's Duty to Cooperate in Accommodation

- Factors determining reasonable accommodation:
 - Whether the employer made an attempt at accommodation
 - The size of the employer's workforce
 - The type of job in which the conflict is present
 - The employer's checking with other employees to see if anyone was willing to assist in the accommodation
 - The cost of accommodation
 - The administrative aspects of accommodation

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What Constitutes Undue Hardship?

- Factors determining undue hardship:
 - The nature of the employer's workplace
 - The type of job needing accommodation
 - The cost of the accommodation
 - The willingness of other employees to assist in the accommodation
 - The possibility of transfer of the employee and its effects
 - What is done by similarly situated employees
 - The number of employees available for accommodation
 - The burden of accommodation on the union (if any)

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What Constitutes Undue Hardship? (continued)

- Courts find undue hardship if an employer has to:
 - Violate the seniority provision of a valid collective bargaining agreement
 - Pay out more than a "de minimis" cost to replace a worker who has religious conflicts
 - Force other employees to trade places with the employee who has a religious conflict

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Religion as a BFOQ

- Title VII permits religion to be a bona fide occupational qualification if it is reasonably necessary to the employer's particular normal business operations.
- Title VII specifically permits educational institutions to employ those of a particular religion if they are owned in whole or in substantial part by a particular religion.

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Religious Harassment

- Most common religion-related issues among employees:
 - Proselytizing
 - Employees feeling harassed by coworkers' religious expressions
 - Employees objecting to job duties
 - Employees harassing coworkers for their religious beliefs
- Religious Freedom Restoration Act

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Religious Harassment (continued)

- Non-religious employees being harassed by religious employees
- Guidelines for the religious freedom of federal employees
- Comparable workplace time and resources
- The employer gets to call the shots

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Union Activity and Religious Discrimination

- Unions are also under a duty to reasonably accommodate religious conflicts
- Frequent conflicts:
 - Union membership
 - Payment of union dues
 - Picketing and striking
- It violates Title VII for an employer to discharge an employee for refusal to join the union because of his or her religious beliefs
- The Establishment Clause

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Summary

- Employees are protected in the workplace in their right to adhere to and practice their religious **beliefs**, and the employer cannot discriminate against them on this basis unless to do so would be **undue hardship** on the employer.
- Employer cannot question the **acceptability** of employee's religion or **when** the employee came to believe.
- Employer should be conscious of potential religious conflicts in developing and implementing workplace policies.
- The prohibition on religious discrimination is not absolute, as employer has only the duty to **reasonably** accommodate the employee's religious conflict unless to do so would cause the employer **undue hardship**.
- While employer must make a **good-faith effort** to **reasonably accommodate** religious conflicts, if such efforts fail, employer will have discharged his or her legal duties under Title VII.

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