



The GSH 60-Second Memo

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Accommodating Employees' Religious Practices and Beliefs: The Devil is in the Details

By Mary Pat Gallagher, Esq.

Chanukah, Christmas, Winter Solstice. While the holiday season is a joyous time of year, it brings with it its own set of stresses for supervisors and managers seeking to fairly accommodate employee requests for time off during the holiday season. When the request for time off is to observe a religious holiday, it becomes particularly important that supervisors and managers understand their legal obligation to reasonably accommodate an employee's religious belief, practice, or expression.

Consider the following hypothetical scenario: An employee, who recently returned from a disability-related leave, approaches her supervisor to request time off from work. The employee is aware that she has exhausted all available and accrued paid time off but is seeking additional unpaid time off to observe upcoming religious holidays. Her supervisor, who does not think that the employee's religion is a "real" religion and is already short-handed on staff, is inclined to deny the request. Do you, as the employer, have an obligation to grant your employee's request for additional unpaid time off from work?

What Constitutes Religion for Title VII Purposes?

Generally, Title VII obligates employers to "reasonably accommodate" employees' "sincerely held" religious belief and observances (or lack thereof) unless doing so would impose an "undue hardship" on the employer.

While it is clear that employers are not allowed to discriminate on the basis of religion, it is not as clear as to what counts as a religious belief. Title VII defines "religion" to include "all aspects of religious observance and practice as well as belief." Religion includes not only traditional, organized religions such as Christianity, Judaism, Islam, and Hinduism, but also religious beliefs that are "new, uncommon, not part of a formal church or sect, only subscribed to by a small number of people, or that seem illogical or unreasonable to others." Religious beliefs include "moral or ethical beliefs as to what is right or wrong which are sincerely held with the strength of traditional religious views." Thus, an employer who rejects a request for a religious accommodation because the employee is a follower of a non-traditional religion, such as Druidism or Wicca, risks violating Title VII unless the employer can show that the employee's request imposed an undue hardship.

How Far Must an Employer Go to Accommodate the Employee?

If the employee approaches an employer with a request for a reasonable accommodation, the employer must work with the employee to create one unless the employer can show that the accommodation creates an undue hardship. Title VII does not define what constitutes a "reasonable accommodation" nor does it define "undue hardship." Thus, an employer must analyze each request for a religious accommodation on a case-by-case basis.

An employer is best advised to engage in the "interactive process" required by the Americans with Disabilities Act to identify a reasonable accommodation. An employer does not have to assume that an accommodation is necessary and may make limited inquiry into factors such as the requirements of the employee's religious beliefs and whether the beliefs are sincerely held.

An employer need not incur more than minimal costs in order to accommodate an employee's religious practices. However, an employer claiming that an accommodation is not feasible because it would result in an undue hardship must be prepared to demonstrate an actual effect that the requested accommodation would have on the employer's business. Higher wage costs can be one form of hardship, as can lost efficiency, increased workloads for other employees, violation of a valid labor agreement, and the creation of safety risks.

In most cases, accommodations involve flex scheduling, voluntary shift swaps, or giving employees time off to attend religious services. Other examples of reasonable accommodations could include exempting the employee from customary dress or grooming requirements, allowing the employee to use a particular space in the workplace for prayer, or being flexible with break schedules so that the employee can engage in prayer.

The Lesson

Ultimately, there are no bright line rules and no easy answers. Employers are best served by managers and supervisors who, when faced with a request for a religious accommodation, are trained to

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(1) individually assess each request and avoid preconceived notions of what qualifies as a religious belief or practice; (2) consider other reasonable and available accommodations if a requested accommodation would pose an undue hardship; and (3) consult their HR professional when faced with a difficult or unique situation. Employers will also benefit by developing internal procedures for processing religious accommodation requests.

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