

Employment Law Corner

Monthly Report



September 2024

September Updates

[The FTC Non-Compete Rule is Dead.](#)

[The Creep of the Hostile Workplace](#)

[Massachusetts Joins the Pay Transparency Band Wagon](#)

Employment Law Corner: Religious Accommodations

Why are we hearing more about Religious Accommodations? In the not-so-distant past, religious accommodation requests were pretty rare. COVID, with vaccine and mask mandates, brought an exponential increase in requests. At that time, the standard to deny a request was fairly low: an employer had to show a “de minimus” cost. Last year that standard changed to “substantially increased cost” or an undue hardship. Now, religious accommodation requests must be more closely scrutinized, keeping the new standard in mind.

To navigate the risks surrounding a religious accommodation, there are a few basic questions you can ask that will mitigate your risk and meet your legal responsibilities to your employees.

Is the employee’s belief religious? This one may seem obvious, but what counts as religion can be as complicated and varied as people are. One mistake an HR professional might make is to dismiss a person’s request because they don’t recognize it as religious. A belief may qualify as religious regardless of whether the belief is consistent with a widely held dogma, is part of a socially-recognized system of beliefs, or even involves a belief in God, gods, or divine beings – what is important is whether the belief deals with subjects that are typically what society considers “religious.” So, it is important to approach these requests with an open mind.

To separate religious beliefs from personal politics, philosophies or preferences, which are not protected under Title VII, there are a few key factors to look for: first, whether the belief addresses fundamental and ultimate questions about the life and the universe; second, whether the belief is part of a whether it consists of a comprehensive belief-system as opposed to an isolated teaching; and third, whether there are certain formal and external signs or the belief, such as a important writings, places of worship, rituals, holidays, and religious tenants. In the end, beliefs that involve ultimate ideas about life, purpose, and death are more likely to be religious in nature and may be the basis for a religious accommodation.

Is the belief sincerely held? The next question is whether the employee really believes what they are saying. Most of the time, it will be hard for an HR professional to demonstrate that the employee does not believe the

religion they say they practice. For this reason, it is usually advisable to take employees at their word. Worth noting is if there is an objective reason to suspect an employee is thinking about something other than “ultimate ideas about life, purpose and death,” the employer can collect more information from the employee. You may doubt the sincerity of the employee’s beliefs if, among other reasons, the employee’s past behavior is clearly inconsistent with the professed belief; if the accommodation being requested is an attractive benefit that is likely to be sought for non-religious reasons; if the employee just asked for the same accommodation on non-religious grounds or the timing is otherwise suspicious.

Keep in mind that the employee’s past actions may not be enough on their own. A recent convert is still entitled to religious accommodations. Also, you should not reject the employee’s request just because they have run their request through chat GPT or have copied the language of the request from online sources – the employee can use someone else’s words to express a sincerely held belief.

Is the accommodation reasonable? Once you determine that the belief behind the request is a sincerely held religious belief, you still need to get to the hard question – whether the requested accommodation is reasonable. A reasonable religious accommodation is anything that allows the employee to act in accordance with their religious beliefs without causing an undue hardship on the company. Your analysis should consider all relevant factors, including monetary costs of the accommodation and the burden of the accommodation on the conduct of the employer’s business. Important factors may include:

1. The type of workplace;
2. The nature of the employee’s duties;
3. The identifiable cost of the accommodation in relation to the size and operating costs of the employer; and
4. The number of employees who will in fact need a particular type of accommodation.

Even if the proposed accommodation is an undue hardship, you should continue the conversation with the employee to see if you can identify an accommodation that will meet the needs of both employer and employee. A reasonable accommodation could include a change to dress code, a change to schedule to accommodate the employee’s Sabbath day; allowing breaks for prayer throughout the day or adjusting start or end times of the day for religious practices; exempting employees from practices that conflict with their religious beliefs, such as exempting employees from a vaccination mandate; and exempting non-religious employees from religious activities, such as a prayer period.

What if another coworker objects to the accommodation? Every HR professional has or will encounter employees who clash over religion, politics, or personal preferences. Even if the co-worker has nothing against the religion itself, it is not uncommon for co-workers to resent their colleagues who, for example, never work a Sunday because of religious accommodation. Employees are not entitled to accommodations that infringe on their co-workers’ ability to do their job or create a hostile work environment (i.e. by allowing the employee to proselytize in the workplace). At the same time, a co-workers disgruntlement, resentment, or jealousy of

co-workers is not a basis for denying accommodation. A showing of undue hardship based on co-worker interests generally requires evidence that the accommodation would actually infringe on the rights of co-workers or cause disruption of work.

Do I have the right policies in place to put all this into action? Finally, the best way to successfully navigate a religious accommodation request is to make sure you have clear, accessible policies and procedures in place to allow employees to make requests. Encourage managers to understand when a request should be treated as a religious accommodation, to ensure all parties approach the process with an open mind and a constructive attitude, and to ensure that each employee is treated as an individual. Religious accommodation requests should never be rejected out of hand and should always be subject to an individualized assessment.

If that all sounds like a lot, **we can help!** Our team works with clients to craft policies, audit your internal procedures, and assess religious accommodation requests to ensure that you are mitigating your liability, meeting your legal obligations, protecting your employee's rights, and finding a solution that works for you.

Who We Are:

We want to introduce ourselves to those we have not met:

- We represent employers exclusively from coast to coast in all facets of employment law and litigation. Our mission is solving problems and anticipating issues so you can concentrate on your business.
- We are constantly searching for the trends and upcoming issues in the law that will impact our clients. We want our clients to be informed and ready. Our familiarity with the workplace and our approach sets us apart from other law firms, making us well equipped to handle your unique needs.
- We are not like other firms: Anyone can tell you what the law states and its limits. That is easy. We find creative solutions within those restrictions that move your business forward. We seek to minimize your risk so you can get back to business. Learn how we can help your business: **Foley & Foley PC attorneys specialize in Employment and Labor Law in the Public and Private Sectors (foleylawpractice.com).**

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Meet Gregory Paal

Greg has experience advising employers on regulatory compliance, contract matters and employment-related litigation. Greg has worked with employers both large and small to meet various challenges, including implementing overtime and leave policies, drafting employment agreements and privacy policies, and resolving discrimination complaints! For more info, check out his full bio **here!**

