

WASHINGTON STATE HUMAN RIGHTS COMMISSION

GUIDE TO RELIGION and WASHINGTON STATE NONDISCRIMINATION LAWS



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Religion and Non-Discrimination

RCW 49.60 and Title VII of the Civil Rights Act of 1964 prohibit discrimination in employment based on religion or creed.

Although the language of the Washington Law Against Discrimination exempts religious organizations from non-discrimination laws in the area of employment, the Supreme Court of Washington determined that this provision violated the Washington Constitution in some instances. In *Ockletree v. Franciscan Health System*, 179 Wn.2d. 769 (2014), a plurality determined that sometimes, discrimination allegations against religious employers may be jurisdictional under RCW 49.60. If the reason for the adverse employment action was unrelated to religious practice or belief, then the case would fall under RCW 49.60 (for example, if the person was terminated because they were injured and could no longer do the job). Also, if the position in question does not have any connection to the practice or teaching of religion (such as a janitor or a physician), then the case would fall under RCW 49.60.

Religion or Creed

A religion or creed is defined broadly and includes observance, practice, and belief. A creed or religious belief includes those sincere and meaningful beliefs that occupy in the life of that individual a place parallel to that of God in a traditional religion. The beliefs can include sincerely held moral and ethical beliefs as to what is right and wrong, and beliefs that address ultimate ideas, or questions about life, purpose, and death. For example Wiccan is a belief that is religious in nature because the belief relates to “ultimate” issues and a moral concern about improving the quality of life for others. However, membership in the Ku Klux Klan is not a religion and is instead considered an ideology.

- A person does not have to be part of an organization or church to have a creed or religion.
- Someone from a particular religion may adhere to different practices and beliefs than someone else in the same religion.
- Someone who was not religious at one point, may become religious.
- Employers may request some type of information to ensure that the employee is sincere, such as further information from the employee or a letter from a religious leader; however, it is often difficult, from a legal standpoint, to challenge a person’s sincerity.

Reasonable Accommodation

In *Kumar v. Gate Gourmet, Inc.*, 180 Wn.2d 481 (2014), the Washington State Supreme Court determined that the Washington Law Against Discrimination requires employers to reasonably accommodate their employees’ religious practices.

In order to receive a reasonable accommodation from an employer, the employee must hold a religious belief and put the employer on notice that the religious belief conflicts with a workplace rule. Once that occurs, the employer and employee must enter into an interactive process to find a reasonable accommodation. The employer does not need to choose the employee's preferred accommodation, only one that works.

There are **two general types of reasonable accommodation**:

1. An **exemption from a work rule** or grooming standard.
 - Examples: An exemption from wearing a uniform or an exemption from a "no-beards" policy for a person who wears religious headwear, clothing, or icons, or has a beard for religious reasons.
 - An employer does not have to make an exemption from the work rule if the rule is safety based or if the rule is a legal requirement. Examples of such rules could be a requirement that employees must wear hard hats at a construction site, or a prohibition of loose-fitting clothing that could get caught in machinery in a machine shop. These safety issues must be legitimate, and not hypothetical.
 - Company image and customer preferences are never valid reasons to deny an exemption from a work rule. Company image, however, should be distinguished from the essential nature of the business. As an example, a company that markets hair care products would require its models to show their hair. A person whose religion requires that their hair be covered could not be a model for the hair care products.
2. **Work schedule change** to accommodate attendance at worship or services or to eliminate a safety issue.
 - The employer can alter the person's schedule, transfer the person to a different position, or change the person's shift in order to accommodate a religious belief and practice.

An employer does not have to reasonably accommodate a religious belief if there is an **undue hardship**.

- An employer can claim that changing a work schedule would result in an undue hardship if there is an actual cost to making the change, if there is an actual negative impact on other employees, or if the change would create a violation of a collective bargaining agreement.
- The employer's burden of showing an undue hardship in religious accommodation situations is less than that of showing an undue hardship in disability accommodation situations. In religious accommodation, the employer can generally show undue hardship if the cost or impact is more than *de minimis*.

An example of an undue hardship might be found in a production setting with timelines or quotas for finishing an order. An employer may not have to accommodate an orthodox Muslim employee who must stop work to pray five times a day, if the time spent in prayer has an impact on production.

Employers should be aware that after the 9/11 terrorist attacks, government enforcement agencies are committed to preventing backlash against Muslims, Arabs, Sikhs, and others who may be thought to be associated with terrorists. In light of this, employers should consider relaxing their uniform and grooming standards, unless there are legitimate safety issues. Certainly, employers should avoid implementing rules that are more restrictive on religious practices because of terrorism fears.

Example: Prior to 9/11/2001, Muslim female employees were allowed by their employer to leave their shirts untucked, as it was a violation of their religious beliefs to tuck their shirts in as it would reveal their female shape. After the 9/11 terrorist attacks, the company revoked this accommodation. The company argued that it was a safety issue. A U.S. District Court determined that safety was not the primary factor behind the new policy, and struck down the enforcement of the policy.

Sometimes, a workplace situation may present conflicting interests. For example, a Muslim dentist may claim that he cannot be in the same room as a dog due to his religious beliefs. One of his patients is disabled, and must have a service animal with her during the dental visit. The dental clinic, as a place of public accommodation, must allow the service animal to enter. The clinic must also explore the religious accommodation issues, and determine how the dentist might be accommodated in the situation.

Discrimination

An employer cannot subject employees or applicants to different treatment due to their religious beliefs. Examples of different treatment include, but are not limited to, refusing to hire an applicant, refusing to promote an employee, giving an employee the hardest jobs or worst shifts, holding an employee to different rules or different performance standards, or withholding benefits from an employee.

Harassing a person because of that person's religion or creed is prohibited conduct. This type of harassment should be covered in an employer's harassment and non-discrimination policies, and should be subject to an internal complaint and investigation procedure. An employer has the duty to take prompt and remedial action if an employee complains of religious discrimination. The employer is obligated to conduct an objective and prompt investigation, with appropriate remediation or discipline if discrimination is found. However, the employer is not obligated to impose the discipline that the complaining employee wants.

Likewise, an employer or manager who holds religious beliefs cannot treat an employee differently or poorly because that employee does not share their religious beliefs, and cannot make any employment decision based on the fact that the employee does not share

their religious beliefs. The same principle applies to the treatment of employees who are not religious. For example, a company owned by Mormons cannot only hire or promote Mormons; the company must provide equal opportunity to people who are of other religions and to people who do not practice a religion.

Employee Behavior

Employees can express their religion at work by wearing personal ornaments, placing modest decorations in their workstations, or by having a Bible study during an unpaid lunch period. Employers can place restrictions on decorations at employee workstations if the workstation is in public or customer view, particularly if the employee works for a government agency. Religious ornamentation at a government agency may run afoul of the First Amendment's Establishment Clause. Employers should prohibit religious group study during work hours. Employers may prohibit private religious study during non-break work hours, as long as the rule is equally applied to similar non-religious behavior (i.e. to studying textbooks and to reading novels or magazines).

A manager or supervisor who decides to hold a religious study for co-workers during an unpaid lunch or outside of work hours must exercise extreme caution. Attendance must be and appear to be completely voluntary - it must never appear that employees are forced or pressured to attend. Attendance at the religious study must never be a prerequisite for any workplace perks or employment decisions. The manager or supervisor must use care to treat all employees the same in all aspects of employment, and to show no favoritism, even social favoritism, to employees who attend the religious study. Employers should be aware of the risk of this type of religious study; if an employee who chooses not to attend the study is then faced with an adverse employment action, there is the potential that the employee will make a claim of religious discrimination.

An employee cannot be rude or disruptive in the exercise of his or her religion, and the employer can prohibit such behavior as long as the same conduct rules are applied to everyone equally in non-religious situations.

In addition, an employee exercising his or her religion should not act adversely toward certain kinds of people, or refuse to cooperate in employer programs. For example, when an employer began displaying "diversity posters" which were inclusive of homosexuals, an employee responded by posting Biblical scriptures large enough to be visible to other employees. When the employee posted a passage condemning homosexuality, the employee's supervisors determined that it could be offensive and that it violated the employer's policy prohibiting harassment. The employee was fired for insubordination when he refused to remove the scriptures. The court held that it would create an undue hardship for the employer to accommodate the employee by allowing him to post messages intended harass his co-workers, or to exclude homosexuals from its diversity program. The court upheld the employee's termination, stating that the employee was not fired for his religious beliefs, but for insubordination and violation of the workplace harassment policy.

If you need additional information, have additional questions, or wish to have training for your organization, please contact the WSHRC at 360-753-6770 or 800-233-3247 (TTY 800-300-7525). Additional information on this and other civil rights issues can be found on our website at www.hum.wa.gov. This document does not constitute legal advice; if you have a particular situation about which you need legal advice, you should contact your attorney.

Following is information, including several scenarios, pertaining particularly to Muslims, Arabs, South Asians, and Sikhs. This information is courtesy of the U.S. Equal Employment Opportunity Commission.

QUESTIONS AND ANSWERS ABOUT EMPLOYER RESPONSIBILITIES CONCERNING THE EMPLOYMENT OF MUSLIMS, ARABS, SOUTH ASIANS, AND SIKHS

Since the attacks of September 11, 2001, the Equal Employment Opportunity Commission (EEOC) and state and local fair employment practices agencies have recorded a significant increase in the number of charges alleging discrimination based on religion and/or national origin. Many of the charges have been filed by individuals who are or are perceived to be Muslim, Arab, South Asian, or Sikh. These charges most commonly allege harassment and discharge.

While employers have an ongoing responsibility to address workplace discrimination, reaction to the events of September 11, 2001 may demand increased efforts to prevent discrimination. This fact sheet answers questions about what steps an employer can take to meet these responsibilities. The Commission has also prepared a companion fact sheet that answers questions about employee rights. For additional information, visit the EEOC's website at <http://www.eeoc.gov>.

INTRODUCTION

Title VII of the Civil Rights Act of 1964 prohibits workplace discrimination based on religion, ethnicity, country of origin, race and color. Such discrimination is prohibited in any aspect of employment, including recruitment, hiring, promotion, benefits, training, job duties, and termination. Workplace harassment is also prohibited by Title VII. In addition, an employer must provide a reasonable accommodation for religious practices unless doing so would result in undue hardship. The law prohibits retaliation against an individual because s/he has engaged in protected activity, which includes filing a charge, testifying, assisting, or participating in any manner in an investigation, or opposing a discriminatory practice. Employers with 15 or more employees are required to comply with Title VII. Title VII also prohibits discrimination by most unions and employment agencies.

HIRING AND OTHER EMPLOYMENT DECISIONS

Narinder, a South Asian man who wears a Sikh turban, applies for a position as a cashier at XYZ Discount Goods. XYZ fears Narinder's religious attire will make customers uncomfortable. What should XYZ do?

XYZ should not deny Narinder the job due to notions of customer preferences about religious attire. That would be unlawful. It would be the same as refusing to hire Narinder because he is a Sikh.

XYZ Discount Goods should also consider proactive measures for preventing discrimination in hiring and other employment decisions. XYZ could remind its managers and employees that discrimination based on religion or national origin is not tolerated by the company in any aspect of employment, including hiring. XYZ could also adopt objective standards for selecting new employees. It is important to hire people based on their qualifications rather than on perceptions about their religion, race or national origin.

HARASSMENT

Muhammad, who is Arab American, works for XYZ Motors, a large used car business. Muhammad meets with his manager and complains that Bill, one of his coworkers, regularly calls him names like "camel jockey," "the local terrorist," and "the ayatollah," and has intentionally embarrassed him in front of customers by claiming that he is incompetent. How should the supervisor respond?

Managers and supervisors who learn about objectionable workplace conduct based on religion or national origin are responsible for taking steps to correct the conduct by anyone under their control. Muhammad's manager should relay Muhammad's complaint to the appropriate manager if he does not supervise Bill. If XYZ Motors then determines that Bill has harassed Muhammad, it should take disciplinary action against Bill that is significant enough to ensure that the harassment does not continue.

Workplace harassment and its costs are often preventable. Clear and effective policies prohibiting ethnic and religious slurs, and related offensive conduct, are needed. Confidential complaint mechanisms for promptly reporting harassment are critical, and these policies should be written to encourage victims and witnesses to come forward. When harassment is reported, the focus should be on action to end the harassment and correct its effects on the complaining employee.

RELIGIOUS ACCOMMODATION

Three of the 10 Muslim employees in XYZ's 30-person template design division approach their supervisor and ask that they be allowed to use a conference room in an adjacent building for prayer. Until making the request, those employees prayed at their work stations. What should XYZ do?

XYZ should work closely with the employees to find an appropriate accommodation that meets their religious needs without causing an undue hardship for XYZ. Whether a reasonable accommodation would impose undue hardship and therefore not be required depends on the particulars of the business and the requested accommodation.

When the room is needed for business purposes, XYZ can deny its use for personal religious purposes. However, allowing the employees to use the conference room for prayers likely would not impose an undue hardship on XYZ in many other circumstances.

Similarly, prayer often can be performed during breaks, so that providing sufficient time during work hours for prayer would not result in an undue hardship. If going to another building for prayer takes longer than the allotted break periods, the employees still can be accommodated if the nature of the template design division's work makes flexible scheduling feasible. XYZ can require employees to make up any work time missed for religious observance.

In evaluating undue hardship, XYZ should consider only whether it can accommodate the three employees who made the request. If XYZ can accommodate three employees, it should do so. Because individual religious practices vary among members of the same religion, XYZ should not deny the requested accommodation based on speculation that the other Muslim employees may seek the same accommodation. If other employees subsequently request the same accommodation and granting it to all of the requesters would cause undue hardship, XYZ can make an appropriate adjustment at that time. For example, if accommodating five employees would not cause an undue hardship but accommodating six would impose such hardship, the sixth request could be denied.

Like employees of other religions, Muslim employees may need accommodations such as time off for religious holidays or exceptions to dress and grooming codes.

TEMPORARY ASSIGNMENTS

Susan is an experienced clerical worker who wears a hijab (head scarf) in conformance with her Muslim beliefs. XYZ Temps places Susan in a long-term assignment with one of its clients. The client contacts XYZ and requests that it notify Susan that she must remove her hijab while working at the front desk, or that XYZ assign another person to Susan's position. According to the client, Susan's religious attire violates its dress code and presents the "wrong image." Should XYZ comply with its client's request?

XYZ Temps may not comply with this client request without violating Title VII. The client would also violate Title VII if it made Susan remove her hijab or changed her duties to keep her out of public view. Therefore, XYZ should strongly advise against this course of action. Notions about customer preference real or perceived do not establish undue hardship, so the client should make an exception to its dress code to let Susan wear her hijab during front desk duty as a religious accommodation. If the client does not withdraw the request, XYZ should place Susan in another assignment at the same rate of pay and decline to assign another worker to the client.

BACKGROUND INVESTIGATIONS

Anwar, who was born in Egypt, applies for a position as a security guard with XYZ Corp., which contracts to provide security services at government office buildings. Can XYZ require Muhammad to undergo a background investigation before he is hired?

XYZ may require Anwar to undergo the same pre-employment security checks that apply to other applicants for the same position. As with its other employment practices, XYZ may not perform background investigations or other screening procedures in a discriminatory manner.

In addition, XYZ may require a security clearance pursuant to a federal statute or Executive Order. Security clearance determinations for positions subject to national security requirements under a federal statute or an Executive Order are not subject to review under the equal employment opportunity statutes.

WHERE TO GO FOR GUIDANCE

The EEOC is available to provide you with useful information on how to address workplace problems relating to discrimination based on religion, national origin, race or color. We conduct various types of [training](#), and we can help you find a format that is right for you.

[Small businesses](#) are faced with unique challenges in promoting effective workplace policies that prevent discrimination. Our Small Business Liaisons are located in each of our District, Local and Area offices to assist you in compliance with EEO laws.

You should feel free to contact EEOC with questions about effective workplace policies that can help prevent discrimination. We are also available to answer more specialized questions. Please call 1-800-669-4000 (TTY 1-800-669-6820), or send inquiries to:

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