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Religious
Freedom in the
Workplace:
**A GUIDE FOR
EMPLOYEES
AND
EMPLOYERS**





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—THE FIRST AMENDMENT TO THE U.S. CONSTITUTION

Religious Freedom in the Workplace: A Guide for Employees and Employers is designed to give employees and employers a clear overview of religious freedom rights in the workplace. Through a question and answer format, it illustrates what the law allows and does not allow them to do so that they can be better prepared to exercise their rights in harmony with the rights of others, including co-workers and employers. It also highlights questions employers may face as their employees seek to practice their religious beliefs in the workplace. In addition, it provides basic guidance for formulating reasonable workplace policies that will help avoid or minimize problems, thus contributing to the general benefit of employees, employers, and overall productivity.

This guide is not comprehensive. For example, different rules often apply for religion-based employment, such as working for a church or mosque. The law also varies somewhat from state to state, and is modified from time to time through legislation and court interpretation. Thus, those with specific legal questions should seek advice from a competent lawyer.



WHAT IS RELIGIOUS FREEDOM?

1. What is meant by the phrase “religious freedom” as it applies to the workplace?

The Constitution of the United States, many state constitutions, and various state and federal laws provide special protections for fundamental rights of individuals. The First Amendment to the United States Constitution specifies rights that protect the vitality of our democracy. Among our First Amendment rights are freedom of religion, freedom of speech, freedom of the press, and freedom of assembly.

Religious freedom means more than just freedom to believe what you want. It is also freedom to talk about and act on your beliefs without coercion or interference. As with any right, religious freedom is not absolute; but courts have held that limits may be lawful if they are narrowly tailored and truly necessary, such as to protect public safety and health.

When considered in relation to the workplace, religious freedom simply means the ability of an individual to believe and act consistently with deeply held religious beliefs while in the workplace.

The Constitution prevents the government from enforcing laws that restrict these rights. In addition, federal law prevents both public and private employers from discriminating against employees based on religion and even requires employers to “reasonably accommodate” an employee’s exercise of their religious belief.

RELIGIOUS LIBERTY IN THE WORKPLACE

2. Is there general agreement about how religious faith should be treated in the workplace under the First Amendment?

Yes. As a fundamental right guaranteed by the First Amendment, employers must respect all religious beliefs and reasonably accommodate the religious needs of all employees. In support of this right, Congress included language in Title VII of the 1964 Civil Rights Act that, among other things, requires that employers not discriminate on the basis of religion. It applies to any employer that has 15 or more employees for at least 20 weeks during the year.

Under Title VII, employers must not treat employees (or applicants for employment) differently because of religious beliefs or practices, or lack of religious beliefs or practices. Employees cannot be required to participate or refrain from participating in a religious activity as a condition of employment. Title VII also requires that employers try in good faith to accommodate the religious needs of their employees upon request, unless it would cause an “undue hardship” to the employer. Title VII prohibits harassment because of religious beliefs or practices, and forbids an employer from retaliating against an employee for asserting rights under Title VII.



EMPLOYEE RELIGIOUS EXPRESSION

3. May employees express their religious beliefs or practices at work?

Yes, although reasonable limits may apply, as discussed in answers to the following questions.

4. May employees share their religious beliefs with co-workers?

Yes, but not to the detriment of either the work for which the employee has been hired, or to the irritation of co-workers. Clearly, if one worker asks about the religious belief of another worker, a free exchange of ideas between them is protected. Respectful conversation about religion while at work is certainly not less protected than conversations about other topics—and is arguably more so. These protections do not mean, however, that the discussion is allowed to interfere with the assigned work of either worker, or to disrupt other workers in the vicinity.

5. May employees wear clothing or hairstyles that are required by their sincerely held religious beliefs while on the job?

Yes, unless the clothing or hairstyle presents a safety or health risk to the employee or others. Under most circumstances, the law requires employers to make a reasonable effort to accommodate religious symbols (such as a Christian cross), clothing (such as a Jewish yarmulke or Muslim headscarf), and hairstyles, including facial hair (such as Sikh uncut hair and beard).

If the employer's dress or grooming standards prohibit such things, the employee may ask for an exception, known as a "reasonable accommodation." The employer may not simply refuse the request but must work in good faith to arrive at a reasonable accommodation, unless it would work an undue hardship on the employer. The employer has the burden of proving undue hardship in these circumstances.

However, the law does not require the employer to adopt the specific accommodation that the employee has requested, even if it is a reasonable one. Rather, the employer is free to come up with its own reasonable accommodation. Courts have decided cases concerning religious clothing and hairstyles in the workplace in a variety of ways, not always in favor of the employee involved.

6. May an employee have a Bible, a religious picture, or other religious item on display in the employee's personal workspace?

Yes, but it depends on the nature of the workspace and the policy of the employer toward all employees. If the employer allows employees to have non-work related items in a personal workspace, such as photos, posters, or other items, then religious items should be allowed as well.



RELIGIOUS HOLIDAYS

7. How should an employee's sincerely held beliefs about religious days of rest or religious holidays be treated in the workplace?

Federal and state law designates certain holidays for which employees are to be given paid time off. Some of these legal holidays are also religious holidays, such as Christmas Day for example. Federal law does not currently require employers to give time off, paid or unpaid, for other religious observances not included in the list of legal holidays. However, under Title VII an employer is required to reasonably accommodate an employee's request for time off to meet the obligations of the employee's sincerely held religious beliefs, unless it would cause the employer undue hardship.

The employer may not simply refuse to accommodate an employee's request. Reasonable accommodations might include flexible scheduling, shift swaps, agreeing to work other holidays, and the like. An employer may require the employee to use paid time off as part of the accommodation.

DISTRIBUTION OF RELIGIOUS LITERATURE

8. May employees or employers distribute religious literature in the workplace?

Employers may allow, but are not required to allow, the distribution of literature in the workplace. This includes religious literature. Remember that Title VII says that employers may not treat employees differently because of religion. This means that if an employer allows employees to distribute or post personal items in the workplace of a non-religious nature, then the employer should also allow similar actions by religiously motivated employees.

EMPLOYEE RELIGIOUS EXPRESSION TO CUSTOMERS

9. May an employee discuss religious views with customers?

Not unless the employer permits it. An employer may prohibit an employee from discussing religious views with customers. An employer may require the employee to greet customers with “Merry Christmas” or certain other generic religious expressions.



COMPANY SPONSORED RELIGIOUS EVENTS

10. May an employee be required to attend a company sponsored religious event?

No.

PROTECTION FROM RELIGIOUS HARASSMENT

11. May other employees mock or harass an employee at work because of the employee's religion, and what is an employer's responsibility?

No. An employer has an obligation to maintain a work environment free from harassment based upon religious beliefs or practices, once the employer is made aware of the offensive conduct. This includes offensive

remarks, as well as verbal or physical threats or abuse. The employer's obligation is not limited to employee behavior only, but also covers others in the workplace. These might include owners, supervisors, co-workers, contractors, and even customers or others regularly within the workplace.

It is important also to understand that this protection extends to an employee's co-workers and others who have indicated a preference not to receive the employee's unsolicited religious communications.

CORPORATE CULTURE AND FINDING COMMON GROUND

12. What do I do, as an employee, if my employer and I disagree on what my religious freedom rights are, and what are the most effective strategies for “finding common ground” regarding religious freedom in the workplace?

Employees have three options when they disagree with their employers about religious rights in the workplace:

- One side or the other can terminate the employment (quit or be fired), which may lead to litigation;



- One side or the other can take the matter to court or a government commission to determine what the law requires under the particular circumstances; or
- Both sides can attempt to understand the other's position and find an acceptable compromise. Obviously, a peaceful solution that does not result in ongoing negative consequences for either side is preferable when possible.

Employees and employers in many companies have had success in finding common ground using the following strategies:

Include all stakeholders.

Success in any enterprise depends on the joint efforts of both employees and employers. Policy decisions should be made only after appropriate involvement of those affected by the decisions and with due consideration of those holding dissenting views. While employers generally make the policy decisions, the active input of employee views and constructive suggestions are often a shortcut to success.

Listen to all sides.

If we are to build trust and truly listen to one another, we must all acknowledge a valid criticism of policies and practices, particularly concerning the treatment of religion and religious perspectives. At the same time, those with sincere religious convictions need to acknowledge that the rights of others are equally important, and that the task of employers is to see that all are treated with respect. Employees can contribute to a respectful workplace if they raise concerns with the employer before they become full-blown disputes.

Work for comprehensive policies.

Adopting clear policies that uphold religious freedom in the workplace can contribute to greater harmony and productivity. On the other hand, failure to have such policies can lead to confusion, conflict, and even legal disputes. By working together to develop comprehensive policies, employers and employees demonstrate that they take religious freedom seriously. Many employers would welcome respectful suggestions for policy improvement.

Be pro-active.

Waiting for a problem to arise before taking action increases the likelihood of strife in the workplace, legal challenges, and mistrust. Acting before the problem arises, such as by adopting clear policies, will minimize problems and maybe avoid them altogether.

Commit to civil debate.

Being able to express and discuss differing views on important issues is vital to free society. It is equally important that those expressions and discussions be conducted in a way that is constructive, not destructive. Personal attacks, name-calling, ridicule, and similar tactics destroy the fabric of our society and undermine the success of any enterprise. We must treat each other with respect and courtesy and strive to be fair and accurate. Deeply held beliefs may prevent full agreement, but civil and courteous debate will allow us to live more peacefully with those differences.



13. What else can employers do to create a culture of religious freedom for people of all religions and none in the workplace?

First, take the pledge. The Corporate Pledge in Support of Freedom of Religion or Belief (FoRB)—which supports religious diversity and freedom in the workplace—sends two clear messages to current and prospective employees:

- (1) You can work here without changing who you are; and
- (2) the company respects all employees and will not favor certain employees over others ... and that's good for the business of all. The FoRB Pledge is one component of a company's overall strategy to value its employees and increase their loyalty for the benefit of customers and shareholders. The FoRB Pledge is a company's public commitment to take reasonable steps to ensure that working at the company does not put employees at odds with their deeply held religious convictions.

This pledge helps companies navigate two internal and two external issues:

Internal:

How to identify and avoid workplace discrimination and harassment on the basis of religion or belief
How to decide on appropriate workplace religious accommodations and other strategies for inclusion

External:

How to demonstrate commitment to freedom of religion or belief as competing rights and

demands arise

How to protect and promote freedom of religion or belief in communities and with partners

Second, the employer can participate in the annual Corporate Religious Equity, Diversity & Inclusion (REDI) Index. The REDI Index is designed to help facilitate faith-and-belief friendly corporate workplaces by identifying and measuring efforts companies can undertake to become faith-and-belief friendly.

A significant and growing number of companies, including several well-known companies in the Fortune 100, 200 and 500, have embraced the REDI Index. Results show that as religion and belief are respected in the workplace, employee performance and job satisfaction improve, and respect for other categories of diversity increase.

Visit www.religiousfreedomandbusiness.org to download the pledge and review the REDI Index. This website also has additional resources and training opportunities. For convenience, the pledge is reproduced here:

CORPORATE PLEDGE - FREEDOM OF RELIGION OR BELIEF

1. Promoting Sustainable and Innovative Business Through Protecting Freedom of Religion or Belief



[COMPANY] affirms that freedom of religion or belief (“FoRB”) is a fundamental right. [COMPANY] also recognizes that religious freedom promotes sustainable and innovative businesses, contributes to human flourishing, and results in peaceful and stable societies. For these reasons, and with a vision of a future of innovative and sustainable economies where FoRB and diversity are respected, [COMPANY] strives to be a leader in promoting and protecting FoRB in its workplace and communities. [COMPANY] will not tolerate abuses of religious freedom within its sphere of influence.

2. Non-Discrimination and Non-Harassment on the Basis of Religion or Belief

[COMPANY] respects each individual’s rights to freedom of religion or belief, provides equal employment opportunities to all employees and prohibits discrimination on the basis of religion or belief. This prohibition on religious discrimination applies to all aspects of employment including, without limitation, recruitment, interviewing, hiring, training, job assignments, promotions, demotions, compensation, benefits, transfers, terminations. [COMPANY] will take appropriate action, consistent with its general non-harassment and non-discrimination policy, upon receiving a report.

3. Religious Accommodation and Inclusion

[COMPANY] promotes a religiously inclusive environment where each employee’s beliefs are

recognized and respected, but where religion or belief is not a matter of force or coercion. Consistent with this policy, an employee may seek, and [COMPANY] will provide, a reasonable religious accommodation that does not create an undue hardship on [COMPANY]'s business if his or her religious beliefs, observances, practices, or requirements conflict with his or her job, work schedule, [COMPANY]'s policy or practice on dress and appearance, or with other aspects of employment.

4. Protecting and Promoting Freedom of Religion or Belief (FoRB) in Our Communities

[COMPANY] strives to be a leader in promoting and protecting freedom of religion or belief (FoRB) among its stakeholders and in the broader community. [COMPANY] gives priority to business partners, suppliers, and contractors who share [COMPANY]'s values, including FoRB. [COMPANY] supports their efforts to promote these values through their business activities. Among other practices that are consistent with this policy, [COMPANY] will strive to support local, national and global initiatives that promote FoRB, and may refrain from doing business with or investing in companies and governments that restrict FoRB.

[SIGNATURE & COMPANY DETAILS]

More Resources

The following is a list of sources you may find helpful in developing a better understanding of the religious liberty rights and responsibilities employees and employers have in the workplace:



www.eeoc.gov/laws/types/religion.cfm
www.eeoc.gov/policy/docs/qanda_religion.html
www.iclrs.org
www.ReligiousFreedomAndBusiness.org
www.ReligiousFreedomCenter.org

ABOUT US

The International Center for Law and Religion Studies is a global leader in comparative and international law concerning religion. The Center's mission is to help secure the blessings of freedom of religion and belief for all people by 1) expanding knowledge and expertise, 2) building networks of experts, and 3) contributing to law reform. As an academic institution at J. Reuben Clark Law School, Brigham Young University, the Center partners with leading universities, NGO's, and governments around the world to organize conferences, training seminars, and workshops. Since its inception in 2000, the Center has helped organize more than 350 educational events in more than 50 countries; worked with more than 1,000 scholars, government officials, judges, and community and religious leaders; consulted on proposed legislation in 55 countries; produced numerous scholarly works and training materials; and educated thousands of students. To learn more visit www.iclrs.org





RELIGIOUS FREEDOM &
BUSINESS FOUNDATION

The Religious Freedom & Business Foundation (RFBF) is the preeminent organization dedicated to educating the global business community, policymakers, non-government organizations and consumers about the positive power that faith — and religious freedom for all (including those with no religious faith) — has on business and the economy. RFBF is a non-partisan, nonpolitical, registered 501(c)3 non-profit organization in the United States. It does not take a position on current political debates. To get involved, please visit religiousfreedomandbusiness.org.



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