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Praying for relief: Accommodating employee religious practices

A court in New York recently highlighted an employer's obligations in responding to a request to accommodate an employee's religious practices. In that case, the employer hired a Jewish woman as a product development manager in October 2006. During the job interview, the woman told the employer she needed to leave work early on Fridays in order to observe the Jewish Sabbath, which runs from sundown Friday until sundown Saturday. The employer agreed to comply with the woman's request, but they never specified just how early the woman could leave on Fridays.

As with any good story, this one had a plot twist: The woman began leaving work three hours early because the home to which she returned on the weekends was located some three hours away (she stayed in an apartment near work during the week) — a fact she never told the employer. To no surprise, with her leaving so early every Friday, her co-workers were quick to complain. The issue with her leaving early then worsened when a client's increased demands essentially doubled her workload. As a result, the employer informed her that she would have to stay until 4 p.m. on Fridays. After the woman said she could not comply, the employer attempted to compromise by allowing her to leave at 3 p.m. or to switch to a four-day workweek (with a commensurate salary reduction). The woman rejected both of these offers and the employer ultimately fired her for refusing to work past 1 p.m. on Fridays. In response, she filed a lawsuit.

So what are an employer's obligations when it comes to religion? First, the law prohibits employers from discriminating against an employee because of his or her religion. Thus, an employer cannot make a hiring or firing decision nor one affecting an employee's terms or conditions of employment based upon that employee's religious beliefs. Second, and of particular note for purposes of this article, the law requires employers to provide a reasonable accommodation to an employee's sincerely held religious practices unless the accommodation would cause an undue hardship to the employer's business.

So what does it mean to provide a reasonable accommodation of a sincerely held religious practice? In most instances, whether a practice is religious and whether the employee's belief is sincere are not at issue (and, at the very least, are beyond the scope of this article). The issues most often subject to debate are whether a requested accommodation is reasonable and whether it represents an undue hardship for the employer. Essentially, an accommodation is a job-related modification that eliminates the conflict between employment demands and the employee's religious needs. The accommodation also must be reasonable. The EEOC's regulations and case law provide examples of accommodations that may be considered reasonable, including arranging a system whereby the requesting employee can attempt to arrange voluntary shift swaps with co-workers; allowing for flexible arrival and departure times; providing a floating or optional holiday; allowing for flexible use of breaks; permitting an employee to make up time missed; or, in more extreme instances, allowing for a lateral transfer or assignment change.

The second part of the accommodation analysis is determining whether the requested modification is an undue burden for the employer. Legally, employers are not required to make any accommodation that would require more than a *de minimis* cost. Whether something is an undue burden is a fact-intensive question, and there is no firm guidance that applies from court to court. As a rule of thumb, an accommodation that would require an employer to regularly pay a premium wage for a substitute worker would be considered an undue hardship. In other words, the *de minimis* cost standard is a fairly low one to meet. Illinois courts have found undue hardship where the accommodation would force other employees to work harder to compensate for the missing employee; the accommodation would expose the employer to potential lawsuits from other employees; or where the accommodation would affect other employees' collectively bargained for shift preference or their compensation and time off. Although these are only examples of the types of undue hardships recognized by courts, the main point is that an employer is not expected to go to significant lengths to accommodate an employee's religious-based needs.

The key to handling a religious accommodation request is to engage in an interactive process with the employee. Even though an employer is not required to meet an employee's every desire, nor is it bound to the accommodations suggested by the employee, it may be found liable if it refuses to participate in the process in good faith. Employers should also keep one other consideration in mind, at least in Illinois: Courts may be hesitant to find that an employer reasonably accommodated an employee's religious beliefs when the accommodation results in a reduction in the employee's wage or benefits. Therefore, employers should be cautious in deciding on any accommodation that would threaten the employee's pocketbook.

So what happened in the New York case discussed above? The court found that the employer's offer of a 3 p.m. Friday departure or a four-day work week with a commensurate salary reduction was a reasonable accommodation. The court was also particularly disturbed by the employee's lack of candor regarding the location of her home, and that fact certainly swayed the court's decision in the employer's favor. Put simply, the employer escaped liability because it approached the situation sensibly and, ultimately, offered two reasonable accommodations to its employee.

The lesson to be learned? If an employee goes to court and prays for relief from religious discrimination, as long as the employer can show that it participated in the interactive process in good faith and made a sincere effort to attempt to accommodate the employee, the employer should be able to save itself come judgment day. **IB**

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