

Louisiana Employment Law Letter

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RELIGIOUS DISCRIMINATION

'Passion' in the workplace: religious accommodations

People in Louisiana are as passionate about religion as they are about politics. Indeed, Mardi Gras, for which Louisiana is so well known, is the precursor to a religious holiday observed or acknowledged in various ways by many people in our state. But when religious beliefs or practices conflict with work obligations, many of you may find yourselves scratching your heads about how to balance your employees' personal religious obligations with their professional workplace obligations without affecting productivity or unduly burdening other employees.

Religious discrimination and accommodation claims aren't as uncommon as they might initially seem. Sure, they don't get media coverage like more salacious sexual harassment cases, but in fiscal year 2002, the Equal Employment Opportunity Commission (EEOC) received and resolved more than 2,500 charges based on alleged religious discrimination and/or failure to provide a reasonable accommodation. The agency recovered \$4.3 million in monetary benefits for employees who filed charges complaining of those unlawful employment practices.

Now the EEOC has focused its efforts on national origin and religious discrimination against Muslims as part of its concern about a September 11 backlash. Consequently, you should be vigilant in reviewing your policies and practices that affect employees who have religious beliefs or practices that conflict with their job requirements.

This month, we're answering questions from our readers on this timely subject. But before we address your questions, here's a refresher on religious discrimination and accommodation.

What is religious discrimination?

Federal and Louisiana law forbids discrimination against applicants and employees on the basis of their religion. For example, you may not refuse to hire, impose stricter promotion criteria on, or pay lower salaries to someone because of his religious beliefs or practices. Additionally, the law requires you to reasonably accommodate an employee's bona fide religious belief or practice unless doing so would create an undue hardship on your business (i.e., it would cause more than a nominal burden).

If you think that sounds similar to your obligation to provide a reasonable accommodation for people with disabilities under the Americans with Disabilities Act, you're not off base. The

concept of job accommodation isn't exclusive to qualified employees with disabilities. Applicants and employees who have bona fide religious beliefs or practices may also be entitled to a job accommodation if it wouldn't result in an undue hardship to your company. So with those general principles in mind, test yourself by considering how you would handle the following scenarios in your workplace.

Can I have Sundays off?

We have an employee who's an assistant minister. She doesn't want to work on Sundays even though her religion doesn't specifically prohibit Sunday work. I understand that we have to accommodate religious observances, beliefs, and practices. Even though what she wants to do is voluntary, does it fall within the parameters of a religious practice under Title VII of the Civil Rights Act of 1964?

First of all, it isn't clear from this scenario whether the employee is asking for Sundays off because of a religious obligation (for example, she must perform religious duties or she sincerely believes her religion mandates that she can't or shouldn't work on Sundays) or whether it's simply a matter of personal preference. If she hasn't told you that she doesn't want to work on Sundays for a reason related to her religion, you should treat her request just as you would any other employee's request for a specific day or days off. Be consistent with your policies and practices. But if she has stated that the reason for her request is a religious belief or practice, then you must determine whether that belief or practice is bona fide. If it is, you must then decide whether allowing her to take Sundays off would present an undue hardship to your business or whether some other reasonable accommodation can be made.

Does the fact that the employee's desire not to work on Sundays isn't "required" by her religion mean that she doesn't have a bona fide religious belief or practice that Sunday work is morally or ethically wrong? Not necessarily. Whether an employee has a bona fide religious belief or practice is a difficult question to answer and will depend on the specific circumstances of each case. A bona fide religious belief or practice involves "moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views." The fact that no religious group espouses that belief or that the religious group to which the employee professes to belong may not accept the belief doesn't necessarily mean that it isn't "religious."

Thus, the fact that the employee's religion doesn't specifically prohibit Sunday work doesn't necessarily mean that her religious belief isn't bona fide or that you needn't consider whether a reasonable accommodation can be made. You should talk with her to determine what her religious requirements are and whether they conflict with a job requirement. For instance, if she really needs time off only to participate in church activities for a specific period of time on Sundays, you can then consider whether a flexible schedule, voluntary schedule swap with a co-worker, or some other accommodation is a more reasonable alternative to taking the entire day off and whether it would enable her to maintain her belief or practice. Once you know precisely why she's requesting Sundays off, you will be in a better position to evaluate whether a reasonable accommodation is available.

We don't mean to suggest that you must provide a job accommodation for a voluntary belief or practice that isn't required by an employee's religion. There certainly may be situations in which the belief or practice isn't deemed "sincerely held" or "religious" as those terms are defined by federal and state discrimination laws. For example, if the employee is inconsistent in her request for Sundays off (she works Sundays for a period of time, then refuses to work Sundays for a period of time) and cannot offer any religion-based explanation for it or she indicates her

schedule is based on personal preference, she probably doesn't have a bona fide religious practice that would be protected by the law.

Can I have the Sabbath off?

We have a part-time position that was specifically created to cover weekends and evenings. An employee transferred into the job knowing the schedule. Now he's asking to switch his Saturday shifts for the next six months so he can observe the Jewish Sabbath with his grandparents when they visit him. Because of the nature of the position, the department simply cannot accommodate him. What should we do?

You're probably questioning whether the employee has a "sincerely held" religious belief to observe the Jewish Sabbath if he does it only when his grandparents are visiting him. While that seems like the easiest way to resolve this question, you should avoid jumping to conclusions without first talking to the employee to find out whether his belief is "religious" or a personal preference. If he has decided that he must observe the Sabbath as part of his religion and that he must continue observing it after his grandparents leave as part of his own "sincerely held" religious belief, you may need to consider whether an accommodation can be made. The mere fact that the belief is new to the employee doesn't necessarily mean that it isn't "sincerely held." On the other hand, if it's purely a matter of personal preference and the employee plans to observe the Sabbath only as a gesture to his grandparents, he may not qualify for an accommodation.

The easiest way to resolve this question is probably to consider whether an accommodation is available if the employee is able to demonstrate a bona fide and sincerely held religious belief. You must then examine the ways you might accommodate the employee's needs. You needn't provide the accommodation he requests unless it wouldn't pose an undue burden and, of all the possible alternatives, it presents the least disadvantage for his employment opportunities.

In this case, the very nature of the employee's job and the reason he was hired was to perform Saturday work. And it seems that the department cannot accommodate him because there aren't enough other employees to cover his shift or for other reasons you didn't specify. Remember, if you deny an accommodation, you must show that it imposed an undue burden on your business. If you have any question about whether an accommodation would be unreasonably burdensome, you should seek legal advice to ensure you're not denying an accommodation you have a legal obligation to provide.

No time off to spare

I have an employee who's requesting a day off for a religious observance. She's salaried and has run out of vacation and personal time. I have told her that if she takes the day off, her salary would be affected. How much trouble are we opening ourselves up to if we deny her time off?

Your question doesn't give us any facts to determine whether the employee has a bona fide religious belief or whether you can accommodate her request. Denying her request without showing it would impose an undue burden on your business could open you up to an EEOC charge, a lawsuit, and even monetary damages and an order that you provide the accommodation.

You also ask whether you can dock the employee for the time she misses because she doesn't have any more paid vacation. The fact that she doesn't have paid vacation to cover the requested time off isn't important to the issue of whether you must provide the accommodation.

Bottom line

As with accommodation under the Americans with Disabilities Act, religious accommodation requests must be evaluated on a case-by-case basis. There aren't any clear-cut rules, so involving your legal counsel before making decisions is always a good idea.

Find out more about religious discrimination and accommodations in the subscribers' area of HRhero.com, the website for Louisiana Employment Law Letter. You have access to an HR Executive Special Report titled "Ten Commandments for Avoiding Religious Harassment and Discrimination Claims." Just log in and scroll down to the link for all the Special Report titles. Need help? Call customer service at (800) 274-6774.

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