

ACCOMMODATING ISLAM IN THE WORKPLACE

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ABSTRACT

There are several million Muslims living and working in the United States. Given that it is not a mainstream religion in the United States, there is a great deal of misunderstanding surrounding its beliefs and practices. To that end, the basis practices and beliefs as it relates to the workplace are reviewed. Recommendations are provided for dealing with religious accommodation requests within the confines of federal law and sound management practices.

INTRODUCTION

The Civil Rights Act (EEOC, 2013) not only prohibits discrimination on the basis of religion but it also requires religious beliefs to be accommodated absent an undue hardship. Within any organization, it is up to management to ensure compliance, whatever the religious practice unless it's too costly. Religion encompasses many dimensions that management may need to address such as clothing, grooming, prayer, and religious observances. A recent survey (Pew Forum, 2010) reveals that 84% of Americans are affiliated with a particular faith. While 78% of the U.S. population identify themselves as Christian, there are many other religions that are non-Christian (Pew Forum, 2010).

One of the more prominent and misunderstood religions in the United States under scrutiny today is Islam. There are approximately 1.62 billion practicing Muslims, which consist of 23% of the world population (Pew Forum, 2010). Based on U.S. Census data, Pew Research (2010) estimates that there are approximately 2.75 million Muslims living in the United States. Many are refugees from Kosovo, Somalia, and Bosnia.

Sisk and Heise (2012) reported that in lower federal court decisions rendered between 1996 and 2005 that Muslims in the United States were “nearly alone among religiously diverse groups” and while they do prevail in many cases they are statistically more unsuccessful in receiving judgments that support religious accommodation. However, the researchers concluded after controlling for other relevant variables that religious bias within the justice system was a significantly related to the adverse decision outcomes.

This bias or misunderstanding of the Islam can arguably be related to the 35% increase in Islamic discrimination charges with the EEOC since 2001 (Aziz, 2013). Islam has a number of religious practices that could impact the workplace. Some customs may be easily accommodated depending on the work environment, while others could cause an undue hardship. The purpose of this paper is to educate management regarding basic Islamic practices and those that could require accommodation in the workplace. Guidelines for religious accommodation of Islam are provided.

RELIGIOUS ACCOMMODATION

First, it should be pointed out that religious organizations or those primarily religious in nature are not obligated to accommodate other religious beliefs. In fact, they can terminate employees for not following the tenets of the religion (*Mormon Church v. Amos*, 1987). Similarly, religious organizations are not compelled to employ anyone not of their faith (*Feldstein v. Christian Science Monitor*, 1983).

Absent these conditions, there are several legal principles governing religious accommodation that have been developed based on case law. First, an employee must have a bona fide religious belief. It is not necessary that the belief be a part of an organized religion or recognizes a Supreme Being or God (Kelly, 2008). Second, the employer must be aware of the need for an accommodation. An employee is not required to explicitly request an accommodation, as long as the employer has constructive knowledge of the need (Findley, Ingram, & Amsler, 2000).

Third, management must attempt to reasonably accommodate the employee's request unless it creates an undue hardship (*TWA v. Hardison*, 1977). This includes considering a range of appropriate accommodations such as consenting to them making-up work, having someone else cover the job, isolated use of overtime, and so on (Findley, et 2000). However, organizations are not expected to incur a hardship when accommodating religious requests. The Supreme Court ruled in *TWA v. Hardison* (1977), that an undue hardship is anything beyond de minimis, meaning that the company should not be expected to incur more than very little in terms of costs.

UNDUE HARDSHIP

According to the Equal Employment Opportunity Commission (EEOC) "an accommodation may cause undue hardship if it is costly, compromises workplace safety, decreases workplace efficiency, infringes on the rights of other employees, or requires other employees to do more than their share of potentially hazardous or burdensome work." (EEOC, 2013).

Additionally, organizations are not expected to expend much in terms of out of pocket expenses. For example, continuing to pay overtime to cover for someone out for religious observance is excluded. However, isolated overtime may be acceptable (Findley, et al., 2000). Any violations of statutory requirements are problematic (*Toledo v. Nobel-Sysco*, 1989). Unilateral accommodations that breach a valid collective bargaining agreement/seniority system is not only an undue hardship but illegal as well (Findley, et., 2000). Nevertheless, in cases where collective bargaining agreements are in effect management should ask the duly elected bargaining representative for a variance or attempt to find some other method within the agreement to accommodate the request.

Morale problems have been determined to be a hardship when there is wide spread discontentment with a particular work modification (*Brener v. Diagnostic Center Hospital*, 1982). Minor complaints are considered de minimis. Employees proselytizing in the work place can be an undue hardship when other workers find it unwelcome (Findley, et., 2000).

Any risks to health and safety are undue hardships. For example, wearing loose or flowing clothes on the production floor that could get caught in machinery or failure to shave facial hair where obtaining an airtight face seal is a necessary component of the job.

Importantly, the management of the organization selects the accommodation, not the employee (*Ansonia v. Philbrook*, 1986). Also, the organization may decide to go beyond de minimis if they so chooses. However, no matter the accommodation permitted, it must be consistently applied.

OVERVIEW OF ISLAM

In order to prevent discrimination, inadvertent or otherwise, and to be better able to meet their religious needs, management must first understand the basics of Islam as practiced by its workforce. Islam is a monotheistic faith characterized by belief in one true God whose exact word was received by the prophet Muhammad and codified in the Qur'an, or Koran which is regarded as the holy book of Muslims. Major custom, rituals, and obligations held by Muslims that may affect the workplace include (Ahmad, 2012):

- Certain dietary restrictions
- No alcohol
- Muslim women must wear a hijab or a khimar (a religious head and/or forehead. sides of neck, shoulders, and chest covering worn in public)
- Muslim women must dress modestly in public
- Males encouraged to wear beards
- Daily prayer (five times a day)
- Wazu (a ritual cleansing performed before prayer)
- Fast during Ramadan
- One pilgrimage to Mecca (Hajj)
- Bear witness to the faith

Major Islamic work-related values include: Equality before God, individual responsibility within a framework of co-operation with others, a view that people in power should treat subordinates kindly, fatalism but also recognition of personal choice, and encouragement of consultation at all levels of decision making, from family to the wider community, to the country as a whole. We will review those facets of Islam that have direct bearing on the workplace.

DIETARY RESTRICTIONS

Islam compels its followers to adhere to certain dietary restrictions known as halal laws which are dictated practices by the prophet Muhammad. Basic tenets of halal laws include: All foods in their natural state are acceptable, anything that is processed/packaged must be certified to ensure that prohibited substances have not contaminated the food, consumption of pork/pork-by products to include gelatin is forbidden, and no alcohol is tolerated in food preparation, including extracts such as vanilla (Budgar, 2011).

In most organizational settings these restrictions would not pose a problem. However, when organizations have company cafeterias or the work is out in the field where meals are often provided such as oil drilling, shipping, fishing, military field contractors, etc. employers could be faced with religious dietary requests.

The guiding principle in these cases is that if it would cost no more to provide halal meals than the food usually provided to other employees or is provided to other religions then the organization must accommodate the request. Otherwise, it is an undue hardship. Employers are

not expected to offer the specific dietary accommodation solicited by the worker but may provide an alternative(s) that is/are less expensive and does not create hardship (Patel v. U.S. Bureau of Prisons, 2008). Organizations may provide employees means to purchase food that meets their needs from outside vendors. It should be pointed out the company may wish to incur the additional expense so as to maintain and promote employee morale which is often a major reason meals are provided in the first place.

ALCOHOL CONSUMPTION

In addition to alcohol prohibition in food preparation, believers are not allowed to consume alcohol. Devout Muslims cannot be in an environment where alcohol is served if his/her companions are drinking. This latter practice can be problematic because many organizations have and promote social events where alcohol is an integral part of the company function. Lahrichi v. Lumera Corp. (2006) is a case in point. A practicing Muslim and Vice President of Technology could not attend the regular informal social gatherings of employees at a pub after work under Islamic prescriptions. These gatherings were not “mandatory,” but they were a part of the culture, a lot of work transpired there, and they were paid for by the company.

However, after he complained, the company did not serve alcohol for two hours at one gathering so he could participate, but he failed to attend. His subsequent lawsuit was dismissed in part because the company attempted to accommodate his religious beliefs (Lahrichi v. Lumera Corp., 2006). Besides, as a senior supervisor he could have scheduled other gatherings where alcohol would not be served.

RELIGIOUS ATTIRE

Usually, Muslims must wear some type of head coverings as part of their religion. Women more often wear hijab, covering head and chest, and men may be seen wearing turbans, taqiyahs, or kuffs. In the U.S. women may be more likely than men to adhere use of head coverings. In general, organizations should approve unless there is a good business reason to the contrary. If religious attire poses a danger of being snagged by machines in operation, slows down an employee at work, or could significantly affect job performance in any manner, then the request should be denied. Several examples are instructive.

AT&T permitted a Muslim female operator to wear a hijab in the course of her job. This was an appropriate accommodation. Her work was not affected and she was able to meet the demands of her religion (Fidelzeld, 2012). However, in other jobs it might pose a serious safety issue.

With respect to security positions such as guards, the khimar, a knee-length hijab, could be used against the guard in the event of an assault or even used to conceal the identity of the wearer (EEOC v. GEO Group, 2010). In a hospital or patient care facility, nurses that attend patients could be accidentally or intentionally choked by an agitated, delusional, or epileptic patient. However, the accommodation could be granted for nurses with little or no patient contact.

DRESS CODES

Many organizations have strict dress codes. However, management must prove it would be an undue hardship to permit an exception. For example, Abercrombie & Fitch has a “Look Policy” which all employees are required to follow. A Muslim female was denied a stocking position with California store because she was asked to wear her hijab which was deemed inconsistent with the “Look Policy.” While Abercrombie argued that the way sales representatives dress were the advertising for the company, there was no evidence presented that the dress code significantly affected store sales or brand image (EEOC v. Abercrombie & Fitch, 2013). The court in granting

summary judgment to the EEOC pointed out that “hypothetical or merely conceivable hardships cannot support a claim of undue hardship” (EEOC v. Abercrombie & Fitch at 10).

In another case, Hertz Corporation terminated of 12 Muslim women who refused to wear knee length skirts and tight fitting trousers to comply with Hertz’s dress code policy. However, Hertz eventually approved the women to return and wear modest clothing (PR Newswire, 2000). Generally, accommodating Muslim women to dress more modestly is appropriate except where dress goes to the heart of business such as a waitress wearing a provocative costume in a Las Vegas casino or bar.

GROOMING STANDARDS

Many Muslim men wear beards as part of their religion. Normally, this should not create a hardship in many work environments, but some situations may prove more difficult. For example, a server that wears a beard in food service preparation. However, this can usually be solved by the use of hairnets. Some union agreements limit the length of beards and allowing them to grow beyond the prescribed length would be an undue hardship (El-Amin v. First Transit, 2005) But, there are some circumstances where an accommodation may not be feasible such as obtaining an airtight face seal in certain refinery and other manufacturing jobs where safety would be a critical component of the job.

PRAYER REQUESTS

Muslims are compelled by their faith to pray five times daily. In many businesses this should be easily accommodated. In most office or related surroundings many employees can take breaks, in particular restroom breaks, at their leisure as long as their work is completed in a timely fashion. Similarly, Muslims should be allowed breaks to pray. Employers may let them pray in their office, a break room, or an empty office. For example, some divisions of Hertz, a rental car company, lets it workers to take breaks as needed. Consequently, they allowed a Muslim worker a prayer break whenever she needed it (Campbell v. Avis, 2006).

However, in 2011 one Hertz division terminated 26 Muslim drivers at the Seattle-Tacoma airport for refusing to sign off the clock when taking prayer breaks. Hertz had originally modified its procedures to pay the employees for two ten-minute breaks, but several took advantage of the paid time (Asia New Monitor, 2011). This practice would be seen as legal as long as Hertz forces other employees to clock out for other personal issues. In this case, there were reports that employees did not clock out for smoke breaks, which if proven renders Hertz’s actions discriminatory (Asia News Monitor, 2011). This situation could have been prevented by approving the employees in question to arrive at work earlier or to make up the time missed.

Other companies have taken a more accepting approach. One Chicago health insurance company manager keeps a prayer rug in her office and reserves a meeting room twice a day for 30 minutes for her Muslim employees to utilize for their prayer times (Sacirbey, 2012).

Some circumstances may be more of problem such as assembly line operations that cannot be interrupted. Although scheduled breaks can often be planned such ways that even this obstacle may be overcome (Haliye v. Celestica Corporation, 2009). A Muslim teacher at a New York middle school was given early release (unpaid time) on Fridays (a required church day) except on the second Friday of the month which was mandatory faculty meetings. To allow him to miss a mandatory faculty meeting would have been an undue hardship (McLaughlin v. New York City Board of Education, 2008).

WAZU

Wazu is a ritual cleansing often performed before prayer by many Muslims. Usually, the believer must wash their face, hands, and arms up to the elbows. Also, the hair must be rubbed with wet hands and feet must be washed up to the ankles (Zakaria v. Deloitte Consulting, 2011). Not all clothing need be removed. Where possible, this should be allowed. If time cannot be made up, then it may be deducted from the employees pay as long the same practice is applied to other employees who need time off for personal reasons.

HOLIDAYS AND OBSERVANCES

The Islamic faith has two main holidays that are celebrated each year, Eid al-Fitr and Eid al-Adha. Eid al-Fitr dates vary depending on the appearance of the moon but will be celebrated in 2013 beginning August 8 and Eid al-Adha will be celebrated beginning the 15 of October (Karachi, 2013). In the days leading up to the holidays there are specific tasks to be performed by the faithful - fasting and a trip to Mecca. The Islamic practices for holidays are dramatically different than the traditional "American" holidays of Christmas and New Year's. These holidays are preceded by the month of Ramadan.

RAMADAN

One of the Pillars of Islam is fasting for 30 days from sun-up to sun-down during Ramadan, which includes "abstaining from all or some kinds of food or drink, especially as a religious practice." (Oxford Dictionary, 2013). At sunset, Islamic families break the fast together and feast (iftar). The severity of observance is largely self-determined. Some followers strictly follow the rules prescribed in the Qur'an. Others take a more modest interpretation and fast only once a week or promise to give up one food. (Aziz, 1995).

In most office jobs, fasting should not be a significant issue. However, according to some recent research, vision problems for those fasting during Ramadan increase significantly (Yazdi, Jafarzadehpur, Mirzajani, and Nematy, 2011). These vision impairments can affect an individual's quality and quantity of work in a wide range of occupations. If these affects can be shown to have a detrimental effect on job performance, then organizations could force fasters to cease and seek medical help or face termination unless an intermediate accommodation can be found.

In general, research reveals a small but significant impact on physical performance, although the impact varies across individuals (Aziz, 2010). It would be prudent for organizations to have policies requiring employees to inform their supervisor, be under the care of a physician that certifies them to be in sufficiently good health to be able to fast for such a long period, and that participants are aware of the risks involved.

Not eating for an extended period can affect job performance, especially for those who do manual labor. Fatigue and weakness can often be expected when a person deprives himself/herself of basic bodily necessities. Manual labor and those jobs that are out of doors would be most directly affected. Workers that forego liquids in high temperatures risk heat exhaustion, heat stroke, or worse and should not be permitted to do so. Otherwise, worker health may be adversely affected leading to lost work days, worker compensation claims, and even willful OSHA citations.

EID AL-FITR

The two religious holidays, Eid al-Fitr and Eid al-Adha include celebrations and festivals that are culturally rich, family oriented, and full of tradition. To deprive Muslims of celebrating these holidays can be highly offensive and demoralizing. Managers should consider how to treat holidays in a way that is fair, legal, and motivating.

Eid al-Fitr follows the month of Ramadan and is celebrated for three days with feasting and many communities even hold carnivals for the children and bazaars following prayers (PR Newswire, 2000). Eid ul-Fitr is comparable to Christian holiday of Christmas and is a nationally recognized holiday in the U.S. Often, businesses have Christmas parties, decorate for the holiday, and provide two holidays (December 24-25) for all employees. Similarly, employers with significant numbers of Muslims, or other denominations for that matter, should permit decorations to be put up in the workplace (if allowed for Christmas) or other ways to recognize Muslim holidays.

EID AL-ADHA

Eid al-Adha is the feast of sacrifice commemorating Abraham's willingness to sacrifice his son at God's command. Prayer is held in the morning followed by sacrificing of a lamb. One-third of the meat is given to the poor (Dalal, 2001).

Employers should set aside some holidays (same number that is allowed for Christmas) as floating holidays so that employees of other denominations, including Islam, may have time off to observe their religious holy days. This need not cost any more than the holidays offered in the past. For example, in 2008, Tyson Foods, which at the time employed nearly 300 Somali Muslims, declared the Muslim holiday, Eid al-Fitr a paid day off, due to the large absence of workers on this day, and removed Labor Day as a holiday (Giulano, 2012).

PILGRIMAGE TO MECCA

Another of the Five Pillars is Hajj, or a pilgrimage to Mecca, the Islamic holy city. All Muslims are expected to make this pilgrimage to the Holy City at least once in their lifetime if they are physically and financially able. The trip includes visiting various shrines and performing various traditions.

This condition should be easily accommodated by businesses because of its relatively infrequent occurrence. Firms can allow employees schedule the trip well in advance to avoid work disruptions and authorize them to take paid vacation or unpaid leave. Unpaid leave could be discriminatory if only religious leave is unpaid (Findley et al

RELIGIOUS HARASSMENT

Religious discrimination and harassment in the U.S. has risen 223% since 1997. Failure to treat other workers with respect and dignity can result in harassment charges. Moreover, most people are easily offended when conduct, no matter how minor it may appear to the perpetrator, is directed at their religious beliefs. Several cases are instructive.

In *Campbell vs. Avis* (2006), a case associated with request for prayer time, while it granted a female courtesy driver her requested accommodations, she was tormented, and ridiculed from then on by her coworkers. She was called stupid for praying so much and was frequently interrupted when she was about to go pray. Management did nothing to correct the situation other than to tell her to ignore the comments (*Campbell vs. Avis*, 2006). Even though it did not rise to the level of illegal harassment these actions were clearly in appropriate, disrespectful, and an example of workplace bullying.

In another case (*EEOC v. Sunbelt Rentals*, 2008), a Muslim rental manager endured on nearly a daily basis being called derogatory names, which included "towel head," and "Taliban," remarks challenging his loyalty to the United States, and associating him with violence. Workers also unplugged his work computer and hid his timecard. Just as in previous case, *Campbell vs. Avis*, management ignored the initial complaints and did nothing to stop further harassment even though it accommodated his prayer sessions and permitted him to wear a beard and kufi

(traditional head gear for Muslim men) (*EEOC v. Sunbelt Rentals*, 2008). Eventually, the victim filed a harassment charge with the EEOC and the courts found in his favor.

Even though these companies had anti-harassment policies in place, management did not create a culture of understanding, tolerance, and adherence to the anti-harassment policies. This seems to be a common theme across many religious harassment cases.

PROSELYTIZING

Conversely, employees who attempt to force their religious beliefs on others can create a hostile environment as well (Findley, Dodd-Walker, Ingram, & Garrott, 2012). While we found no cases involving propagation of Islam, several other cases illustrate this issue.

In *Peterson v. Hewlett-Packard* (2004), a worker began posting explicit Bible scriptures in his work cubicle that was visible to all who passed by. These passages could have been found offensive to some. Acting proactively, Hewlett-Packard asked that they be removed. He refused and was eventually terminated. His termination was upheld in court (*Peterson v. Hewlett-Packard*, 2004).

In another case, the male Catholic supervisor of a female Baptist office worker began criticizing her decision to obtain a divorce based on religious grounds. This and other lectures about her prospects for salvation went on for several years. The District court found his conduct could constitute harassment and allowed the case to go to trial (*Tiller v. ATSI*, 2003).

CONCLUSION

While religious stereotypes and misunderstandings of other religions may never totally disappear, human resource managers can make efforts to reasonably accommodate employees by being knowledgeable of the basics of Islam; specifically its five pillars. Management should strive to fairly evaluate requests for accommodation, considering federal legislation, related cases and any offered compromises from the employee in determining what measures to take. Moreover, organizations should propagate policies that are inclusive of various religions and intolerant of bullying or harassment of its employees.

Importantly, while some companies do a good job of addressing religious needs, they sometimes fail to enforce anti-harassment policies. Management must do more than just have harassment policies “on the books.” It must create an atmosphere of acceptance and understanding not just toward Islam but all of the religions in its workplace.

It starts with frequent diversity training and continues with all supervisors enforcing the policies by creating an atmosphere of understanding, acceptance, tolerance, and inclusion. Further, supervision must be rewarded or disciplined based on their compliance and promotion of these policies. When problems do occur they must be addressed immediately.

Management should continuously seek to better understand the religions and attendant religious needs of its employees. Doing so can result in actions that promote a productive, motivated workforce which will enrich the company’s reputation and overall profitability.

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