



RELIGIOUS ACCOMMODATION

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Consider the hypothetical situation where an employee informs his employer that, following a recent “spiritual awakening,” he is now convinced that God wants him to spend every afternoon from 1:00 to 3:00 in prayer and meditation. Although he regularly works from 8 a.m. to 5 p.m., he asks that his employer “accommodate” his religious beliefs by giving him two hours of leave every afternoon and by extending his scheduled work day to 7 p.m. The obvious question facing the employer is, “What duty do I have to accommodate this request?”

Both federal and state law obligate an employer to “reasonably accommodate” the “sincerely held religious beliefs” of its employees. 42 U.S.C. §2000e(j); Wis. Stat. §§111.31(3m), 111.337(1). This legal standard creates two hurdles, both of which must be crossed, before an employer will have a duty to provide a religious accommodation.

First, an employer has a duty to accommodate only the “sincerely held” religious beliefs of its employees. Although the employee bears the burden to establish the sincerity of his religious beliefs, that burden is not a heavy one. An employee has the right to individually define his or her religious beliefs, and those beliefs need not conform to the practices or beliefs of any “established” denomination or main line religious system. (For example, in the hypothetical above, the fact that no mainline religious system requires two hours of prayer and meditation every afternoon is not determinative of whether or not the employee’s belief is sincerely held.) Rather, all religious beliefs are potentially protected by the statutes and are limited only by the requirement that such beliefs be “sincerely held.”

In a sense, whether a religious belief is sincerely held or not will generally be known best by the one claiming to have the religious belief. Consequently, when an employee requests a religious accommodation, her employer may question her about the sincerity of her beliefs. If an employee informs her employer that the requested accommodation

pertains to an activity that, though religious in nature, is not required by her personal religious beliefs, then accommodation is not required. For example, though an employee might wish to attend his church picnic, the employer has no duty to accommodate the employee's request for a scheduling change so that she may attend the picnic unless attendance is required by the employee's sincerely held religious beliefs.

External information may also shed light on the "sincerity" of an employee's claimed religious beliefs. For example, if the employer learns that the employee in the hypothetical above is using the two hours every afternoon to play golf instead of praying and meditating, then the employer might reasonably conclude that the employee's claimed religious belief is not sincerely held.

Second, an employer's obligation to accommodate an employee's sincerely held religious belief ends at the point at which such accommodation becomes "unreasonable" and otherwise creates an "undue hardship" on the employer. 42 U.S.C. §2000e(j); Wis. Stat. §§111.31(3m), 111.337(1). Although the terms "reasonable accommodation" and "undue hardship" are used to describe the duty of accommodation under federal and state disability laws, an employer's burden to provide an accommodation under the two statutes is not the same. In fact, an employer bears a lower burden to provide a religious accommodation than the burden it bears to accommodate a disability. For example, unlike an accommodation of a disability, a religious accommodation will generally create an undue hardship if the cost to the employer of that accommodation is more than "de minimus." Nevertheless, both varieties of accommodation require a fact-specific analysis, and the scope of what constitutes an "undue hardship" will vary depending upon the totality of the circumstances, including the size of the employer, the nature of the requested accommodation, the availability of alternatives, etc. In the hypothetical above, the question of undue hardship might turn on the nature of the employee's job duties, the availability of co-workers to cover the employee's shift from 1:00 to 3:00, the hours during which the employer operates the facility, etc.

In addition, an employee is not entitled to the accommodation of her choosing as long as the employer offers an accommodation that is sufficient to eliminate the conflict between the employee's duties and her religious needs. For example, though an employee might prefer that the employer re-schedule her normal work hours to accommodate her religious observances, the LIRC has said that, at least in some cases, an employer may accommodate the employee's religious observances by simply

adopting a policy that allows employees to trade shifts. In that case, the LIRC has said that such a policy may constitute a reasonable accommodation of an employee's religious practices even if the employee is ultimately unable to locate any co-worker who is willing to swap shifts.

In summary, when an employee requests a religious accommodation, the employer should generally engage in an interactive process to attempt to respectfully determine the "sincerity" of the employee's religious beliefs. If the belief is sincerely held, then the employer must determine whether, under all the circumstances, the requested accommodation – or any accommodation – would eliminate the conflict between the employee's job duties and his religious beliefs without creating an undue hardship on the employer.