Religious Expression Accommodation

The information below is extracted from the EEOC Compliance Manual on Religious Discrimination, https://www.eeoc.gov/laws/guidance/section-12-religious-discrimination#h_97858873140101610749938513. Sections and examples retain the same numbers as within the manual.

Excerpt from EEOC Compliance Manual

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The guidance page cited above and from which the material below was excerpted contains the following notice:

Notice Concerning the Undue Hardship Standard in Title VII Religious Accommodation Cases.

This document was issued prior to the Supreme Court's decision in *Groff v. DeJoy*, 143 S. Ct. 2279 (2023). The *Groff* opinion clarified that "showing 'more than a *de minimis* cost'…does not suffice to establish undue hardship under Title VII." Instead, the Supreme Court held that "undue hardship is shown when a burden is substantial in the overall context of an employer's business," "tak[ing] into account all relevant factors in the case at hand, including the particular accommodations at issue and their practical impact in light of the nature, size and operating cost of an employer." *Groff* supersedes any contrary information on this webpage. For more information about the EEOC's resources on religious discrimination, please see https://www.eeoc.gov/religious-discrimination.

Section 12: Religious Discrimination

12 - IV: Reasonable Accommodation

C. Common Methods of Accommodation in the Workplace

Under Title VII, an employer or other covered entity may use a variety of methods to provide reasonable accommodations to its employees. The most common methods are (1) flexible scheduling; (2) voluntary substitutes or swaps of shifts and assignments; (3) lateral transfers or changes in job assignment; and (4) modifying workplace practices, policies, or procedures. policies, and/or procedures.

6. Permitting Prayer, Proselytizing, and Other Forms of Religious Expression

Some employees may seek to display religious icons or messages at their workstations or use a particular religious phrase when greeting others. Others may seek to proselytize by engaging in one-on-one discussions regarding religious beliefs or distributing literature. Still others may seek to engage in prayer at their workstations or to use other areas of the workplace for either individual or group prayer, study, or meeting. In some of these situations, an employee might request accommodation in advance to permit such religious expression. In other situations, the employer will not learn of the situation or be called upon to consider any action unless it receives complaints about the religious expression from either other employees or customers. As noted in §§ 12-II-A-3 and 12-III-C of this document, prayer, proselytizing, and other forms of religious expression do not solely raise a religious accommodation issue but may also raise intentional discrimination or harassment issues.

To determine whether allowing or continuing to permit an employee to pray, proselytize, or engage in other forms of religiously oriented expression in the workplace would pose an undue hardship, employers should consider the potential disruption, if any, that will be posed by permitting the expression of religious belief. As explained below, relevant considerations may include the effect the religious expression has had, or can reasonably be expected to have, if permitted to continue, on coworkers, customers, or business operations.

a. Effect on Workplace Rights of Coworkers

Religious expression can create undue hardship if it disrupts the work of other employees or constitutes—or threatens to constitute—unlawful harassment. Conduct that is disruptive can still constitute an undue hardship, even if it does not rise to the level of unlawful harassment. Since an employer has a duty under Title VII to protect employees from harassment, it would be an undue hardship to accommodate expression that is harassing. As explained in § 12-III-A-2-b of this document, religious expression directed toward coworkers, made in coworkers' presence, or that a coworker learns of, might constitute unlawful harassment in some situations, for example where it is facially abusive (i.e., demeans people of other religions) or where, even if not abusive, it persists even though it is clearly unwelcome. However, as with bias from customers, if coworkers' objections are not because the conduct is facially abusive or persistent but rather because of bias of coworkers against religious expression generally or that particular religious expression, it is unlikely that accommodating the religious expression would be an undue hardship. It is necessary to make a case-by-case determination regarding whether the effect on coworkers actually is an undue hardship. Mere subjective offense or disagreement with unpopular religious views or practices by coworkers is not sufficient to rise to the level of unlawful harassment. However, this does not require waiting until the unwelcome behavior becomes severe or pervasive. As with harassment on any basis, it is permitted and advisable for employers to take action to stop alleged harassment before it becomes severe or pervasive, because while isolated incidents of harassment generally do not violate federal law, a pattern of such incidents may be unlawful.

b. Effect on Customers

The determination of whether it is an undue hardship to allow employees to engage in religiously oriented expression toward customers is a fact-specific inquiry and will depend on the nature of the expression, the nature of the employer's business, and the extent of the impact on customer relations. For example, one court found that it was a reasonable accommodation to allow an employee to use the general religious greeting "Have a Blessed Day" with coworkers and with customers who had not objected, rather than using it with everyone, including a customer who objected. However, other courts have found undue hardship where religiously oriented expression was used in the context of a regular business interaction with a client. Whether or not the client objects, religiously oriented expression may create an undue hardship for an employer where the expression could be mistaken as the employer's message, particularly in the instance of government employers. Where the religiously oriented expression is not limited to use of a phrase or greeting, but rather is in the manner of individualized, specific proselytizing, an employer is far more likely to be able to demonstrate that it would constitute an undue hardship to accommodate an employee's religious expression, regardless of the length or nature of the business interaction.

EXAMPLE 50
Display of Religious Objects by an Employee

Susan and Roger are members of the same church and are both employed at XYZ Corporation. Susan works as an architect in a private office on an upper floor, where she occasionally

interacts with coworkers, but not with clients. Roger is a security guard stationed at a desk in the front lobby of the XYZ building through which all employees, clients, and other visitors must enter. At a recent service at Susan and Roger's church, the minister distributed posters with the message "Jesus Saves!" and encouraged parishioners to display the posters at their workplaces in order to "spread the word." Susan and Roger each display the poster on the wall above their respective workstations. XYZ orders both to remove the poster despite the fact that both explained that they felt a religious obligation to display it, and despite the fact that there have been no complaints from coworkers or clients.

Susan and Roger file charges alleging denial of religious accommodation. The employer will probably be unable to show that allowing Susan to display a religious message in her personal workspace posed an undue hardship, unless there was evidence of disruption to the business or the workplace which resulted. By contrast, because Roger sits at the lobby desk and the poster is the first thing that visitors see upon entering the building, it would appear to represent XYZ's views and would therefore likely be shown to pose an undue hardship.

EXAMPLE 51
Undue Hardship to Allow Employee to Discuss Religion with Clients

Helen, an employee in a mental health facility that served a religiously and ethnically diverse clientele, frequently spoke with clients about religious issues and shared religious tracts with them as a way to help solve their problems, despite being instructed not to do so. After clients complained, Helen's employer issued her a letter of reprimand stating that she should not promote her religious beliefs to clients and that she would be terminated if she persisted. Helen's belief in the need to evangelize to clients cannot be accommodated without undue hardship. The employer has the right to control speech that threatens to impede provision of effective and efficient services. Clients, especially in a mental health setting, may not understand that the religious message represents Helen's beliefs rather than the facility's view of the most beneficial treatment for the patient.