



Work Schedule 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.

1. Scheduling Changes

An employer may be able to reasonably accommodate an employee by allowing flexible arrival and departure times, floating or optional holidays, flexible work breaks, use of lunch time in exchange for early departure, staggered work hours, and other means to enable an employee to make up time lost due to the observance of religious practices. However, EEOC's position is that it is insufficient merely to eliminate part of the conflict, unless eliminating the conflict in its entirety poses an undue hardship.

EXAMPLE 41

Break Schedules/Prayer at Work

Rashid, a janitor, tells his employer on his first day of work that he practices Islam and will need to pray at several prescribed times during the workday in order to adhere to his religious practice



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of praying at five times each day, for several minutes, with hand washing beforehand. The employer objects because its written policy allows one fifteen-minute break in the middle of each morning and afternoon. Rashid's requested change in break schedule will not exceed the 30 minutes of total break time otherwise allotted, nor will it affect his ability to perform his duties or otherwise cause an undue hardship for his employer. Thus, Rashid is entitled to accommodation.

EXAMPLE 42

Blanket Policies Prohibiting Time Off

A large employer operating a fleet of buses had a policy of refusing to accept driver applications unless the applicant agreed that he or she was available to be scheduled to work any shift, seven days a week. This policy would violate Title VII if applied to discriminate against applicants who refrain from work on certain days for religious reasons, by failing to allow for the provision of religious accommodation absent undue hardship.



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2. Voluntary Substitutes and Shift Swaps

The reasonable accommodation requirement can often be satisfied without undue hardship where a volunteer with substantially similar qualifications is available and willing to switch shifts, either for a single absence or multiple absences, including absences occurring over an extended period of time. "[T]he obligation to accommodate requires that employers and labor organizations facilitate the securing of a voluntary substitute with substantially similar qualifications. Some means of doing this which [covered entities] should consider are: to publicize policies regarding accommodation and voluntary substitution; to promote an atmosphere in which such substitutions are favorably regarded; to provide a central file, [physical or electronic] bulletin board or other means for matching voluntary substitutes with positions for which substitutes are needed." The employer's obligation is to make a good faith effort to allow voluntary substitutions and shift-swaps to accommodate a religious conflict. This does not require the employer itself to arrange a substitute or swap, but where it is difficult for employees to arrange shift substitutes or swaps on their own, the employer may have an obligation to do more to facilitate the search for volunteers. Likewise, if the employer is on notice that the employee's religious beliefs preclude him not only from working on his Sabbath but also from inducing others to do so, reasonable accommodation requires more than merely permitting the employee to swap. An employer does not have to permit a substitute or swap if it would pose an undue hardship. As noted above, under the de minimis cost standard, if a swap or substitution would result in the employer having to pay premium wages (such as overtime pay), the frequency of the arrangement will be relevant to determining if it poses an undue hardship; "the Commission will presume that the infrequent payment of premium wages for a substitute or the payment of premium wages while a more permanent accommodation is being sought are costs which an employer can be required to bear as a means of providing a reasonable accommodation."

If it does not pose an undue hardship, an employer must make an exception to its policy of requiring all employees, regardless of seniority, to work an "equal number of weekend, holiday, and night shifts," and instead permit voluntary shift swaps between qualified coworkers in order to accommodate a particular employee's sincerely held religious belief that he should not work on his or her Sabbath. Of course, if allowing a swap or other accommodation would not provide the coverage the employer needs for its business operations or otherwise pose an undue hardship, the accommodation does not have to be granted.