

Blog Post

Religious Accommodation Requests: What Employers Should Know

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Employers must walk a tightrope when dealing with an employee or applicant seeking a religious accommodation as demonstrated by two recent court cases with opposite results.

In one case, a federal appellate court decided that a job applicant whose offer was rescinded after she asked for a religious accommodation did not have a retaliation claim because her request did not amount to “opposition” of an unlawful employment practice under Title VII of the Civil Rights Act. In the other, a jury awarded \$21 million to a hotel dishwasher who was forced to work Sundays after being accommodated for her religion for years.

A little background on what the law requires: Under Title VII, an employer cannot discriminate against an employee or applicant because of his or her religion (or lack of religious belief) in hiring, firing, or any other terms and conditions of employment. An employer is required to reasonably accommodate an employee’s religious beliefs or practices, unless doing so would cause undue hardship to the employer. Reasonable accommodations include flexible scheduling, voluntary shift substitutions or swaps, job reassignments, and modifications to workplace policies or practices. An accommodation may cause undue hardship if it is costly, compromises workplace safety, decreases workplace efficiency, infringes on the rights of other

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employees, or requires other employees to do more than their share of potentially hazardous or burdensome work. If an employer fails to accommodate, an employee or applicant could bring a claim for discrimination under Title VII. In addition, Title VII allows an employee or applicant to bring a retaliation claim under either the “opposition” clause or the “participation” clause. The “opposition” clause makes it unlawful for an employer to discriminate against an employee or job applicant because he or she opposed any unlawful employment practice. In contrast, the “participation” clause makes it unlawful for an employer to discriminate against an employee or job applicant because he or she made a charge of discrimination or participated in any proceeding under the act.

In one of the recent cases, the plaintiff, a Seventh-day Adventist and registered nurse, applied for a position at a hospital in Minnesota. The hospital made the plaintiff a conditional job offer, and the position was accepted. However, while completing the pre-hire paperwork, she disclosed her need to have Friday nights off due to her religious beliefs. Since the collective bargaining agreement required unconditional availability on weekends, the request was denied, but the hospital invited her to apply for other positions.

After finding reasonable cause for a claim of retaliation, the Equal Employment Opportunity Commission (“EEOC”) brought a lawsuit alleging retaliation on behalf of the plaintiff. After the trial court ruled in favor of the hospital, the EEOC appealed. In support of this appeal were several religious and civil rights organizations, including the Mid-America Union Conference of Seventh-day Adventists, the Minnesota Catholic Conference, American Jewish Committee, the Union of Orthodox Jewish Congregations of America, the Christian Legal Society, the American Civil Liberties Union, and the American Civil Liberties Union of Minnesota. Advocates for these organizations argued that religious workers have the right to request an

accommodation even when it is unlikely to be given and that Title VII's opposition clause is the only protection from being fired for merely making the request. Despite the support that the EEOC received, the U.S. Court of Appeals for the Eighth Circuit affirmed the lower court's decision, finding that the hospital's denial of the plaintiff's request and rescission of the conditional job offer did not amount to retaliation. The EEOC petitioned the court for a rehearing, but that petition was recently denied.

Contrast that decision with the jury verdict reached by a Florida jury last month awarding a hotel dishwasher more than \$21 million because her employer refused to accommodate her religion after doing so for several years. The hotel claimed she was fired for, among other things, "unexcused absences." The jury's award will be reduced because of Title VII's caps on damages, but it is still an expensive lesson. Following this verdict, the hotel asked the court to order a new trial or to rule in its favor as a matter of law. These motions are still pending before the court.

Both decisions serve as important reminders for employers. Employers are obligated to accommodate applicants or employees (absent undue hardship) when policies or practices create a conflict with an employee's or applicant's religious belief or practice. Federal law requires employers to fairly balance an employee's right to practice his or her religion and the operation of the business. With this in mind, the following is a list of best practices for employers to keep in mind in carrying out the duties of a business:

- Establish written criteria for evaluating candidates for hire or promotion and apply that criteria consistently to all candidates;
- Develop internal procedures for processing religious accommodation requests;
- Train managers and supervisors on how to recognize religious accommodation requests;

- Individually assess each request and avoid assumptions or stereotypes about what constitutes a religious belief or practice or what type of accommodation is appropriate;
- Consider the employee's proposed method of accommodation, and if it is denied, explain to the employee why the proposed accommodation is not being granted;
- Consider offering alternative methods of accommodation on a temporary basis, while a permanent accommodation is being evaluated;
- Try to work with employees who need an adjustment to their work schedule to accommodate religious practices;
Provide training to inexperienced managers and encourage them to consult with more experienced managers or human resources personnel when addressing difficult issues;
- Inform employees that the business will make reasonable efforts to accommodate religious practices;
- Consider adopting flexible leave and scheduling policies and procedures that allow employees to meet their religious and other personal needs while meeting the company's business needs;
- Facilitate and encourage voluntary substitutions and swaps with employees of substantially similar qualifications by publicizing its policy permitting such arrangements, promoting an atmosphere in which substitutes are favorably regarded, and providing a means to help an employee with a religious conflict find a volunteer to substitute or swap.

The U.S. Court of Appeals for the Eighth Circuit decision is EEOC v. North Memorial Health Care and can be found [here](#).

If you have questions or need assistance implementing policies or practices to assist in ensuring your business is meeting its obligations

under Title VII, please contact your Akerman attorney.

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