

Continuing Communication Helps Religious Accommodations

By Rebecca R. Hastings, SPHR, November 2007

An employer's failure to keep up with religious accommodation requests over time can cause a chain reaction of employee dissatisfaction, discrimination claims and negative publicity. Experts say the monitoring of such requests should be built into continuing employer-supervisor communications.

Case in point: In September 2007 the Equal Employment Opportunity Commission (EEOC) filed a discrimination lawsuit in federal court charging United Parcel Service Inc. (UPS) for failing to accommodate an employee's religious beliefs. For five years, a long-tenured package delivery driver and member of the United Church of God received an accommodation enabling him to refrain from work from sunset Friday to sunset Saturday. After facility management changed in 2005, however, the driver's accommodation ended and he was told to finish his route or be terminated for job abandonment.

The UPS experience is part of a larger trend, experts say. The number of EEOC workplace religious discrimination lawsuits has soared by nearly 50 percent in recent years, according to A. Martin Wickliff, Esq., of Epstein Becker Green Wickliff & Hall, P.C., suggesting that employers might not be adequately prepared to deal with the law regarding religion in the workplace.

"An employee's religious beliefs must be accommodated unless [the beliefs create] an undue hardship for employers, but employees must also be protected from intimidation by others, or from compulsory religious observance," Wickliff said in a press release. "However, since religion falls under the First Amendment and freedom of speech, an employer also cannot restrict the rights of people to express themselves religiously, unless such religious expression slows down the workplace."

Even when accommodation is standard practice, failure to track the application of the organization's practice can have unintended consequences. For example, an Oct. 12, 2007, *Washington Post* article reported that a number of former employees of the U.S. Food and Drug Administration (FDA) benefited from the misapplication of "religious compensation time," some even receiving payouts of thousands of dollars when they changed jobs or retired. Other employees reportedly used the time for golf outings or medical appointments.

According to the newspaper, religious compensation time is "a little-known benefit created by a 1978 law that allows civilian federal employees to work small amounts of overtime, bank those hours and use them to take time off for religious observances without spending their vacation leave." Rep. Bart Stupak, D-Mich., chairman of a House investigative subcommittee, has reportedly asked the Department of Health and Human Services' inspector general to determine whether laws were broken.

"It is always better to catch problems before they go to court, because when it comes to issues like religion, tempers are always high, and it is easy for a person to feel they are being singled out or persecuted," Wickliff added.

Keep Track and Avoid Surprises

It's a good idea for supervisors to set an expectation for periodic "check-ins" after an employee has come forward with a religious accommodation request, says Michelle Weber, assistant director of religious diversity in the workplace for the Tanenbaum Center for Interreligious Understanding in New York. One reason for such a conversation is to make sure the accommodation is working out the way the employee and the employer hoped it would, she says. But it's also an opportunity to make sure nothing has changed.

Although an employee's core beliefs are not likely to change dramatically over time, Weber says their specific accommodation needs might vary based on the time of year and the religious holidays. "There may be some accommodation for religious garb or prayer during the workday that becomes part of the employee's work life and then some special occasion comes up causing the employee to want to do something additional," she says.

"In those situations again there's often a knee-jerk reaction in which the employer wonders if this is a permanent part of their work life," Weber says. "And it's usually not—it's usually part of a special observance."

Such surprises can be avoided by asking employees as part of the check-in conversation what kinds of accommodations they expect to need in the next quarter, Weber says. "This can also be solved by employers educating themselves by keeping a diversity calendar on their desk with religious holidays listed."

An Accommodation by Any Other Name

Requests for religious accommodation are often viewed very differently than disability accommodations, according to Weber. "Religious beliefs are not an obvious physical thing you can see and fix by adding a ramp or renovating a bathroom," she says. But lack of knowledge plays a part. "People don't know much about other faith traditions," she says, adding that there is a belief among some managers that religious beliefs have no relationship to work.

Weber suggests that employers treat religious accommodations the same as disability-related accommodations. For example, the Job Accommodation Network (JAN), which provides guidance on disability-related accommodations, encourages employers to take the following steps to keep track of accommodations over time:

- Monitor the effectiveness of the accommodation.
- Update periodically if needed.
- Keep the lines of communication open.
- Document efforts.

“Our goal is to help employers understand that accommodations are not special things,” Weber says. Rather than having separate policies, therefore, she suggests employers have one policy that addresses an employer’s obligations under Title VII and the Americans with Disabilities Act (ADA). “That takes the stigma of special treatment away,” she adds.

Plan for Turnover and Transitions

The UPS and FDA experiences highlight the need for continuing management training to ensure that organizations keep up with religious accommodations as staff changes occur. Weber suggests that organizations provide initial and follow-up diversity training for managers as a matter of course.

Where possible, Weber says, transition meetings between departing managers and their replacements can provide an opportunity to discuss accommodation issues as well as bring the newcomers up to speed on what’s been going on in the department. Otherwise, she suggests, companies should brief new managers on the range of accommodations provided by the company or common in their industry.

Employers might want to provide training about world religions so employees and managers understand the cultural reasons for certain practices, says Cindy Graves Wigglesworth, president of Conscious Pursuits Inc., a training company specializing in spiritual intelligence and board member of the Association for Spirit at Work. “The training doesn’t have to be touchy-feely,” she says. “It should be informational.” She says employees exposed to such training learn that the core values and aspirations across religions are often the same, even though practices are different.

“People don’t understand other religions at all,” Wigglesworth says. “If all companies did a basic course the ‘uh oh’ would go out of it and people would approach it with curiosity.”

Plan Ahead for Common Requests

HR professionals play a key role in staying current about religious accommodation requirements and legal pitfalls, Weber says, though some organizations simply fail to learn from other companies’ experiences. “The issue of hair and dress comes up again and again despite a pretty substantial body of

case law to provide guidance,” Weber says. “Employers are committed to what they see as their needs or standards and seem to have a lot of trouble thinking outside the box to accommodate hair and dress issues,” she adds.

Weber says time-off requests, whether tied to a particular holiday or a weekly Sabbath observance, also present challenges for some employers. She suggests employers think creatively about scheduling and ask themselves whether a particular schedule is integral to business operations or is just the way the company has always done things.

“A little bit of calm and logic and a genuine desire to accommodate where you can is appropriate,” Wigglesworth says. She recommends that employers explore [compressed workweek](#) schedules, for example, as one way to accommodate Friday prayers and early departures.

Though some employees’ time-off needs might change with the seasons, Wigglesworth says, employers should not allow employees unlimited freedom. “You don’t want an infinitely adjustable target so someone can form their own religion—‘the church of me,’ for example—that requires that they take off every Wednesday,” she says. Accommodation requests should always be evaluated in light of business needs.

Wigglesworth, who spent 20 years in HR at Exxon, says HR professionals set the tone for accommodation requests. “It’s incumbent upon HR people to grow up a little and identify our own prejudices and shadows if we are going to be healthy role models for the working community,” she says, adding that a conciliatory, business-focused way of looking at the world is the ideal.

“There are an infinite number of ways people come in and ask for time off, whether it’s related to religion or not,” Wigglesworth says. “Just use good judgment.”

Consider the Business Case

“There is value to being faith-friendly,” Wigglesworth says. “The majority of people who take their faith seriously are the type of people you want to employ because they care about living ethical lives,” she says, and they might be able to handle stress better than others. “People who have a strong faith have a strong center.”

Wigglesworth says spirituality in the workplace is too often viewed as an issue that’s not really an issue. Instead of viewing accommodation requests with suspicion, she says, employers should view them as a source of strength. “Quit seeing it as a problem,” she says.

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