

———— **A Brief Guide to** ————
RELIGIOUS RIGHTS
———— **in the WORKPLACE** ————



Tishrei 5775 - September 2014



Agudath
Israel
of America
אגודת ישראל באמריקה

A Brief Guide to

RELIGIOUS RIGHTS

in the WORKPLACE

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*Agudath Israel of America receives many calls each year from individuals who are having difficulty having their religious observances accommodated by their employer, or finding a job that will accommodate their religious observances. We are therefore pleased to publish this **Guide to Religious Rights in the Workplace** (2014/5775 edition) which answers the common questions we are asked and provides legal guidance and advice for those in need. In addition to this Guide, we have a new website, legalsupportservicesllc.org, which contains additional information to help those facing difficulty getting accommodated.*

Lastly, we encourage those facing such difficulties to call our office, 212-797-9000 ext. 335, so that we can further direct and guide you personally. We are pleased that we are usually able to help most of those seeking the accommodation of their religious observances in the workplace. We also receive calls from those in academic institutions seeking accommodation for missed classes and/or exams, and the materials on our website address this issue as well.

We wish everyone success in having their religious needs accommodated in the workplace.

Sincerely,

Mordechai Biser

Title VII of the federal Civil Rights Act of 1964 prohibits discrimination against employees on the basis of their religious beliefs. The law governs all aspects of employment, from hiring practices to the payment of pensions, and requires employers to “reasonably accommodate” an employee’s religious observances as

long as such accommodation does not cause the employer “undue hardship.”

In other words, employers have a responsibility to offer employees a reasonable method of fulfilling their duties that is not in conflict with their religious principles. There are, however, limits to this responsibility. Employers are not required to incur undue hardship for the sake of such accommodation.

The standard of “undue hardship” varies with the nature of the business and the type of duties required of the employee. The phrase is not defined by the statute, but the Supreme Court has ruled that employers can claim undue hardship if the accommodation of an employee causes any financial loss beyond normal administrative costs. An employer is also not required to accommodate one employee’s religious observances by assigning another employee a less desirable shift or task than that to which he is entitled under union regulations or any other bona fide seniority system.

Nevertheless, the burden of proving hardship is on the employer. In order to claim that a reasonable accommodation is not possible without significant complication or cost, an employer must demonstrate the specific effect of the accommodation on the business.

A common example of a reasonable accommodation would be the use of flexible scheduling in order to enable employees to avoid work on, and for a reasonable time before, Shabbos or Yom Tov.

In addition, employers must attempt to accommodate employees who, for religious reasons, are required to maintain a particular manner of dress—the wearing of a yarmulke or clothes that meet the requirements of tznius—assuming accommodation is possible without undue hardship to the employer.

Employees have a responsibility to help find reasonable means of carrying out their job duties without violating the strictures of their beliefs. For example, an employee who wishes to take time off for Yomim Tovim or leave work early on erev Shabbos might suggest a more flexible work schedule that allows him to make up the time on

other days.

Some states have passed anti-discrimination laws that go beyond the federal law and the way the courts have defined its requirement of undue hardship. New York State, for example, forbids an employer from imposing on an employee “any terms or conditions that would require such person to violate or forego a sincerely held practice of his or her religion” unless the employer can show that providing accommodation would result in “significant difficulty or expense.”

Neither Federal nor state law requires employers to compensate an employee for time missed due to adherence to their beliefs, although New York State requires that employees be allowed to utilize leave time for absences due to religious observances. Generally, an employer has the following options:

- He can work with the employee to determine a mutually convenient time to make up for missed work (this option is only available at the employer’s discretion)
- He can charge the time missed to the employee’s vacation leave
- He can withhold the employee’s pay for the time missed

Although there are times when it is necessary and appropriate to explore one’s legal options, it must be emphasized that in the majority of cases conflicts can and should be resolved through an amicable discussion with one’s employer. Ultimately, it is the employer’s willingness to find a solution that determines whether accommodations can be made. A friendly and positive relationship with an employer will go a long way towards ensuring that an acceptable solution is found.

COMMON QUESTIONS & ANSWERS

Q I am looking for a job. Do I have a responsibility to inform a prospective employer of possible work and religious observance conflicts during an interview?

A No. The law expressly forbids the consideration of an employee's religious practices for the purpose of hiring decisions. Consequently, a job applicant has no responsibility to volunteer information about his level of religious commitment before a decision is made.

That being said, employers can indirectly determine the extent to which a candidate's observances may interfere with his or her job duties. For example, an interviewer may inform the candidate of the required work hours and ask if he expects to be available at those times. In such a case, an interviewee should make clear exactly when he or she will be unavailable and explain that his unavailability is due to his or her religious convictions. Failure to do so can result in the forfeiture of the employee's legal right to accommodation.

Of course, once the job has been offered and accepted, an employee should disclose the constraints of his religious obligations as soon as possible, thus allowing the employer sufficient time to attempt to find a reasonable solution to any conflict.

Q Must an employer provide me with ample time off on Fridays to get home early to prepare for Shabbos?

A New York State law gives an employee the right to be absent on his Sabbath or religious holiday "including a reasonable time prior and subsequent thereto for travel between his place of employment and his home." Although Federal law does not specifically address this issue, it does require "reasonable accommodation," which would generally include allowances for adequate travel time on erev Shabbos or Yom Tov. The amount of time considered "reasonable"

can vary depending on considerations such as traffic and weather conditions. It cannot, however, be extended to include preparations for Shabbos that could have been made at an earlier time.

Q I am newly observant and have previously worked on Shabbos and Yom Tov. Does my employer still have a legal responsibility to find an accommodation?

A Yes. The employer's responsibility extends to any sincerely held religious belief, regardless of how recently it was adopted. There have been cases in which employers have attacked the sincerity of an employee's beliefs, but in general, the courts have only accepted such arguments if it could be shown that the employee's practices were inconsistent and used primarily as a means of avoiding certain work obligations.

Q My employer has scheduled a job related exam for Shabbos. What can I do?

A According to federal law, the reasonable accommodation standard is applied to such exams as well. In practical terms, this means that your employer would be required to attempt to reschedule the exam for you, assuming he can do so without suffering undue hardship.

Q My employer refuses to make a reasonable attempt to accommodate my religious needs. What are my options?

A If you feel your employer is not making a good faith effort to address your concerns, Agudath Israel can provide you with a letter for you to show your employer that explains your rights and your employer's obligations under the law, by contacting

Agudath Israel's office of Constituent Services at 212.797.900 x335 or email: constituentservices@agudathisrael.org. If necessary, we may be able to refer you to a private attorney to represent you in communications—and possible litigation—with your employer. In some cases it may be appropriate to report discrimination to the Federal Equal Employment Opportunity Commission (EEOC), or to your state's human rights or civil rights division. We recommend discussing your situation with an attorney before filing a complaint.

Q I have been subjected to religious harassment at work. What are my rights?

A Federal law protects an employee's right to work in an environment "free of discriminatory intimidation, ridicule, and insult." This means that employers can be held liable for the actions of employees who subject colleagues to abusive behavior. However, the courts have not interpreted random one-time incidents to be sufficient to create an abusive or hostile work environment. Objectionable behavior must generally be repeated or habitual in order to be legally actionable, except in cases of extreme severity.

Again, please feel free to contact Agudath Israel Office of Constituent Services at 212.797.900 x335 or email: constituentservices@agudathisrael.org, of advice and guidance.

Q I have recently been fired as a result of my religious observances. What should I do now?

A If you are interested in filing charges, you should sit down with an attorney who can determine whether you have a valid cause for legal action. Regardless of whether you bring a suit, you should begin looking for another job as soon as possible. Even if you ultimately prevail in court, litigation can be costly and, in many cases, quite lengthy.

A SUMMARY OF NEW YORK STATE'S RELIGIOUS ACCOMODATION LAW

(New York State Executive Law §296 (10))

An employer may not discriminate against an employee in hiring or promotion by imposing upon the employee “any terms or conditions that would require such person to violate or forego a sincerely held practice of his or her religion, including but not limited to the observance of any particular day or days or any portion thereof as a sabbath or other holy day in accordance with the requirements of his or her religion.”

An employee generally has the right to be absent from his place of employment during his or her sabbath or other holy day, “including a reasonable time prior and subsequent thereto for travel between his or her place of employment and his or her home.”

When an employee does take time off to observe his Sabbath or holiday, the employer must, wherever practicable, work out with the employee a “mutually convenient time” when the hours missed because of religious observance will be made up, or charge the religious observance day to the employee’s vacation leave. The employer must permit an employee to utilize leave (other than sick leave) for religious observances. Only where it is not practicable to arrange for make-up time and where the employee has used up his or her leave time may the employer dock the employee’s pay for the time missed.

An employer is not required to accommodate the religious observances of employees only if it can show either that to do so would cause it “undue economic hardship” (which the law defines as one requiring “significant expense or difficulty”) or that the accommodation would result in the inability of the employee to perform the essential functions of the position in which he or she is employed.

FULL TEXT OF NEW YORK STATE EXECUTIVE LAW §296 (10)

10. (a) It shall be an unlawful discriminatory practice for any employer, or an employee or agent thereof, to impose upon a person as a condition of obtaining or retaining employment, including opportunities for promotion, advancement or transfers, any terms or conditions that would require such person to violate or forego a sincerely held practice of his or her religion, including but not limited to the observance of any particular day or days or any portion thereof as a sabbath or other holy day in accordance with the requirements of his or her religion, unless, after engaging in a bona fide effort, the employer demonstrates that it is unable to reasonably accommodate the employee's or prospective employee's sincerely held religious observance or practice without undue economic hardship on the conduct of the employer's business. Notwithstanding any other provision of law to the contrary, an employee shall not be entitled to premium wages or premium benefits for work performed during hours to which such premium wages or premium benefits would ordinarily be applicable, if the employee is working during such hours only as an accommodation to his or her sincerely held religious requirements. Nothing in this paragraph or paragraph (b) of this subdivision shall alter or abridge the rights granted to an employee concerning the payment of wages or privileges of seniority accruing to that employee.

(b) Except where it would cause an employer to incur an undue hardship, no person shall be required to remain at his or her place of employment during any day or days or portion thereof that, as a requirement of his or her religion, he or she observes as his or her sabbath or other holy day, including a reasonable time prior and subsequent thereto for travel between his or her place of employment and his or her home, provided however, that any such absence from work shall, wherever practicable in the reasonable judgment of the employer, be made up by an equivalent amount of time and work at some other mutually convenient time, or shall be charged against any leave with pay ordinarily granted, other than sick leave, provided further, however, that any such absence not so made up or charged, may be treated by the employer of such person as leave taken without pay.

(c) It shall be an unlawful discriminatory practice for an employer to refuse to permit an employee to utilize leave, as provided in paragraph (b) of this subdivision, solely because the leave will be used for absence from work to accommodate the employee's sincerely held religious observance or practice.

(d) As used in this subdivision:

(1) "Undue hardship" shall mean an accommodation requiring significant expense or difficulty (including a significant interference with the safe or efficient operation of the workplace or a violation of a bona fide seniority system). Factors to be considered in determining whether the accommodation constitutes an undue economic hardship shall include, but not be limited to:

(i) The identifiable cost of the accommodation, including the costs of loss of productivity and of retaining or hiring employees or transferring employees from one facility to another, in relation to the size and operating cost of the employer;

(ii) The number of individuals who will need the particular accommodation to a sincerely held religious observance or practice; and

(iii) For an employer with multiple facilities, the degree to which the geographic separateness or administrative or fiscal relationship of the facilities will make the accommodation more difficult or expensive. Provided, however, an accommodation shall be considered to constitute an undue hardship if it will result in the inability of an employee to perform the essential functions of the position in which he or she is employed.

(2) "Premium wages" shall include overtime pay and compensatory time off, and additional remuneration for night, weekend or holiday work, or for standby or irregular duty.

(3) "Premium benefit" shall mean an employment benefit, such as seniority, group life insurance, health insurance, disability insurance, sick leave, annual leave, or an educational or pension benefit that is greater than the employment benefit due the employee for an equivalent period of work performed during the regular work schedule of the employee.

FULL TEXT OF RELEVANT SECTIONS FROM NEW JERSEY STATUTE 10:12-5

q. (1) For any employer to impose upon a person as a condition of obtaining or retaining employment, including opportunities for promotion, advancement or transfers, any terms or conditions that would require a person to violate or forego a sincerely held religious practice or religious observance, including but not limited to the observance of any particular day or days or any portion thereof as a Sabbath or other holy day in accordance with the requirements of the religion or religious belief, unless, after engaging in a bona fide effort, the employer demonstrates that it is unable to reasonably accommodate the employee's religious observance or practice without undue hardship on the conduct of the employer's business. Notwithstanding any other provision of law to the contrary, an employee shall not be entitled to premium wages or premium benefits for work performed during hours to which those premium wages or premium benefits would ordinarily be applicable, if the employee is working during those hours only as an accommodation to his religious requirements. Nothing in this subsection q. shall be construed as reducing:

(a) The number of the hours worked by the employee which are counted towards the accruing of seniority, pension or other benefits; or

(b) Any premium wages or benefits provided to an employee pursuant to a collective bargaining agreement.

(2) For an employer to refuse to permit an employee to utilize leave, as provided for in this subsection q., which is solely used to accommodate the employee's sincerely held religious observance or practice. Except where it would cause an employer to incur an undue hardship, no person shall be required to remain at his place of employment during any day or days or portion thereof that, as a requirement of his religion, he observes as his Sabbath or other holy day, including a reasonable time prior and subsequent thereto for travel between his place of employment and his home; provided that any such absence from work shall, wherever practicable in the reasonable judgment of the employer,

be made up by an equivalent amount of time and work at some other mutually convenient time, or shall be charged against any leave with pay ordinarily granted, other than sick leave, and any such absence not so made up or charged, may be treated by the employer of that person as leave taken without pay.

(3)(a) For purposes of this subsection q., “undue hardship” means an accommodation requiring unreasonable expense or difficulty, unreasonable interference with the safe or efficient operation of the workplace or a violation of a bona fide seniority system or a violation of any provision of a bona fide collective bargaining agreement.

(b) In determining whether the accommodation constitutes an undue hardship, the factors considered shall include:

(i) The identifiable cost of the accommodation, including the costs of loss of productivity and of retaining or hiring employees or transferring employees from one facility to another, in relation to the size and operating cost of the employer.

(ii) The number of individuals who will need the particular accommodation for a sincerely held religious observance or practice.

(iii) For an employer with multiple facilities, the degree to which the geographic separateness or administrative or fiscal relationship of the facilities will make the accommodation more difficult or expensive.

(c) An accommodation shall be considered to constitute an undue hardship if it will result in the inability of an employee to perform the essential functions of the position in which he or she is employed.

(d)(i) The provisions of this subsection q. shall be applicable only to reasonable accommodations of religious observances and shall not supersede any definition of undue hardship or standards for reasonable accommodation of the disabilities of employees.

(ii) This subsection q. shall not apply where the uniform application of terms and conditions of attendance to employees is essential to prevent undue hardship to the employer. The burden of proof regarding the applicability of this subparagraph (d) shall be upon the employer.