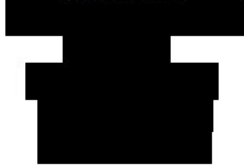




DISTRICT OF COLUMBIA



TENNESSEE



VIRGINIA



September 6, 2024

Kerry Kotouc, Senior V.P. and Chief Counsel, U.S. Retail Operations
Walmart Headquarters
702 SW 8th St.
Bentonville, AR 72716

The American Center for Law & Justice (“ACLJ”)¹ represents ██████████ in his request for a religious accommodation to have Sundays off in accordance with his religious beliefs without any penalty such as an overall reduction in his hours. The purpose of this letter is to (1) inform Walmart of its obligation under federal law to accommodate the religious beliefs and practices of its employees who observe the Sabbath; (2) explain the detrimental effect this teaming schedule has on any employee who requests religious accommodations; and (3) obtain your assurances that ██████████ request will be accommodated which will allow ██████████ to withdraw his current EEOC charge filed against Walmart.

Statement of Facts

██████████ resides in ██████████ and works as a retail associate for Walmart Supercenter ██████████ located in ██████████. For the last seven years, ██████████ has worked a full-time shift for Walmart while being allowed to observe the Sabbath on Sundays. His normal days off are Thursdays and Sundays. Formerly, he submitted his weekly availability in advance, and his schedule was based on his availability. However, ██████████ was recently notified of a new team scheduling policy/procedure being implemented by Walmart. He approached HR and Management regarding this new scheduling procedure to learn if and how it may affect his typical work schedule. On Wednesday, August 1, ██████████ met with Tara Scott-Wilson in Walmart’s HR department. During this conversation, ██████████ was informed that he could attend church any day of the week, including on Sunday, but that his hours could be cut as a result of his request for Sundays off.

¹ The ACLJ is an organization dedicated to defense of constitutional liberties secured by law. The ACLJ engages legal, legislative, and cultural issues through advocacy, education, and litigation that includes representing clients before the Supreme Court of the United States and international tribunals around the globe.

Following his meeting with Tara, ██████ sought further clarification in a later conversation with his manager, TK. TK confirmed that Walmart would be implementing the new teaming schedule and explained that the new teaming schedule would guarantee a set schedule of 40 hours every week only if associates agreed to be available on any and all days of the weekend. If they are not available on the weekends, employees fall outside team scheduling, resulting in the possibility that their hours will get cut on days when the demand for associates does not rise to a level where the work is needed. According to TK “what's gonna happen is we're gonna have the ‘teaming schedule’ folks who . . . are gonna have their schedules that drop in and then the people who are not on a teaming schedule are gonna drop in based on the customer need.”

Walmart’s implementation of the new teaming schedule will impose a penalty on any employee who holds a sincerely held religious belief to observe the Sabbath and, in accordance with that belief, requests not to work on their Sabbath. ██████ will be forced to choose between working on Sundays against his religious beliefs, or taking off on Sundays and risking his hours being cut. When ██████ brought up this conflict and the effect of the policy, TK responded “[i]t’s my job to just make you aware of what the situation looks like.”

Still not receiving any clarification, ██████ contacted Walmart’s Ethics hotline. Since calling the Ethics hotline, ██████ has been in contact with both Renee York from Market HR, and Renee’s boss, Adam Smith-McCombs, head of Walmart Regional Ethics and Compliance. Neither Mr. Smith-McCombs nor Ms. York have offered any solution. They simply confirmed that while ██████ would not be forced to work on Sundays – and even though he would be available and willing to work any of the other 6 days of the week – that there may be times when he does not receive the opportunity to work a forty-hour work week.

██████ has formally requested in writing a religious accommodation pursuant to his sincerely held religious beliefs that Sundays are to be observed as the Sabbath while maintaining his forty-hour work week. It has been over two weeks and ██████ has not received any response to his accommodation request. Moreover, ██████ has also initiated an EEOC charge against Walmart.

Statement of Law

Title VII makes it unlawful for an employer:

- (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's . . . *religion*, sex, or national origin; or
- (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's . . . *religion*, sex or national origin.

42 U.S.C. § 2000e-2 (emphasis added). The wide jurisdiction of Title VII applies to all public and private employers, including Walmart. *Id.* at §§ 2000e-16, 2000e(a)-(b).

Title VII’s definition of religion is broadly construed and “includes all aspects of religious observance and practice, as well as belief . . .” 42 U.S.C. § 2000e(j). Clearly, the sincerely held belief of observing Sundays as the Sabbath falls squarely within this broad definition. In sum, Title VII requires employers to make reasonable accommodations² to an employee’s sincerely held religious beliefs as long as it does not pose an undue hardship. *See Groff v. DeJoy*, 143 S. Ct. 2279, 2286 (2023). An employer has an affirmative obligation to eliminate the conflict between an employee’s sincerely held religious belief or practice and a job requirement unless doing so results in a substantial cost or other burden to the employer. Such a hardship exists only where the request will *substantially* interfere with the operations of the employer. *Groff*, 143 S. Ct. at 2294 (rejecting the notion that undue burden is anything rising to the level of “more than de minimis”).

As EEOC guidance further explains, “no undue hardship is imposed by temporary costs, voluntary shift swapping, occasional shift swapping or administrative costs.” *Id.* at 2296 (citing 29 CFR 1605.2(d)). The Supreme Court’s decision in *Groff* makes clear that costs must rise to a level that is “excessive” or “unjustifiable” for an employer to deny an employee’s religious accommodation. *Id.* Thus, “it would not be enough for an employer to conclude that forcing other employees to work overtime would constitute an undue hardship. Consideration of other options such as voluntary shift swapping, would also be necessary.” *Id.* at 2297. Further, when showing harm under 42 U.S.C § 2000e-2, the Supreme Court has held that the plaintiff “need show only some injury respecting [his] employment terms or conditions.” *Muldrow v. City of St. Louis*, 144 S.Ct. 967, 971 (2024).

Even before *Groff* controlled, federal courts already acknowledged that employers cannot escape liability by ignoring religious accommodation requests. *See EEOC v. Ithaca Indus., Inc.*, 849 F.2d 116, 119 (4th Cir. 1988) (finding Title VII violation when employer “made no effort to accommodate” the employee); *see also EEOC v. Arlington Transit Mix, Inc.*, 957 F.2d 219, 222 (6th Cir. 1991) (emphasizing that the employer “[was] in no position to argue that it was unable to accommodate” the employees religious beliefs because the employer did not pursue any reasonable accommodation.)

Here, Walmart’s new scheduling guideline is extremely troubling and forces employees to choose between their livelihood and their religious beliefs. Employees who observe the Sabbath will potentially have their hours cut resulting in lower pay though they are willing and able to work a full-time shift, work on at least one day of the weekend and/or could voluntarily swap shifts with other employees. In light of the fact that this new schedule fails to allow for any accommodation and imposes a penalty for any such request, Walmart is in violation of federal law.

² Accommodation” means that mere employer neutrality is not enough. *See Riley v. Bendix Corp.*, 464 F.2d 1113, 1115 (5th Cir. 1972); *Reid v. Memphis Publ’g Co.*, 468 F.2d 346, 350-51 (6th Cir. 1972) (the fact that a particular policy is applied uniformly to all employees does not lessen the discriminatory effect upon a particular employee’s religious beliefs).

Conclusion

In light of Walmart's failure to accommodate [REDACTED] religious beliefs and grant a reasonable accommodation, he has initiated an EEOC complaint. We have advised [REDACTED] to pursue all legal remedies available to him in the event that Walmart refuses to grant his request.

The purpose of this letter is to request **written assurances by September 13, 2024** that (1) Walmart change this guideline which, if implemented, will fail to comply with Title VII requirements; and (2) grant [REDACTED] a reasonable accommodation that allows him to observe the Sabbath without penalty or threat of loss of pay which will allow [REDACTED] to withdraw his current EEOC charge.

Sincerely,

A handwritten signature in blue ink that reads "Garrett Taylor". The signature is written in a cursive style with a large, prominent "G" and "T".

Garrett Taylor*
Associate Counsel
American Center for Law & Justice
**Admitted in TN*