



# MEMORANDUM

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## **Religious Discrimination and Accommodation in the Workplace Under Title VII**

The religious freedom of many public and private sector employees is protected by Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, a federal law often referred to as “Title VII.” The statute prohibits many (but not all) employers that have at least fifteen employees from, among other things, discriminating in employment based on religion, and it also requires those employers to grant a reasonable request to accommodate an employee’s sincerely held religious beliefs or practices unless doing so would impose a significant cost or burden on business operations.

This memorandum addresses several frequently asked questions about the protection of religious belief and practice in the workplace.<sup>1</sup> References will often be made to guidelines issued by the Equal Employment Opportunity Commission (“EEOC”), which investigates potential violations of Title VII and enforces the statute’s requirements through lawsuits and other means.

### **1. Which employers and employees does Title VII apply to?**

The following section summarizes what entities and individuals are subject to Title VII’s requirements and protections.<sup>2</sup> An “employer” for purposes of Title VII is:

a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, an Indian

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<sup>1</sup> Title VII also applies (to some extent) to labor unions and employment agencies, and prohibits discrimination on several bases other than religion, but this memorandum focuses on Title VII’s employer requirements concerning religious belief and practice. Also, although this memorandum focuses on Title VII, there are numerous other federal, state, and local constitutional provisions, laws, and regulations that (1) impose requirements and responsibilities upon employers, including anti-discrimination and religious accommodation laws, and (2) provide individuals and/or entities with rights that may be implicated in the workplace environment.

<sup>2</sup> For more information on this subject, see EEOC Compliance Manual, “Threshold Issues,” <https://www.eeoc.gov/policy/docs/threshold.html>.

tribe, or any department or agency of the District of Columbia subject by statute to procedures of the competitive service . . . or (2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under [Internal Revenue Code Section 501(c)]. . . .<sup>3</sup>

Title VII defines “employee” as “an individual employed by an employer, except that the term ‘employee’ shall not include any person elected to public office in any State or political subdivision of any State . . . or any person chosen by such officer to be on such officer’s personal staff, or an appointee on the policy making level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office. The exemption . . . shall not include employees subject to the civil service laws of a State government, governmental agency or political subdivision. . . .”<sup>4</sup> In other words, some, but not all, public employees are included within Title VII’s definition of a protected “employee.”

Certain types of religious organizations and job positions are excluded from Title VII due to the First Amendment of the United States Constitution and/or specific statutory language. For example, Title VII does not apply to “a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.”<sup>5</sup> The religious organization exception “applies only to those institutions whose ‘purpose and character are primarily religious.’”<sup>6</sup>

Additionally,

it shall not be an unlawful employment practice for a school, college, university, or other educational institution or institution of learning to hire and employ employees of a particular religion if such school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of such school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion.<sup>7</sup>

Furthermore, special rules apply when an employee has a clergy or other ministerial position or job duties. The ministerial exception, which is recognized in light of the First Amendment, “applies only to those employees who perform essentially religious functions, namely those whose primary duties consist of engaging in church governance, supervising a religious order, or conducting religious ritual, worship, or instruction.”<sup>8</sup> “The ministerial exception

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<sup>3</sup> 42 U.S.C. § 2000e(b).

<sup>4</sup> 42 U.S.C. § 2000e(f).

<sup>5</sup> 42 U.S.C. § 2000e-1(a).

<sup>6</sup> EEOC Compliance Manual, <https://www.eeoc.gov/policy/docs/religion.html> (hereafter “EEOC Compliance Manual”; see also EEOC, *Questions and Answers: Religious Discrimination in the Workplace*, [https://www.eeoc.gov/policy/docs/qanda\\_religion.html](https://www.eeoc.gov/policy/docs/qanda_religion.html) (hereafter “EEOC Q&A’s”).

<sup>7</sup> 42 U.S.C. § 2000e-2(e)(2).

<sup>8</sup> EEOC Q&A’s.

is not limited to the head of a religious congregation, leaders, ministers, or members of the clergy, and can apply to ‘lay’ employees and even non-‘co-religionists’ or those not ‘practicing’ the faith. Courts have applied the ministerial exception in cases involving parochial school teachers, church musicians, and other employees who perform religious functions.”<sup>9</sup> However, the exception does not necessarily apply to everyone with a title typically conferred upon clergy (*e.g.*, minister). In short, in each case it is necessary to make a factual determination of whether the function of the position is one to which the exception applies.<sup>10</sup>

Moreover, Title VII states that “it shall not be an unlawful employment practice for an employer to hire and employ employees . . . on the basis of his religion . . . in those certain instances where religion . . . is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise.”<sup>11</sup> Note, however, that “for employers that are not religious organizations and seek to rely on the BFOQ defense to justify a religious preference, the defense is a narrow one and rarely successfully invoked.”<sup>12</sup>

## **2. What are Title VII’s requirements concerning religious discrimination and accommodation?**

Employers who are subject to Title VII may not treat employees differently due to their religious beliefs or practices (or lack thereof), or subject employees to harassment due to their religious beliefs or practices.<sup>13</sup> Title VII makes it illegal for a defined “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 . . . 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. . . .<sup>14</sup>

Additionally, as will be discussed in more detail later, employers who are subject to Title VII may not deny a reasonable request to accommodate an employee’s sincerely held religious beliefs or practices when an accommodation would not impose more than a de minimis cost or burden on business operations.<sup>15</sup>

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<sup>9</sup> EEOC Compliance Manual.

<sup>10</sup> *Id.*

<sup>11</sup> 42 U.S.C. § 2000e-2(e)(1).

<sup>12</sup> EEOC Compliance Manual.

<sup>13</sup> EEOC Q&A’s.

<sup>14</sup> 42 U.S.C. § 2000e-2(a). For example, “Title VII’s prohibition on disparate treatment based on religious beliefs . . . can apply to disparate treatment of religious expression in the workplace. . . . [D]ifferential treatment of similarly situated employees with respect to the display of a religious item at work constitutes religious discrimination.” EEOC Compliance Manual; *see also* EEOC Q&A’s. “Except as otherwise provided in [Title VII], an unlawful employment practice is established when the complaining party demonstrates that . . . religion . . . was a motivating factor for any employment practice, even though other factors also motivated the practice.” 42 U.S.C. § 2000e-2(m).

<sup>15</sup> EEOC Q&A’s.

### **3. What kinds of religious beliefs and practices are protected by Title VII?**

The EEOC has noted that Title VII “defines religion very broadly for purposes of determining what the law covers.”<sup>16</sup> Title VII states that “[t]he term ‘religion’ includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee’s or prospective employee’s religious observance or practice without undue hardship on the conduct of the employer’s business.”<sup>17</sup>

As the EEOC has explained,

[t]hese protections apply whether the religious beliefs or practices in question are mainstream or non-traditional, and even if not recognized by any organized religion. . . . Religion includes not only traditional, organized religions such as Christianity, Judaism, Islam, Hinduism, Sikhism, and Buddhism, but also religious beliefs that are new, uncommon, not part of a formal church or sect, only subscribed to by a small number of people, or that seem illogical or unreasonable to others.<sup>18</sup>

Title VII encompasses a wide variety of religiously motivated observances and practices. Some examples include “attending worship services, praying, wearing religious garb or symbols, displaying religious objects, adhering to certain dietary rules, proselytizing or other forms of religious expression, or refraining from certain activities. Whether a practice is religious depends on the employee’s motivation.”<sup>19</sup>

### **4. What does Title VII require in terms of reasonably accommodating employee religious beliefs and practices?**

“Title VII requires an employer, once on notice that a religious accommodation is needed, to reasonably accommodate an employee whose sincerely held religious belief, practice, or observance conflicts with a work requirement, unless doing so would pose an undue hardship.”<sup>20</sup> “An individual alleging the denial of a religious accommodation is generally seeking an adjustment to a neutral work rule that infringes on the employee’s ability to practice his religion. The accommodation requirement is ‘plainly intended to relieve individuals of the burden of choosing between their jobs and their religious convictions, where such relief will not unduly burden others.’”<sup>21</sup>

“A religious accommodation is an adjustment to the work environment that will allow the employee to comply with his or her religious beliefs. . . . The employer’s duty to accommodate will usually entail making a special exception from, or adjustment to, the particular requirement that creates a conflict so that the employee or applicant will be able to practice his or her religion.

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<sup>16</sup> *Id.*

<sup>17</sup> 42 U.S.C. § 2000e(j).

<sup>18</sup> EEOC Compliance Manual.

<sup>19</sup> EEOC Q&A’s.

<sup>20</sup> *Id.*

<sup>21</sup> EEOC Compliance Manual.

Accommodation requests often relate to work schedules, dress and grooming, or religious expression or practice while at work.”<sup>22</sup> The most common methods [used by employers to provide reasonable accommodations to employees] 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.”<sup>23</sup>

“An applicant or employee who seeks religious accommodation must make the employer aware both of the need for accommodation and that it is being requested due to a conflict between religion and work.”<sup>24</sup> “[I]n some cases where an employer has made no effort to act on an accommodation request, courts have found that the employer lacked the evidence needed to meet its burden of proof to establish that the plaintiff’s proposed accommodation would actually have posed an undue hardship.”<sup>25</sup>

“An adjustment offered by an employer is not a ‘reasonable’ accommodation if it merely lessens rather than eliminates the conflict between religion and work, provided that eliminating the conflict would not impose an undue hardship. . . . To qualify as a reasonable accommodation, an adjustment . . . must not discriminate against the employee or unnecessarily disadvantage the employee’s terms, conditions, or privileges of employment.”<sup>26</sup> “[A]n employer’s proposed accommodation will not be ‘reasonable’ if a more favorable accommodation is provided to other employees for non-religious purposes, or, for example, if it requires the employee to accept a reduction in pay rate or some other loss of a benefit or privilege of employment and there is an alternative accommodation that does not do so.”<sup>27</sup>

In sum, employers have an affirmative duty to reasonably accommodate the religious beliefs and practices of their employees that they are aware of, unless such accommodation would place an undue hardship on the employer.

## **5. When does an employer have an “undue hardship” defense?**

In *Groff v. DeJoy*,<sup>28</sup> the Supreme Court held that the term “undue hardship” means “an employer must show that the burden of granting an accommodation would result in substantial increased costs in relation to the conduct of its particular business.” The Court clarified further that the determination of undue hardship should be based on a fact-specific inquiry, considering the

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<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> EEOC Q&A’s. Nonetheless, as the Supreme Court has stated, “an employer who acts with the motive of avoiding accommodation may violate Title VII even if he has no more than an unsubstantiated suspicion that accommodation would be needed.” *EEOC v. Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768, 773 (2015). “For example, suppose that an employer thinks (though he does not know for certain) that a job applicant may be an orthodox Jew who will observe the Sabbath, and thus be unable to work on Saturdays. If the applicant actually requires an accommodation of that religious practice, and the employer’s desire to avoid the prospective accommodation is a motivating factor in his decision, the employer violates Title VII.” *Id.* at 773–74.

<sup>25</sup> EEOC Compliance Manual.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> 2023 U.S. LEXIS 2790 (June 29, 2023).

nature, size, and operating cost of the employer. The impact of a religious accommodation on coworkers is relevant only to the extent that it affects the conduct of the business.

*Groff* repudiated a fifty-year-old case, *Trans World Airlines v. Hardison*,<sup>29</sup> in which the Supreme Court held that undue hardship means anything “more than de minimis.” Importantly, the *Groff* Court emphasized that bias or hostility toward a religious practice or accommodation cannot be considered a valid defense for the employer: “An employer who fails to provide an accommodation has a defense only if the hardship is ‘undue,’ and a hardship that is attributable to employee animosity to a particular religion, to religion in general, or to the very notion of accommodating religious practice cannot be considered ‘undue.’”<sup>30</sup>

*Groff* has significant implications for addressing religious accommodations in the workplace. It reaffirms the protection of religious believers under Title VII and clarifies that employers cannot dismiss accommodation requests based solely on a minimal burden. Instead, employers must demonstrate that the burden of accommodating an employee’s religious practice is substantial.

*Groff* provides a new rubric for assessing future religious accommodation cases under Title VII, requiring a more nuanced analysis that considers the specific circumstances and impact on the employer’s business. How that rubric will be applied by the lower courts remains to be seen.

## **6. How does Title VII apply to dress codes, grooming policies, the use of employer facilities for religious activities, and sharing your faith at work?**

The EEOC has explained that, “[w]hen an employer has a dress or grooming policy that conflicts with an employee’s religious beliefs or practices, the employee may ask for an exception to the policy as a reasonable accommodation.”<sup>31</sup>

Absent undue hardship, religious discrimination may be found where an employer fails to accommodate the employee’s religious dress or grooming practices. Some courts have concluded that it would pose an undue hardship if an employer was required to accommodate a religious dress or grooming practice that conflicts with the public image the employer wishes to convey to customers. While there may be circumstances in which allowing a particular exception to an employer’s dress and grooming policy would pose an undue hardship, an employer’s reliance on the broad rubric of “image” to deny a requested religious accommodation may amount to relying on customer religious bias (“customer preference”) in violation of Title VII. There may be limited situations in which the need for uniformity of appearance is so important that modifying the dress code would pose an undue hardship. However, even in these situations, a case-by-case determination is advisable.<sup>32</sup>

Additionally, “[i]f an employee needs to use a workplace facility as a reasonable accommodation, for example use of a quiet area for prayer during break time, the employer should

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<sup>29</sup> 432 U.S. 63 (1977). See also EEOC Q&A’s.

<sup>30</sup> 2023 U.S. LEXIS 2790, at \*35.

<sup>31</sup> EEOC Q&A’s.

<sup>32</sup> *Id.*

accommodate the request under Title VII unless it would pose an undue hardship. If the employer allows employees to use the facilities at issue for non-religious activities not related to work, it may be difficult for the employer to demonstrate that allowing the facilities to be used in the same manner for religious activities is not a reasonable accommodation or poses an undue hardship.”<sup>33</sup>

Concerning religious expression, the EEOC has advised that “[e]mployers should not try to suppress all religious expression in the workplace. Title VII requires that employers accommodate an employee’s sincerely held religious belief in engaging in religious expression in the workplace to the extent that they can do so without undue hardship on the operation of the business. . . . [R]elevant considerations may include the effect such expression has on co-workers, customers, or business operations.”<sup>34</sup> The EEOC has noted that an employer will have a more difficult time justifying restrictions on employee religious expression where there is no evidence of workplace disruption (for example, where no co-worker has complained about the expression), and where the expression is directed toward co-workers rather than clients (who may mistakenly believe that the employee’s expression represents the views of the employer).<sup>35</sup>

#### **7. How does Title VII apply to employee training programs and other employer programs and practices?**

“[A]n employer is required to excuse an employee from compulsory personal or professional development training that conflicts with the employee’s sincerely held religious beliefs or practices, unless doing so would pose an undue hardship. It would be an undue hardship to excuse an employee from training, for example, where the training provides information on how to perform the job, or how to comply with equal employment opportunity obligations, or on other workplace policies, procedures, or legal requirements.”<sup>36</sup>

Additionally, private employers who desire to do so may express their own religious beliefs or practices in the workplace. “However, if an employer holds religious services or programs or includes prayer in business meetings, Title VII requires that the employer accommodate an employee who asks to be excused for religious reasons, absent a showing of undue hardship.”<sup>37</sup>

#### **8. Do different principles apply when the employer is a government entity?**

In a government workplace, regardless of whether Title VII is applicable, “the First Amendment Free Exercise Clause and Establishment Clause may affect the employer’s or employee’s ability to restrict or engage in religious expression.”<sup>38</sup> The situation is more complex than in a private workplace because the First Amendment does not apply to non-governmental

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<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> EEOC Compliance Manual (see the Example involving “Susan” and “Roger”).

<sup>36</sup> EEOC Q&A’s.

<sup>37</sup> *Id.*

<sup>38</sup> EEOC Compliance Manual n.140. The First Amendment states, in relevant part, that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press. . . .” The First Amendment and various other constitutional provisions have been held by court decisions to apply to state and local governments.

actors, whereas public employers as well as public employees (at least while acting in an official capacity) are subject to the First Amendment. Additionally, the federal Religious Freedom Restoration Act (RFRA) applies to the federal workplace, and similar laws and/or constitutional provisions provide similar protections for religious freedom of government employees in some states. The EEOC and other agencies have provided more detailed discussion on religious exercise and expression in government workplaces.<sup>39</sup>

### **Conclusion**

Contrary to what some may believe, individuals do not forfeit their religious freedom when they enter the workplace. Although the facts and circumstances of any particular situation are important to take into account, as a general rule, Title VII protects employee religious beliefs and practices and ensures that individuals may not be discriminated against due to their faith. We hope that this memorandum was helpful in summarizing how Title VII protects religious freedom and expression in many workplaces.

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Last updated: July 20, 2023

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<sup>39</sup> See, e.g., EEOC Q&A's (citing, among other things, *Guidelines on Religious Exercise and Religious Expression in the Federal Workplace*).