

RELIGIOUS EMPLOYEES



RELIGIOUS LIBERTY PROTECTION KIT

**Know Your Rights as
an Employee**



DEAR FRIEND OF RELIGIOUS FREEDOM,

Thank you for your desire to protect **religious employees** against increasingly hostile legal threats to your freedom to believe and to act upon your beliefs. I hope you find this **Religious Liberty Protection Kit** a simple but high-quality tool for helping you guard the most precious freedom you or anyone in our society has: religious liberty, our first liberty in the Bill of Rights.

Please let us know any further way we can help you.



Kelly Shackelford, Esq.

President, CEO & Chief Counsel





FIRST LIBERTY INSTITUTE® RELIGIOUS LIBERTY PROTECTION KIT FOR RELIGIOUS EMPLOYEES

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INTRODUCTION

What can I do if my employer requires me to violate my religious beliefs on the job? Can I be required to attend diversity training if the content violates my religious beliefs? Can I be required to use words, such as pronouns, in ways that violate my religious beliefs?

First Liberty Institute has advised hundreds of religious employees at secular workplaces who have asked questions like these. Our nationwide, nonprofit law firm is dedicated to protecting religious freedom for all Americans, at no cost to our clients. Our President and CEO, Kelly Shackelford, has over 30 years of experience defending the constitutional rights of organizations like yours.

This Religious Liberty Protection Kit for Religious Employees carefully summarizes the recommendations we've developed over the years. In it, you will find guidance on requesting a religious accommodation at your workplace. While this Protection Kit uses examples based upon the questions we most frequently receive, its advice is applicable to a wide range of religious beliefs and religious accommodation requests. Our mission is to protect religious liberty for *all* Americans, and the legal principles given in this guide apply to religious communities of all faiths.

Thank you for learning about your religious liberty rights and your interest in standing up for our First Amendment's First Liberty. [1]

Citations:

1. First Liberty Institute's Religious Liberty Protection Kit for Religious Employees provides general guidance to assist you in responding to current legal threats to religious freedom. This document does not create an attorney-client relationship, and it is not to be used as a substitute for legal advice from a licensed attorney. Because the law is constantly changing and each workplace's policies are unique, First Liberty Institute and its attorneys do not warrant, either expressly or impliedly, that the law, cases, statutes, and rules discussed or cited in this guide have not been changed, amended, reversed, or revised. If you have a legal question or need legal advice, please contact an attorney. First Liberty Institute's attorneys may be contacted by requesting legal assistance at FirstLiberty.org.

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Your Legal Rights as an Employee

Your Legal Rights as an Employee

Federal employment discrimination law, Title VII of the Civil Rights Act of 1964 (“Title VII”), prohibits employers with 15 or more employees from discriminating on the basis of religion. [2] The law also provides that employers may not create a hostile work environment on the basis of religion, which means that employers cannot tolerate severe or pervasive harassment on the basis of religion. [3] Some states grant similar protections applicable to employers with fewer than 15 employees. If you believe that you have experienced religious discrimination or harassment, we recommend that you reach out to an attorney to discuss filing a complaint with the Equal Employment Opportunity Commission (“EEOC”) or the appropriate state agency.

Hostile work environment: Unfortunately, many people work in environments that they feel are “hostile” in some way. But not every difficult work environment is something that an employee can bring a lawsuit over. In order to be legally actionable, the hostility an employee endures must be because of their protected class (such as religion, race, or sex), and it must be “severe or pervasive.”

In this guide, we want to highlight another important protection for religious employees in the workplace—**the right to request a religious accommodation**. Title VII requires that employers grant reasonable religious accommodation requests unless doing so would cause an undue hardship on the business. [4] Undue hardship is defined as substantial increased costs in the overall context of an employer’s business. [5] You have the right to ask for a religious accommodation when you may be called to do something on the job that violates your sincerely-held religious beliefs.

Traditionally, religious accommodation requests have been used for religious employees who cannot work on one day of the week in order to observe Sabbath or Shabbat or who require a modification to a grooming policy in order to wear a yarmulke, beard, or hijab. [6] Some employers mistakenly believe that religious accommodations only include these kinds of requests. However, Title VII defines “religion” broadly to include all aspects of religious observance and belief. [7] Religious accommodations have been provided in a variety of circumstances. For instance, pharmacies have accommodated Christian/Catholic pharmacists who

objected to dispensing abortifacient drugs by rearranging shifts. [8]

Increasingly, employers are putting in place policies with respect to issues of gender and sexuality that conflict with some religious employees' beliefs on these issues. Religious employees may wonder what their rights are in these circumstances. The next sections look at a few such scenarios.

Religious Accommodations & Diversity Training

Many workplaces require employees to attend diversity training, sometimes called anti-harassment, DEI, or Title VII training. These trainings may describe the legal requirement that employers not discriminate on the basis of a variety of protected classes, including sexual orientation and gender identity. In *Bostock v. Clayton County*, the Supreme Court held that Title VII prevents employers from discriminating on the basis of sexual orientation or transgender status. [9] The Supreme Court has not yet addressed specific questions regarding gender identity with respect to bathroom policies, grooming policies, and pronoun usage. This is an evolving and fact-specific area of law. We would caution that not all diversity trainings accurately portray the law, especially with respect to protections for religious employees who hold different religious beliefs about gender and sexuality.

Employees sometimes ask us whether they are required to attend or participate in diversity training because the trainings may include statements that contradict the employee's religious beliefs. The answer is generally yes, but it depends.

Most religious individuals do not have a sincerely-held religious belief that they cannot hear perspectives that differ from their own. If an employee is required to attend a training session and answer questions about the state of the law or company policy, it is unlikely that the religious employee will be able to argue that he or she is being called upon to violate his or her sincerely-held religious beliefs by *attending*. However, if an employee is being called to personally *affirm* agreement with a statement that violates his or her religious beliefs, then that employee may be able to ask for a religious accommodation.

Religious accommodation requests regarding pronoun



Religious Accommodations & Diversity Training

usage and similar moral issues are a developing area of law. The Supreme Court has been very attuned to protecting the rights of religious people with respect to their beliefs on issues of gender and sexuality. For example, in *Obergefell v. Hodges*, the Court recognized that many traditional beliefs about issues of marriage and sexuality are based on “decent and honorable religious or philosophical premises[.]” [10] In *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*, the Court went a step further and held that it was unconstitutional discrimination for the state agency to disparage such religious beliefs or fail to display respectful consideration for people who hold traditional religious beliefs on such matters. [11] We would argue that it would likewise violate Title VII for a company to engage in similar disparagement of employees based upon their religious beliefs. Again, this is a developing area of the law.

Importantly, we caution that if your religious accommodation request is denied, you could lose your job. We have seen businesses fire employees who ask for religious accommodations. First Liberty is not able to take every case in which an employer violates employee’s religious rights. For these reasons, religious accommodations requests should be made only when necessary to avoid a conflict between a job requirement and the employee’s sincerely-held religious belief. We will describe best practices for requesting an accommodation in a later section.

Religious Accommodations & Pronoun Usage

Increasingly, workplaces are creating policies that require or imply that employees are expected to use pronouns in accordance with a transgender individual’s preference. In 2024, the EEOC (the federal agency that enforces the nondiscrimination provisions of Title VII of the Civil Rights Act) issued “Enforcement Guidance on Harassment in the Workplace” stating, “Harassing conduct based on sexual orientation or gender identity includes ... repeated and intentional use of a name or pronoun inconsistent with the individual’s known gender identity (misgendering)....” [12] Although this statement is only guidance, [13] and its legality is being challenged in court, many employers and courts may follow it in interpreting Title VII. The EEOC does not detail how this guidance interacts with potential religious liberty defenses.

Some employees hold the sincere religious belief that sex is an immutable characteristic and they cannot knowingly use pronouns that do not accord with an individual’s biological sex. They are committed to treating all their coworkers with respect, but their religious convictions prohibit them from using a coworker’s preferred pronouns.

If you are in a situation where you are being asked to agree to use pronouns in violation of your sincerely-held religious beliefs, you may be able to request a religious accommodation. The EEOC Guidance mentioned above ignores important questions regarding the availability of a religious accommodation in this scenario. A number of cases addressing this issue have been working their way through the court system.

If you find it necessary to broach this topic with your employer or to request a religious accommodation, it is best to let your employer know specifically what you do and do not object to. For example, you could explain if your religious beliefs permit you to use preferred names or last names but not preferred pronouns. A narrower request may be easier to accommodate.

How Do I Request a Religious Accommodation?

When requesting an accommodation, keep the following points in mind:

1. Only request a religious accommodation if necessary.
2. Make your religious accommodation requests in writing, such as an emailed request, and retain a copy.
3. Clearly and concisely explain your religious beliefs and the accommodation that you are seeking. If there is more than one way for the employer to accommodate you, it is helpful to highlight some different options.
4. The narrower your religious accommodation request, the stronger your position that the employer could accommodate you without incurring substantial increased costs.
5. Work with your employer to try to come up with a win-win solution. Ask for a meeting to discuss possible options.
6. Be polite and respectful at all times.

Example Accommodation Requests: Diversity Training & Pronoun Usage

Example Accommodation Request: Diversity Training

[Explain how much you value being a part of the company.] With this letter, I am respectfully requesting a religious accommodation not to be required to violate my sincerely-held religious beliefs.

I firmly believe that all people are created in the image of God and should be treated with dignity and respect. I am fully committed to treating everyone with dignity and professionalism, including people with different beliefs and lifestyles. (Mark 12:31). As a part of my Christian faith, I believe that God created mankind as immutably male and female, sexually different but with equal personal dignity. (Genesis 1:26-28). I also believe that God created marriage as the permanent union of one man and one woman, with absolute marital fidelity. (Genesis 2:23-24).

Because of my religious beliefs, I cannot personally affirm agreement with moral statements that go against my sincerely-held religious beliefs. [Company's] diversity training requires me to affirm that [insert objected to affirmation]. I am requesting a religious accommodation to not be required to make this affirmation or speak in other ways that violate my religious beliefs. I can affirm that I will treat everyone with politeness and professionalism, as I have demonstrated during my [X] years at the company.

I look forward to working with you to find an alternative solution to complete the diversity training requirements. Thank you for your consideration of this matter.

Example Accommodation Request: Pronoun Usage

[Explain how much you value being a part of the company.] With this letter, I am respectfully requesting a religious accommodation not to be required to violate my sincerely-held religious beliefs.

I firmly believe that all people are created in the image of God and should be treated with dignity and respect. I am fully committed to treating everyone with dignity and professionalism, including people with different beliefs and lifestyles. (Mark 12:31). As a part of my Christian faith, I also believe that God created mankind as immutably

male and female, sexually distinct but with equal personal dignity. (Genesis 1:26-28).

Because of my religious beliefs, I cannot use pronouns in a way that violates my religious beliefs about gender and sexuality. I am requesting a religious accommodation to not be required to speak in a way that knowingly violates my religious beliefs about gender and sexuality. At all times, I will treat everyone with politeness and professionalism, as I have demonstrated in my [X] years with the company.

I look forward to meeting with you to discuss this religious accommodation request. Thank you for your consideration of this matter.

What Happens After I Request a Religious Accommodation?

The religious accommodation request should spark a dialogue between employer and employee to find a mutually agreeable solution. If the company's initial proposal is insufficient or too vague, you may consider asking for a meeting or responding with a counterproposal that is more specific or more tailored to your request. [14]

Companies cannot legally terminate you or refuse to hire you because they think they might have to grant a reasonable religious accommodation request.

Title VII also prohibits retaliation against an employee who "oppose[s] any practice made an unlawful employment practice by this subchapter." [15] The "EEOC has taken the position that requesting religious accommodation is protected activity" covered by the anti-retaliation provision. [16] However, at least one federal appellate court has held that employees can only allege retaliation if they were retaliated against for opposing the unlawful denial of a religious accommodation, not if they were retaliated against for making the accommodation request itself. [17] And, although the law does protect you from retaliation, it is still possible that the employer will take adverse action against you or will respond to your accommodation request by becoming overly critical of other aspects of your job performance to the point that you are fired for other alleged offenses.

Retaliation: To be considered "retaliation" under federal employment law, the employer's action against you must be because you opposed or complained about unlawful discrimination. If the employer retaliated against you for another reason, that might not be considered "retaliation" in the employment law context.

Are Employers Required to Grant Religious Accommodation Requests?

Whether an employer is legally required to grant a religious accommodation request is a fact-specific question. The answer will depend on how much of a hardship accommodating your request places on your employer. The answer also may vary based upon your state.

Before First Liberty's 2023 Supreme Court victory in *Groff v. DeJoy*, courts typically allowed employers to avoid granting religious accommodations if they could point to any minimal or "de minimis" cost to the business. This interpretation was based on a poorly-written 1977 Supreme Court decision called *TWA v. Hardison*. [18]

However, in *Groff v. DeJoy*, the Supreme Court clarified the law in a way that gives more protections for religious employees. The Court unanimously concluded that federal law requires workplaces to accommodate religious employees unless the employer can "show that the burden of granting an accommodation would result in substantial increased costs in relation to the conduct of its particular business." [19] This standard takes into account "all relevant factors ..., including the particular accommodations at issue and their practical impact in light of the nature, size, and operating cost of [an] employer." [20]

The Supreme Court explained that, in general, temporary costs, voluntary shift swapping, occasional shift swapping, or administrative costs will not impose an "undue hardship." [21] Additionally, a coworker's dislike of a religious practice, religious expression, or the accommodation itself should not factor into the calculus of the undue burden; only coworker impacts that affect the conduct of the business should be taken into account. [22] Finally, that an employer cannot simply assess the reasonableness of a particular possible accommodation; instead, it must consider other options. [23]

The *Groff* decision means that more employers will be legally required to respect their religious employees by granting them accommodations.

What If I Am Denied a Religious Accommodation?

If your request is denied, you can consider whether to file a charge of religious discrimination with the Equal Employment Opportunity Commission or the appropriate state agency. You have a limited timeframe after the accommodation is denied in which to do so, so you should contact an attorney to ensure that you file a charge on time. It is typically safest to file a charge of discrimination within 180 days of the alleged discrimination. Federal employees have shorter deadlines and typically should contact an EEO Counselor for your agency within 45 days of the alleged discrimination.

After the agency investigates the situation, either it will take up the case itself or, more likely, it will send you a right to sue letter which enables you and your attorney to bring a lawsuit. We caution that litigation is a long and arduous process, with no guarantee of success. For this reason, every attempt should be made to come to a mutually agreeable solution with your employer should you need to request a religious accommodation.


Conclusion

We hope this guide will be a helpful resource for you. If you have any questions, please seek legal assistance. First Liberty attorneys are standing by at FirstLiberty.org to help protect your religious freedom.

Citations:

2. Note: This guide is directed toward religious employees at secular, for-profit workplaces. This guide does not apply to employees who work at places of worship or other religious non-profits. Such organizations generally have a right to create a community that shares a set of religious beliefs and thus can make employment decisions on the basis of religion. See 42 U.S.C. § 2000e-1(a); *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049 (2020); *Hosanna-Tabor Evangelical Lutheran Church Sch. v. E.E.O.C.*, 565 U.S. 171 (2012); *Little v. Wuerl*, 929 F.2d 944, 951 (3d Cir. 1991). For additional information, see First Liberty's Protection Kits for religious schools and ministries.

3. See 42 U.S.C. § 2000e-2(a)(1); *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21 (1993); *Johnson v. Spencer Press of Maine, Inc.*, 364 F.3d 368, 376-77



What If I Am Denied a Religious Accommodation? & Conclusion

(1st Cir. 2004).

4. 42 U.S.C. § 2000e(j); EEOC Guidelines on Discrimination Because of Religion, 29 C.F.R. § 1605.2(b).

5. *Groff v. DeJoy*, 600 U.S. 447, 470 (2023). The alleged hardship cannot be merely speculative. *Buonanno v. AT&T Broadband, LLC*, 313 F. Supp. 2d 1069, 1081 (D. Colo. 2004).

6. See, e.g., *E.E.O.C. v. Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768 (2015) (headscarf); *Fraternal Order of Police Newark Lodge No. 12 v. City of Newark*, 170 F.3d 359 (3d Cir. 1999) (beards).

7. 42 U.S.C. § 2000e(j).

8. See *Vandersand v. Wal-Mart Stores, Inc.*, 525 F. Supp. 2d 1052 (C.D. Ill. 2007).

9. *Bostock v. Clayton Cnty.*, 590 U.S. 644 (2020).

10. 576 U.S. 644, 672 (2015).

11. *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm'n*, 138 S. Ct. 1719, 1729, 1731 (2018).

12. Enforcement Guidance on Harassment in the Workplace, II.A.5.c, EEOC (issued Apr. 29, 2024; last accessed May 2, 2024), available at <https://www.eeoc.gov/laws/guidance/enforcement-guidance-harassment-workplace>.

13. The Guidance itself states, “the contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public....” *Id.*

14. *Abercrombie & Fitch*, 575 U.S. at 774-75.

15. 42 U.S.C. § 2000e-3(a).

16. Questions and Answers: Religious Discrimination in the Workplace, EEOC (last accessed June 8, 2021), available at <https://www.eeoc.gov/laws/guidance/questions-and-answers-religious-discrimination-workplace>.

17. *E.E.O.C. v. N. Mem'l Health Care*, 908 F.3d 1098, 1102 (8th Cir. 2018).

18. *Hardison*, 432 U.S. 63.

19. *Groff*, 600 U.S. at 470.

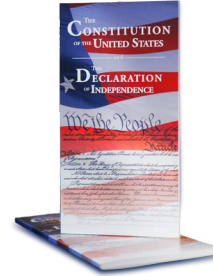
20. *Id.* at 471.

21. *Id.*

22. *Id.* at 472.

23. *Id.* at 473 (an employer must not “merely ... assess the reasonableness of a particular possible accommodation or accommodation”; rather “[c]onsideration of other options ... would also be necessary”).

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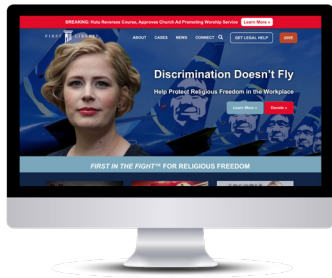
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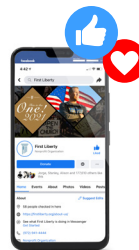
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