



## Dealing with religious accommodation requests from employees

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A Muslim front desk attendant explains that she must wear her head scarf at all times, including to work. A Pentecostal housekeeper insists upon wearing a skirt while performing her tasks, stating that her religion prohibits women from wearing slacks. A Sikh bellman advises his manager that he must wear a turban, according to the tenets of his faith. A Christian restaurant server and a Jewish concierge express preferences for wearing religious jewelry with the symbols of their faith. What do these employees have in common? They have all requested the right to wear certain attire that communicates their faith or complies with specific religious tenets... some of which may violate the hotel's dress code or uniform policy.

When a hotel manager encounters a religion-based request for a waiver of the dress code, what is the proper course of action? How must a manager respond to a request for religious accommodation, in order to minimize potential legal liability and maintain a sensitive posture while dealing with a diverse group of employees? Here are a few answers.

### Religious discrimination – Just the basics

Studies have shown that, while race and color-based discrimination claims may be decreasing, religion-based discrimination claims are actually on the rise. Religious discrimination claims take two forms: 1) classic disparate treatment or 2) a harassment claim. In the first situation an employee asserts that Management deliberately treated him unfairly by either singling him out for an adverse job action because of his religion or failing to accommodate religious beliefs or practices, while in the second scenario Management permitted a supervisor or co-worker to harass the employee because of his religious beliefs. Disparate treatment claims follow the same well-known formula: the employee must first prove a *prima facie* case, which raises an inference of unlawful discrimination, the employer may counter with evidence of legitimate, non-discriminatory reasons for its personnel actions, and the employee then resumes the burden and attempts to show that the employer's legitimate, non-discriminatory reasons are in fact a pretext for unlawful discrimination.

Religious harassment claims, too, follow the well-tread path that sexual and racial harassment cases have laid out: the employee proves his or her *prima facie* case of harassment, which the employer may attack with an affirmative defense, showing that it put policies in place to combat harassment and the employee failed to reasonably utilize the policies, and that once it became aware of the situation Management took prompt action to identify and correct any harassing behavior.

### Religious accommodation requests

Religious accommodation requests, however, can be trickier for an employer to process than complaints of disparate treatment or harassment, and they often involve thorny conflicts between employment policies and an employee's stated religious beliefs. Title VII of the Civil Rights Act of 1964 requires employers to accommodate employees' requests for reasonable accommodation when a religious belief conflicts with a work requirement or rule, so long as the accommodation does not result in an "undue hardship" to the employer's business.



Courts have defined “undue hardship” to mean a burden that imposes “more than a *de minimis* cost” to the employer – a fairly low standard. If an employee requests accommodation for a religious belief or practice, and such accommodation would impose even a small cost on the employer or slightly burden the employer’s business, the employer likely does not have to grant the requested accommodation. Even if an employee’s request for a reasonable accommodation would not unduly burden the employer’s business, the employee is not entitled to his or her perfect or ideal accommodation. So long as the employer provides a *reasonable* accommodation – even if it is not the accommodation the employee wanted – the employer has satisfied the requirements of Title VII.

Religious accommodation requests frequently arise in the context of scheduling – such as, for instance, a front desk agent’s request for Sundays off to observe her Sabbath or for an early dismissal or late arrival to allow her to attend religious services. Dress codes and uniform policies, similarly, often conflict with an employee’s religious dress requirements. In recent years, there have been a number of requests for adjustments to or wholesale exemptions from employers’ dress code policies to comply with employees’ stated religious requirements.

### How hoteliers can avoid liability

When a staff member presents a manager with a request for a reasonable accommodation, the manager should immediately assess whether it is possible to accommodate the request without unduly burdening hotel operations. In a recent decision of the case *EEOC v. Papin Enterprises, Inc.* (2009), by the U.S. District Court for the Middle District of Florida, the Court held that an employer generally may inquire into the religious nature of an employee’s belief, but cautioned that employers should scrupulously avoid passing judgment on either the legitimacy of religious beliefs or the sincerity of an individual’s professed religious belief. In *Papin Enterprises*, the employer, a quick-service food franchisee, routinely requested documentation, in the form of a religious text or a note from a clergy member, to support an employee’s request for a reasonable accommodation of his or her religious belief. An employee claimed that she was required to wear a nose ring in compliance with the strictures of her Nuwabian religion, but was unable to present a religious text noting this requirement and informed her employer that she had no minister.



The jury returned a verdict finding that the employee did not have a sincerely held religious belief that she must wear a nose ring and therefore that the employer’s decision to terminate the employee, after her nose ring rendered the franchise out of compliance with its franchise agreement, was not discriminatory. The Court noted with approval that, subsequent to the jury’s decision that no discrimination had taken place, the employer had nonetheless stopped requesting supporting documentation for religious accommodation requests. The manager responsible for reviewing religious accommodation requests testified that all such requests were now rejected based on food safety guidelines. Although the Court noted that the law on requesting documentation to support religious accommodation requests was unclear, it explained that employers may conduct some inquiry into the sincerity of an employee’s religious belief, or the religious nature of a professed belief, without implicating Title VII liability. Some “research” into a religious belief is not an impermissible questioning of the religious belief itself.

When a staff member presents a hotel manager with a request for a religious accommodation, then, it is likely permissible for the manager to do some independent research into the professed religious requirement, to determine whether it truly is religious. Managers should be careful, however, to avoid passing judgment on an employee’s professed belief. Even if the manager does not understand an employee’s belief, or does not agree with an employee’s practice, that does not diminish the religious nature of the belief or practice. For example, in the case of the Muslim front desk attendant who expresses a belief that she needs to wear her head covering at work, a manager’s own lack of understanding of or agreement with the practice does not give the manager grounds for rejecting the request. Rather, after verifying that the practice is indeed religious in nature, the manager should simply assess whether he or she can accommodate the employee’s request without unduly burdening hotel operations. If the manager is able to accommodate the request at no more than a *de minimis* cost to the hotel, he or she should do so – or risk Title VII liability.

It should be noted that not all requests for wholesale exemptions from a hotel’s dress code will be candidates for accommodation. In the 2005 case of *Hussein v. Waldorf Astoria Hotel*, the Court of Appeals for the Second Circuit explained that an employee’s “on-the-spot” request for a wholesale exemption from the hotel’s policy prohibiting facial hair “not only made it difficult for the Waldorf to accommodate him, but would also undermine its ability to manage other staff.” Thus, the Court found that the employee’s request for an exemption from the grooming policy was not a request for a reasonable accommodation, and that the hotel could not have accommodated this particular request without undue hardship to its operations.

## **Bottom line for hoteliers**

As religious plurality increases in the United States and around the world, hoteliers will note an increasingly diverse workforce. While such diversity improves employees' work experiences and helps hotels to better serve a similarly diverse customer base, managers must exercise caution and good judgment when fielding requests for religious accommodation. Although most courts will likely find that it is permissible for a manager to conduct some research into the religious nature of an employee's professed belief, as well as some analysis of whether that belief is sincerely held – for instance, by noting any inconsistent conduct by the employee – managers must nonetheless be careful to avoid passing judgment on a religious practice or imposing their own religious beliefs on their staff. By acting with sensitivity and exercising caution, hoteliers will be able to effectively manage a diverse workforce, granting requests for accommodation where appropriate and properly measuring the resulting burden, if any, to hotel operations. ✧

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