



Accommodating Religion in the Workplace

by Justin Flamm

Religion permeates our society, and the workplace is no exception. Under the same laws that prohibit race and sex discrimination, employers cannot hire, fire, or discipline based on an employee's religion. When faith conflicts with work, however, employers can face challenging decisions.

carried. Another employer faced a lawsuit over its directive that an employee stop telling customers to "have a blessed day."

Federal and Ohio laws require reasonable accommodations for religious practices and beliefs. Employees are not always entitled to the accommodation of their choice, however, and a court may find an accommodation to be "reasonable" even though the employee is unhappy

with it. Accommodations are never required if they would cause the employer "undue hardship." This exception is not overly demanding; anything more than a minimal cost usually constitutes undue hardship.

Potential accommodations include revising work schedules, trading shifts with other employees, and reassigning objectionable job duties.

If those efforts would increase the employer's overtime expenses or would prevent projects from being completed, the undue hardship exception may apply. For unionized employers, seniority provisions in a

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Worship services and prohibitions of Sabbath work can cause scheduling problems. Likewise, religious beliefs may clash with certain job duties. In one case, a convenience store manager's religion prohibited her from selling pornographic magazines that the store

Members of the Military Have Civilian Job Protections

by Justin Flamm

As thousands of military reservists are called to active duty, they will leave their civilian jobs for months or even years. A 1994 law called the Uniformed Services Employment and Reemployment Rights Act (USERRA) applies to virtually all employers and gives reservists and other service members a wide range of job protections. Active duty, reserve duty, and required training activities in all branches of the armed forces are covered, even if the employees volunteered for duty.

Q: What obligations does USERRA impose on employers?

A: Employers must allow leaves of absence for military service, up to a cumulative total of five years for each employee. USERRA does not require paid leave, but employees can maintain their existing health care coverage for up to two years. If the military leave lasts more than 31 days, employers can shift 102 percent of the health care premium to the employee (like COBRA benefits). For shorter absences, the allocation of health care costs cannot be changed.

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labor contract usually trump an inconsistent request for accommodation.

An employer's skepticism about the validity of a particular organized religion or religious belief seldom changes the legal analysis. Because faith is such a personal matter, courts rarely pass judgment on sincerely held beliefs. The legal definition of "religion" is broad, and it extends far beyond mainstream churches. In one extreme example, a court ruled that a white supremacist group was a religion under federal law.

The employer's religion also may cause conflict. Several companies have been hit with large verdicts for trying to impose management's religious beliefs on employees with different beliefs (or no beliefs at all). An exception exists for religious organizations, such as a parochial school that considers religion when hiring teachers.

Reasonableness and undue hardship are fact-sensitive legal standards, so an employer receiving a request for religious accommodation should consider ways to resolve the employee's conflict. Although religious practice may yield to business necessity in many cases, employers should consult with counsel before rejecting an accommodation.

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Web site resource for small businesses:

To learn about programs offered by the U.S. Dept. of Labor's Office of Small Business, visit: <http://www.dol.gov/osbp>.

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Pension plans and a wide range of other employee benefits also are covered by USERRA. For example, the United States Department of Labor takes the position that military leave time counts toward eligibility for benefits under the Family and Medical Leave Act (FMLA).

When the military service ends, employers must provide prompt reemployment to employees who are honorably discharged. Narrow exceptions exist if reemployment is impossible, unreasonable, or would cause undue hardship to the employer.

Q: What is the "escalator principle"?

A: After World War II, the United States Supreme Court ruled that a returning soldier "does not step back on the seniority escalator at the point he stepped off. He steps back on at the precise point he would have occupied had he kept his position continuously during the war." This principle is incorporated into USERRA.

Thus, where it is reasonably certain that an employee would have been promoted if not for his or her military leave, the employer may have to award that promotion (or

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another job with similar pay and status) when the employee comes back. Employers also must provide training for employees who are unqualified for the "escalator position."

The escalator principle does not always require a promotion, however. If an employee on military leave would have been laid off along with other employees, USERRA probably does not require reemployment.

Q: What are the potential penalties for violations of USERRA?

A: USERRA can be enforced through individual lawsuits. The Veterans' Employment and Training Service (known as VETS), which is part of the Department of Labor, also investigates USERRA

complaints by employees.

For proven violations, employers may have to reimburse employees for lost pay and benefits. These damages can be doubled if the violation was willful. Additionally, employers may be required to pay an employee's reasonable attorney fees and other litigation expenses.

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IN THE HOPPER

State legislation that could affect small business

The American Jobs Creation Act, signed by President Bush in October, requires that employers make changes to many deferred compensation arrangements. Taxes and penalties may accrue if required changes are not made. Contact your attorney and accountant to insure your deferred compensation plan is in compliance.

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