

In this fact sheet, we explain the law that governs corporate employers' obligations to accommodate their employees' religious commitments in the workplace. This law protects Americans of every faith, or no faith, from facing discrimination because of their religious beliefs or practices or from being forced to choose between their faith and their job. As we set out below, both the Equal Employment Opportunity Commission ("EEOC") and the U.S. Supreme Court have devoted increased attention to protecting Americans' religious liberty in recent years. Careful employers should note this and do the same.

What law protects employees' religious freedom?

The key federal law which protects employees is Title VII of the Civil Rights Act of 1964 ("Title VII"). Title VII makes it unlawful for a private employer with at least fifteen employees:

- (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 race, color, 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 race, color, religion, sex, or national origin.¹

Title VII consequently prohibits private employers from discriminating against employees based on their religion, which is defined to include "all aspects of religious observance and practice as

well as belief."² Title VII requires employers to accommodate an employee's religious commitments unless the employer can demonstrate that it would cause "undue hardship on the conduct of the employer's business" to do so.³

The EEOC's [guidance](#) on workplace religious accommodations includes examples of such accommodations to protect employees who follow a variety of religious traditions. The EEOC updated its guidance in January 2021, superseding the previous version issued in 2008.⁴ The 2021 update covered developments during a period when the EEOC heard a surge of religious-discrimination claims⁵ and, while remaining largely consistent with the 2008 guidance, made several modifications all of which provided employees with additional protection for their religious exercise, as discussed below.

In many parts of the country, federal protections are supplemented by state or local laws governing private employment, which may provide employees with additional protections.⁶ For instance, New York and New Jersey state law, like federal law, each require employers to grant reasonable accommodations for religious exercise unless doing so would impose an "undue" hardship on the employer's business, but the states impose a higher standard on an employer to prove that a hardship is "undue."⁷ Private employers should therefore consider the laws of the state in which they do business and consult state counsel to ensure that they are in compliance.

While Jews make up only about 2% of the U.S. population, typically 8-10% of the religious discrimination claims the EEOC receives in a year reflect claims of anti-Semitic discrimination.⁸



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When does an employee begin to be protected by Title VII?

Potential employees have a legal right not to be discriminated against based on their religion from the moment they apply for a job. Title VII is violated if a private employer “fail[s] or refuse[s] to hire” an applicant because of that applicant’s religion (or race, color, sex, or national origin), or to limit, segregate, or classify applicants on the basis of religion or any other protected characteristic.⁹

Accordingly, a private employer may not make an applicant’s religious practice a factor in deciding whether or not to hire them.¹⁰ An employer may not use an applicant’s need for an exception from a policy that applies to all employees as a basis for the employer’s decision not to hire an applicant.¹¹ Applicants need not directly state they require a religious accommodation to be protected. Their rights are violated if an employer’s anticipation of their need for an exception is a “motivating factor” in the employer’s hiring decision.¹²

What are employers required to accommodate?

Title VII protects all aspects of religious observance, practice, and belief.¹³ Employers must accommodate all sincerely held religious beliefs, as well as associated observances and practices. A belief need not be an essential part of the employee’s faith or be shared by all members of the employee’s religion. It only has to be an “honest conviction” of the individual employee.¹⁴ And employers must treat all religions equally. They may not grant an accommodation for an employee of one faith while denying the same accommodation for an employee of another faith.¹⁵

Employers must make “reasonable” accommodations for employees’ religion. This means that an employer must attempt to eliminate any conflict between religious obligations and work obligations. An accommodation that does not eliminate a conflict between work requirements and a religious belief or practice is presumptively not reasonable unless it would impose an undue hardship on the conduct of the employer’s business for the employer to provide a full accommodation.¹⁶

How much burden must an employer assume to accommodate an employee’s religion?

An employer must accommodate an employee’s religion unless doing so would impose an “undue hardship on the conduct of the employer’s business.”¹⁷ If full accommodation would impose an undue hardship on an employer, an employer must still provide an accommodation “to the extent it can” without taking on an “undue hardship on the conduct of the employer’s business.”¹⁸

The Supreme Court has held that Title VII requires only that private employers assume minimal financial burdens (*de minimis*) in their efforts to accommodate their employees’ religious commitments. For instance, switching an employee’s shifts would not create an undue burden unless the company had to consistently pay another employee overtime pay to cover the same shift, or assign a supervisory employee for the work. Both of these burdens have been characterized as “undue,”¹⁹ while infrequent payment of overtime to one employee to cover another employee’s religious observance has been held not to be an undue hardship to an employer’s business.²⁰ [Tip: As discussed above, some states – like New York – have more demanding standards. As discussed below, this “*de minimis*” standard is being challenged in pending litigation.]

If an employer provides an accommodation for a secular purpose, it may not deny the same or a similar



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accommodation for a religious purpose. It is not deemed burdensome for an employer who is making one exception to a rule to make a second exception from the same rule when the second employee is requesting it on religious grounds.²¹

What are some common religious accommodations Jewish employees need?

The most common religious accommodations that private employers must make for their Jewish employees are related to scheduling around holidays and accommodating religious attire. Jewish employees often request not to work on religious holidays such as the High Holidays, Passover, and Shabbat. Religiously observant Jewish women may request to wear long sleeves and skirts. Observant Jewish men may request to wear a beard or a yarmulke.

Private employers should understand the accommodation the requesting employee needs to practically remove the employee's conflict.²² For example, accommodating an employee's need not to work on some Sabbaths while requiring attendance on other Sabbaths is an insufficient accommodation.²³ A satisfactory religious accommodation may require a full day schedule change or only a change in the hours of attendance on a religious holiday.²⁴

Employers who can, without undue hardship on the conduct of their business, change an employee's schedule to accommodate observance of Shabbat and Jewish holidays must do so.²⁵ As the Orthodox Union [explains](#), on many such holidays, Jewish employees are prohibited by religious rules from work; vehicular travel; use of electronic devices; and other secular activities. Observance of religious rules regarding Shabbat or Jewish religious holidays may also require the employee to have enough time to make necessary preparations for the religious observance (including traveling home) before the holiday begins. For instance, Shabbat and Jewish holidays begin at sundown, so observant Jewish

employees may sometimes need an accommodation permitting them to leave early on Fridays or holiday eves. California and New York law consequently require an employer to accommodate an employee's observance of a Sabbath or holiday as well as reasonable time necessary for travel prior and subsequent to that observance.²⁶

An employer should initiate a shift change itself to enable an employee to observe a religious holiday and not rely on the employee to informally swap shifts.²⁷ If an employer knows that Jewish employees are likely to request days off for the High Holidays, the employer should not schedule compulsory attendance events on these days. Any meeting, training, or other work event that employees must attend to perform their job properly should be rescheduled or also provided on an alternate date.²⁸ An employer should not schedule activities after learning that a Jewish employee has requested a holiday off and then assert that their business suffers an undue hardship because of the employee's absence from those activities.²⁹

Private employers must accommodate religious requests for exemptions from dress code policies unless the employer can show that an accommodation would cause an undue burden on the conduct of the employer's business, such as a safety hazard.³⁰ If the policy is merely aesthetic, the employer should generally grant the accommodation. If the policy is justified by health and safety, the accommodation may be denied only if the employee's required religious clothing endangers someone else's health or safety.³¹ The most common dress code accommodations requested by observant Jews usually do not endanger anyone's health or safety.

Some Jewish employees may ask for a religious accommodation to allow them to grow a beard. If an employer allows beards for any reason, it must also allow its Jewish employees to wear beards at



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work for religious reasons.³² Similarly, a private employer whose policy is to forbid hats at work must ordinarily make an exception for a Jewish employee who asks to be allowed to wear a skullcap (“yarmulke”). In this situation, there is no clear economic burden on the employer and there is no impact on other workers, so this type of clothing-based accommodation has been held to create no more than a *de minimis* burden.³³

Employees also should not be required to perform duties that would violate their religion’s rules.³⁴ This conflict may best be addressed by offering an employee the option to switch to a different role. The employee must earn a comparable wage in the new role.³⁵ If the transfer creates an undue burden on other employees, however, the parties may need to find another accommodation.³⁶

For additional examples and information on accommodating employee’s religious beliefs, review the EEOC’s detailed [Religious Accommodation guide](#).

How is the law developing?

The U.S. Supreme Court has taken a broad approach to the protection of individual religious freedom in its past few terms.³⁷ In that time, several Supreme Court Justices have expressed their view that courts should require more of employers who claim that a particular religious accommodation would impose an undue burden on the conduct of their business. Requiring employers to demonstrate more than a *de minimis* burden would provide greater protections for employees’ religious freedom rights.³⁸ The Court has not recently heard a case addressing employees’ Title VII religious rights, but the trend towards enhanced protections for individual religious freedom may also reach the corporate workplace. A recently filed petition for Supreme Court review requests that the *TWA, Inc. v. Hardison de minimis* standard be overruled.³⁹ Careful employers should note the trend towards greater protection of religious freedom.

Similarly, the 2021 EEOC Guidance increases its emphasis on employees’ religious protections in several ways, compared to the 2008 version. Among other things, the new EEOC guidance is more explicit than its predecessor in emphasizing that:

- not every hardship an accommodation may create is “undue”, and sometimes an employer may be obligated to bear some level of hardship to protect employees’ religious rights;
- employers may not simply assert an accommodation would give rise to an undue hardship, but must grant the accommodation unless they can provide “evidence-based” reasons not to do so;
- if an employer can show evidence-based reasons that providing a full accommodation would create an undue hardship for the conduct of its business, it is still obliged to grant as much of an accommodation as possible without taking on an undue hardship;
- employers’ adverse actions against employees (or prospective employees) based on their anticipation of the employee’s need for a religious accommodation violate Title VII; and
- EEOC considers it a violation of Title VII if an employer denies an accommodation, even if the employee continues to practice their religion as if it had been granted and the employer takes no action against them. It considers the denial itself a violation without any other adverse action.

Like EEOC, the Office of Federal Contract Compliance Programs⁴⁰ recently issued new [guidance](#) on religious accommodations which enhances employees’ protections. The new language in OFCCP’s new guidance even more strongly emphasized an employer’s obligation to provide what EEOC termed an “evidence-based” justification when that employer asserts an accommodation would cause an undue hardship. OFCCP concluded that generally “actual costs” are necessary to demonstrate an undue hardship, and that such a hardship “can only be demonstrated by specific, concrete, clearly ascertainable impositions”, not



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“hypothetical or speculative costs and burdens” or “anticipated” costs.

What should employers do?

It is important for private employers to respect their employees’ right to religious exercise and offer reasonable accommodations to allow employees to practice their faith. Employers should make a sincere best effort to accommodate their employees’ religious needs. They should try to grant religious accommodations, not deny them.

Employers should inform employees that they will make reasonable religious accommodations; train staff to recognize and process religious accommodation requests; and evaluate requests fairly and equally regardless of the faith tradition followed by the requesting employee.⁴¹ Employers should also facilitate the full inclusion of their employees of faith. For instance, Gibson Dunn has recently set up a Sabbath-observers’ employee resource group to help meet the needs of and provide support for its observant Jewish employees.⁴²

Employers must make concrete efforts to accommodate their employees’ religious beliefs in all but rare circumstances.

To do so, they should

- 1) listen to their employees’ needs and understand what an accommodation can accomplish;
- 2) prepare a reasonable accommodation plan that actually meets the employee’s needs;
- 3) discuss the planned accommodation with the employee;
- 4) adjust the proposed accommodation as needed; and

- 5) implement an accommodation that satisfies the employee and does not overly burden the employer.

In sum, an employer should grant a requested religious accommodation unless doing so would create an undue hardship on the conduct of the employer’s business. If it would, the employer should seek alternatives that would protect the employee’s religion while avoiding any undue hardship.

About the Brandeis Center

The Louis D. Brandeis Center, Inc., (LDB) is an independent, nonprofit organization established to advance the civil and human rights of the Jewish people and promote justice for all. The Brandeis Center conducts research, education, and advocacy to combat the resurgence of anti-Semitism on college and university campuses. It is not affiliated with the Massachusetts University, the Kentucky law school, or any of the other institutions that share the name and honor the memory of the late U.S. Supreme Court justice.

Contact Us

Web: www.brandeiscenter.com

Phone: 202-559-9296

E-mail: info@brandeiscenter.com

Address: 1717 Pennsylvania Ave NW, Suite 1025
Washington, D.C. 20005

Facebook: [Louis D. Brandeis Center for Human Rights Under Law](https://www.facebook.com/Louis-D.-Brandeis-Center-for-Human-Rights-Under-Law)

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- 42 U.S.C.A. § 2000e-2(a).
- 42 U.S.C.A. §§2000e(j).
- Id.*
- Equal Employment Opportunity Commission, *Compliance Manual on Religious Discrimination*, available at <https://www.eeoc.gov/laws/guidance/section-12-religious-discrimination>.
- E.g. Joe Boone, *EEOC Issues New Guidance on Religious Discrimination and Accommodation of Religious Beliefs*, Strategic HR Solutions, April 11, 2021.
- See Equal Employment Opportunity Commission, *Compliance Manual on Religious Discrimination*, available at https://www.eeoc.gov/laws/guidance/section-12-religious-discrimination#_ftnref122.
- See e.g. N.Y. Exec. Law § 296 (2)(d)(iii); N.J. Stat. 10 § 5-12 (q)(3)(a).
- See *Combatting anti-Semitism in the Workplace*, Brandeis Center Webinar, January 10, 2022, available at <https://www.youtube.com/watch?v=DqaOLOlMSDU&feature=youtu.be> (26:30-28:05).
- [42 U.S.C.A. §§2000e-2\(a\)](#).
- See *Equal Employment Opportunity Commission v. Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768, 773 (2015).
- See *id.* at 775.
- See *id.* at 772.
- See e.g. Equal Employment Opportunity Commission, *Religious Garb and Grooming in the Workplace: Rights and Responsibilities*, available at <https://www.eeoc.gov/laws/guidance/religious-garb-and-grooming-workplace-rights-and-responsibilities>.
- See *Thomas v. Rev. Bd. of Indiana Emp. Sec. Div.*, 450 U.S. 707 (1981).
- E.g. Equal Employment Opportunity Commission, *Compliance Manual on Religious Discrimination*, available at https://www.eeoc.gov/laws/guidance/section-12-religious-discrimination#_ftnref137.
- E.g. *Tabura v. Kellogg USA*, 880 F.3d 544, 550 (10th Cir. 2018) citing *Ansonia Bd. of Educ. v. Philbrook*, 479 U.S. 60, 70 (1986).
- See *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63, 84 (1977). See e.g. *Ansonia Bd. of Educ. v. Philbrook* at 68–69 (reaffirming that the extent of undue hardship on the employer's business is at issue only where the employer claims that it is unable to offer any reasonable accommodation without such hardship); *E.E.O.C. v. Ilona of Hungary, Inc.*, 108 F.3d 1569, 1576 (7th Cir. 1997).
- See e.g. Equal Employment Opportunity Commission, *Religious Garb and Grooming in the Workplace: Rights and Responsibilities*, available at https://www.eeoc.gov/laws/guidance/section-12-religious-discrimination#_ftnref137; *Tabura v. Kellogg USA* at 550-551.
- See *Trans World Airlines, Inc. v. Hardison*, at 84; *Baz v. Walters*, 782 F.2d 701, 706 (7th Cir. 1986). "Undue burden" is not defined in Title VII and has been interpreted in this area of law through U.S. Supreme Court precedent. "Undue burden" in the overwhelming majority of civil rights law, such as in the Americans with Disabilities Act, is a higher burden than the "de minimis" standard outlined in *Trans World Airlines, Inc. v. Hardison*. See also *E.E.O.C. v. Firestone Fibers & Textiles Co.*, 515 F.3d 307, 317-18 (4th Cir. 2008).
- E.g. Equal Employment Opportunity Commission, *Compliance Manual on Religious Discrimination*, available at https://www.eeoc.gov/laws/guidance/section-12-religious-discrimination#_ftnref251 (citations omitted).
- See e.g. *Fraternal Ord. of Police Newark Lodge No. 12 v. City of Newark*, 170 F.3d 359, 366-67 (3d Cir. 1999); *U.S. Equal Emp. Opportunity Comm'n v. Consol Energy, Inc.*, 860 F.3d 131, 142-43 (4th Cir. 2017).
- Groff v. DeJoy*, 35 F.4th 162, 171 (3d Cir. 2022). *Petition for certiorari filed*, No. 22-174.
- Tabura v. Kellogg USA* at 550-551, citing *Ansonia Bd. of Educ. v. Philbrook* at 70.
- See *E.E.O.C. v. Ilona of Hungary, Inc.* at 1576.
- See *Tabura v. Kellogg USA* at 559; *Draper v. U.S. Pipe & Foundry Co.*, 527 F.2d 515, 519-20 (6th Cir. 1975) citing *Dixon v. Omaha Public Power Dist.*, 385 F.Supp. 1382 (D.Neb.1974); *Claybaugh v. Pacific Northwest Bell Tel. Co.*, 355 F.Supp. 1, 5 (D.Or.1973).
- California Government Code § 12940 (l)(i); N.Y. Exec. Law § 296 (10)(a-b).
- See *Smith v. Pyro Min. Co.*, 827 F.2d 1081, 1088–89 (6th Cir. 1987).
- See *Leifer v. New York State Div. of Parole*, 391 F. App'x 32, 34 (2d Cir. 2010).
- See *E.E.O.C. v. Ilona of Hungary, Inc.*, at 1576-77.
- See *Equal Emp. Opportunity Comm'n v. Aviation Port Servs., LLC*, No. CV 18-10909-FDS, 2020 WL 1550564, at *3 (D. Mass. Apr. 1, 2020).
- See *Equal Emp. Opportunity Comm'n v. Aviation Port Servs., LLC* at 2-3 (holding that terminating six employees for wearing long skirts for religious reasons violated Title VII because the long skirts did not cause a safety concern despite the employer's initial claim that short skirts were required as a safety policy).
- See *Fraternal Ord. of Police Newark Lodge No. 12 v. City of Newark*, 170 F.3d 359, 366–67 (3d Cir. 1999) (*certiorari denied*).
- See e.g. Equal Employment Opportunity Commission, *Religious Garb and Grooming in the Workplace: Rights and Responsibilities*, available at <https://www.eeoc.gov/laws/guidance/religious-garb-and-grooming-workplace-rights-and-responsibilities>.
- See *Thomas v. Rev. Bd. of Indiana Emp. Sec. Div.*, 450 U.S. 707 (1981).
- See *Draper v. U.S. Pipe & Foundry Co.* at 519.
- See *E.E.O.C. v. Firestone Fibers & Textiles Co.*, 515 F.3d 307, 317-18 (4th Cir. 2008); but cf. *Groff v. DeJoy* at 179 (Hardiman, J. dissenting) (inconveniencing a requesting employee's coworkers alone should not constitute undue hardship).
- Carson v. Makin*, 596 U.S. ____ (2022); *Kennedy v. Bremerton*, 597 U.S. ____ (2022); *Fulton v. City of Philadelphia*, 593 U.S. ____ (2021).
- See *Small v. Memphis Light, Gas & Water*, 141 S.Ct. 227 (2021) (Gorsuch, J., joined by Alito, J., dissenting from the denial of certiorari); *Patterson v. Walgreen Co.*, 140 S.Ct. 685 (2020) (Alito, J., joined by Thomas and Gorsuch, JJ., concurring in the denial of certiorari).
- Groff v. DeJoy*, No. 22-174.
- OFCCP oversees employers which are federal contractors and subcontractors, which it estimates include about 20% of the U.S. workforce. Statement of Jenny R. Yang, Director, Office of Federal Contract Compliance Programs, before the Subcommittee on Civil Rights and Human Services, Committee on Education and Labor, U.S. House of Representatives, April 27, 2022, available at [https://edlabor.house.gov/imo/media/doc/DOL-OFCCP%20\(Director%20Yang\)%20Testimony%20Final-4-27%20Ed%20%20Labor%20Civil%20Rights%20Subcommittee%20Hearing.pdf](https://edlabor.house.gov/imo/media/doc/DOL-OFCCP%20(Director%20Yang)%20Testimony%20Final-4-27%20Ed%20%20Labor%20Civil%20Rights%20Subcommittee%20Hearing.pdf).
- See Equal Employment Opportunity Commission, *Best Practices for Eradicating Religious Discrimination in the Workplace*, available at <https://www.eeoc.gov/laws/guidance/best-practices-eradicating-religious-discrimination-workplace>.
- See *Gibson Dunn Sabbath Affinity Group Navigates Faith*, BigLaw, available at <https://www.law360.com/pulse/articles/1518576/gibson-dunn-sabbath-affinity-group-navigates-faith-biglaw>.
- See *Toledo v. Nobel-Sysco, Inc.*, 892 F.2d 1481, 1489–90 (10th Cir. 1989); *Brown v. Polk Cnty., Iowa*, 61 F.3d 650, 655 (8th Cir. 1995); *Brown v. Gen. Motors Corp.*, 601 F.2d 956, 961