



# AGUDATH ISRAEL OF AMERICA LEGAL SUPPORT SERVICES

42 Broadway, New York, NY 10004 • (212) 797-9000 • Fax (646) 254-1650

## **A Brief Guide To Religious Rights in the Workplace**

Title VII of the federal Civil Rights Act of 1964 prohibits discrimination against employees on the basis of their religious beliefs. The law governs all aspects of employment, from hiring practices to the payment of pensions, and requires employers to “reasonably accommodate” an employee’s religious observances as long as such accommodation does not cause the employer “undue hardship.”

In other words, employers have a responsibility to offer employees a reasonable method of fulfilling their duties that is not in conflict with their religious principles. There are, however, limits to this responsibility. Employers are not required to incur undue hardship for the sake of such accommodation.

The standard of “undue hardship” varies with the nature of the business and the type of duties required of the employee. The phrase is not defined by the statute, but the Supreme Court has ruled that employers can claim undue hardship if the accommodation of an employee causes any financial loss beyond normal administrative costs. An employer is also not required accommodate one employee’s religious observances by assigning another employee a less desirable shift or task than that to which he is entitled under union regulations or any other bona fide seniority system.

Nevertheless, the burden of proving hardship is on the employer. In order to claim that a reasonable accommodation is not possible without significant complication or cost, an employer must demonstrate the specific effect of the accommodation on the business.

A common example of a reasonable accommodation would be the use of flexible scheduling in order to enable employees to avoid work on, and for a reasonable time before, Shabbos or Yom Tov.

In addition, employers must attempt to accommodate employees who, for religious reasons, are required to maintain a particular manner of dress—the wearing of a yarmulke or clothes that meet the requirements of *tznius*—assuming accommodation is possible without undue hardship to the employer.

Employees have a responsibility to help find a reasonable compromise between their job duties and the strictures of their beliefs. For example, an employee who wishes to take time off for *Yomim Tovim* or leave work early on *erev Shabbos* might suggest a work schedule that allows him to make up the time on other days.



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Some states have passed anti-discrimination laws that go beyond the federal law and the way the courts have defined its requirement of undue hardship. New York State, for example, forbids an employer from imposing on an employee “any terms or conditions that would require such person to violate or forego a sincerely held practice of his or her religion” unless the employer can show that to provide accommodation would result in “significant difficulty or expense.”

Federal law does not require an employer to compensate an employee for time missed due to adherence to their beliefs. Generally, an employer has the following options:

- He can work with the employee to determine a mutually convenient time to make up for missed work;
- He can charge the time missed to the employee’s vacation leave;
- He can withhold the employee’s pay for the time missed.

In any case, the choice is the employer’s, not the employee’s. However, New York State requires that employees be allowed to utilize vacation leave time for absences due to religious observances

Although there are times when it is necessary and appropriate to explore one’s legal options, it must be emphasized that in the majority of cases conflicts can and should be resolved through amicable discussions with employers. Ultimately, it is the employer’s willingness to find a solution that determines whether accommodations can be made. A friendly and positive relationship with an employer will go a long way towards ensuring that an acceptable solution is found.

## **Common Questions & Answers**

**Q: Do I have a responsibility to inform a prospective employer of possible work and religious observance conflicts during an interview?**

**A:** No. The law expressly forbids the consideration of an employee’s religious practices for the purpose of hiring decisions. Consequently, a job applicant has no responsibility to volunteer information about his religious observances before a decision is made.

That being said, employers can indirectly determine the extent to which a candidate’s observances may interfere with his or her job duties. For example, an interviewer may inform the candidate of the required work hours and ask if he expects to be available at those times. In such a case, an interviewee should make clear exactly when he will be unavailable and explain that his unavailability is due to



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his religious convictions. Failure to do so can result in the forfeiture of his legal right to accommodation.

Of course, once the job has been offered and accepted, an employee should disclose the constraints of his religious obligations as soon as possible, thus allowing the employer sufficient time to attempt to find a reasonable solution to any conflict.

**Q: Must an employer provide me with ample time off on Fridays to get home early to prepare for Shabbos?**

**A:** New York State law gives an employee the right to be absent on his Sabbath or religious holiday “including a reasonable time prior and subsequent thereto for travel between his place of employment and his home.” Although Federal law does not specifically address this issue, it does require “reasonable accommodation,” which would generally include allowances for adequate travel time on *erev Shabbos* or *erev Yom Tov*.

The amount of time considered “reasonable” can vary depending on considerations such as traffic and weather conditions. It is stretching the definition of “reasonable accommodation”, however, to insist on the right to go home in order to commence preparations for Shabbos that could easily have been made at an earlier time.

**Q: I am newly observant and have previously worked on Shabbos and Yom Tov. Does my employer still have a legal responsibility to find an accommodation?**

**A:** Yes. The employer’s responsibility extends to any sincerely held religious belief, regardless of how recently it was adopted. There have been cases in which employers have attacked the sincerity of an employee’s beliefs, but in general, the courts have only accepted such arguments if it could be shown that the employee’s practices were inconsistent and used primarily as a means of avoiding certain work obligations.

**Q: My employer refuses to make a reasonable attempt to accommodate my religious needs. What are my options?**

**A:** If you feel your employer is not making a good faith effort to address your concerns, there are several things you can try. Firstly, Agudath Israel of America can provide you with a letter for your employer, explaining your rights and your employer’s obligations under the law. In many cases, employers are simply unaware of their legal



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obligations to accommodate religious observance. Presenting your employer with this sort of non-threatening legal letter may well be all you need to do.

If necessary, Agudath Israel may be able to refer you to a private attorney to represent you in communications—and possible litigation—with your employer. The threat of possible litigation can sometimes be effective. In some cases it may be appropriate to report discrimination to the Federal Equal Employment Opportunity Commission (EEOC), or to your state’s human rights or civil rights division. We recommend discussing your situation with an attorney before filing a complaint.

**Q: I have been subjected to religious harassment at work. What are my rights?**

**A:** Federal law protects an employee’s right to work in an environment “free of discriminatory intimidation, ridicule, and insult.” This means that employers can be held liable for the actions of employees who subject colleagues to abusive behavior. However, the courts have not interpreted random one-time incidents to be sufficient to create an abusive or hostile work environment. Objectionable behavior must generally be repeated or habitual in order to be legally actionable, except in cases of extreme severity.

**Q: I am considering filing a complaint or taking other legal action against my employer. Are there any drawbacks I should be aware of?**

**A:** Filing a charge with the EEOC or otherwise pursuing legal action against an employer is a serious step and not without its drawbacks. Most employees would be well-advised to view such actions as a last resort to be considered only after serious attempts to discuss their concerns with their employers have been rebuffed.

Bear in mind that filing a charge does not guarantee a favorable judgment. Many cases of this type are ultimately decided in favor of the employer. Even where there has been a legal finding by a government agency that discrimination occurred, you still may need to retain a private attorney to compel your employer to accommodate you.

Consider, too, that a judgment in the employee’s favor may, in some cases, create hostile feelings in the employer. Although outright retaliation is of course illegal, there are subtle forms of retaliation that are hard to prove but can nevertheless make life difficult for an employee who is no longer viewed as a team player.

Obviously, there are times when legal action may be necessary, but that should be determined only after consultation with an attorney.



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**Q: I have recently been fired as a result of my religious beliefs. What should I do now?**

**A:** If you are interested in filing a complaint and/or a lawsuit, you should sit down with an attorney who can determine whether you have a valid cause for legal action. Regardless of whether you bring a suit, you should begin looking for another job as soon as possible. Even if you ultimately prevail in court, litigation can be costly and, in many cases, quite lengthy.

### **A Summary of New York State's Religious Accommodation Law**

(New York State Executive Law §296 (10))

- An employer may not discriminate against an employee in hiring or promotion by imposing upon the employee “any terms or conditions that would require such person to violate or forego a sincerely held practice of his or her religion, including but not limited to the observance of any particular day or days or any portion thereof as a Sabbath or other holy day in accordance with the requirements of his or her religion.”
- An employee generally has the right to be absent from his place of employment during his or her Sabbath or other holy day, “including a reasonable time prior and subsequent thereto for travel between his or her place of employment and his or her home.”
- When an employee does take time off to observe his Sabbath or holiday, the employer must, wherever practicable, work out with the employee a “mutually convenient time” when the hours missed because of religious observance will be made up, or charge the religious observance day to the employee's vacation leave. The employer must permit an employee to utilize leave (other than sick leave) for religious observances. Only where it is not practicable to arrange for make-up time and where the employee has used up his or her leave time may the employer dock the employee's pay for the time missed.
- An employer is not required to accommodate the religious observances of employees only if it can show either that to do so would cause it “undue economic hardship” (which the law defines as one requiring “significant expense or difficulty”) or that the accommodation would result in the inability of the employee to perform the essential functions of the position in which he or she is employed.