

RELIGIOUS DISCRIMINATION IN THE WORKPLACE

What is the federal law relating to religious dress and grooming in the workplace?

Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*, as amended ("Title VII"), prohibits employers with at least 15 employees (including private sector, state, and local government employers), as well as employment agencies, unions, and federal government agencies, from discriminating in employment based on race, color, religion, sex, or national origin. It also prohibits retaliation against persons who complain of discrimination or participate in an EEO investigation. With respect to religion, Title VII prohibits among other things:

- disparate treatment based on religion in recruitment, hiring, promotion, benefits, training, job duties, termination, or any other aspect of employment (except that "religious organizations" as defined under Title VII are permitted to prefer members of their own religion in deciding whom to employ);
- denial of reasonable accommodation for sincerely held religious practices, unless the accommodation would cause an undue hardship for the employer;
- workplace or job segregation based on religion;
- workplace harassment based on religion;
- retaliation for requesting an accommodation (whether or not granted), for filing a discrimination charge with the EEOC, for testifying, assisting, or participating in any manner in an EEOC investigation or EEO proceeding, or for opposing discrimination.

OTHER RESOURCES RELATED TO THIS TOPIC

- ***Questions and Answers About Employer Responsibilities Concerning the Employment of Muslims, Arabs, South Asians, and Sikhs***
<http://www.eeoc.gov/eeoc/publications/backlash-employer.cfm>
- ***Questions and Answers About the Workplace Rights of Muslims, Arabs, South Asians, and Sikhs Under the EEO Laws***
<http://www.eeoc.gov/eeoc/publications/backlash-employee.cfm>
- ***Questions and Answers on Religious Discrimination in the Workplace***
http://www.eeoc.gov/policy/docs/qanda_religion.html
- ***Best Practices for Eradicating Religious Discrimination in the Workplace***
http://www.eeoc.gov/policy/docs/best_practices_religion.html
- ***Compliance Manual on Religious Discrimination***
<http://www.eeoc.gov/policy/docs/religion.html>
- ***Guidelines on Discrimination Because of Religion, 29 C.F.R. Part 1605***
<http://www.gpo.gov/fdsys/pkg/CFR-2013-title29-vol4/xml/CFR-2013-title29-vol4-part1605.xml>
- ***Guidelines on Religious Exercise and Religious Expression in the Federal Workplace*** (Aug. 14, 1997),
<http://clinton2.nara.gov/WH/New/html/19970819-3275.html>

¹ For further discussion about the definition of "religion" under Title VII, see *EEOC Compliance Manual on Religious Discrimination* (2008) at 12-I-A-1.

SCENARIOS

1. Afizah is a Muslim woman who has been employed as a Financial Aid counselor at a college for six months. The college has a dress code prohibiting tellers from wearing any head coverings. Although Afizah has not previously worn a religious headscarf to work at the bank, her personal religious practice has been to do so during Ramadan, the month of fasting that falls during the ninth month of the Islamic calendar. The fact that Afizah adheres to the practice only at certain times of the year does not mean that her belief is insincere. (*EEOC v. Ilona of Hungary, Inc.*, 108 F.3d 1569, 1575 (7th Cir. 1997); *EEOC v. IBP, Inc.*, 824 F. Supp. 147, 151 (C.D. Ill. 1993)).
2. Aatma, an applicant for an adjunct professor position who is an observant Sikh, wears a chunni (religious headscarf) to her job interview. The interviewer does not advise her that there is a dress code prohibiting head coverings, and Aatma does not ask whether she would be permitted to wear the headscarf if she were hired. There is evidence that the manager believes that the headscarf is a religious garment, presumed it would be worn at work, and refused to hire her because the company requires adjuncts and residential faculty to wear a uniform with no additions or exceptions. This refusal to hire violates Title VII, even though Aatma did not make a request for accommodation at the interview, because the employer believed her practice was religious and that she would need accommodation, and did not hire her for that reason. Moreover, if Aatma were hired but then instructed to remove the headscarf, she could at that time request religious accommodation.
3. Nasreen, a Muslim applicant for an airport ticket counter position, wears a headscarf, or hijab, pursuant to her religious beliefs. Although Nasreen is qualified, the manager fears that customers may think an airport employee who is identifiably Muslim is sympathetic to terrorist hijackers. The manager, therefore, offers her a position in the airline's call center where she will only interact with customers by phone. This is religious segregation and violates Title VII. As a best practice, managers and employees should be trained that the law may require making a religious exception to an employer's otherwise uniformly applied dress or grooming rules, practices, or preferences. They should also be trained not to engage in stereotyping about work qualifications or availability based on religious dress and grooming practices. (See generally *EEOC v. Alamo Rent-A-Car, LLC*, 432 F. Supp. 2d 1006 (D. Ariz. 2006)).
4. Mirna alleges she was terminated from her job in warehousing because of her religion (Pentecostal) after she told her supervisor that her faith prohibits her from wearing pants, as required by the company's new dress code. Mirna requested as an accommodation to be permitted to continue wearing a long but close-fitting skirt. Her manager replies that the dress code is essential to safe and efficient operations on the warehouse floor, but there is no evidence regarding operation of any equipment or machinery at issue to show that close-fitting clothing like that worn by Mirna poses a safety risk. Because the evidence does not establish that wearing pants is truly necessary for safety, the accommodation requested by Mirna does not pose an undue hardship.
5. Salma, an office employee, requests that she be permitted to wear her religious headscarf as an exception to her department's new uniform policy. Joe, the manager, refuses. Salma contacts the human resources department at the District office. Despite Joe's objections, the human resources department instructs him that in this instance, there is no undue hardship and that he must grant the request. Motivated by reprisal, Joe shortly thereafter gives Salma an unjustified poor performance rating and denies her request to attend training that he approves for her co-workers. This violates Title VII.