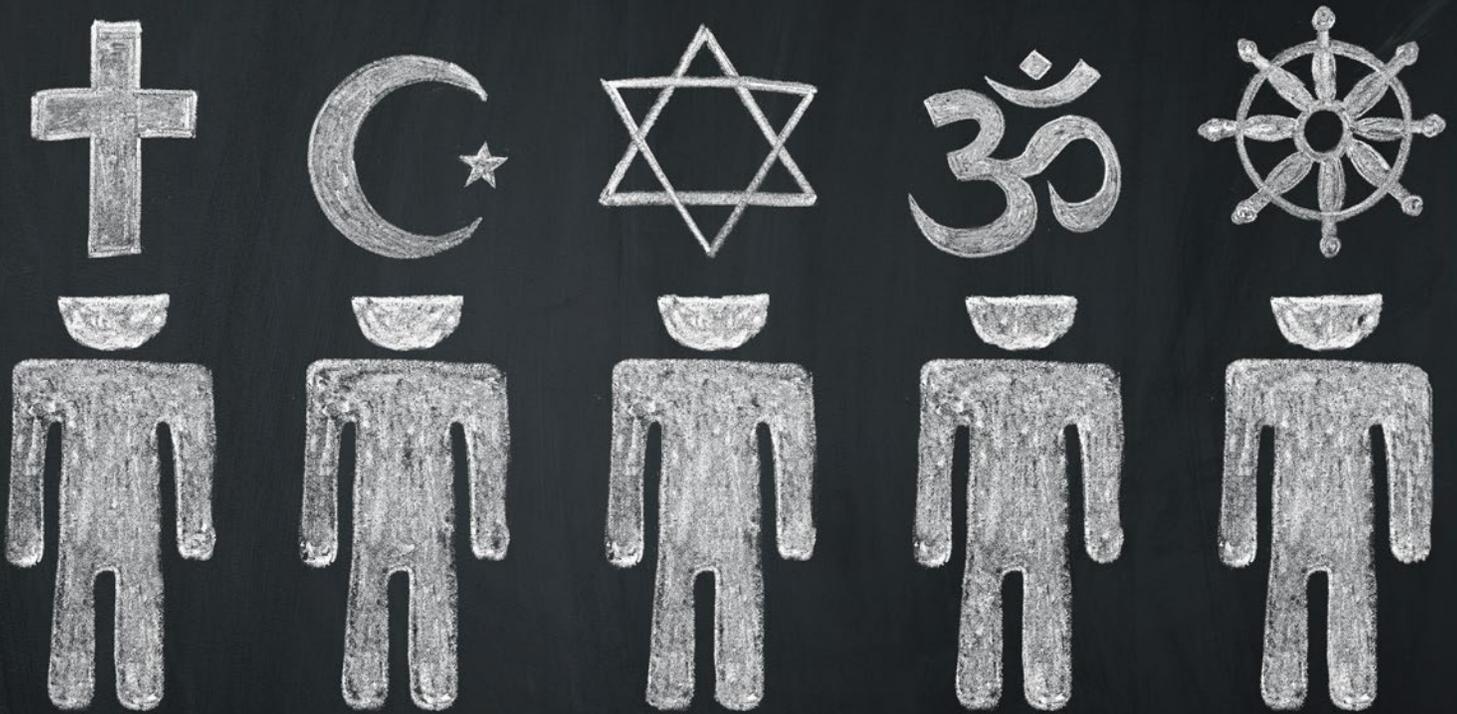


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A NEWSLETTER FOR CLIENTS OF TROJAN PROFESSIONAL SERVICES, INC.



Religion in the Workplace

by Rebecca Boartfield

A good rule of thumb for employers has always been to treat all employees the same, applying the same rules, no one better or differently than others.

It's a good rule, and it seems fair enough. Adhering to this would avoid legal problems, right? Not necessarily. Sometimes, as strange as it sounds, you will be required to treat some employees differently and perhaps more generously than you would other employees. One example is religion in the workplace.

Do you know what to do when an employee says, "I can't work on Saturday because it's against my religion?" Or, "I must wear this head scarf due to my religious beliefs?" Or, "I cannot write and mail out those holiday cards because it is against my religion?" Or, "These tattoos are part of my religion?"

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If you think the answer is to ignore these requests, you would be wrong. Given the laws and protections in place for religion, a statement like this from your employee is only the very beginning of what could be a more complex issue than you imagined.

Religion and the Law

The background starts with Title VII of the Civil Rights Act of 1964 which protects people from discrimination on the basis of race, sex, color, national origin, and religion. This means employers cannot treat employees who may fall into one of the above categories, known as protected classes, less favorably than other employees not in those groups.

The law also provides that employers give “**reasonable accommodation**” to employees based on some of these protections; for example, an employee who has “sincerely held” religious beliefs. The reasonable accommodation provision means an employee might get an exception to a rule of some kind or be treated more favorably than other employees. Religious beliefs must be “sincerely held” to qualify for reasonable accommodation under the law—but determining whether or not the beliefs are “sincerely held” becomes somewhat subjective.

Definition of Religion

The definition of religion under Title VII is very broad. Specifically, it includes “all aspects of religious observance and practice as well as belief.” Religions that are traditional (such as Christianity, Judaism, Islam, Hinduism, and Buddhism) and non-traditional or new (such as Scientology, The Church of Body Modification, and Kemeticism) are all covered by these laws.

Religion does not have to include a formal church or sect, it does not have to be subscribed by a large population of people, and sometimes it may seem illogical or unreasonable to others. A belief is “religious” for Title VII purposes if it is “religious in the person’s own scheme of things,” and if it is “a sincere and meaningful belief that occupies in the life of its possessor a place parallel to that filled by ... God.”

Religious beliefs include theistic beliefs as well as non-theistic moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views. Religion typically concerns “ultimate ideas” about “life, purpose, and death.” Social, political, or economic philosophies, as well as mere personal preferences, are not “religious” beliefs.

Being able to accurately judge whether or not an employee has “sincerely held” religious beliefs in the real world is not black and white. There are some factors to consider, but they should not be held as the “Gold Standard.”

Here are some examples:

- Whether the employee has behaved in a manner markedly inconsistent with the professed belief;
- Whether the accommodation sought is a particularly desirable benefit that is likely to be sought for secular reasons;
- Whether the timing of the request renders it suspect (e.g., it follows an earlier request by the employee for the same benefit for secular reasons); and/or
- Whether the employer otherwise has reason to believe the accommodation is not sought for religious reasons.

“Reasonable Accommodation”

Accommodation of a person’s religious beliefs will need to occur when the person’s religious beliefs or practices conflict with the employer’s requirement of that individual. Providing “reasonable accommodation” is any adjustment to the work environment that will allow the employee to comply with his/her religious beliefs. Thus, accommodation may entail the employer making a special exception to policies or job-related expectations for the religious individual. Accommodating religious beliefs for an employee can encompass three areas of the workplace: work schedule, job duties, and appearance requirements.

Examples of reasonable accommodation may include:

- Changing scheduled work hours to allow an employee to participate in religious observances;
- Modifying dress standard requirements;
- Allowing voluntary substitutes or swaps in staff;
- Switching one paid holiday for another.

The term “reasonable accommodation” does not have a straight forward definition. The EEOC has stated that “reasonable” will be determined on a case-by-case basis. Therefore, what is a reasonable accommodation for one employee may not be for another. The ultimate goal must be eliminating the conflict between the employer’s practices and the individual’s religious beliefs. If this can be done, then it must. Simply reducing the conflict will not be acceptable if another solution provides for complete elimination of the conflict.

The employer is not stuck with accepting the accommodation most preferred by the employee if more than one option is available. In doing so, however, the employer must be able to show that other employees did not receive a more favorable accommodation for purposes unrelated to religious beliefs or practices.

Follow these steps to process a request for an accommodation and reduce the risk of lawsuits:

- 1 Engage in a conversation** to discuss the employee's particular needs.
- 2 Be mindful of requests** for additional information or supporting data of the accommodation and/or sincerity of the beliefs. Asking for too much can lead to the appearance of retaliation or harassment or be seen as a method for avoiding the accommodation entirely.
- 3 If an accommodation is not immediately apparent**, actively discuss with the employee the accommodations that might be effective if an accommodation is not immediately apparent.
- 4 Check in periodically with the employee if an accommodation is made**, to ensure his/her satisfaction with the arrangement.
- 5 Document everything** just in case you're challenged by a claim or lawsuit later.

Undue Hardship

The EEOC allows an employer to deny a request for accommodation if it would result in "undue hardship" to the employer's business. Here again is a concept not easily defined and certainly not simple to apply. When claiming "undue hardship," the burden is fully on the employer to justify and prove if later challenged.

For a religious accommodation to cause "undue hardship" it must impose "more than cost." This determination can only occur on a case-by-case basis and **may include such factors as:**

- The type of workplace,
- The nature of the employee's duties,
- The identifiable cost of the accommodation in relation to the size and operating costs of the employer, and
- The number of employees who will need a particular accommodation.

Any employer claiming hardship and who is challenged in that decision must establish real data as to the cost or the disruption that would be caused if the employer satisfied the accommodation. The employer cannot rely on hypothetical information; only objective, concrete, fact-specific considerations when claiming "undue hardship."

Conclusion

Accommodating and/or properly handling religion-related issues, as well as other similar protected classes, can create challenges in the workplace. It is a growing and evolving area of employment compliance. This is particularly true in an environment in which claims against employers are rising: setting a trend for future years to come.

If faced with an employee requesting an accommodation or refusing to perform a job duty, based on workplace protections, know that you can't ignore it, disregard it, or otherwise take adverse action against him/her, unless you want liability to hit you square in the face. Consult with compliance professionals to get the right guidance on how to manage the complexity of religious protections and accommodation. Don't let this blindsides you and wreak havoc on your most valuable asset — **your business!**



Rebecca Boartfield is a Human Resources and Employment Compliance Consultant with Bent Ericksen & Associates, a national Human Resources and Employment Compliance Consulting firm. An HR professional for more than fifteen years, Rebecca's specialty is employment compliance and human resources management. She has worked in

a variety of management and consulting capacities, including speaking, presenting, and training.

FMI: rebecca@bentericksen.com, 541-685-9003, or www.bentericksen.com.

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Ask the Consultant

Q: If a patient has a root canal done with access through an existing crown, what code is used to bill for a final restoration of the access hole? Is it a build-up or a filling?

Q: What is the code for billing the repair to the crown after the specialist completes the root canal therapy?

A: For a root canal closure you should bill a single surface composite filling. **D2391 Resin Based Composite** is the code you should use. It is misleading to bill a core buildup D2950 in conjunction with a crown repair when the crown has not been removed.

Response provided by **Kathleen Johnson**,
President of Kathleen Johnson Consulting.

You have questions? We have answers!

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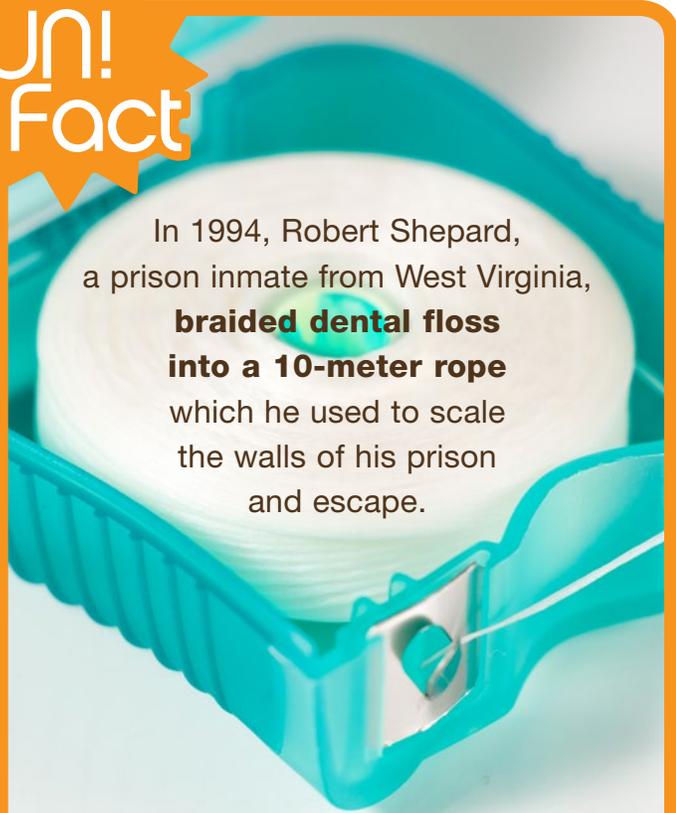
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Quote-Worthy

“ Before anything else, preparation is the key to success. ”

— Alexander Graham Bell

FUN! Fact



In 1994, Robert Shepard, a prison inmate from West Virginia, **braided dental floss into a 10-meter rope** which he used to scale the walls of his prison and escape.

The inmate evaded capture for five weeks only to be arrested robbing a drugstore.
It's unclear if he was stealing dental floss.

Check out trojanonline.com for some of our favorite "classic" Trojan Today articles:

3/14/19

The Challenges and Rewards of Multiculturalism

David E. Nelson

(First published: 4/2011)

3/22/19

Managing Success

Dale Tucci

(First published: 2/2013)

Service Savvy

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Please contact our Software Support Department at 800-451-9723 ext. 1 to assist you with setting this up and to answer any questions you may have.

***There still are a few Dental Practice Management Systems that do not integrate with downloads. We will continue to work on getting these last few companies integrated.*

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Dental Team Training Front Office Rocks

Presented by Laura Hatch

MARCH 29, 2019

San Diego Marriott Mission Valley
San Diego, CA

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I call them all the time now with tons of questions. They are always there to help ...

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I highly recommend them!!"

— Agnieszka R.



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