

# HR COMPLIANCE OVERVIEW



## Title VII Religious Discrimination and Accommodations

Title VII of the Civil Rights Act (Title VII) prohibits employers with 15 or more employees from discriminating on the basis of an applicant's or employee's protected trait, including religion. Title VII also requires employers to reasonably accommodate an applicant's or employee's sincerely held religious beliefs or practices. These Title VII requirements are enforced by the U.S. Equal Employment Opportunity Commission (EEOC).

Failure to comply with Title VII's religious discrimination and accommodation requirements can have significant repercussions for employers, including costly litigation and claims and poor employee morale. Therefore, it is critical for employers to comply with their requirements under the law and to foster an inclusive and accommodating workplace. This Compliance Overview provides a high-level summary of an employer's obligations with respect to religious discrimination and accommodation requirements under Title VII.

## Highlights

Title VII prohibits employers from taking any of the following actions:

- Discriminating against individuals on the basis of their sincerely held religious beliefs;
- Failing to prevent religious harassment in the workplace;
- Retaliating against an individual for asserting their legal rights; and
- Failing to accommodate an individual's sincerely held religious beliefs.

### LINKS AND RESOURCES

- EEOC religious discrimination [overview](#)
- EEOC [fact sheet](#) on religious discrimination
- EEOC religious discrimination [compliance manual](#)

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## Overview of Title VII Religious Discrimination

### Covered Entities

#### Covered Employers

In general, Title VII, including its religious discrimination and accommodation requirements, applies to most private employers with **15 or more employees** for each working day in each of 20 or more calendar weeks in the current or preceding calendar year.

However, even if an employer is not covered by Title VII, it may be subject to other state or local laws that prohibit workplace discrimination on the basis of religion. Therefore, employers should carefully review the laws in their state and municipality to ensure compliance with all applicable laws.

#### Exceptions

Title VII's religious discrimination provisions do not apply to any **religious corporation, association, educational institution or society** with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution or society of its activities. The religious organization exception is not limited to jobs involved in the specifically religious activities of the organization. In addition, the exception allows religious organizations to prefer to employ individuals who share their religion, defined not by the self-identified religious affiliation of the employee, but broadly by the employer's religious observances, practices and beliefs.

### Covered Individuals

Title VII's religious discrimination and accommodation provisions generally protect applicants and employees (including former employees) employed within the U.S. or who are U.S. citizens working abroad for U.S. employers and U.S.-controlled companies. However, such provisions do not apply to:

- Foreign nationals working abroad for U.S.-controlled companies;
- U.S. citizens working abroad for non-U.S.-controlled companies;
- Independent contractors; and
- Employees who serve in a ministerial role.

### Protected Religion

Title VII defines religion broadly and includes all aspects of religious observance and practice, as well as belief. Specifically, religion includes organized religions, such as Christianity, Judaism, Hinduism, Sikhism and Buddhism, as well as religious beliefs that are new, uncommon, not part of a formal church or sect, only subscribed to by a small number of people, or that seem illogical or unreasonable to others. Title VII also protects atheism and other lack of religious belief.

An individual's religious beliefs do not need to be confined in either source or content to traditional or parochial concepts of religion. However, they do need to be sincerely held in order to be protected. Nonetheless, according to EEOC guidance, whether a religious belief is "sincerely held" is generally presumed or easily established. Therefore, most religious beliefs will satisfy this requirement.

### Prohibited Discrimination

Under Title VII, covered employers are prohibited from doing any of the following on the basis of an individual's religion:

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- Discriminating with respect to compensation, terms, conditions or privileges of employment;
- Discharging or failing or refusing to hire;
- Limiting, segregating or classifying the individual in any way that would deprive them of employment opportunities or otherwise adversely affect their status as an employee; and
- Printing or publishing or causing to be printed or published any notice or advertisement relating to employment or admission to, or employment in, any program established to provide apprenticeship or training, indicating any preference, limitation, specification or discrimination based on religion.

## Exceptions

However, employers may:

- Apply different standards of compensation, or different terms, conditions or privileges of employment pursuant to a **bona fide seniority** or **merit system**, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of religion;
- Give or act upon the results of any **professionally developed ability test** if such test, its administration or action upon the results is not designed, intended or used to discriminate based on religion; and
- Hire and employ employees or admit or employ any individual in an employer apprenticeship or training or retraining program on the basis of their religion where religion is a **bona fide occupational qualification** reasonably necessary to the normal operation of the business.

## Prohibited Retaliation

Employers are prohibited from **retaliating** against an individual because they:

- Opposed religious discrimination;
- Filed a charge of religious discrimination; or
- Testified, assisted or otherwise participated in an investigation or proceeding relating to a claim of religious discrimination.

## Prohibited Harassment

Title VII also prohibits **harassment** based on an individual's religion. Unlawful religious harassment is unwelcome conduct based on religion where:

- Enduring the offensive conduct becomes a condition of continued employment; or
- The conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile or abusive.

Examples of harassment based on religion may include the use of religious epithets or offensive comments based on an individual's religion (including atheism or lack of religious belief), religious practices or religious dress as well as harassment based on religious stereotypes and because of a request for, or receipt of, a religious accommodation. Religious harassment may also include explicitly or implicitly coercing employees to engage in religious practices at work.

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Employers are automatically liable for harassment by a supervisor that results in a negative employment action, such as termination, failure to promote or hire, and loss of wages. If the supervisor's harassment results in a hostile work environment, employers may avoid liability only if they can provide that they:

- Reasonably tried to prevent and correct the harassing behavior; and
- The employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer.

Employers may also be liable for harassment by non-supervisory employees or non-employees over whom the employer has control if the employer knew, or should have known, about the harassment and failed to take prompt and appropriate corrective action.

## Reasonable Accommodation Requirements

Title VII also requires covered employers to provide **reasonable accommodations** for an employee's or applicant's sincerely held religious belief, observance or practice, unless doing so would impose an undue hardship on the employer. A reasonable religious accommodation is any adjustment to the work environment that will allow the employee to practice their religion. Examples of religious accommodations include but are not limited to:

- Flexible scheduling to accommodate religious obligations and observance;
- Voluntary shift substitutions or swaps;
- Job reassignments;
- Lateral transfers;
- Permitting employees to engage in religious expression at work; and
- Exceptions to dress or grooming rules (e.g., allowing employees to wear a cross necklace, hijab, turban, yarmulke or kippah, abaya, or ash mark, or have facial hair or carry a kirpan).

Whether a particular accommodation imposes an undue hardship on an employer's business depends on the individual circumstances of the employer, their business and the employee. Factors considered in determining whether an undue hardship exists include:

- More than de minimis increased costs;
- Reduced productivity;
- Infringements on other employees' job rights, such as accommodations that reasonably threaten to create a hostile work environment or create a substantial risk to workplace safety, health or security; or
- Conflicts with a legally mandated federal, state or local security requirement.

However, coworker objections based on hostility to religion or customer fears or prejudices are **not** undue hardship.

Further, although employers are not required to engage in a discussion with an employee before making a determination on an accommodation request, it may be beneficial to do so. Such interaction generally involves the employer and employee sharing information needed to assess an accommodation request. If the accommodation request does not provide sufficient information for the employer to make a determination, and the employer has a bona fide doubt as to the basis for the accommodation request, the employer may consider making a limited inquiry into the facts and circumstances of the employee's claim that the belief or practice at issue is religious and sincerely held, and that the belief or practice gives rise to the need for the accommodation.

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## Enforcement and Penalties

Individuals alleging violations of Title VII’s religious discrimination and accommodation requirements may initiate an action against an employer by filing a charge of discrimination with the EEOC. If there is a local or state law similar to Title VII, individuals may be required to file a charge with the state or local agency that enforces the law, and the EEOC may work with the agency to investigate and resolve the charge. Under Title VII, individuals have **180 days** from the date the alleged violation took place to file a charge with the EEOC. The filing deadline is extended to **300 days** if a state or local agency enforces a state or local law similar to Title VII. Individuals must file an EEOC charge before they may file a lawsuit in federal court.

If a court determines that an employer violated Title VII, the employer may be subject to the following penalties:

- Injunctive relief;
- Back pay;
- Reinstatement or front pay;
- Compensatory and punitive damages; and
- Attorney fees and costs.

## Employer Takeaways

Employers that fail to comply with Title VII’s religious discrimination and accommodation requirements may be subject to costly legal penalties and an erosion of positive employee relations. Therefore, employers should ensure that they are aware of and in compliance with all of their obligations under the law.