

Religion or Belief in the Workplace:

A Guide for Employers Following Recent European Court of Human Rights Judgments



What is the purpose of this publication?

In January 2013, the European Court of Human Rights (the Court) published its judgment in four combined cases about religious rights in the workplace. The judgment affects employer responsibilities for policies and practices affecting religion or belief rights in the workplace, the rights of employees (including job applicants) and the rights of customers or service users. This guide aims to help employers understand how to comply with the Court's judgment when recognising and managing the expression of religion or belief in the workplace.

Who is it for?

This guide is useful for employers, employees, service providers, customers, public authorities and their service users.

What is inside?

This guide covers:

- How will an employer know if a religion or belief is genuine?
- What kind of religion or belief requests will an employer need to consider?
- What steps should an employer take to deal with a request?
- What questions should employers ask to ensure their approach to a religion or belief request is justified?
- Do employees now have a right to promote their particular religion or belief when at work?
- Can employees refrain from work duties?
- Useful examples

When was it published?

This guide was first published in February 2013. It was updated in March 2014.

Why has the Commission produced it?

The Equality and Human Rights Commission has responsibility for the promotion and enforcement of equality and human rights laws in England, Scotland and Wales.

What formats are available?

This Guide is available as a PDF file and as a Microsoft Word file from www.equalityhumanrights.com.

Introduction

In January 2013, the European Court of Human Rights (the Court) published its judgment in four combined cases about religious rights in the workplace. The cases are: *Eweida and Chaplin v. the United Kingdom* and *Ladele and McFarlane v. the United Kingdom*. The cases were brought by Christians, but the implications of the judgment apply to employees with any religion or belief, or none. The judgment affects employer responsibilities for policies and practices affecting religion or belief rights in the workplace, the rights of employees (including job applicants) and the rights of customers or service users.

This good practice guide aims to help employers understand how to comply with the Court's judgment when recognising and managing the expression of religion or belief in the workplace. It specifically addresses the following questions:

- How will an employer know if a religion or belief is genuine?
- What kind of religion or belief requests will an employer need to consider?
- What steps should an employer take to deal with a request?
- What questions should employers ask to ensure their approach to a religion or belief request is justified?
- Do employees now have a right to promote their particular religion or belief when at work?
- Can employees refrain from work duties?

At the end of this document, there are a number of examples of requests and how employers might deal with them.

The Equality and Human Rights Commission supports individuals' right to freedom of thought, conscience and religion, and to conditional protection of the right to express religion or belief. It seeks to promote a balanced approach to recognising and managing religion or belief issues at work and to help employers and employees find reasonable solutions, wherever possible, and avoid complex, costly and damaging litigation. It is in the interests of all parties to try to find reasonable solutions through discussion, mutual respect and, where practical, mutual accommodation.

When considering a religion or belief request by an employee, an employer should assess whether the religion or belief is genuine and also whether accepting or rejecting the request will be lawful under equality and human rights legislation.

How will an employer know if a religion or belief is genuine?

A protected belief should be more than an opinion or a viewpoint, and it should be serious, genuinely and sincerely held, and worthy of respect in a democratic society. It should also be compatible with human dignity and should not conflict with the fundamental rights of others. The law protects adherents to all the generally recognised religions, as well as druids and pagans, for example. It also protects people without any religion or belief, including humanists and atheists.

Employers are not expected to be experts in religion or belief issues and should not spend too much time or expense examining the motivation or genuineness of a particular employee's religion or belief. In most cases, this will be easily identified.

An employer should only question a belief in the most exceptional cases where, for example, it is very obscure, appears to be objectively unreasonable, or the sincerity of the belief of an employee is genuinely in doubt. In such situations, employers can ignore requests when they reasonably conclude that the belief is not sincere.

What kind of religion or belief requests will an employer need to consider?

Most requests are likely to cover:

- **Manifestation of belief:** This covers clothing, appearance and jewellery with religion or belief meaning. Examples include: wearing headscarves, turbans, kippahs (skull caps) and modest dress, having a beard, and wearing a cross, crucifix, kara (a Sikh steel bracelet) or Star of David.
- **Time off work for religion or belief reasons:** This covers requests for time off work for religion or belief reasons on a regular basis, such as to avoid working on Sundays (for Christians) or to allow prayers to be said on Fridays (for Muslims). It also covers time off work for infrequent occasions, such as

religion or belief festivals or one-off requests, such as time off work for pilgrimages.

- **Adapting work duties:** Employers may be asked to adapt work duties to allow employees to avoid contact with alcohol and/or meat at work for religion or belief reasons.

Employers are not required to comply with these requests on all occasions but, as discussed below, they should consider them seriously.

What steps should an employer take to deal with a request?

Employers should review work place policies and practices to ensure that they do not unjustifiably discriminate against an employee who requests a change due to a particular belief. Employers are encouraged to consider how they would respond were such a situation to arise in the future.

An employer should take all requests seriously and should not make assumptions about the significance of a religion or belief, or disregard a request because it is made by only one employee. Even those who have the same religion may not share the same beliefs or practices.

Employers are encouraged to take as their starting-point consideration as to how to accommodate the request unless there are cogent or compelling reasons not to do so, assessing the impact of the change on other employees, the operation of the business and other factors outlined below.

What questions should employers ask to ensure their approach to a religion or belief request is justified?

An employer should seek to balance the religion or belief needs of an employee with the legitimate needs of the business and the interests of others. In general, the fact that someone else might not share a religion or belief or be opposed to it does not mean that the employee is automatically to be barred from having their request granted.

To reach a fully considered, balanced, and reasonable conclusion, an employer should consider, amongst other factors:

- The cost, disruption and wider impact on business or work if the request is accommodated
- Whether there are health and safety implications for the proposed change
- The disadvantage to the affected employee if the request is refused
- The impact of any change on other employees, including on those who have a different religion or belief, or no religion or belief
- The impact of any change on customers or service users, and
- Whether work policies and practices to ensure uniformity and consistency are justifiable.

In many cases, employers and employees may be able to find solutions to managing religious issues in the workplace. Generally speaking, it is better to try to achieve a solution than to pursue litigation.

Do employees now have a right to promote their particular religion or belief when at work?

Some employees may seek to persuade their colleagues or customers to adopt their religion or belief by distributing literature or in conversation. Others may wish to tackle misunderstanding or further explain their religion or belief.

Employees may assert the right to discuss their personal beliefs in the workplace and employers should not prevent such conversations, unless to do so is a proportionate means of achieving a legitimate aim; for example, if the conversations amount to harassment of other people. Harassment is defined in this context as unwanted conduct that is reasonably viewed as violating dignity, intimidating, hostile, degrading, humiliating or offensive to other people.

Employers may be justified in limiting the freedom of employees in promoting their beliefs at work, when this involves someone in a powerful position acting inappropriately towards someone in a vulnerable or subordinate position.

Can employees refrain from work duties?

Some employees may wish to opt out of the performance of some of their duties due to their religion or belief. Sometimes this is known as conscientious objection. This is explicitly permitted by law in certain specific situations, for example medical staff can opt out of performing abortions, or carrying out embryo research or fertility treatment.

However, the law is clear that when someone is providing a public service, they cannot, because of their religion or belief, discriminate unlawfully against customers or service users.

An employer should carefully consider the circumstances of every request from an employee to opt out of part of their job requirements, but is not required either to accept or reject such a request automatically. Some employers allow employees to opt out of part of their jobs to accommodate religion or belief objections in certain circumstances. This may be where other employees can cover for the employee making the request so it does not affect the effectiveness of the organisation or the provision of the service to the public.

Examples of requests and how employers might deal with them

The following examples have been constructed to illustrate the good practice points made in this document, which the Equality and Human Rights Commission believes will assist employers to comply with the law. The examples may help employers decide how to deal with a particular situation, but do not represent legal advice on how courts or tribunals will determine these or similar issues.

- Changes to work duties, including a requirement for employees to clean the work kitchen, lead a vegetarian employee working in an office to tell his employer that he wishes to avoid coming into contact with meat at work to comply with his religion or belief. The employer recognises not all vegetarians have the same objection, but accepts in this case that the request is genuinely motivated by the employee's belief and that it is sincere. After talking with other employees, the employer concludes the impact on other employees can be easily managed, and decides to exempt the vegetarian employee from fridge cleaning duties where meat is stored.

- A Jewish check-out operator within a small supermarket has been allowed regularly to finish work early on a Friday afternoon to prepare for the Sabbath. A new manager, who has not been made aware of this by the branch manager, constructs a work rota requiring the Jewish employee (and other employees) to work late on Fridays. On discovering this, the Jewish employee asks the new manager to change the rota to meet his religious needs. When considering his request, the new manager looks at the rotas to see if there are other staff who could cover his Friday shifts on a regular basis. He then discusses the practical consequences with the Jewish employee and with the other members of the team to see if the change will have adverse consequences for them. He discovers that the other members of the team will not be adversely affected and so agrees to the request.
- A Muslim job applicant has been offered a job in a care home which she discovers requires her to be available for work on Fridays, including during prayer times. She asks the employer if she can be allowed regular time off work on Friday to attend worship at a local mosque. Her employer, who provides care 24 hours a day, 7 days a week to service users, looks into the request but encounters significant difficulty in changing other employees' work rotas to meet her religious needs. There is insufficient cover available from the small number of other employees to enable the service to be provided and ensure that every employee has a fair amount of time off work. The employer offers occasional time off work on Fridays without compromising service delivery and the needs of other employees, but the Muslim job applicant decides not to take up this offer of employment, preferring to search for other work that will fully meet her religious requirements.
- When at work, two employees begin to talk about environmental issues. During the conversation, one employee states that, based on her deeply held ecological beliefs, she believes that it is quite wrong for anyone to drive to work and that anyone who does this is irresponsible. Her colleague, who regularly drives to work, is offended by this comment and complains to her employer of harassment at work. The employer rejects the complaint, saying the discussion was a reasonable expression of a philosophical belief in the workplace.
- An employer has a policy prohibiting the wearing of all jewellery. The reason for the policy is to ensure employees present a corporate image to the public. A Christian employee, who usually wears a small cross on a chain around his

neck, asks his employer to change this policy, so he can continue to wear his cross. The employer re-examines the reasons for the policy and decides to provide an exemption for mutually acceptable forms of jewellery worn by employees for religious reasons. The employer decides this exception still means it can present a corporate image. There is no adverse impact on others in making this change to the policy.

- A Sikh doctor asks the hospital in which he works to allow him to wear a turban as he now feels that this is something he should wear to comply with his religious obligations. The hospital's dress code requirements are silent about whether a turban (or other head coverings) can be worn at work. His employer recognises that not all Sikhs share the same beliefs or practices. It seriously examines the request, and concludes that a securely fitted turban in the hospital's colours should be allowed under its dress code to enable doctors to be identified and because it does not pose a health and safety risk. The Sikh doctor agrees to wear a turban at work that meets these requirements.
- A newly-appointed magistrate has a philosophical belief that protecting the welfare of children means that they should not be brought up by parents in same-sex relationships. She asks her employer to exempt her from dealing with family law work involving same-sex couples. The employer considers this request, but decides to reject it and requires her to carry out her work duties on the basis that the belief is incompatible with upholding the dignity and fundamental rights of same-sex couples under its equal opportunities policy.
- During a home visit, a Hindu social worker offers to say prayers for a service user in an attempt to help that person overcome certain health issues. The service user, who does not share those beliefs, feels uncomfortable about this taking place at her home but fears the consequences if she refuses. She reluctantly accepts the offer but subsequently complains to the employer, who disciplines the social worker for inappropriate unprofessional conduct amounting to an abuse of power over a vulnerable service user. The social worker is warned not to repeat such conduct at work without the permission of the employer and the service user.
- A Christian hospital nurse offers to say prayers for a patient, making it clear that there is no pressure or obligation on the patient to agree and he will not be offended if the patient declines. The patient decides that she would like the prayers to be said for her as she will gain some comfort from them. The

hospital nurse's colleagues who witness this raise concerns with their manager who, after investigation, decides nothing inappropriate occurred in these circumstances. This was because the nurse had discussed and agreed in advance with his employer that he could offer prayers, when the hospital chaplain was unavailable, to patients who had identified spiritual needs and who accepted the offer without any pressure or abuse of power.

Further information

The Equality and Human Rights Commission is also publishing a companion guide, *Religion or Belief in the Workplace: An Explanation of Recent European Court of Human Rights Judgments*, which aims to help employers understand the legal implications of the Court's judgment. This document describes the laws that protect rights to religion or belief, including the Equality Act 2010, and Articles 9 and 14 of the European Convention on Human Rights.

See also Equality and Human Rights Commission Statutory Equality Act 2010 Code of Practice for employers, available at www.equalityhumanrights.com.

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