



Job Duty/Transfer Accommodation

The information, below, is extracted from the EEOC Compliance Manual. Sections and examples retain the same numbers as within the manual.

Excerpt from EEOC Compliance Manual

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Section 12: Religious Discrimination

C. Common Methods of Accommodation in the Workplace

Under Title VII, an employer or other covered entity may use a variety of methods to provide reasonable accommodations to its employees. The most common methods are: (1) flexible scheduling; (2) voluntary substitutes or swaps of shifts and assignments; (3) lateral transfer and/or change of job assignment; and, (4) modifying workplace practices, policies, and/or procedures....

3. Change of Job Tasks and Lateral Transfer

When an employee's religious belief or practice conflicts with a particular task, appropriate accommodations may include relieving the employee of the task or transferring the employee to a different position or location that eliminates the conflict with the employee's religion. Whether or not such accommodations pose an undue hardship will depend on factors such as the nature or importance of the duty at issue, the availability of others to perform the function, the availability of other positions, and the applicability of a CBA or seniority system.

EXAMPLE 42

Restaurant Server Excused from Singing Happy Birthday

Kim, a server at a restaurant, informed her manager that she would not be able to join other waitresses in singing "Happy Birthday" to customers because she is a Jehovah's Witness whose religious beliefs do not allow her to celebrate holidays, including birthdays. There were enough servers on duty at any given time to perform this singing without affecting service. The manager refused any accommodation. If Kim files a Title VII charge alleging denial of religious accommodation, she will prevail because the restaurant could have accommodated her with little or no expense or disruption.

EXAMPLE 43

Pharmacist Excused from Providing Contraceptives

Neil, a pharmacist, was hired by a large corporation that operates numerous large pharmacies at which more than one pharmacist is on duty during all hours of operation. Neil informed his employer that he refused on religious grounds to participate in distributing contraceptives or answering any customer inquiries about contraceptives. The employer reasonably accommodated Neil by offering to allow Neil to signal to a co-worker who would take over servicing any customer who telephoned, faxed, or came to the pharmacy regarding contraceptives.



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EXAMPLE 44

Pharmacist Not Permitted to Turn Away Customers

In the above example, assume that instead of facilitating the assistance of such customers by a co-worker, Neil leaves on hold indefinitely those who call on the phone about a contraceptive rather than transferring their calls, and walks away from in-store customers who seek to fill a contraceptive prescription rather than signaling a co-worker. The employer is not required to accommodate Neil's request to remain in such a position yet avoid all situations where he might even briefly interact with customers who have requested contraceptives, or to accommodate a disruption of business operations. The employer may discipline or terminate Neil for not meeting legitimate expectations.

The employee should be accommodated in his or her current position if doing so does not pose an undue hardship. If no such accommodation is possible, the employer needs to consider whether lateral transfer is a possible accommodation. For example, if a pharmacist who has a religious objection to dispensing contraceptives can be accommodated without undue hardship by allowing the pharmacist to signal a co-worker to assist customers with such prescriptions, the employer cannot choose instead to accommodate by transferring the pharmacist to a different position. Moreover, if the pharmacist cannot be accommodated within his position, the employer cannot transfer the pharmacist to a position that entails less pay, responsibility, or opportunity for advancement unless a lateral transfer is unavailable or would otherwise pose an undue hardship.

EXAMPLE 45

Lateral Transfer Versus Transfer to a Lower-Paying Position

An electrical utility lineman requests accommodation of his Sabbath observance, but because the nature of his position requires being available to handle emergency problems at any time, there is no accommodation that would permit the lineman to remain in his position without posing an undue hardship. The employer can accommodate the lineman by offering a lateral transfer to another assignment at the same pay, if available. If, however, no job at the same pay is readily available, then the employer could satisfy its obligation to reasonably accommodate the lineman by offering to transfer him to a different job, even at lower pay, if one is available.