



Reasonable Accommodation *Religious and Disability Q & A*

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Q1: Is my agency required to accommodate the religious practices of both employees and applicants?

- A. Yes. Under Title VII of the Civil Rights Act of 1964 employment discrimination based on the religion of both employees and applicants is prohibited. Such discrimination on the basis of religion includes refusing to provide a religious accommodation to an employee or applicant, unless doing so would be an undue hardship or pose a direct threat to safety of the employee or others in the workplace. [Back to the top](#)

Q2: What qualifies as a religion under Title VII?

- A. Title VII defines religion very broadly, prohibiting discrimination against an individual's **sincerely held** religious belief or practice. A religious practice or belief may be sincerely held by an individual even if newly adopted, not consistently observed, or different from the commonly followed doctrines of the religion. Furthermore, an individual may choose to adhere to some views of the religion, but not others. The EEOC includes both theistic beliefs (those that believe in God) as well as non-theistic moral or ethical beliefs about right and wrong that are sincerely held with the strength of a traditional religious view or belief. EEOC has also noted that an individual's religious beliefs may change over time. Personal preference, social, political, or economic philosophies are not religious beliefs under Title VII.

A practice may be considered religious for one individual, while not religious for another. An example is not working on a Saturday. If a person objects to working on a Saturday because it would violate a sincerely held rule of faith, such practice is considered religious. If another individual objects to working on a Saturday due to familial obligations, such practice is not considered religious. Not working on a Saturday is a practice protected under Title VII only if the reason for not working on that day is religious. [Back to the top](#)

Q3: Must my agency provide any religious accommodation that is requested so long as the employee's belief is sincerely held?

- A. Not if providing the accommodation would impose an undue hardship on your agency. An undue hardship under Title VII means that providing the accommodation would more than minimally burden the operation of your agency's business. An employer may reject an employee's request for religious accommodation based on workplace safety, security, or health concerns (e.g., religious garb or grooming), but only if the circumstances actually pose an undue hardship on the operation of the business, and not because the employer simply assumes that the accommodation would pose an undue hardship. Note that neither



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co-worker disgruntlement nor customer preference constitutes undue hardship. Some examples of situations where the burden on business is more than minimal (or an "undue hardship") include:

- violating a seniority system;
- causing a lack of necessary staffing;
- jeopardizing security or health; or,
- costing the agency more than a minimal amount.

In certain situations, the requested accommodation may pose an undue hardship, but a different accommodation may meet the employee's needs and not pose an undue hardship. An example would be if the requested accommodation required a schedule change for the employee, but such a change would cause a lack of necessary staffing. However, allowing co-workers to voluntarily substitute or swap shifts would resolve the staff coverage concern and offer an alternative for accommodating the request.

There usually is no reason to question whether the employee's religious belief is sincerely held. However, according to EEOC, an employer may make a limited inquiry whether the belief or practice is religious and sincerely held and would give rise to the need for an accommodation. Although you may have uncertainty about a belief, under Title VII, employers seldom win discrimination claims on this ground. Courts consider the sincerity of an employee's belief and do not analyze the merits of that belief. A discussion with legal counsel is, therefore, recommended before denying an accommodation because you do not consider the religious belief to be sincerely held. [Back to the top](#)

Q4: *May I make an exception to an agency policy or rule in order to accommodate an employee's religious beliefs?*

A: Yes. If doing so would not cause an undue hardship and the employee's belief is sincerely held, then you may grant an exception to an agency policy or rule as an accommodation. Some examples of common religious accommodations include:

- An exception to the agency dress and grooming code for a religious practice (e.g., a Muslim woman who wears a religious headscarf or a Jewish man who wears a skullcap [yarmulke]);

Note that the EEOC has a resource titled, "Religious Garb and Grooming in the Workplace: Rights and Responsibilities" and a fact sheet explaining these



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issues due to the frequency of their occurrence. These resources can be found at this link:

https://www.eeoc.gov/eeoc/publications/fs_religious_garb_grooming.cfm

- A request by a Catholic employee for a schedule change to attend church services on Good Friday;
- A Muslim employee needing additional breaks or a change in the standard break schedule to permit him or her to perform daily prayers. [Back to the top](#)

Q5: *What is reasonable accommodation under the ADA, as amended?*

- A. Reasonable accommodation is any modification or adjustment to a job or the work environment that will enable a qualified applicant or employee with a disability to participate in the application process or to perform essential job functions. Reasonable accommodation also includes adjustments to assure that a qualified individual with a disability has rights and privileges in employment equal to those of employees without disabilities.

Examples of accommodations that may be considered reasonable include, but are not limited to: modifications to existing facilities to ensure accessibility for a disabled individual; job restructuring; part-time or modified work schedules; acquiring equipment or modifying existing equipment; modifying employment tests or training materials; making exceptions to policies; and, reassignment to a vacant position.

An accommodation is not considered reasonable if it presents an undue hardship or poses a direct threat to the safety of the employee or others in the workplace.

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Q6: *Who must be afforded a reasonable accommodation under the Americans with Disabilities Act (ADA), as amended?*

- A. The ADA, as amended, protects qualified individuals with disabilities, and requires reasonable accommodation to assist them with overcoming workplace barriers experienced because of disability, unless accommodation would be an undue hardship.

The term “qualified” means that an applicant or employee satisfies the knowledge, skill, experience, education, and other job-related requirements of the position sought or held, and can perform the essential job tasks of the position, with or without reasonable accommodation.



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The term “disability” means: (1) a physical or mental impairment that substantially limits one or more major life activities, (2) a record of a physical or mental impairment that substantially limits one or more major life activities, or (3) being regarded as having a physical or mental impairment that substantially limits one or more major life activities. Note that a reasonable accommodation is not required under the “regarded as” prong.

It should be noted that the Americans with Disabilities Act Amendments Act (ADAAA) of 2008 greatly broadened the definition of disability. Although it did not change the wording of the three-part definition above, it broadened the meaning.

For more information on how the ADAAA broadened the definition of disability click [here](#). [Back to the top](#)

Q7: What are the limitations on the obligation to reasonably accommodate a disability?

- A. The disabled individual requiring the accommodation must be otherwise qualified, and the disability must be known to the employer. In addition, an employer is not required to make an accommodation if it would impose an "undue hardship" on the operation of the employer's business. [Back to the top](#)

Q8: Is the definition of undue hardship in relation to the ADA, as amended, different from the undue hardship standard for religious accommodations?

- A. Yes. Under the ADA, as amended, the undue hardship standard is a higher burden than that provided for religious accommodations under Title VII’s “de minimis cost or burden” standard. The ADA, as amended, requires a showing of “significant difficulty or expense incurred” by the employer to meet the undue hardship standard. The regulations provide five factors to consider when determining if the accommodation would cause an undue hardship on the employer:
- (i) The nature and net cost of the accommodation needed, taking into consideration the availability of tax credits and deductions, and/or outside funding;
 - (ii) The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation, the number of persons employed at such facility, and the effect on expenses and resources;
 - (iii) The overall financial resources of the employer, the overall size of the business of the employer with respect to the number of its employees, and the number, type, and location of its facilities;



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- (iv) The type of operation or operations of the employer, including the composition, structure, and functions of the workforce of such entity, and the geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the employer; and,
- (v) The impact of the accommodation upon the operation of the facility, including the impact on the ability of other employees to perform their duties and the impact on the facility's ability to conduct business. [Back to the top](#)

Q9: Must my agency hold an employee's position available while the employee is on leave as an accommodation?

- A. Yes, your agency must hold an employee's position available. Note that contingent leave (leave contingent upon the position being available upon the employee's return) is not considered a "reasonable" accommodation. An employee who is on leave as a reasonable accommodation is entitled to return to the same position, unless your agency can demonstrate that holding the position open would be an undue hardship. If doing so would impose an undue hardship (and meet the burden explained in Question 6), your agency then must consider whether there is a vacant, equivalent position for which the employee is qualified. If such a position is available and would allow continued leave, the employee should be reassigned to the equivalent position. If an equivalent position is not available, then your agency must look for a vacant position at a lower level. Continued leave is not required as a reasonable accommodation if a vacant position at a lower level is also unavailable. [Back to the top](#)

Q10: Can my agency deny leave as an accommodation if the employee has exhausted his or her accrued paid leave?

- A. No, not based solely on the exhaustion of paid leave. Unpaid leave, except for contingent leave, is considered a valid option for reasonable accommodation under the ADA, as amended. If the unpaid leave would represent an undue hardship, then it would not be required.

The EEOC recommends that employers first allow employees to exhaust accrued paid leave before putting the employee on unpaid leave. The ADA regulations are silent on whether production or work standards should be prorated when leave is taken as a reasonable accommodation. The EEOC, however, has stated that an employee should never be penalized for work missed while on leave that is a reasonable accommodation. The EEOC provides doing so would not only be retaliation for the employee's use of an accommodation, but would also make the leave an ineffective accommodation, potentially subjecting an employer to liability for failure to provide a reasonable accommodation. Please note that courts have varying interpretations on whether penalizing an employee for work missed while on



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leave that is a reasonable accommodation could be considered retaliatory. [Back to the top](#)

Q11: Can indefinite leave be a reasonable accommodation?

- A. No. Indefinite leave would not be considered “reasonable.” While your agency may be required to grant extended leave as an accommodation that has an approximate date of return, indefinite leave, without any estimate of a return date, can impose an undue hardship on business operations. If the approximate date of return ends up being incorrect, you may seek medical documentation to determine when the correct approximate date of return will be and why the original return-to-work date was not correct. You would then determine whether you can continue to provide leave for that amount of time without undue hardship, or whether the request for leave has become indefinite. If the medical provider cannot provide an approximate date of return upon which your agency can determine whether continuing leave will be an undue hardship, then the request for leave is indefinite.

Click [here](#) for an example provided by the EEOC of leave that has become indefinite and no longer a reasonable accommodation. [Back to the top](#)

Q12: When should my agency offer leave as an accommodation when an employee is on Family and Medical Leave for reasons connected to a disability?

- A. You should always consider the requirements of both statutes separately, and then consider whether the two will overlap. Under the FMLA, an eligible employee is entitled to a maximum of 12 workweeks of leave per 12-month period for a serious health condition. Under the ADA, as amended, an employee is entitled to leave if there is no other effective accommodation for the employee’s disability and the leave will not cause an undue hardship. Under the ADA, as discussed in Question 8, the employee’s position must be held open while the employee is on leave unless doing so would cause an undue hardship. When the employee is ready to return to work he or she must be returned to the same position (absent undue hardship) so long as the employee is still qualified. The FMLA requires that an employee be returned to the same or an equivalent position.

Example: An employee with a disability needs 15 weeks of leave for treatment connected to a disability. The employee is eligible for 12 weeks of leave under the FMLA, therefore the first 12 weeks of leave is both FMLA leave and a reasonable accommodation. Under the FMLA, the employee’s last three weeks of leave (week 13-15) could be denied. However, because the employee is also protected under the ADA as a qualified employee with a disability, the employee’s request for the additional three weeks of leave cannot be denied, unless your agency can show



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undue hardship in allowing an additional three weeks. Note that you may consider the impact on your business operations caused by the initial 12 weeks of leave, along with other undue hardship factors (See Question 6). [Back to the top](#)

Q13. Can my agency maintain existing production/performance standards for an employee with a disability?

- A. An employer can hold employees with disabilities to the same standards of production/performance as other similarly situated employees without disabilities for performing essential job functions, with or without reasonable accommodation. An employer also can hold employees with disabilities to the same standards of production/performance as other employees regarding marginal functions unless the disability affects the person's ability to perform those marginal functions. If the ability to perform marginal functions is affected by the disability, the employer must provide some type of reasonable accommodation such as job restructuring but may not exclude an individual with a disability who is satisfactorily performing a jobs essential functions. [Back to the top](#)

Q14. Must I be familiar with the many diverse types of disabilities to know whether or how to make a reasonable accommodation?

- A. No. An employer is required to accommodate only a "known" disability of a qualified applicant or employee. The requirement generally will be triggered by a request from an individual with a disability, who frequently can suggest an appropriate accommodation. Accommodations must be made on an individual basis, because the nature and extent of a disabling condition and the requirements of the job will vary in each case. If a disabled person requests, but cannot suggest, an appropriate accommodation, the employer and the individual should work together to identify one. There are also many public and private resources that can provide assistance without cost. [Back to the top](#)

Q15. Can my agency require supporting documentation before providing reasonable accommodation?

- A. An employer may require supporting documentation when a disability or the need for accommodation is not obvious. If adequate supporting documentation is no provided, reasonable accommodation may be denied.

Any documentation that identifies an applicant's or employee's medical information is considered confidential and must be maintained securely and separate from an official personnel file. [Back to the top](#)