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Accommodations
Under the ADA and
Title VII
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AGENDA

- I. Basics Under the ADA and Title VII
- II. Religious and Medical Accommodations in the Workplace
- III. Conducting ADA and Title VII Interactive Discussions: Key Questions



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AGENDA

IV. Post Pandemic Reboot: Work from Home and Other Hot Button Considerations (including some of the recent COVID developments)



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BASICS UNDER THE ADA & TITLE VII

What is required under the ADA?

What is a reasonable accommodation?

How do we determine what would be a reasonable accommodation?



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BASICS UNDER THE ADA & TITLE VII

A change to what?



What is the goal?

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BASICS UNDER THE ADA & TITLE VII

Examples:

- Purchase a special software making it easier for individuals who are visually impaired to perform their job duties.
- Giving instructions in writing to an individual who has
- What else?



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BASICS UNDER THE ADA & TITLE VII

Do you have to change the job?

Do you have to create a new job?

Do you have to excuse rude or inappropriate behavior?

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BASICS UNDER THE ADA & TITLE VII

- Has to be a "reasonable accommodation"
- Which does not cause an undue hardship



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POLLING QUESTION #1

Requests for reasonable accommodations need to be in writing.

- True or false?

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POLLING QUESTION #2

Once an employee requests a reasonable accommodation, his/her employer may not request documentation from a doctor confirming the individual's disability status and needs.

- True or false?

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BASICS UNDER THE ADA & TITLE VII

Individualized assessment



Key Questions to Ask

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BASICS UNDER THE ADA & TITLE VII

Title VII: Religious Objections to a Work Requirement

- Employer cannot discriminate on the basis of an employee or applicant's sincerely held religious beliefs or practices.

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BASICS UNDER THE ADA & TITLE VII

- Employers cannot force employees to choose between their sincerely held religious beliefs and a work requirement.
- Must be a mechanism for employees to request an exemption.



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BASICS UNDER THE ADA & TITLE VII

What you should know about COVID-19 and the ADA, the Rehabilitation Act, and other EEO laws. Last updated 3/14/2022.

<https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>

- Best practice - L.1. Employers should provide employees and applicants with information about whom to contact and the proper procedures for requesting an accommodation.


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**RELIGIOUS AND MEDICAL ACCOMMODATIONS
IN THE WORKPLACE**

What are an employer's obligations when it comes to religious exemptions?

Must allow the employee an opportunity to obtain an exemption.




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**RELIGIOUS AND MEDICAL ACCOMMODATIONS
IN THE WORKPLACE**

Resource: 3-Step Guide for responding to requests for religious exemptions.



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**RELIGIOUS AND MEDICAL ACCOMMODATIONS
IN THE WORKPLACE**

STEP 1 – Decide Whether the Employee’s Objection is Based on a Personal Choice or a “Sincerely Held Religious Belief”

Threshold – Requests for religious accommodations have to be based on a sincerely held religious belief - “Moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views”

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RELIGIOUS AND MEDICAL ACCOMMODATIONS IN THE WORKPLACE

The EEOC states that an employer should assume that an employee's stated religious belief is sincerely held.

- An objection to an employee's religious exemption request can only occur when there is a good faith and objective basis for questioning the religious nature or sincerity of the stated belief.

What does that mean?

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RELIGIOUS AND MEDICAL ACCOMMODATIONS IN THE WORKPLACE

The EEOC identifies three factors that could undermine the credibility of an employee seeking a religious exemption:

- Whether the accommodation would produce a particularly desirable benefit that is likely sought for secular reasons.
- Whether the timing of the request is suspect.
- Whether the employer has reason to believe that the accommodation is not sought for religious reasons.

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RELIGIOUS AND MEDICAL ACCOMMODATIONS IN THE WORKPLACE

Ex #1 - Benny Bolts has been employed with your agency for over a year.



Benny's favorite team is playing in the Stanley Cup Finals this year. Benny is scheduled to work during games 4 and , but Benny has really good tickets to those games. Benny tells his supervisor that he cannot work those days because of his religious beliefs.

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RELIGIOUS AND MEDICAL ACCOMMODATIONS IN THE WORKPLACE

Ex #2 - Sam works for a company that grants employees a 30-minute meal break. Sam requests that his employer extend his lunch break every day to 1 hour and 20 minutes so that he has enough time to drive to his local mosque to practice his daily religious prayer.

What do you think? What should an employer do?



Does the employer have the right to ask for proof that the employee belongs to a religious organization?

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STEP 2 - Engage in the Interactive Process

If an employee's religious accommodation/exemption request is sincere, employers need to engage in an interactive dialogue to determine what reasonable accommodation(s) can be made.

Ensure discussion and process is well documented including the steps taken to accommodate the employee.

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How do you ensure that discussion and process is well documented?

- Reasonable accommodation form
Notes that include the steps taken to accommodate the employee and what accommodations were offered to and accepted/rejected by the employee.
List of questions tailored to the employee's request.

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STEP 3 - Make a Decision on the Accommodation Request



Decide whether to give the employee the "green light" on his/her accommodation request.

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RELIGIOUS AND MEDICAL ACCOMMODATIONS IN THE WORKPLACE

Requests for reasonable accommodations must be granted unless it poses an undue hardship.

2 standards. The undue hardship burden currently is met for a religious discrimination exemption request where there is more than a de minimis cost or burden to the company.

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RELIGIOUS AND MEDICAL ACCOMMODATIONS IN THE WORKPLACE

The employer does not have to provide the specific accommodation requested by the employee.

Horvath v. City of Leander, Texas, 5th Cir. (January 13, 2020) - First Amendment Challenge



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**RELIGIOUS AND MEDICAL ACCOMMODATIONS
IN THE WORKPLACE**

Ensure managers are trained to recognize requests for accommodation, even when it does not seem like a direct request.

If a request is unclear, follow-up with the employee to see if they are seeking accommodations.

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POLLING QUESTION #3

"I'm having trouble getting to work on time because of the medical treatments I am undergoing."

- YES
- NO



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POLLING QUESTION #4

"This work chair is very uncomfortable."

- YES
- NO



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POLLING QUESTION #5

“The bright lights in my office are giving me a headache.”

- YES
- NO



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POLLING QUESTION #6

“I can't seem to fit my wheelchair underneath my desk.”

- YES
- NO



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RELIGIOUS AND MEDICAL ACCOMMODATIONS IN THE WORKPLACE

Dress and Grooming Policies

- Employers have the right to set dress code boundaries.
- However, employers must make reasonable accommodations for an employee's religious beliefs.

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RELIGIOUS AND MEDICAL ACCOMMODATIONS IN THE WORKPLACE

See EEOC v. Red Robin Gourmet Burgers, Inc., 2005 WL 2090677 (Wash. 2005).

Plaintiff had religious inscriptions (tattoos) on his wrists since the beginning of his employment with Red Robin.

After 6 mos. of employment, new management ordered Plaintiff to conceal his tattoos, in accordance with its dress code policy that no tattoos should be visible.

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RELIGIOUS AND MEDICAL ACCOMMODATIONS IN THE WORKPLACE

Plaintiff thereafter had multiple conversations with the new management about his faith, advising management that it is against his religion to cover his tattoos.

Plaintiff sought an exemption from the dress code; however Red Robin refused and failed to provide any alternatives. Red Robin's argument was that Plaintiff's tattoos undermined Red Robin's "wholesome image".

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Red Robin was ordered to pay Plaintiff \$150K. The Court stated that Red Robin's undue hardship claim needed to be supported with more than hypothetical hardships based on unproven assumptions.



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RELIGIOUS AND MEDICAL ACCOMMODATIONS IN THE WORKPLACE

Safety concerns – Court says Pennsylvania prison can ban Muslim scarfs.

- Three Muslim women filed a lawsuit after the prison they worked for banned them from wearing religious headscarves.
- The prison argued that headscarves are a legitimate concern (hiding contraband or used by an inmate for strangulation)

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RELIGIOUS AND MEDICAL ACCOMMODATIONS IN THE WORKPLACE

Religious Expression

Jessica is a receptionist at a local government office. She wants to place a bible and small cross at her desk.



- Can you think of any issues with granting Jessica’s request?

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RELIGIOUS AND MEDICAL ACCOMMODATIONS IN THE WORKPLACE

Charles’ email signature block contains the phrase “Have a blessed day”.



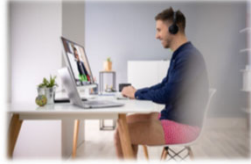
Susan’s email signature block contains a quote from Mahatma Gandhi stating “Be the change you want to see in the world”.

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WORK FROM HOME ACCOMMODATIONS AND CONSIDERATIONS

As we slowly enter a post-COVID-19 era, it looks like remote work is here to stay.



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POLL QUESTION #7

Do any of your employees work from home?

- Yes
• No

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WORK FROM HOME ACCOMMODATIONS AND CONSIDERATIONS

- Are employers required to offer a remote work environment?
• What about a hybrid work from home environment?
• Is working from home a reasonable accommodation?
• Does it mattered if you offered it during the height of the pandemic?

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WORK FROM HOME ACCOMMODATIONS AND CONSIDERATIONS

When can an employer deny a request to work from home?

- What if an employee remains fearful of contracting COVID-19?
- What about an employee who says they are more productive at home?



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WORK FROM HOME ACCOMMODATIONS AND CONSIDERATIONS

What you should know about COVID-19 and the ADA, the Rehabilitation Act, and other EEO laws.

D.15 - Assume that an employer grants telework to employees for the purpose of slowing or stopping the spread of COVID-19.

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POLL QUESTION #8

When an employer reopens the workplace and recalls employees to the worksite, does the employer automatically have to grant telework as a reasonable accommodation to every employee with a disability who requests to continue this arrangement as an ADA/Rehabilitation Act accommodation?

- Yes or No?

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WORK FROM HOME ACCOMMODATIONS AND CONSIDERATIONS

What if 80% of an employee's work can be done from home?

What happens if you allow employees to work remotely but then unexpectedly need them to come into the office on very short notice?



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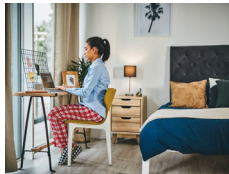
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WORK FROM HOME ACCOMMODATIONS AND CONSIDERATIONS

Consider a Remote Work (telecommuting) Policy.

- Can your policy provide that employees will be allowed to work remotely, but when they do, they need to be able to be at work within an hour of his/her boss's request?



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POLL QUESTION #9

Question:

An applicant did not disclose that he had a religious conflict with working on Saturdays even though the job description states that occasional Saturday work is required.

Two days after the applicant is hired, he tells you he cannot work on Saturdays.

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POLL QUESTION #9

Because the applicant hid this information from you in the hiring stage, you can insist that he work Saturdays or face termination.

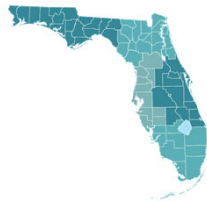
- True
- False

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BEST PRACTICES

Vaccines in Florida



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BEST PRACTICES

- Have the appropriate exemption forms available.
- Make sure your supervisors know when to escalate the request.
- Foster clear communication: train

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BEST PRACTICES

- Don't do nothing!
- Think of your interactive discussion as a tennis match.
- Don't hesitate to call for help.

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QUESTIONS?

DON'T BURY YOUR HEAD IN THE SAND!!



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