

Co-worker complaints not enough to establish accommodation hardship

Four days after the University of Tennessee Knoxville hired Kimberly Crider, she told her supervisor that she was a Seventh-day Adventist, which precluded her from working from sundown Friday through sundown Saturday. Crider's job responsibilities included monitoring an emergency cellphone on a rotating basis during weekends.

When Crider's co-workers refused to exchange shifts to accommodate her, the university determined she was unable to fulfill her job duties and fired her. As you would guess, Crider sued, claiming religious discrimination under Title VII.

Title VII requires an employer to reasonably accommodate an employee whose sincerely held religious belief, practice, or observance conflicts with a work requirement, unless doing so would pose an undue hardship. An accommodation poses an undue hardship if it causes more than de minimis cost on the operation of the employer's business.

In *Crider v. University of Tennessee* (No. 11-5511, 6th Cir., 2012), the 6th Circuit applied those principles and concluded that a jury should decide whether the university lawfully refused to force its employees to change shifts to accommodate Crider's religion.

Hardship or accommodation?

The university insisted that requiring its employees to work Saturday shifts every other weekend would have created an undue hardship for Crider's former co-workers, so much so that it would cause "undue hardship on the conduct of the employer's business."

The court concluded that "employee dissatisfaction or inconvenience alone" does not create an undue hardship. Instead, "it is the effect such dissatisfaction has on the employer's ability to operate its business that may alleviate the duty to accommodate."

In EEOC guidance on religious accommodation, the agency says, "It would pose an undue hardship to require employees *involuntarily* to substitute for one another or swap shifts."

What employers should do

Some might argue that this case undercuts the EEOC's position. In reality, I think the university simply failed to prove the undue hardship with actual facts and data relative to its operations.

If you are planning to reject an employee's request for a shift change as a religious accommodation, you must be able to support the claim of hardship with facts. Ask:

- How does it impact your scheduling?
- Do you have to hire additional staffing to cover for the missed shifts?
- How much would it cost you in added overtime or other premium wages?

- How often would you have to pay overtime or other premium wages?

Without answers to those questions, you will be hard-pressed to prove that a shift swap creates an undue hardship.

EEOC examples of accommodating religious needs

Here are some hypothetical scenarios illustrating how the EEOC views an employer's religious accommodation obligations:

Restaurant server excused from singing "Happy Birthday": Kim, a restaurant server, tells her manager that she can't sing "Happy Birthday" to customers because she is a Jehovah's Witness, whose religious beliefs do not allow her to celebrate holidays, including birthdays. Kim's voice isn't needed because there are always enough other servers on hand to sing should the need arise. The manager refuses to accommodate her.

Result: 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.

Religious garb: Nasreen, a Muslim ticket agent for a commercial airline, wears a head scarf, or hijab, to work at the airport ticket counter. After Sept. 11, 2001, her manager objected, telling Nasreen that the customers might think she was sympathetic to terrorist hijackers. Nasreen explains to her manager that wearing the hijab is her religious practice and continues to wear it. She is terminated for wearing it over her manager's objection.

Result: Customer fears or prejudices do not amount to undue hardship. Therefore, the refusal to accommodate her and the termination violate Title VII. Denying Nasreen the position due to perceptions of customer preferences about religious attire would be disparate treatment based on religion. That is a Title VII violation, because it would be the same as refusing to hire Nasreen because she is a Muslim.

Facial hair: Prakash, who works for a surgical instrument manufacturer, does not shave or trim his facial hair because of his Sikh religious observance. When he seeks a promotion to manage the division responsible for sterilizing the instruments, his employer tells him that he must shave or trim his beard because otherwise his beard may contaminate the sterile field. The employer offers to allow Prakash to wear two face masks instead of trimming his beard. Prakash thinks that wearing two masks is unreasonable and files a Title VII charge.

Result: The employer will prevail because it offered a reasonable accommodation that would eliminate Prakash's religious conflict with the hygiene rule.