

Tips for Restaurants, Retailers When Faced With Sabbath Day Requests

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Imagine you manage a busy restaurant, and you are working on the schedule for next week. Saturday is your busiest day, and you need all hands on deck, so you need to schedule everyone for that day. Just when you have the schedule finished, an employee approaches you and says she cannot work Saturdays because her religion prohibits working on Saturdays. Not only does she need this Saturday off, but all Saturdays in the future. What do you do?

The scenario above is becoming more common.

For decades, employees have had the right under federal and state laws to request religious accommodations from employment policies, including schedule changes. Under Title VII of the Civil Rights Act of 1964, and many state laws, employers must accommodate employee sincerely held religious beliefs, as long as it would not create an undue hardship for the employer.

Although the need to accommodate religious beliefs is not new, religious accommodations have received significant increased attention in recent years. Employers received an unprecedented number of religious accommodations in response to employment policies related to the COVID-19 vaccine. Furthermore, the U.S. Supreme Court in *Groff v. DeJoy* in 2023 raised the standard of what constitutes an undue hardship under Title VII, from “more than a de minimis” cost on the employer to a “substantial” cost.

Based on these developments, employers need to be prepared to respond to religious accommodation requests, particularly requests to not work a certain day of the week due to sabbath obligations.

Here are some tips to prepare for sabbath day requests:

1. *Have a policy:* Every employer should have a policy and process in place for responding to requests for religious accommodation requests. You likely cannot just follow the same process you have for medical accommodation requests because there are important differences between the two legal frameworks for religious and disability accommodations.
2. *Case-by-case:* Evaluate the requests for sabbath days off on a case-by-case basis. An across-the-board approach for all employees and circumstances is likely not going to work. Each request should be evaluated individually.
3. *Understand the request:* It is important to understand exactly what the employee’s religious restrictions are. Ask respectfully for reasonable additional information to allow you to evaluate the request. For example, does the employee’s religion prohibit working all day or just in the evening? Understanding exactly what the employee’s

restrictions are will enable you to evaluate whether it is possible to accommodate without an undue hardship.

4. *Consider alternative accommodations:* If the individual cannot work on Saturday, can they instead work on Sunday or Friday evenings or other times when it is busy?
5. *Consider the cost or burden of accommodating:* It is important to clearly evaluate the cost or burden of giving the employee the requested day off. Consider the employee's position, duties, and effects on operations to evaluate whether they can receive the requested day off. You can consider the potential effects on other employees, but you should focus on the actual costs or burdens and not just hypotheticals of what may occur.

Restaurant and retailers should be ready to respond to requests for religious accommodations based on sabbath days. If you need assistance, do not hesitate to reach out to a Jackson Lewis attorney.

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