

# RELIGIOUS EMPLOYEES



## RELIGIOUS LIBERTY PROTECTION KIT

**Know Your Rights as  
an Employee**



## DEAR FRIEND OF RELIGIOUS FREEDOM,

Thank you for your desire to protect **religious employees** against increasingly hostile legal threats to your freedom to believe and to act upon your beliefs. I hope you find this **Religious Liberty Protection Kit** a simple but high-quality tool for helping you guard the most precious freedom you or anyone in our society has: religious liberty, our first liberty in the Bill of Rights.

Please let us know any further way we can help you.



**Kelly Shackelford, Esq.**

*President, CEO & Chief Counsel*







## **FIRST LIBERTY INSTITUTE® RELIGIOUS LIBERTY PROTECTION KIT FOR RELIGIOUS EMPLOYEES**

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First Liberty Institute's Religious Liberty Protection Kit for Religious Employees provides general guidance to assist you in responding to current legal threats to religious freedom. This document does not create an attorney-client relationship, and it is not to be used as a substitute for legal advice from a licensed attorney. Because the law is constantly changing and each workplace's policies are unique, First Liberty Institute and its attorneys do not warrant, either expressly or impliedly, that the law, cases, statutes, and rules discussed or cited in this guide have not been changed, amended, reversed, or revised. If you have a legal question or need legal advice, please contact an attorney. First Liberty Institute's attorneys may be contacted by requesting legal assistance at [FirstLiberty.org](https://www.FirstLiberty.org).

### **First Liberty Institute**

2001 W. Plano Parkway Suite 1600  
Plano, Texas 75075

**[FirstLiberty.org](https://www.FirstLiberty.org)**

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# INTRODUCTION

What can I do if my employer is requiring me to violate my religious beliefs on the job? Can I be required to attend diversity training if what it teaches violates my religious beliefs? Can I be required to use words, such as pronouns, in ways that violate my religious beliefs?

First Liberty Institute has advised hundreds of religious employees at secular workplaces who have asked questions like these. Our nationwide, nonprofit law firm is dedicated to protecting religious freedom for all Americans, at no cost to our clients. Our President and CEO, Kelly Shackelford, has over 30 years of experience defending the constitutional rights of people like you.

This Religious Liberty Protection Kit for Religious Employees carefully summarizes the recommendations we've developed over the years. In it, you will find guidance on requesting a religious accommodation at your workplace. While this Protection Kit uses examples based upon the questions we most frequently receive, its advice is applicable to a wide range of religious beliefs and religious accommodation requests. Our mission is to protect religious liberty for all Americans, and the legal principles given in this guide apply to religious communities of all faiths.

Thank you for learning about your religious liberty rights and your interest in standing up for our First Amendment's First Liberty.

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## Your Legal Rights as an Employee

### *Your Legal Rights as an Employee*

Federal employment discrimination law, Title VII of the Civil Rights Act of 1964 (“Title VII”), prohibits employers with 15 or more employees from discriminating on the basis of religion. [2] The law also provides that employers may not create a hostile work environment on the basis of religion, which means that employers cannot tolerate severe or pervasive harassment on the basis of religion. [3] Some states also provide similar protections applicable to employers with fewer than 15 employees. If you believe that you have experienced religious discrimination or harassment, we recommend that you reach out to an attorney to discuss filing a charge of discrimination with the Equal Employment Opportunity Commission or the appropriate state agency.

In this guide, we want to highlight another important protection for religious employees in the workplace—**the right to request a religious accommodation**. Title VII requires that employers grant reasonable religious accommodation requests unless doing so would cause an undue hardship on the business. [4] Undue hardship is currently defined as more than a de minimis cost to employers. [5] You have the right to ask for a religious accommodation when you may be called to do something on the job that violates your sincerely-held religious beliefs.

Traditionally, religious accommodation requests have been made by religious employees who cannot work on one day of the week in order to observe Sabbath or Shabbat or who require a modification to a grooming policy in order to wear a yarmulke, cross necklace, or hijab. [6] Some employers mistakenly believe that religious accommodations need be granted only for these kinds of requests. However, Title VII defines “religion” broadly to include all aspects of religious observance and belief. [7] Religious accommodations have been provided in a variety of circumstances. For instance, pharmacies have accommodated Christian/Catholic pharmacists who objected to dispensing abortifacient drugs by rearranging shifts. [8]

Increasingly, employers are putting in place gender and sexuality policies that conflict with some employees’ religious beliefs. Religious employees may wonder what their rights are in these circumstances. The next sections look at a few such scenarios.



## *Religious Accommodations & Diversity Training*

Many workplaces require employees to attend diversity training, sometimes called anti-harassment or Title VII training. These trainings may describe the legal requirement of employers not to discriminate on the basis of a variety of protected classes, including sexual orientation and gender identity. In *Bostock v. Clayton County*, the Supreme Court held that Title VII prevents employers from discriminating on the basis of sexual orientation or transgender status. [9] The Supreme Court has not yet addressed specific questions regarding gender identity with respect to bathroom policies, grooming policies, and pronoun usage. This is an evolving and fact-specific area of law. We would caution that not all diversity trainings accurately portray the law, especially with respect to protections for religious employees who hold different religious beliefs about gender and sexuality.

Employees sometimes ask us whether they are required to attend or participate in diversity training because the trainings may encourage behavior that contradicts the employee's religious beliefs. The answer is it depends.

Most religious individuals do not have a sincerely-held religious belief that they cannot hear perspectives that differ from their own. If an employee is required to attend a training session and answer questions about the state of the law or company policy, it is unlikely that the religious employee will be able to argue that he or she is being called upon to violate his or her sincerely-held religious beliefs by attending. However, if an employee is being called to personally affirm agreement with a statement that violates his or her religious beliefs, then that employee may be able to ask for a religious accommodation. We will describe best practices for requesting an accommodation in a later section.

### **Citations:**

2. This guide is directed toward religious employees at secular, for-profit workplaces. This guide does not apply to employees

## Religious Accommodations & Diversity Training

who work at places of worship or other religious non-profits. Such organizations generally have a right to create a community that shares a set of religious beliefs and thus can make employment decisions on the basis of religion. See 42 U.S.C. § 2000e-1(a); *Little v. Wuerl*, 929 F.2d 944, 951 (3d Cir. 1991); *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049 (2020); *Hosanna-Tabor Evangelical Lutheran Church School v. E.E.O.C.*, 565 U.S. 171 (2012). For additional information, see First Liberty's Protection Kits for religious schools and non-profits.

3. See 42 U.S.C. § 2000e-2(a)(1); *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21 (1993); *Johnson v. Spencer Press of Maine, Inc.*, 364 F.3d 368, 376–77 (1st Cir. 2004).

4. 42 U.S.C. § 2000e(j); EEOC Guidelines on Discrimination Because of Religion, 29 C.F.R. § 1605.2(b).

5. *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63 (1977). The alleged hardship cannot be merely speculative. *Buonanno v. AT&T Broadband, LLC*, 313 F. Supp. 2d 1069, 1081 (D. Colo. 2004).

6. See, e.g., *E.E.O.C. v. Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768 (2015) (headscarf); *Fraternal Order of Police Newark Lodge No. 12 v. City of Newark*, 170 F.3d 359 (3d Cir. 1999) (beards).

7. 42 U.S.C. § 2000e(j).

8. See *Vandersand v. Wal-Mart Stores, Inc.*, 525 F. Supp. 2d 1052 (C.D. Ill. 2007).

9. *Bostock v. Clayton Cty*, 140 S. Ct. 1731 (2020).

## Religious Accommodations & Pronoun Usage

Increasingly, workplaces are creating policies that require or imply that employees are expected to use pronouns in accordance with a transgender individual's preference. Some employees hold the sincere religious belief that sex is an immutable characteristic and they cannot knowingly use pronouns that do not accord with an individual's biological sex. If you are in a situation where you are being asked to agree to use pronouns in violation of your sincerely held religious beliefs, you may be able to request a religious accommodation. If the policies are vague and you are not sure about the employer's pronoun policy, you may be able to request clarification and a religious accommodation if needed.

## How Do I Request a Religious Accommodation?

When requesting an accommodation, keep the following points in mind:

1. An employer is not likely to grant a religious accommodation request if they do not know that you need one.
2. Make your religious accommodation requests in writing, such as an emailed request, and retain a copy.
3. Clearly and concisely explain your religious beliefs and the accommodation that you are seeking.
4. Work with your employer to try to come up with a win-win solution.
5. Be polite and respectful at all times.

## Example Accommodation Request: Pronoun Usage

With this letter, I am respectfully requesting a religious accommodation not to be required to violate my sincerely-held religious beliefs.

I firmly believe that all people are created in the image of God and should be treated with dignity and respect. I am fully committed to treating everyone with dignity and professionalism, including people with different beliefs and lifestyles. (Mark 12:31). As a part of my Christian faith, I also believe that God created mankind as immutably male and female, sexually distinct but with equal personal dignity. (Genesis 1:26-28).

Because of my religious beliefs, I cannot use pronouns in a way that violates my religious beliefs about gender and sexuality. I am requesting a religious accommodation to not be required to use pronouns in a way that knowingly violates my religious beliefs about gender and sexuality, should the situation arise. At all times, I will treat everyone with politeness and professionalism.

Thank you for your consideration of this matter.

## Example Accommodation Request: Diversity Training

### **Example Accommodation Request:** *Diversity Training*

With this letter, I am respectfully requesting a religious accommodation not to be required to violate my sincerely-held religious beliefs.

I firmly believe that all people are created in the image of God and should be treated with dignity and respect. I am fully committed to treating everyone with dignity and professionalism, including people with different beliefs and lifestyles. (Mark 12:31). As a part of my Christian faith, I believe that God created mankind as immutably male and female, sexually different but with equal personal dignity. (Genesis 1:26-28). I also believe that God created marriage as the permanent union of one man and one woman, with absolute marital fidelity. (Genesis 2:23-24).

Because of my religious beliefs, I cannot personally affirm agreement with moral statements that go against my sincerely-held religious beliefs. [Company's] diversity training requires me to affirm that [insert objected to affirmation.] I am requesting a religious accommodation to not be required to make this affirmation or speak in other ways that violate my religious beliefs. I can affirm that I will treat everyone with politeness and professionalism. I am happy to work with you to find an alternative solution to complete the diversity training requirements.

Thank you for your consideration of this matter.

### **What Happens After I Request a Religious Accommodation?**

The religious accommodation request should spark a dialogue between employer and employee to find a mutually agreeable solution. If the company's initial proposal is insufficient or too vague, you may consider responding with a counterproposal that is more specific or more tailored to your request.

Companies cannot terminate you or refuse to hire you because they think they might have to grant a reasonable religious accommodation request. [10]

Title VII also prohibits retaliation against an employee who "oppose[s] any practice made an unlawful employment practice by this subchapter." [11] The "EEOC has taken the position that requesting religious accommodation is protected



activity” covered by the anti-retaliation provision. [12] However, at least one federal appellate court has held that employees can only allege retaliation if they were retaliated against for opposing the unlawful denial of a religious accommodation, not if they were retaliated against for making the accommodation request itself. [13]

### ***Are Employers Required to Grant Religious Accommodation Requests?***

Whether an employer is legally required to grant a religious accommodation request is a fact-specific question. The answer will depend on how reasonable your request is and how much of a hardship it places on the employer. The answer also may vary based upon your state. Religious accommodation requests regarding pronoun usage and similar moral issues are a developing area of law.

Currently, although the text of Title VII requires employers to grant reasonable religious accommodations unless employers can prove that doing so would cause them “undue hardship,” the Supreme Court in 1977 interpreted this provision leniently in favor of employers. [14] The *Hardison* case held that employers can deny the request if accommodating the religious belief would cause more than a de minimis cost to the employers. Subsequent courts have required these costs to be real, as opposed to merely hypothetical or speculative. [15]

At least four Justices currently on the Supreme Court have suggested that *Hardison*’s employer-friendly interpretation should be reconsidered in a future case. [16] For instance, Justice Gorsuch has argued that the de minimis standard is not grounded in the text and instead should be interpreted in the same way that courts interpret other civil rights statutes that use the term. Under those statutes, employers must provide an accommodation “unless doing so would impose ‘significant difficulty or expense’ in light of the employer’s financial resources, the number of individuals it employs, and the nature of its operations and facilities.” [17] The issue is likely to be litigated in the future.

The Supreme Court also has been very attuned to protecting the rights of religious people with respect to their beliefs on issues of gender and sexuality. For example, in *Obergefell*

*v. Hodges*, the Court recognized that many traditional beliefs about issues of marriage and sexuality are based on “decent and honorable religious or philosophical premises[.]” [18] In *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*, the Court went a step further and held that it was unconstitutional discrimination for the state agency to disparage such religious beliefs or fail to display respectful consideration for people who hold traditional religious beliefs on such matters. [19] We would argue that it would likewise violate Title VII for a company to engage in similar disparagement of employees based upon their religious beliefs.

#### **Citations:**

14. *Hardison*, 432 U.S. 63.

15. *Buonanno*, 313 F. Supp. 2d at 1081.

16. *Kennedy v. Bremerton Sch. Dist.*, 586 U. S. \_\_\_\_, 139 S. Ct. 634, 637 (2019) (Alito, J., concurring).

17. *Small v. Memphis Light, Gas, & Water*, 593 U. S. \_\_\_\_, 141 S. Ct. 1227, 1228 (2021) (Gorsuch, J., dissenting).

18. 576 U.S. 644, 672 (2015).


19. *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm’n* 138 S. Ct. 1719, 1729, 1731 (2018).” *Should be* “19. *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm’n*, 138 S. Ct. 1719, 1729, 1731 (2018).

### *What If I Am Denied a Religious Accommodation?*

If your request is denied, you can consider whether to file a charge of religious discrimination with the Equal Employment Opportunity Commission or the appropriate state agency. You have a limited time frame after the accommodation is denied in which to do so, so you should contact an attorney to ensure that you file a charge on time. After the agency investigates the situation, then either it will take up the case itself, or more likely, it will send you a right to sue letter which enables you and your attorney to bring a lawsuit. We caution that litigation is a long and arduous process, with no guarantee of success. For this reason, every attempt should be made to come to a mutually agreeable solution with your employer should you need to request a religious accommodation.

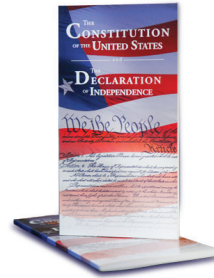
### *Conclusion*

We hope this guide will be a helpful resource for you. If you have any questions, please seek legal assistance. First Liberty attorneys are standing by at [FirstLiberty.org](http://FirstLiberty.org) to help protect your religious freedom.



**What If I Am Denied a  
Religious Accommodation?  
& Conclusion**

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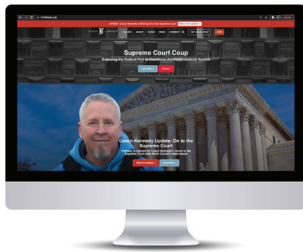
### 7 Facts About Religious Rights in the Workplace

Right now, attacks against people of faith in the workplace are at an all-time high. And what's worse, many employees allow themselves to become victims of religious discrimination due to their own lack of knowledge or pressure to conform—even though the law is on their side!

Don't wait until it happens to you. Equip yourself and your family to meet any challenge of your faith at your workplace with First Liberty's 7 Facts About Religious Rights in the Workplace. Assembled by First Liberty's expert legal team, this handy guide will allow you to live out your faith at work with confidence.

Visit:  
[FirstLiberty.org/Workplace-Protection-Kit](http://FirstLiberty.org/Workplace-Protection-Kit)





### Learn More on First Liberty's Website

Visit our website, where you'll find information on our cases, clients and breaking updates on religious liberty in America. Whether you want to learn more about our attorneys, leadership and staff, or if you need to request legal assistance, our website is a one-stop shop for everything you need to know about religious freedom.

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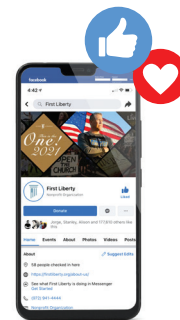
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(972) 941-4444



**Jeff Mateer**

*Exec. Vice President, Chief Legal Officer  
First Liberty's Religious Employee's Expert*

First Liberty is our nation's largest legal organization solely dedicated to protecting religious liberty for all Americans. We have won cases at all court levels, including the United States Supreme Court, federal and state courts, and administrative courts and agencies. Victories are won through a nucleus of top-ranked staff attorneys who coordinate a national network of top litigators from firms that include 24 of the largest 50 in the world.



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