

When Does Reasonable Accommodation Become Unreasonable?

QUESTION: We are a flower delivery company, and Saturday is one of our busiest days. Today we got an unusual request from Aaron, one of our new drivers. He says he has just joined a religion that forbids working on Saturdays, and he wants us to stop scheduling him on Saturdays for the indefinite future.

I am of the opinion that we do not have an obligation to start giving him Saturdays off. He has been employed with us for over a year and has never complained before about working on Saturdays. Besides, we let all of our employees know during the interview process that they are frequently required to work on that day, and it doesn't seem fair that Aaron should get preferential treatment. Do we have to give him that day off?

ANSWER: All Oregon employers have an obligation to reasonably accommodate the sincerely held religious beliefs of an applicant or employee, unless to do so would cause an undue hardship for the employer.

A religious belief is considered to be sincerely held if the individual can demonstrate a strict adherence to the belief. The accommodation requested by an employee must also be based on the employee's adherence to a practice that is a tenet of the employee's religious beliefs, as opposed to the employee's preference.

It sounds like Aaron is saying that not working on Saturday isn't a matter of his personal convenience, but is in fact a requirement of his faith. Therefore, you probably do have an obligation to determine if you can take him off the Saturday schedule without creating an undue hardship to yourself and the company.

So how do you determine what is "reasonable" and what is an "undue hardship?" Historically, the standard for determining undue hardship with respect to religious accommodation has been dramatically different than that in situations where an employee is requesting an accommodation for a disability.

To establish an undue hardship in disability cases, employers generally must show that the proposed accommodation would result in significant expenditures or would fundamentally alter the nature of the employers' business. By contrast, federal and Oregon courts have found that employers could prevail in religious accommodation cases where they were able to establish that the requested accommodation would create more than a "de minimus" (minimal) expense.

In April of this year, however, the Oregon Court of Appeals appears to have set a new standard for "undue hardship" in our state. *Nakashima v. Board of Education* involved the Portland Adventist Academy's request to reschedule a state basketball tournament so that they would not have to play on their Sabbath. The Oregon Schools Activities Association and the Board of Education refused this request, stating that it would create more than a de minimus hardship. The Oregon court, however, ruled that the accommodation would have to be granted unless it would result in *significant difficulty* or expense.

The ruling in Nakashima is still being appealed and the final outcome remains to be seen, but at this time the Nakashima ruling remains in effect, moving Oregon in the direction of requiring more than the longstanding “de minimus” standard.

What about the fact that Aaron was told in the interview that he would sometimes have to work on Saturdays and he agreed to this? The fact is that people sometimes change their religious preferences, and they have a right to do so. This does not affect their right to request and receive reasonable accommodation.

To determine whether Aaron’s request might create an undue hardship, BOLI or a court would look at factors such as:

- how many employees the company has,
- how much customer service might be impeded (if at all),
- how much, if any, monetary loss the employer would suffer as a result of the requested accommodation.

Employers have a right to ask employees who request religious accommodation for verification that the accommodation is required to enable the employee to satisfy a tenet of the religion. A letter from a pastor, affirming that the employee’s requested act (or omission) satisfies a tenet of the employee’s religion, is an example of the type of verification to which an employer is entitled.

For more information on this and other important issues affecting Oregon employers, including seminars conducted by BOLI’s Technical Assistance Unit, visit our website at www.oregon.gov/boli/ta. You may also call us at 971-673-0824.