

# TANENBAUM

## CORPORATE MEMBERSHIP

TANENBAUM CENTER FOR INTERRELIGIOUS UNDERSTANDING • JULY 2014

## 50 Years Later, the Challenge Continues...

Several years ago, soon after Tanenbaum began addressing religious bias in the health care industry, I visited a large, full-service medical center/teaching hospital to meet with a group of directors about our work. The meeting was fruitful, and it was clear that the hospital was committed to providing religio-culturally competent patient care.

But after the formal meeting was over, I was pulled aside by a woman working in human resources. She quietly told me that there were other things to know, and how nursing applicants were really being screened, especially for emergency room openings.

During our conversation, she described an informal but consistent practice of identifying, and immediately disqualifying, Jewish applicants because they might cause scheduling problems by asking for time off on Friday nights and Saturdays. From our conversation, it appeared that the hospital had struggled to accommodate Orthodox Jewish employees in the past, and when it did so, their accommodation was perceived as favoritism and caused friction. To respond to these challenges, the hiring staff was effectively eliminating the problem – by carefully hiring nurses who were anything but Jewish.

This illustrates how – 50 years after the Civil Rights Act of 1964 was passed – employers with good intentions are still struggling with religious discrimination. At the center of this story, however, lies a distinguishing fact about religious discrimination, which contrasts with other identities protected by Title VII of the Civil Rights Act of 1964. When it comes to religion, employers are expected to provide *reasonable accommodations* for sincerely held religious, ethical or moral beliefs unless doing so would impose an undue hardship on the employer's business.



President Lyndon B. Johnson signs the Civil Rights Act of 1964. Among the guests behind him is Martin Luther King, Jr.

### TITLE VII'S RELIGIOUS ACCOMMODATION REQUIREMENT

Interestingly enough, when Title VII was first enacted 50 years ago, it did not include this reasonable [accommodation requirement for religion](#). It included religion as one of several groups (along with race, color, sex, and national origin) that were protected from discrimination. However, the lack of clarification about whether employers needed to accommodate employees' religious practices, such as a refusal to work during regularly scheduled work hours, caused confusion and led to complaints being logged with the Equal Employment Opportunity Commission.

This was the state of the law in 1971 when the U.S. Supreme Court decided *Dewey vs. Reynolds Metals Co.*, a case in which an employee refused to work during his assigned Sunday overtime shifts because of his religious observance of the Sabbath. The Supreme Court ruled that while Reynolds Metals Co. was not discriminating against Dewey, it was failing to accommodate Dewey's

religious practice. Shortly after this case was decided in 1972, Congress amended Title VII to require employers to reasonably accommodate employees' religious observances and practices, unless doing so would create an undue hardship.



Martin Luther King, Jr. and Malcolm X at the United States Capitol on March 26, 1964. Both men had come to hear the Senate debate on the bill. This was the only time the two men ever met; their meeting lasted only one minute.

### **ACCOMMODATIONS: A WORK IN PROGRESS**

In the years since those early days of Title VII, employers in the United States have made great strides in reducing workplace discrimination at large. The adoption of employment protections for veterans, people with disabilities, age, pregnancy, and in some states sexual orientation and gender identity, among other categories is countering discrimination at work and making companies more attractive to employees. At the same time, companies have learned that addressing discrimination proactively and trying to establish inclusive work environments that value and respect differences can lead to corporate success and the hiring and retention of the best talent.

However, when it comes to religious bias, discrimination and non-accommodation at work, progress remains relatively slow-going and undeniably complicated. Though religious discrimination complaints made to the Equal Employment Opportunity Commission (EEOC) are the smallest in total number, they are also one of the fastest rising ([rising 71% since 2001](#)). Further, many

experiences of religious bias go unreported to the EEOC or even human resource professionals. In fact, Tanenbaum's *2013 Survey of American Workers and Religion* found that among the one-third of American workers who had witnessed or experienced some form of non-accommodation at work, [less than 1-in-5 ever shared the experience with managers or HR](#).

It has become clear that religious accommodation, though a critical building block in creating inclusive and productive workplaces, still holds a certain stigma. Employers tend to view such accommodations as a burden that will require time and money. Human Resource practitioners fear that providing accommodations for employees will open a floodgate of difficult requests. And employees often hesitate to submit requests for accommodations. Many fear that they will be viewed as troublemakers or not good team players or worse, that they will suffer retaliation in the form of harassment, demotion, or being let go.

Interestingly, our [2013 Survey](#) found that the most commonly reported experience of non-accommodation at work was being required to work during Sabbath observances or on a religious holiday (24%) – the very same issue that sparked the legal requirement for accommodations in 1971.

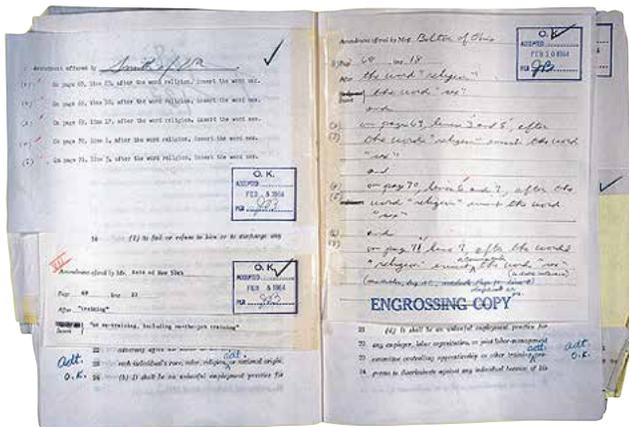
“ **Religious accommodation, though a critical building block in creating inclusive and productive workplaces, still holds a certain stigma.** ”

Clearly, protection for Sabbath observers is not an issue that has been resolved and remains salient at workplaces of all kinds, including a hospital that is clearly committed to diversity and inclusion. That hospital faced a very real challenge. It had to ensure that patients received needed care and that nurses were available to cover necessary shifts. However, at



that hospital, which was in dire need of qualified nurses, hiring managers were allegedly denying employment to applicants before an accommodation request had even been made. The managers' fear of accommodation requests was causing these hiring managers to discriminate.

Fear of the possible consequences of providing reasonable accommodations holds us back from creating the kinds of equal and inclusive workplaces envisioned with the passing of the Civil Rights Act of 1964.



Engrossing copy of H.R. 7152, which added sex to the categories of which the bill prohibited discrimination, as passed by the House of Representatives.

### THE ACCOMMODATION MINDSET

In the face of the 50th anniversary of this important piece of national legislation, we ask you and your colleagues to think about the importance of providing religious accommodations and review Tanenbaum's [Eight Steps to the Accommodation Mindset](#), a tool we developed to illustrate the process of establishing a corporate culture of accommodating religiously diverse employees and applicants. These eight steps include ways to course correct managers' mindset away from the question of "Do I have to accommodate?" and toward "How can we accommodate?"

As an exclusive benefit to our Corporate Members, we've also included an "Accommodation Mindset Worksheet," (below) designed to walk you through

“ Fear of the possible consequences of providing reasonable accommodations holds us back from creating the kinds of equal and inclusive workplaces envisioned with the passing of the Civil Rights Act of 1964.

each step. This worksheet can be adapted for many purposes – and can even be used to identify personal biases and assumptions that may be influencing your approach to this challenging issue. For example, if one of the hiring managers at the hospital had made use of this worksheet, questions 1 and 2 would likely have pointed to their own assumptions about a prospective applicant's religious requirements and ultimately, to the fact that no accommodation request had yet been made:

*Question:* What specific information do you know so far about the employee's personal needs and specific conflict(s) between work and religion?

*Answer:* Nothing, yet.

When faced with an accommodation request, these questions can help managers, human resources practitioners, employee relations employees, and even equal employment officers in finding creative and effective accommodation solutions for a diverse workforce.

In Friendship,

Joyce S. Dubensky



# The Accommodation Mindset Worksheet

## 1. Get the Facts

What information do you actually know about this employee's religious beliefs and practices that may (or may not) pertain to this situation?

## 2. Recognize All Employees' Needs

What specific information do you know so far about the employee's personal needs and specific conflict(s) between work and religion?

What necessary information do you NOT know about the employee's specific belief(s), observance(s), or practice(s) in order to move forward?

## 3. Ask Respectful Questions

Design three respectful questions that you can ask the employee to collect the necessary information that you require. Respectful questions will communicate that you respect the beliefs of your colleague and that you are open to understanding a new perspective. For example, do not ask "what's that scarf on your head for?" Instead, ask "If you have a few minutes, would you mind sharing about your head covering and if it has any significance?" And remember, you can avoid "Spokesperson Syndrome" by always asking about the *individual's* beliefs and practices (not about an entire faith tradition):

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

## 4. Identify Any Limitations

What, if any, are the employer's limitations? (e.g. budget, time, resources, space, safety, contracts, infringing on other employees' rights, etc.)

## 5. Be Creative

Identify two different ways that the employee could be accommodated:

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If you cannot identify an accommodation that would not cause what you believe to be an undue hardship on the employer, explain why in detail:

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Consider inviting the employee to suggest a possible accommodation that takes into account all of the various issues raised including the issues involved in an undue hardship.

## 6. Communicate

If one or more accommodations have been identified (either by the company or by the person involved) choose one and explain why you will go with that option.

## 7. Educate

Which additional departments/specific employees (if any) need to be made aware of the situation, the accommodation(s) and the religious practices being addressed?

How will you brief/train/or educate those departments/specific employees?

## 8. Institutionalize

Can this particular accommodation become a better practice that becomes institutionalized and part of the corporate policies and practices?

If yes, how?

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