

# Religious Self-Identification

This fact sheet explores the employer’s role regarding religious self-identification and best practices for employers regarding questions about employees’ religious identity. Employees may choose to identify their religion in the workplace in a number of ways, from personal expression of observances to public celebration of holidays. And employers may desire to know more about their employees’ religious affiliations to better accommodate them.

**Disclaimer:** The information in this resource is for informational purposes only and does not constitute legal advice or establish an attorney-client relationship. Tanenbaum thanks Schulte Roth & Zabel LLP for its expertise and assistance in preparing this resource.

## **Should I Request that Employees Self-Identify Their Religion?**

In general, we believe it is the best practice for companies and organizations not to request religious self-identification from employees. An employer may see a request for religious self-identification as a well-intentioned effort to identify diversity and make employees ‘feel seen.’ However, it could have the opposite result instead. Such requests could have the potential to make employees feel exposed and uncomfortable, run against the grain of their communal traditions, and/or evoke collective trauma.

According to the U.S. Equal Employment Opportunity Commission, “[q]uestions about an applicant’s religious affiliation or beliefs (unless the religion is a bona fide occupational qualification (BFOQ)), are generally viewed as non-job-related and problematic under federal law.”<sup>1</sup> While “an employer whose purpose and character is primarily religious is permitted to lean towards hiring persons of the same religion....[o]ther employers should avoid questions about an applicant’s religious affiliation.”<sup>2</sup> This includes questions concerning places and days of worship as well as religious holidays; and requesting references from religious leaders – all of which are not recommended for non-religious organizations. Notwithstanding the foregoing, when reviewing applicant or employee requests for religious accommodations (e.g., time off for holidays), an employer may make certain inquiries, including “ask[ing] the applicant or employee to explain the religious nature of the practice and the way in which it conflicts with a work requirement.”<sup>3</sup>

In a report by the U.K. Equality and Human Rights Commission, some Christian employees felt that stereotypes about Christians were unfairly applied to them. One employee described being accused of being homophobic simply for identifying as a Christian. Self-identification can also be problematic for nonreligious employees. In that same report, an Atheist employee described being subject to proselytizing in the workplace from a manager once that manager learned that the employee was not

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<sup>1</sup> “Pre-Employment Inquiries and Religious Affiliation or Beliefs,” U.S. EEOC, accessed February 9, 2023, par. 1, <https://www.eeoc.gov/pre-employment-inquiries-and-religious-affiliation-or-beliefs>

<sup>2</sup> Ibid, par. 2.

<sup>3</sup> “Section 12: Religious Discrimination,” U.S. EEOC, accessed February 9, 2023, s. IV(A)(1), par. 3, <https://www.eeoc.gov/laws/quidance/section-12-religious-discrimination>

religious.<sup>4</sup> Nearly half of nonreligious Americans surveyed (44.3%) mostly or always concealed their nonreligious identity.<sup>5</sup> Some may do this to avoid discrimination or mistreatment in the workplace due to their identity.<sup>6</sup>

### **Handling Employees' Voluntary Self-Identification**

Employees may voluntarily choose to identify their religion, for example, when requesting accommodations. They may also identify their religion through their personal observance such as religious headwear or symbols in their workspace. Furthermore, some employees may identify their religion through their voluntary efforts to participate in employee resource groups (ERGs) or holiday party planning efforts.

Employers should have clear protocols, clearly enforced best practices for handling religious information, and requests for accommodation to ensure the utmost sensitivity and confidentiality. Such information should only be shared on a need-to-know basis, discussed for purposes relevant to the workplace, and treated respectfully and impartially.

### **What If I Want to Better Accommodate Employees' Religious Diversity?**

The best approach includes:

- Training for sensitivity to diversity in religious perspectives.
- Communicating with employees as to the procedures for requesting accommodations (including following up effectively).
- Making sure that holiday events respect the diverse spectrum of religious belief and expression with employees voluntarily included in their planning.

Employees may change their religious beliefs and affiliation over time (e.g., from affiliated to unaffiliated), and new employees may add to the overall religious diversity of your team, but your dedication to learning, communication, and supporting employee diversity in the workplace should be a constant and consistent effort. Whatever the religious affiliation of your employees, following these practices will help them feel comfortable coming to you with accommodation requests, and comfortable being their complete selves in the workplace.

Tanenbaum can assist you with one-on-one consultations, troubleshooting, and training on religion in the workplace - including navigating religious accommodations, planning for inclusive holiday events, and other issues you may face in ensuring respect for religious diversity. For more useful information on world religions, subscribe to our online resource, [\*\*Religion at Work: A \(Human\) Resource\*\*](#). Visit

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<sup>4</sup> Martin Mitchell et al., "Religion or Belief Call for Evidence findings," U.K. Equality and Human Rights Commission, last modified March 1, 2015, pp. 42-43,

[https://www.equalityhumanrights.com/sites/default/files/rob\\_call\\_for\\_evidence\\_report.pdf](https://www.equalityhumanrights.com/sites/default/files/rob_call_for_evidence_report.pdf)

<sup>5</sup> Somjen Frazer et al., "Reality Check: Being Nonreligious in America," U.S. Secular Survey, American Atheists, accessed February 9, 2023, p. 19, <https://www.secularsurvey.org/s/Reality-Check-Being-Nonreligious-in-America.pdf>

<sup>6</sup> Martin Mitchell et al., "Religion or Belief Call for Evidence findings," U.K. Equality and Human Rights Commission, last modified March 1, 2015, pp. 42-43,

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