

The Right to Religious Observance

Britain is a multi-cultural/multi-faith society with many different religions and yet the world of work makes little provision for the followers of non-Christian religions.

Religious observance is not just about attending religious ceremonies or participating in religious festivals. It covers a whole range of issues such as dress codes, food in staff canteens and leave arrangements.

Religious observance is an important bargaining issue.

This resource sheet aims to assist negotiators in persuading employers to recognise and take into consideration the religious practices of an increasingly multi-cultural/multi-faith workforce.

Why is Religious Observance an Usdaw issue?

- We are committed to building a multi-cultural society free from discrimination and prejudice. To turn this aim into a reality we need to make progress on improving rights to religious observance.
- A large number of Usdaw members have specific cultural and faith needs which need to be addressed by the union. Nearly 8% of the Union's membership are Black or from minority ethnic communities. Issues such as religious observance which start to address the specific cultural and faith needs of these members need to be put onto our negotiating agenda.
- We need to look at adopting positive campaigns to improve the appeal of Usdaw to Black and minority ethnic workers. Indian, Pakistani and Bangladeshi workers are less likely to be members of a Union than workers from other ethnic groups. By championing issues such as religious observance we will gain new members by increasing our appeal to all sections of the workforce.

What are the facts?

- The Equality Act 2010 establishes the right to have religious and cultural beliefs respected. The Act also protects people who do not have any religious belief.
- Employers have a responsibility to avoid indirect as well as direct race discrimination. Indirect discrimination is the application of a requirement or condition which is applied to all staff but which impacts negatively more on one faith group.
- The Equality Act 2010 advises employers to adapt existing work requirements where they might conflict with the religious and cultural needs of the workforce; in particular employers are advised to look at dress codes, prayer times and religious holidays. However, the regulations do not say that employers must always provide time off and facilities for religious observance.
- An employee may have a legitimate grievance if their religious and cultural beliefs are disregarded. In such circumstances Union reps need to consider taking complaints through the company grievance procedure.

What do we want?

The following section identifies some of the issues which may need to be placed on the bargaining agenda. The aim is not to prescribe the sole legitimate forms of religious observance. Members will identify other issues.

■ **Time off for religious observance**

There are a growing number of workplaces that make special arrangements to allow staff to take annual or unpaid leave to facilitate religious observances.

■ **Dress codes**

The right to religious observance involves more than just observing major annual festivals. Work rules such as dress codes need to be re-examined to ensure they respect the beliefs of all sections of the workforce.

A female Muslim employee successfully challenged a British Home Stores dress code on the grounds that a requirement for female staff to wear a skirt was a form of discrimination, as her religion did not allow her to uncover her legs. The NHS changed its uniform requirements following a similar case involving a Sikh female nurse. All major retailers now provide company uniforms and headscarves in line with cultural beliefs and traditions.

■ **Prayer rooms**

Respecting the right to religious observance should also involve looking at the provision of facilities such as making a room available for prayer.

Such a room should be clean, accessible and have facilities for washing, if possible, before prayers. A cupboard where photographs, pictures and statues can be stored in order not to offend Muslim employees would also be useful. The provision of a compass would also assist Muslim workers so they can be certain of the direction of Mecca.

The toiletries manufacturer Elida Faberge have provided a prayer room in at least one of their workplaces. JD Williams set aside quiet space and washing facilities for employees who want to pray.

■ **Weekly religious observance**

Employers should take into account religious observance when organising the workplace. Allowing Muslim workers time off to attend prayers on a Friday by working later on another day could be helpful to both employer and employee. Organising working arrangements that allow workers to finish early on a Friday would also assist Jewish employees.

■ **Dietary needs**

The religious, social and cultural requirements of employees should be taken into consideration by employers in the range of food available in staff canteens. This should involve at the very least the provision of vegetarian options. If possible, and if it is justified by demand, specially prepared food such as halal or kosher meals could be provided.

■ **Extended leave**

Religious observance may result in legitimate requests for extended leave, for example Muslims wanting to make a pilgrimage to Mecca.

Employers should give consideration to allowing staff to 'bank' annual leave ie saving some leave each year to allow for an extended holiday. Employers should also be sympathetic to staff taking all annual leave entitlement in one block to allow for an extended visit abroad. Finally, unpaid leave to add to the annual paid leave should be considered for a once in a lifetime trip abroad. The Union has extended leave agreements with, amongst others, Morrisons and Tesco (that allows employees to take time off to visit relatives abroad or embark on a pilgrimage).

Arguments to use with employers

- Employers who make efforts to understand the needs of their employees by providing additional facilities and showing flexibility will benefit from gaining a more loyal workforce. A more committed workforce will be a more productive workforce.
- An employer who is known to make specific efforts to address the cultural needs of the workforce will increase market appeal to minority ethnic consumers.
- The required measures will not usually be of great financial cost to the employer. Often they only require a more sensitive and flexible approach by the employer to personnel and human resource issues such as rotas.
- Employers who ignore the legitimate requests of employees concerning religious and cultural beliefs could find themselves embroiled in grievances or even costly and complex legal action. Such action is likely to attract very bad publicity for the company.

Frequently Asked Questions

Question 1: Can a Muslim employee demand the right for leave at Eid, and if they are refused, is the employer breaking the law?

Answer: No. The employee has no statutory right to demand time off for Eid. An employer is under an obligation to seriously consider the request, and should try to meet it wherever possible. Refusal to grant such leave may be discriminatory if it cannot be justified on the grounds of business needs. It is important to give as much notice as possible and whilst you may not always be able to give an exact date, you can give an approximate date. The decision will be based on the circumstances of the organisation at that particular time, and the effect your absence will have on them.

Question 2: A Jewish employee says that she cannot work at the checkout as she cannot handle pork, bacon or alcoholic goods.

Answer: If a person feels that their religious belief prevents them from handling certain products then they should discuss it with their rep and manager. A policy that all staff must work in the meat section of a supermarket may amount to indirect discrimination as it disadvantages Jewish and Muslim workers for example. However working in the meat section is very different from requiring someone to handle already packaged products on the checkout. An employer can refuse a request where agreeing it would place an undue burden on business.

Question 3: A worker who is a committed Christian is being pressured, when she starts her new job in a major supermarket, to work Sundays. Her manager says she has to work Sundays as part of her contract.

Answer: No. A retail worker doesn't have to work on Sundays. Shopworkers have a legal right under the Sunday Trading Legislation to contract out of Sunday working. For more information see Usdaw's leaflet – *Sunday Working for Shop and Betting Workers (Leaflet 278)*.

For those Usdaw members who do not work in retail or whose Sabbath Day falls on a day other than Sunday there have been some helpful tribunal decisions. The approach taken suggests that in order to avoid indirectly discriminating, an employer should be able to justify and provide evidence of the need for Sunday (or Sabbath Day) working and should be able to demonstrate that they have explored alternatives. In other words, where a request is made by a worker not to work on Sunday (or on their Sabbath Day) an employer must seriously consider accommodating the request.

The Equality Act 2010

The regulations make it unlawful on the grounds of religion or belief to:

- Directly discriminate against anyone. That is, to treat a person less favourably than others because of their religious belief (or absence of it).
- Indirectly discriminate against anyone. That is, to apply a criterion, provision or practice which disadvantages people of a particular religious belief unless it can be objectively justified.
- Subject someone to harassment.
- Victimise someone because they have made or intend to make a complaint or allegation or have given or intend to give evidence in relation to a complaint of discrimination on the grounds of religion or belief.
- Exceptions may be made in very limited circumstances if there is a genuine occupational requirement for the worker to be of a particular religion or belief in order to do the job or to comply with the religious or belief ethos of the organisation.

Other legal guidance and case law

- *Volume 2 of 7: Equality Act 2010 evidence* published by the Equality and Human Rights Commission at www.equalityhumanrights.com
- *Muslims in the Workplace* a good practice guide published jointly by the Muslim Council of Britain and the DTI. Available at www.mcb.org.uk/faith/approved.pdf

Where to go for further help and advice

Usdaw's Equalities Section at Central Office can give further advice on the issues raised in this resource sheet. Tel: 0161 224 2804 or e-mail: womenandequalities@usdaw.org.uk

Usdaw's Legal Department can offer advice on individual cases and relevant case law.
Tel: 0161 224 2804