

“I Need Friday Off”

(By Douglas P. Currier, Verrill Dana, LLP)

Friday is a big day. The Company has to complete a marketing plan for a major client presentation on Monday morning. The creative designer on the project announces that he cannot work Friday – he is teaching a bible studies class that day. The project manager asks you; “Can we make him come to work on Friday?”

You know that both the Maine Human Rights Act and the Federal Civil Rights Act prohibit discrimination, harassment and retaliation based on an employee’s religion. Both laws also require that employers “reasonably accommodate” an employee’s sincerely held religious beliefs, practices and observances, unless it would be an “undue hardship” to do so.

An “undue hardship” for purposes of religious accommodation is easier to demonstrate than an “undue hardship” for purposes of accommodating individuals with disabilities. An undue hardship exists with respect to a religious accommodation when the accommodation impacts the employer’s business and involves more than a minimal effort or expense. Still, undue hardship is a vague concept and is dependent on the particular facts of the situation; therefore an employer must be careful before denying a requested accommodation.

So how should you respond to the creative designer’s request to be excused from work on Friday?

First, do not become obsessed about whether the employee’s religious beliefs are “sincerely held.” Unless there are solid objective reasons to believe that the employee has fabricated his religious beliefs in order to get time off for some other purpose, take the employee at his word. For example, the creative director should not be required to get a note from his church confirming that he has bible class on Friday.

Second, understand that the fact that this is something that the creative director desires to do in furtherance of his religious beliefs, as opposed to being actually mandated to do by his religious beliefs, really does not make a difference. You still need to make reasonable accommodations. Employers who go on the internet to research the teachings of the employee’s religion often get into trouble (or waste time) because the focus of the concern is not on the norms of the religion, but on the sincerely held beliefs and observances of the employee.

Third, talk to the employee about his request, even if you are convinced that an accommodation will not be possible. The law requires an interactive process where both the employee and the employer make a good faith effort to balance the employee’s religious needs with the degree of disruption imposed on the employer.

Fourth, ask yourself these three questions regarding the requested accommodation. If the answer to any one of the three questions is “yes” then it may be that you have the right to deny the request:

- 1) Does the requested accommodation interfere with productivity or workplace safety?
- 2) Will the requested accommodation cost more than a minimal amount?
- 3) Will other employees be disadvantaged if the requested accommodation is granted?

Continued...

An employer may be able to establish undue hardship if accommodating an employee's religious practices requires more than ordinary administrative or operational costs, diminishes efficiency in other jobs or impairs workplace safety. An undue hardship may also exist when the proposed accommodation infringes on other employees' job rights or benefits or causes co-workers to carry the accommodated employee's share of potentially hazardous or burdensome work.

In this instance, the requested accommodation is not likely to cost the Company anything (e.g., the Company does not need to pay another employee overtime to cover the creative director's absence), nor will other employees be disadvantaged, unless the other employees will be required to work more hours on Friday and/or over the weekend because of the creative director's absence. However, the creative director's requested accommodation potentially will interfere with productivity because the marketing plan needs to be completed before Monday's presentation. The creative director's absence may also interfere with the quality and efficiency of the work that is done by the other project team members that Friday.

Fifth, once you have determined that there might be an undue hardship (e.g., a negative impact on productivity), consider whether there might be ways to avoid or minimize the disruption to your operations. For example, consider whether there is another employee who can fill in for the creative director on Friday. If that will not work, consider whether the creative director might be able to work at least part of the day Friday, and perhaps start work earlier that day, so he can teach bible class later in the afternoon. Perhaps the creative director can also do part of his work on the project on Saturday. You could also ask the other project team members whether they would be willing to work on the project on Saturday instead of Friday, with the understanding that they have no obligation to agree to do so.

It may be that the creative director is unique in his talents and/or has historical knowledge of the project such that he needs to be available on Friday to collaborate with the other project team members; therefore, not having him at work on Friday puts the quality of the marketing plan at risk. In that case, you can tell the creative director that he cannot take Friday off to teach his bible study class. To strengthen your position, though, you might want to emphasize that you are willing to allow him to take time off on another day to teach a bible study class.

Finally, make sure you treat your employees consistently. If last month you excused another employee from working on a Friday so he could attend his child's sports event, you should excuse the creative director too unless you can demonstrate that the nature of their respective positions and the business demands at the time are very different. And even if you grant the requested accommodation, make sure you treat the employees consistently. If the employee who went to his child's sporting event was not required to make up the missed time, do not make the creative director to make up the missed time either.