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Recommendations Regarding Religion in the Workplace

This policy brief emerged from preparation for and discussions in Parallel Session 2.1 on “Dignified Work,” but its analysis was consistent with discussions in Session 2.4 on “Religion and Anti-Discrimination Norms” and Session 2.5 on “Innovation and Why Religious Voices Matter.” Lead drafters were those who led the discussion in session 2.1. This included Carlos Custer, Former Secretary General, World Confederation of Labour, Argentina; Richard Foltin, Senior Scholar, Religious Freedom Center, Freedom Forum Institute, USA; Mark Hill QC, Honorary Professor, Centre for Law and Religion, Cardiff University, UK; and Juan Martin Vives, Director, Center for Studies on Law and Religion, Univesidad Adventista Del Plata, Argentina.

1. Framing the discussion

Our religious identity travels with us. It does not exist solely in the home or the place where we choose to worship but comprises an important part of who we are and how we self-identify. Over a lifetime, a large percentage of an individual’s time will be spent in a workplace – office, factory, etc. A workforce that feels respected and that it is afforded dignity is a productive workforce. Division, argument, unhappiness and dissent has the potential to compromise the effectiveness of any business or organisation. Denial of religious accommodation is a form of religious discrimination just as is discrimination on the basis of status alone. This policy brief is designed to consider how strategies for accommodating religious beliefs and practice can be deployed to promote the concept of dignity in the workplace.

2. When do these issues arise?

There are a myriad of circumstances when employers will need to give consideration to the religious identity of staff. These include:

- Non-discriminatory hiring and firing
- Religious dress
- Dietary requirements
- Washing and praying
- Holy days
- Performance of duties that conflict with religious beliefs and practice

3. What must an employer consider?

Employers need to be religiously literate. This can be facilitated from publically available guidance and by engagement with local faith leaders. Employers must also be prepared to engage constructively with employees in seeking a way to reasonably accommodate religious beliefs and practices in a fashion that does not impose undue hardship on the employer, including through undue negative impact on fellow employees.

4. Distinguishing religious ethos organizations

Distinct issues arise when the employer is a religious or religiously affiliated organization. As with other so called “ethos employers,” freedom of association (and where religious organizations are involved, freedom of religion) entails a right to recruit and maintain personnel whose beliefs and conduct are consistent with the ethos of the organization. This is particularly true for core and leadership positions, but can be important for other personnel. The issues get more complicated where public funding supports the employer or when the employer in question is a for-profit organization. These concerns can affect the balancing of freedom of association and freedom of religion claims asserted by employers. These issues deserve continuing study, but are beyond the scope of this policy brief.

5. Striking the proper balance

In the accommodation of religion in the workplace, various matters must be considered:

- (a) Is there a difference between private employers, on the one hand, and governmental or public sector workforce, on the other?
- (b) Will different principles apply depending on the size of the business and the ease with which staff can be rostered?
- (c) What factors are relevant in determining what constitutes a reasonable accommodation or an undue hardship?
- (d) To what extent does harm to third parties or intersection with anti-discrimination laws and other pertinent statutes limit the obligation/option to accommodate?

6. Recommendations

6.1 Governments should promote and facilitate an interactive process in which:

- an employee¹ advises the employer of the need for the accommodation of a religious practice;
- the employer must engage in genuine and sympathetic discussion of whether and how such accommodation may be provided;
- the employer has an obligation to make an affirmative and bona fide effort to provide a reasonable accommodation;
- an independent adjudicator/mediator system should be established to give effect to the above.

6.2 Governments should establish legal standards as to when a religious accommodation must be provided, as follows: upon actual notice or upon belief and knowledge that an employee requests accommodation of a religious belief or practice, the employer shall provide a reasonable accommodation of a religious belief or practice unless the employer will incur an undue hardship in providing such accommodation. A reasonable accommodation must actually remove the conflict, although it need not necessarily be the reasonable accommodation that the employee would prefer. Undue hardship shall be defined as significant difficulty and expense, including material harm or substantial inconvenience to third parties, such as customers or fellow employees.

6.3 In considering whether a contemplated accommodation constitutes an undue hardship, the following factors may, without limitation, be taken into account: the identifiable cost of the accommodation, including the costs of loss of productivity and of retraining or hiring employees or transferring employees from one facility to another; the overall financial resources and size of

¹ The term “employee” as used in this document shall include job applicants and other potential hires.

the employer involved, relative to the number of its employees; and for an employer with multiple facilities, the geographic separateness or administrative or fiscal relationship of the facilities; intersection with civil rights laws and other pertinent legislation.

- 6.4 With the exception of collective bargaining agreements, it is not a defence to an employee's request for religious accommodation for an employer to seek to rely on the existence of a general rule or practice that is applied without discrimination, where to do so does not resolve the conflict. The requirement of religious accommodation is not satisfied by mere formal equality, where such formal equality leaves the employee with an unnecessary choice between faith and livelihood. (Compare the protections afforded in many jurisdictions to persons with disabilities.)
- 6.5 Employers shall not impose upon an employee an obligation to participate in religious or sectarian observance, including prayers or Bible/holy book studies, as a condition of employment
- 6.6 Governments should refuse to enter into procurement and other contracts unless the contracting party has a policy in place that complies with the foregoing.
- 6.7 Governments should undertake a public education campaign directed at both employers and employees/job applicants, reinforcing the principle that religion is an aspect of a person's essential identity as much as race, national origin, sex, sexual orientation, etc., and that religious identity encompasses religious practice as well as belief.
- 6.8 Religious organisations should disseminate information concerning their doctrines and beliefs, and how those are manifested in particular practices and manifestations.

GUIDANCE AND RESOURCES

See, by way of example, the guidance available from the UK Equality and Human Rights Commission on *Religion or Belief in the Workplace* and the US Equal Employment Opportunity Commission publication on *Religious Garb and Grooming in the Workplace: Rights and Responsibilities*:

<https://www.equalityhumanrights.com/en/religion-or-belief-workplace>

https://www.eeoc.gov/eeoc/publications/qa_religious_garb_grooming.cfm

The following are examples of helpful resources for promoting religious literacy

<https://berkleycenter.georgetown.edu/resources/christianity-traditions>

<https://adfinternational.org/resource/christianity-in-the-workplace-an-employers-guide-to-christian-beliefs/>

<https://rlp.hds.harvard.edu/our-approach/what-is-religious-literacy>

<http://religionandprofessions.org/religious-literacy-toolkits/what-is-religious-literacy/>

<https://www.vox.com/first-person/2017/1/5/14166366/religious-illiteracy-conservative-liberal>