

Employers have nothing to fear from faith

A pragmatic approach to religion in the workplace can avoid costly legal battles. By **Kate Hilpern**

With recent headlines announcing pagan police officers' right to attend rites and dance naked, it's no wonder that employers are unsure about what they are expected to do to support their employees' religious and philosophical beliefs. With legislation also covering less well-known religions and beliefs, such as paganism, Rastafarianism, druidism, Darwinism, creationism and atheism, there's understandable concern about tripping up and being taken to an employment tribunal.

In fact, says Rachel Kryss, campaign director at the Employers Forum on Age and Belief, of all the employment laws relating to discrimination, those on religion and belief – set up in 2003 and due to be amalgamated into the Equality Act 2010 from this October – tend to frighten companies the most.

But Kryss says there's no cause for alarm. Employers are not required to do anything beyond acting reasonably and are certainly not expected to put their employees' beliefs before their own business needs. This was illustrated when a Muslim warehouseman claimed that Tesco had indirectly discriminated against him by expecting him to handle alcohol. Tesco successfully argued that supplying alcohol to its stores was a legitimate aim and requiring him to handle it was a proportionate means of achieving that aim. Another case involved a Seventh-Day Adventist who claimed the travel agency who employed her had discriminated indirectly by requiring her to work on some Saturdays, when her faith dictates she abstains from secular activity. She also lost her case, because the tribunal agreed there was a compelling business need outweighing the disadvantage to the employee.

To avoid disgruntled employees and tribunals altogether, Kryss says employers should avoid blanket refusals and

consider each request individually. She believes it's important to seize the initiative. "It's not the done thing to talk about religion in our culture, but this is the first barrier for employers to overcome. They need to engage with their workforce to understand who they are. That might mean monitoring religion and beliefs, which isn't something that many do."

Most see it as too personal while others think it's futile, because even if you find out 80 per cent of your workforce is Christian, what does that tell you? Half of those might not be practising and being asked to work on Sundays, for example, or told they can't display a cross, could be irrelevant. People's religious beliefs are very personal. What one person considers imperative for practising their religion might be insignificant for another. But Kryss says that pinpointing the issues a workforce feels strongly about will also send out a caring message – which can hugely affect morale and engagement. "Religion is not something people can hang up with their coats when they get to work," she says.

Planning ahead is also advisable. "Employers are obliged to be reasonable when they consider people's requests relating to religion, so being prepared for the kinds of questions that might come up, and knowing what your boundaries are, is a useful place to start," says Kryss.

But it is no more useful for managers to agree to every request they get than for them to refuse every request, she points out. "Saying yes to everything can lead to tension among colleagues, while saying no without due consideration might land you with a legal claim."

Dress codes are probably the area that's received the most press attention. BA made headlines after it forbade uniformed staff from wearing visible jewellery – something that one staff member who wanted to openly wear her cross objected to on the grounds of its discriminating against Christians. Since losing the case, BA has changed

its policy, but unless there's a good reason, such as health and safety, employers would do well to exercise a degree of caution when banning visible signs of religion and belief in its dress code, advises Esther Smith, partner at Thomas Eggar law firm.

Employers should also focus on dietary needs, says Laing. "Certain religions have strict rules including, in some cases, prohibition of meat and/or alcohol," she explains. In the staff canteen and at social events, think about catering for everyone by including vegetarian and non-alcoholic options and perhaps kosher and halal too.

Bereavement is another area often missed. "Certain religions have distinct bereavement requirements resulting in employees needing an extended period of time off work," says David Green, head of employment at law firm Charles Russell.

Employers should also think about break policies, ensuring that where possible those who require prayer breaks can have their break times altered accordingly.

Flexible work and holiday schedules can help people in all kinds of situations, not only those who need time off for religious observation. Although employers are not expected to provide a separate prayer room, why not assign a room or office for prayers at certain times if the demand is there?

In larger companies, religious networks have proved successful. Sarah Churchman, head of diversity at PricewaterhouseCoopers, says: "We have networks for Christians, Muslims, Hindus and most recently Sikhs. Why wouldn't we? We want people to bring their whole self to work and feel comfortable. Networks also help us learn. Five years ago, we introduced our contemplation rooms because our Muslim workers told us they had to pray in a stairwell. It was horrifying and enlightening for us. The networks have taught us small gestures can have an enormous impact on engagement: for example,



facilities to celebrate religious festivals.”

Neeta Laing, head of employment at law firm Lewis Hymanson Small, reminds employers to be mindful of the fact it's not only managers who may discriminate. “Even where discrimination or harassment has been committed by an employee, the employer will usually be liable, unless it has taken reasonable steps to prevent such conduct. Part of these steps include good policies and procedures and also ensuring management and employees have received training on these aspects,” she says.

Avoid relying on case law, however. It's all too easy to miss the context. One tribunal case, for instance, agreed that a Jewish employee had been discriminated against when he was not allowed to take a day off for Yom Kippur. But it was only because the employer had failed to consider whether its staffing needs could have been met in some other way that the employer was found guilty. Without that context, many employers might glean that they are obliged to say yes to all such requests.

Snigdha Nag, senior lecturer at the City Law School, City University London, advises employers to clearly write up all policies. An effective Equal Opportunities policy is not a “magic shield” against complaints, she warns, but it has three important effects. “First, it may make workers more aware of the behaviours that are not acceptable in the workplace. Second, it will allow the employer to act when individuals start performing discriminatory acts by allowing the employer to discipline the perpetrators. Third, it can be used in the tribunal to show that the employer did what they could to prevent discrimination in the workplace – the ‘employer's defence’ in the legislation.” Acas can help with drawing up a policy, she says.

Indeed, there are plenty of experts available. The Employers Forum on Age and Belief, for example, carries out mock tribunals to highlight key issues to employers, as well as providing guidance on everything from Ramadan to setting up networks and a quiet space.

Above all, Adrian Martin, partner at Burges Salmon, says: “It's important to remember that claims of religious discrimination are not that common in practice, even though there have been a number of high-profile cases.”

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