



BUSINESS ORIGINAL [August 14, 2019](#)

Religion Is Not Like Other Protected Classes for Employers

By Gary Deel, Ph.D., JD

Faculty Director, [School of Business](#), American Public University

Imagine that you are an employer in the hotel industry. Today, one of your bell services employees stops by your office to tell you that she is suing you for employment discrimination.

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Bewildered, you ask “What do you mean?! How did I discriminate against you?”

“You make me carry luggage all over the hotel every day. I am disabled, and you don’t provide me any accommodations,” she replies.

“But the requirements of this job were explained to you when you applied,” you exclaim. “You were asked if you had any limitations which would prevent you from performing these duties, and you said no!”

“I know,” she retorts. “But today, I changed my mind and decided that I am disabled. So now you are discriminating against me by not allowing me to do easier work.”

This scenario might sound absurd, and it isn't likely to happen in the context of an employee with a disability. However, it could very well happen with respect to another protected class, and so managers should be aware of an important point of legal incongruity.

The Laws Defining Protected Classes

In the United States, federal labor legislation prohibits discrimination in employment based on a variety of protected classes. This legal movement began with the [Civil Rights Act of 1964](#), which prohibited [discrimination](#) based on the characteristics of race (to include ethnicity), color, national origin, sex and religion. Age was later added in 1967 through the [Age Discrimination in Employment Act](#) (though only for those 40 years of age or older). And disability was added in 1990 through the [Americans with Disabilities Act](#).

Many Americans think that sexual orientation and [gender identity](#) are also protected classes under federal law, but sadly, they are not. Various attempts have been made to add these categories to the list of protected classes at the federal level, but unfortunately, they have not yet prevailed over the political agendas in Congress to subvert the rights of lesbian, gay, bisexual, transsexual and questioning/queer (LGBTQ) Americans. However, many states do provide state-level protections prohibiting discrimination based on these classes.

But one must ask: Why are these protected classes? Why are these the qualities that lawmakers felt worthy of protection from discrimination?

Why not include other categories as well? For example, what about people who smoke cigarettes, people who have facial tattoos or people who prefer to wear red t-shirts?

The answer is fairly intuitive. The list of protected classes exists because these qualities are immutable. In other words, these qualities cannot be readily changeable at the will of the individual.

Think about it. Are race, ethnicity, or color readily changeable qualities? No.

National origin? No.

Sex? No (at least not without extensive medical intervention, and even then, there remains the question of legal recognition).

Age? No.

Disability? Absolutely not. It is the definition of a disability to be outside the control of the disabled person. Otherwise, such a person could simply choose to overcome the disability and it therefore wouldn't be a disability.

Even if sexual orientation and gender identity have not yet been protected by federal law, we can at least acknowledge that they ought to be. There is no credible medical evidence whatsoever to suggest that either of these characteristics are matters of discretion. Individuals have no more choice in their sexuality or gender identity than they do in their race or ethnicity.

Religion and Protected Class Status

But when we come to religion as a protected class, we notice an anomaly. It is not like the other classes. While the others on our list are objectively immutable, religion has no such rigidity.

Some might think that religion is not something that one easily changes, but in fact, people shift their religious beliefs quite regularly. Believers become non-believers. Non-believers become believers. Believers of one religious doctrine switch to another. It happens all the time.

To complicate matters further, the law forbids any parameters as to belief systems. In other words, there is no such thing as a “legitimate” or “credible” religion under the law.

All that is required is that the individual believe in their religious convictions in good faith. So if a person chooses, for example, to embrace the tenets of the [Church of the Flying Spaghetti Monster](#), they are entitled to the same protection under the law as would be afforded to Christians, Catholics, Muslims or Jews.

The aim of this protection is well-intentioned. A key reason for the founding of our great nation was to promote religious freedom and to provide a safe haven for those fleeing religious persecution.

However, in practice what this protection means is that employees are free to adopt whatever belief systems they wish and whenever they wish. As a result, employers are obligated — at a minimum — to follow Equal Employment Opportunity Commission (EEOC) mandates and [“reasonably accommodate an employee’s religious beliefs or practices, unless doing so would cause more than a minimal burden on the operations of the employer’s business.”](#)

This obviously doesn’t mean that an employer must give an employee whatever he or she wants in the name of religious freedom. Imagine a religion that requires its followers to be paid at least \$100,000 USD per year. That’s not likely to pass muster.

However, the law is very clear that employers should make “reasonable adjustments” wherever practicable. The EEOC cites common accommodations that include [“flexible scheduling, voluntary shift substitutions or swaps, job reassignments, and modifications to workplace policies or practices.”](#)

What Do ‘Reasonable Adjustments’ Mean in Practice?

“Reasonable adjustments” generally means that if an employee’s religious requirements are not overly burdensome, they should be accommodated to the extent manageable. Normally, that doesn’t create tremendous hardship for businesses, as most of the world’s major religions don’t demand too much from employers. An employee may request a day off to worship or perhaps a 15-minute break to pray during a shift.

Some Employees May Attempt to Exploit Their Protected Class

But consider that a worker could, in theory, exploit these protections with no legal ramifications whatsoever. Suppose that this week I'm a Catholic and require Sundays off, but next week I decide I'm a Seventh Day Adventist and need Saturday off too.

When Shabbat and Yom Kippur come around, I'm Jewish. But when Eid and Ramadan are upon us, I'm Muslim.

And then for any other items on my wish list, I can simply make up my own belief system, so long as I stand behind it in "good faith." Perhaps I want to be permitted to wear certain jewelry at work or dye my hair bright pink. Maybe I simply want to abstain from certain duties. As long as my purported religious convictions do not create a tremendous hardship for my employer, the law says that they should be honored.

One might think that these kinds of exploitations would be rare. But as someone who has managed hundreds of employees over the course of my storied career, I can attest to the fact that some employees will seize upon loopholes without hesitation where opportunities to take advantage exist. And so understanding what the law does and does not require of employers can be invaluable in navigating these kinds of encounters.

A larger question stemming from this discussion is whether religious beliefs, in their current interpretation, are actually deserving of the same protections as the other truly immutable classes that are currently protected. That is a topic for thoughtful political debate in the United States. But in the meantime, it's sufficient to say that employers everywhere should be mindful of the extensive leeway offered by the law in terms of religious protections and how some employees might aim to abuse it.

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About the Author

Dr. Gary Deel is a Faculty Director with the School of Business at American Military University. He holds a JD in Law and a Ph.D. in Hospitality/Business Management. He teaches human resources and employment law classes for American Military University, the University of Central Florida, Colorado State University and others.