



Spring 2025 CLE Workshop · March 26 – 28, 2025

# Higher Education Discrimination Law

## Religious Discrimination and Accommodations for Staff and Students

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# Religious Discrimination Jurisprudence

- Background
  - Supreme Court expansion of Free Exercise Clause interpretation
  - Supreme Court ruling in *Groff v. DeJoy* (2023)
  - Focus on whether belief is sincerely held and religious in nature rather than whether the belief “qualifies” as a religion
  - Undue hardship defense must show that accommodation cost is greater than de minimis, but requires “substantial increased costs,” which may include alteration of how work is done or a “substantial burden in the overall context of an employer’s business.”

# Typical Religious Accommodation Requests

- Scheduling of work
- Compliance with health mandates, such as vaccine requirements, by staff or students
- Faculty making religious comments in class (unrelated to subject matter of class)
- Conflict between faculty or staff member's religious doctrine and institutional nondiscrimination policies
- Conflict between student religious organizations and institutional nondiscrimination policies



# **Practical Decision Making: Religious Accommodations for Employees Post Groff**

# Yale's Approach to Religious Accommodations

- Yale University provides reasonable accommodations to all current and prospective employees, including Faculty and Staff through an interactive process facilitated by the Office of Institutional Equity and Accessibility (OIEA).
- Employees who need to take time off to practice their religious beliefs, attend a religious event or observe a religious holiday are encouraged to request time off in accordance with the standard paid time off process.

# Accommodation Guidelines

- The University considers religious accommodation requests by current and prospective employees, including faculty and staff, based on the totality of the circumstances. A religious accommodation may include, but is not limited to:
- Time or a place for prayer during a workday
- Time off to attend a religious event or observe a religious holiday
- Modifications to an employee's work schedule or work assignment
- Modifications to a department's dress and grooming policies or practices
- Any other adjustment to a University policy, procedure or other requirement for an employee's religious practice

# Accommodation Process – Time Off

- Faculty and staff who need to take time off to practice their religious beliefs, attend a religious event or observe a religious holiday should request time off in accordance with the standard PTO process that applies to their unit or school.
- Faculty and staff who need to request an adjustment to their unit's policies or practices for taking time off to practice their religious beliefs and cannot otherwise follow the standard university PTO process should submit the Religious Accommodation Request Form with as much notice as possible to allow sufficient time to consider the request(s) and make appropriate arrangements; faculty and staff may be required to use accrued time (PTO) as part of the religious accommodation.

# Accommodation Process – Other Requests

- All faculty and staff requests for religious accommodation that cannot otherwise be accommodated within the standard PTO process should be submitted to OIEA by the individual seeking the accommodation. Faculty and staff members making a request should complete the Religious Accommodation Request Form.
- An assigned OIEA staff member will facilitate an interactive process with the faculty or staff member, their supervisor and other stakeholders, such as the relevant Dean's Office or Human Resources, to make good faith efforts to identify and implement accommodations that are reasonable, effective and do not impose an undue hardship on the conduct of the department's operation.

# Process for Evaluating Employee Requests



# Partners for the Interactive Process

Manager

Unit/Department  
leadership

Chaplain's  
Office

Human  
Resources

Union (for  
employees in  
unions)

Facilities

# Common Accommodations Requests at Yale

- Time Off Requests
- Policy Modification (dress/grooming)
- Schedule Modification
- Assignment Modification
- Adjustment to Policy/Procedure/Practice
- Adjustments to Accommodate Dietary Restrictions

# Alternative Approaches

- Process managed by staff within Human Resources (Columbia, Ohio State, Texas Tech)
- Process facilitated by managers with support of Human Resources and/or civil rights compliance office (and as a resource for the employee making the request) (Rice, Duke, Cornell)
- Process facilitated by managers with the expectation that they consult with Human Resources or civil rights compliance office if they are going to deny the request (Emory)

# Policy Samples

## **Civil Rights Compliance Office**

- Yale University - <https://oiea.yale.edu/accommodations/religious>
- John Hopkins University - <https://oie.jhu.edu/religious-accommodations/>
- Vanderbilt University - [https://www.vanderbilt.edu/ea/religious\\_accommodations.php](https://www.vanderbilt.edu/ea/religious_accommodations.php)

## **Human Resources**

- Columbia University - <https://universitypolicies.columbia.edu/content/religious-accommodation-policy>
- Ohio State University - <https://equity.osu.edu/support-options-and-accommodations/religious-accommodations>
- Texas Tech University - <https://www.texastech.edu/offices/cfo/system-regulation-07.10-non-discrimination-anti-harassment-policy-complaint-procedure.pdf>

# Policy Samples (Continued)

## Supervisor

- **Rice University** - <https://aeeo.rice.edu/get-help>
- **Duke University** - <https://oie.duke.edu/how-we-work/complaints-and-concerns/>
- **Cornell University** - <https://hr.cornell.edu/understand-your-benefits/accommodations/religious-accommodations>

# Tips for Engaging with Decision Makers

- Emphasize importance of dignity in the process – value the privacy and autonomy of the person making the request
- Distinguish between this process and other accommodation processes (disability, pregnancy, supportive measures in a complaint process)
- Encourage curiosity in the interactive process and not about the sincerity or validity of the belief
- Educate on the new standard – many decision makers are familiar with the pre-Groff standard

# Employee Hypothetical 1

Fred Dukes is a museum security officer at a university museum. Fred is a new employee who has just completed his probationary period. The university is a large public university that employs 150 security officers who provide safety and security services to the campus community in partnership with the university's police department. There are twenty officers who provide direct support to the museum and other cultural centers operated by the university. These officers have a distinct job title and a different salary range. They also have specialized training in cultural property protection and visitor experience. The museum security officers are the only security officers who support the museums and work in three different shifts (morning/afternoon/overnight). The Security Department has a mandatory holdover/call-back overtime policy to cover staffing shortages or other emergencies.

Fred is a Muslim who observes the holiday of Ramadan. Muslims who observe Ramadan fast from sunrise to sunset on each day that month, which ends with an Eid ul Fitr celebration.

**Fred has requested the following accommodations for the month of Ramadan:**

- (a) time off from work to observe Eid ul Fitr (which falls on a workday);
- (b) exemption from mandatory overtime and holdover policies.

# Employee Hypothetical 2

Raven Darkholme is an accountant for the University's procurement office. The procurement office is co-located with a number of other units in an administrative services building a few blocks away from central campus. Raven has requested that the university make some modifications to help them practice their faith. Raven stated that their faith requires them to pray multiple times a day (twice during the work day) and to wash their hands, face and feet in preparation for prayer.

They have asked that the university convert an existing space into a prayer room and to install a foot washing station in an existing bathroom. They have also reported that their faith requires them to maintain cleanliness in accordance with their religious practice and have requested the installation of a bidet in the bathroom.

The background of the slide features a stylized illustration of a diverse group of students. The silhouettes are rendered in various shades of brown, tan, and olive green, creating a layered effect. The students are shown from the chest up, facing different directions, which emphasizes their individuality and diversity. The overall tone is warm and inclusive.

# **Practical Considerations: Navigating Religious Accommodations for Students**

# Navigating Student Accommodation Requests

- **Applicable Legal and Policy Standards:**
  - U.S. Constitution
  - State laws
  - University policy
- **Typical Institutional Obligation:**
  - Institutions must provide reasonable accommodations for students' sincerely held religious beliefs or practices unless such accommodation would fundamentally alter the curriculum or academic program

# Navigating Student Requests (Continued)

- **Where should institutions direct students to submit requests?**
  - Institutions may require students direct their accommodation requests to:
    - (1) a centralized office(r) for review, engagement, and determination; or
    - (2) to each relevant administrator or instructor for same.
- **When must students submit requests?**
  - Institutions may require prior notice and set a specific deadline for students' known accommodations needs (e.g., by the end of a time certain, such as the second week of classes); however, institutions should be mindful of changing circumstances and include a general deadline as well (e.g., or otherwise as soon as possible after the need becomes known).

# Navigating Student Requests (Continued)

- **What must be considered when reviewing requests?**
  - The reviewer must evaluate each request on a case-by-case basis, considering:
    - The requirements of the course, program, or requirement;
    - Potential effects of the accommodation on the student, fellow students, and institution;
    - Duration and (if applicable) cost of the accommodation request; and
    - Availability of alternative accommodations
- **Must the accommodation be granted?**
  - Not necessarily. After conducting the analysis, if the reviewer does not believe the request should be granted as submitted (and prior to denying an accommodation), they should engage the student in an interactive process.
  - The university is not required to accept the student's preferred accommodation if there is more than one that would eliminate the religious conflict—in which event the University may select which accommodation(s) will effectively eliminate such conflict.

# Student Hypothetical: Academic Requirements

- Public State University (PSU) Professor of Biology Timothy Ratliff requires in-person class attendance. As stated on the first-day syllabus, Professor Ratliff scheduled a mid-term exam on Good Friday. A student named Lochlan is an adherent to Christianity and regularly travels home for Easter weekend. At the end of class two days prior to the scheduled exam, Lochlan requests to be excused from both the Good Friday class meeting *and* scheduled exam as a religious accommodation.
- Piper is also enrolled in Professor Ratliff's spring semester class. For most of her life, Piper had followed Buddhism. In mid-February, Piper became an adherent to a religious tradition known as Sol. According to this tradition, followers must avoid direct sunlight between the Winter Solstice and Vernal Equinox. Piper submits a request to the Dean of Students office to be excused from class attendance until the Vernal Equinox as a religious accommodation.

# Student Hypothetical: Medical Requirements

- Victoria is a 22-year-old incoming medical student at TWLU Medical Center. As a condition of participation in required clinical rotations, the Medical Center requires all matriculating students to be up-to-date on Varicella, MMR, Tdap, and Hep B immunizations, and all continuing students to receive seasonal influenza vaccines. Victoria received CDC-recommended vaccines as a child, but since becoming an adult, she has become averse to the idea of seasonal vaccination. Victoria considers herself an adherent to humanism and questions the ethics of vaccines. She requests an exemption from the Medical Center's requirements as a religious accommodation.
- TWLUMC provides optional medical student housing. State law and university policy require students in university housing be vaccinated against meningitis. Saxon, a 21-year-old, has signed a Medical Center housing contract. Vaccinations conflict with Saxon's sincerely held religious belief, and he requests an exemption as a religious accommodation.

# Religious Student Organizations

- **Recognition & Benefits.** If a university chooses to recognize student organizations, then religious student organizations generally have a right to:
  - Recognition (*Healy v. James*, 408 U.S. 169 (1972));
  - Facility use (*Widmar v. Vincent*, 454 U.S. 263 (1981)); and
  - Funding eligibility (*Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819 (1995); *Bd. of Regents of Univ. of Wisconsin Sys. v. Southworth*, 529 U.S. 217 (2000)).
- **Membership.** Universities *may* adopt a broadly applicable nondiscrimination policy conditioning organizational recognition (and associated benefits) on adherence to an “all comers” membership policy (*Christian Legal Soc’y v. Martinez*, 561 U.S. 661 (2010)).
  - There is no legal duty to adopt an “all comers” policy. In fact, many institutions permit groups to limit their membership to those who share the group’s interests, goals, or beliefs.
  - Note state laws may prohibit “all comers” policies for religious student organizations (e.g., AL, AZ, AR, ID, IA, KS, KY, LA, NC, OH, OK, SD, TN, VA).
- **Leadership.** Religious student organizations are likely permitted to limit *leadership* to those who share the group’s beliefs (*Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171 (2012); *Our Lady of Guadalupe v. Morrissey-Berru*, 591 U.S. 732 (2020)).

# Student Organization Hypothetical

Midwest University recognizes student organizations so long as they have at least 5 members (including 3 officers), a University employee advisor, and otherwise follow and agree to MU's student organization policies. MU student organizations may be *Affiliated* or *Sponsored* (by an academic department). The Midwest Order of Deists (MOD) is seeking recognition.

MOD's statement of faith provides that, "women are the superior sex," and the organization's draft bylaws only permit women to serve as officers, citing their statement of faith. How should MU respond to MOD's request for recognition:

- *If MU has an all-comers policy?*
- *If MU does not have an all-comers policy?*
- *If MOD classifies as a fraternal organization, exempt from Title IX?*
- *If MOD acquires private housing and classifies as a residential student org?*



# Questions?

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