

Compulsory Labor on the Sabbath

While it would be inappropriate for The Rutherford Institute to provide you with legal advice at this time and under these circumstances, the Institute has reviewed the current materials relating to your inquiry and is pleased to provide the following information.

The Employee's Sabbath Rights and the Employer's Duty to Accommodate

All employers, public and private, must comply with Title VII requirements. Title VII is an employment statute that was created to protect employees from unfair labor practices. First, an employer is not allowed to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's ...religion¹ Second, an employer is required by law to accommodate an employee's religious observances and practices unless she/he is able to prove that it would be an undue hardship.² In essence, an employer must respect an employee's Sabbath unless she/he can prove that doing so would be more than a *de minimis* burden. The three important points to remember is that: (1) the employer has the burden of proving that accommodating an employee's needs is an undue hardship; (2) *de minimis* means any hardship that is not trifling; and (3) the employee has a duty to cooperate with the employer.

Burden Of Proof Is On The Employer

Fortunately, the employee does not have the burden of proof. This means that the employer must prove that accommodating an employee's religious practices creates an undue hardship and that the hardship is more than *de minimis*. The hardship on the employer must be actual. Hypothetical and conceivable hardships are not enough.³

What Is And Is Not A De Minimis?

"*De minimis* is a Latin phrase that means very small or trifling." Although the Supreme Court and the federal appellate courts have not clearly defined what is *de minimis*, they have addressed what is not *de minimis*. A federal district court determined that infrequent payments and administrative costs of implementing the accommodation are *de minimis*.⁴ The employer is not required to incur more than a *de minimis* cost.⁵ An employer is not required to deny shift preferences of some employees to accommodate

religious practices.⁶ Also, though a labor agreement can not be made in violation of the statute, the employer is not required to violate a valid labor agreement to accommodate a religious practice.⁷

For example, a postal worker wanted her employer to compel others to work involuntarily in her place on her Sabbath. The Appellate Court determined that the employer's asking other employees to work in her place was sufficient and the employer was not required to compel the other employees to work in her place.⁸

Employee's Obligation to Cooperate

Though the employer is required to make reasonable accommodations, Title VII does not guarantee that the employee will be given the accommodation of his/her choice.⁹ The employee has the duty to make a good faith attempt to satisfy his needs through the means offered by the employer.¹⁰ If an employee does not cooperate, he/she may lose her/his rights to be accommodated.¹¹ For example, Billy Lee, an employee of ABF Freight Systems and a Seventh-Day Adventist, did not wish to work from sundown Friday to sundown Saturday. ABF proposed a system that would allow Mr. Lee to observe his Sabbath in most instances. He, however, rejected ABF's proposal because it did not "guarantee" that he would not have to work on the Sabbath. ABF was able to prove that to accommodate Mr. Lee on his terms they would have to bring in drivers from another city and incur other costs that were more than *de minimis*.¹² Therefore, a employee must cooperate with the employer to ensure that an employee's religious rights are accommodated.

Unemployment Benefits for Those who Refuse to Work on their Sabbath

When the state offers an important benefit--such as unemployment compensation--it cannot condition receipt of such benefits on behavior which would violate the religious person's beliefs.¹³ Unless the state has a compelling interest, it cannot pressure a person to violate his/her religious observation of a Sabbath Day.¹⁴

When determining the right to benefits, the Court generally considers whether the claimant's beliefs qualify for protection under the First Amendment of the U.S. Constitution, whether the claimant's right to the free exercise of religion is violated if benefits are denied, and whether the clause forbidding the establishment of religion is violated if benefits are rewarded. Several Supreme Court cases examine the topic of religious persons who lose unemployment benefits because they will not violate their Sabbath.

For example, in a 1963 case, a Seventh-Day Adventist was discharged from her employment when she refused to work on Saturday, which is her Sabbath.¹⁵ The South Carolina Unemployment Commission initially denied her unemployment benefits. The United States Supreme Court reversed the denial.¹⁶ The Court held that the government

may not "penalize or discriminate against individuals or groups because they hold religious views abhorrent to the authorities."¹⁷ The general rule behind the decision is that the government cannot pressure a person into choosing between the observation of a religious practice and the receipt of an important benefit.¹⁸

Also, even if the employee does not believe in observing the Sabbath until after he/she is hired, the belief must be protected.¹⁹ The Court refused to differentiate between the religious convert and the person whose religious beliefs preceded employment. As Justice Brennan wrote, "So long as one's faith is religiously based at the time it is asserted, it should not matter for constitutional purposes, whether that faith derived from revelation, study, upbringing, gradual evolution, or some source that appears entirely incomprehensible."²⁰

Additionally, when a person receiving unemployment benefits refuses available work because it conflicts with his/her Sabbath Day, the state cannot withdraw further unemployment benefits on that reason alone.²¹

Requests for Further Information or Legal Assistance

The Rutherford Institute hopes that this information has been helpful to you in your fight for religious freedom. If you desire additional information on this or other issues of religious liberty, or if you need personal legal assistance in any area regarding religious freedoms, please feel free to write to us at The Rutherford Institute, P.O. Box 7482, Charlottesville, Virginia 22906-7482, or visit our website at www.rutherford.org.

Endnotes

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1. 42 U.S.C. ? 2000e-2(a) (1)
 2. 42 U.S.C. ? 2000e(j)
 3. *Tooley v. Martin-Marietta Corp.*, 648 F.2d 1239 (9th Cir. 1981), *cert. denied*, 454 U.S. 1098 (1981).
 4. *U.S. E.E.O.C. v. IBP, Inc.*, 824 F.Supp. 147 (C.D.Ill. 1993).
 5. *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63 (1977).
 6. *Id.* at 81.
 7. *Id.* at 79.
 8. *Mann v Frank*, 7 F.3d 1365 (8th Cir. 1993).
 9. *Lee v. ABF Freight Systems, Inc.*, 22 F.3d 1019 (10th Cir. 1994).
 10. *Id.* at 1022-23 (quoting *Toledo v. Nobel-Sysco, Inc.*, 892 F.2d 1481, 1488 (10th Cir. 1989)).
 11. *Chrysler Corp. v. Mann*, 561 F.2d 1282 (8th Cir. 1977), *cert. denied*, 434 U.S. 1039 (1978).
 12. *Lee*, 22 F.3d 1019 (10th Cir. 1994).
 13. *Thomas v. Review Board of the Indiana Employment Security Division*, 450 U.S. 707, 717-18 (1981).
 14. *Id.*
 15. *Sherbert v. Verner*, 374 U.S. 398 (1963).
 16. *Id.* at 410.
 17. *Id.* at 402.
 18. *Id.* at 404.
 19. *Hobbie v. Unemployment Appeals Commission of Florida*, 480 U.S. 136, 144 (1987).
 20. *Id.* (citing *Callahan v. Woods*, 658 F.2d 679, 687 (9th Cir. 1981)).

21. *Frazer v. Illinois Dept. of Employment Security*, 489 U.S. 829 (1989).