

June 16, 2020



U.S. Department of Labor – OFCCP
Attention: OFCCP Help Desk
200 Constitution Ave NW
Room C-3325
Washington DC, 20210

To Whom it May Concern:

The Jewish Coalition for Religious Liberty is a nonprofit organization—a group of lawyers, rabbis, and professionals who practice Judaism and advocate for religious liberty. We represent people of faith who practice their faith in religious services and in the public square. We have a strong interest in ensuring that Jewish Americans are free to practice their faith in the workplace. Judaism’s obligations and prohibitions govern every aspect of a Jewish person’s life, including his or her professional life. For that reason, Jewish Americans may require reasonable accommodations in order to fully participate in the workforce.¹

We seek an official opinion from OFCCP addressing the scope of legal protections for religious liberty in the workplace. We are concerned that employees in the technology, education, public, and other sectors may face discrimination at work based on faith-related activities and beliefs. Much of the discrimination Jewish employees may face is plainly illegal under the laws within OFCCP’s jurisdiction. However, we think OFCCP can bring clarity to these areas by issuing an official opinion. These published documents would help employees and employers alike understand the legal protections for religious liberty. Specifically, we hope your opinion can address the legality of the following six scenarios:

1. An applicant/employee suffers an adverse employment action because an employer assumes the applicant/employee has values that others may find offensive (e.g., because he or she attended a religious private school, attends an Orthodox synagogue with sex-segregated seating, or wears a hijab).
2. An applicant/employee suffers an adverse employment action because he or she is a member of a religion that has taken public policy positions that others may find offensive (e.g., supporting or opposing the State of Israel or opposing late-term abortions).
3. An applicant/employee suffers an adverse employment action because, during non-work hours, he or she attended or otherwise supported a synagogue/church-sponsored cause or event that others may find offensive (e.g., an anti-war rally, the March for Life, or a rally opposing anti-Semitism).
4. An employee suffers an adverse employment action because, during a company-provided rest break in which coworkers were discussing current events or social issues, the employee stated the he or she has religious views that others may find offensive (e.g., he

¹ JCRL does not represent or have any immediate plans to represent a client in litigation relating to the issues raised by this letter.

or she believes in traditional marriage or, conversely, supports an expanded definition of the family).

5. An applicant/employee suffers an adverse employment action because, either during an interview or before first reporting for work, the employee informs the employer about a religious requirement that necessitates an accommodation (e.g., the inability to work on the Sabbath or other religious holy days, the need to have a personal microwave for kosher food).
6. An applicant/recently hired employee is let go because he or she requested an accommodation for religious observance, with no opportunity to discuss with the employer the reasons for the needed accommodation or possible solutions. (e.g., needing to leave work early on Friday afternoons in the winter to be home before the Sabbath begins at sundown.).

We recognize that these examples are, unfortunately, but a few of the many scenarios in which America's workers, including those who practice Judaism, face religious discrimination. An OFCCP opinion will provide much-needed clarity and help prevent further unlawful discrimination in the workplace.

Currently OFCCP agency decisions on point are lacking. But the courts have held that discrimination based on such activities is illegal. *See e.g., E.E.O.C. v. Abercrombie & Fitch Stores, Inc.*, 135 S.Ct. 2028, 2031

(2015) ("Title VII of the Civil Rights Act of 1964 prohibits a prospective employer from refusing to hire an applicant in order to avoid accommodating a religious practice that it could accommodate without undue hardship"); *id.* at 2034 ("Title VII does not demand mere neutrality with regard to religious practices Rather, it gives them favored treatment, affirmatively obligating employers not to fail or refuse to hire or discharge any individual ... because of such individual's religious observance and practice.") (quotations omitted); *Baker v. The Home Depot*, 445 F.3d 541, 548 (2d Cir. 2006) (requiring employer to provide a reasonable accommodation to allow employee to attend prayer services and refrain from working on the Sabbath).

Please reach out to me if I may be of further assistance. Otherwise, I look forward to your response. My e-mail address is Hslugh@Jcrl.org and my phone number is 954-328-9461.

Sincerely,

Howard Slugh
General Counsel