

## Freedom of Religion and Belief in the Workplace

*“Religion is an essential aspect of one’s identity and [...] religious identity encompasses religious practice as well as belief. Given the fact that many people spend a large share of their daily lives at work, ensuring the non-discrimination of employees on grounds of their religion or belief is thus of crucial importance.”*

This quote is from a 2020 resolution<sup>1</sup> of the Council of Europe’s Parliamentary Assembly. It makes clear an important truth. We bring our whole selves to work, including our beliefs. We are there to work – and we need to do our job properly. But no one should be forced to leave their beliefs at home. The Resolution goes on to remind member states of the Council of Europe to ensure non-discrimination in the workplace on the grounds of religion or belief. It points out that this freedom can be restricted but these restrictions are themselves restricted – to fit human rights standards and must be necessary, proportionate and pursue a legitimate aim.

So what does this mean in practice?

Direct discrimination on the grounds of religion would be when, for example, someone was dismissed for respectfully expressing their faith-based opinion. Indirect discrimination would be when a general rule on every employee had a negative impact on some, for example, a requirement to eat pork.

In general, employees committed to different faiths or worldviews are able to work effectively and get on well with each other without difficulty<sup>2</sup>. Employers encourage an atmosphere of tolerance and acceptance so that any tension or concern can be dealt with.

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<sup>1</sup>Council of Europe Resolution 2318 (2020) on The protection of freedom of religion or belief in the workplace <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=28556&lang=e>

<sup>2</sup> Research of the Religious Freedom and Business Foundation claims that businesses are increasingly interested in facilitating individual expressions of religion or belief. According to the Foundation, Religious freedom is one of only three factors significantly associated with global economic growth.<sup>2</sup>

So, for example,

- Mutual understanding, as well as good food hygiene rules, can enable diet variations to be managed with requirements to keep food items covered in communal fridges. This helps individuals whether their diet is Halal, Kosher, vegan or any other.
- Flexibility regarding working hours works when everyone knows they must show commitment to their employer and to the rest of the team. One person might want time off for a religious festival, just as someone else may want to attend their child's sport's day. One person wants to take a few minutes in order to pray, while another does the same in order to smoke outside. They do so at an appropriate work moment. As long as people make up the time and show willingness to cover for their colleagues, everyone can be happy.

It is always best to avoid problems by anticipating them. Can an employer work with their staff to consider potential issues and solutions? Can people say when, if possible, they'd want to take time off, just as the employer can point out when such privileges will simply not be possible for work pressure reasons? Can there be reflection on what kind of team activities would make individuals feel uncomfortable e.g. if someone objects to gambling (or indeed is recovering from a gambling addiction), don't have the Christmas party at a casino? Can the employee respectfully raise their issue but in good time so that the employer or colleagues can work out a response?

Things can go wrong when the individual took on a job that their conscience will not let them do or the job requirements have changed, leading to serious conscience issues. However, this does not always have to be true. A pacifist should never apply to be a soldier. But a pacifist working for a management consultant should surely be able to discreetly ask not to be sent to help an arms manufacturer if another consultant could go. A Palestine supporting Muslim may not feel comfortable promoting an Israeli political cause. A committed environmentalist may not want to design graphics advertising the coal industry. If the company is big enough, could they not ask the boss to send others to serve the client? The employer should be able to carry out the job, the client should get the service. There does not need to be any awkwardness. Good teamwork should mean that conscience can quietly be respected. However, if there really is no other colleague to take on the work, then the employee has a tough decision to make.

Sometimes, the courtroom cannot be avoided.

Nadia Eweida and Shirley Chaplin both went to the European Court of Human Rights<sup>3</sup> with uniform issues. Ms Eweida won her case against British Airways who had forbidden her to wear a small lapel cross badge. The court found that there was no valid justification for this ban. Ms Chaplin wanted to wear a cross on a chain but she cared for patients with dementia. Her employer argued that this was unsafe since her patients might grab the necklace, and the court agreed. These two cases demonstrate that flexibility, discretion and common sense are good rules when it comes to regulations about work uniform.

The European Union's Court of Justice (CJEU)<sup>4</sup> made a judgement on a Muslim woman who wore a headscarf at work. G4S made clear to employee Samira Achbita<sup>5</sup> that company policy disallowed all religious, political or philosophical signs in the workplace. The court said that G4S had not discriminated against Ms Achbita. However, the CJEU decision does not pay any attention to the fact that the company policy was clearly going to impact holders of certain beliefs more than others and thus constituted indirect discrimination. The CJEU decision failed to protect the freedom of religion of any Muslim woman who feels her faith obliges her to cover her head or, indeed a Jewish man who feels he must wear a skullcap. Nor did the CJEU push G4S for an adequate justification for its policy. The fact that a client might not want to see a religious symbol does not seem to be a strong enough justification for a policy leading to Ms Achbita having to leave her employment.

Lilian Ladele was employed as a registrar in London to celebrate civil marriages. At the time, there were no same-sex marriages in the UK. British law then changed to allow same-sex couples to marry but Ms Ladele did not feel comfortable officiating at same-sex marriage ceremonies. Her colleagues discreetly helped out so that she did not need to do so. No same-sex couple knew about this arrangement and they were all able to get married. Everything was fine until others found out and made a formal complaint. The case went to the European Court of Human Rights<sup>6</sup>. She lost on the grounds that same-sex couples had been discriminated against. But that does not seem fair considering that none of them had even known about Ms Ladele's beliefs.

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<sup>3</sup> <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-115881%22%7D>

<sup>4</sup> The EU's Court of Justice (CJEU) makes judgements on EU law on cases within the EU. The European Court of Human Rights is the court of the Council of Europe, making human rights judgements for its 47 member states.

<sup>5</sup> <http://curia.europa.eu/juris/liste.jsf?num=C-157/15> case c-157/15 Achbita vs G4S (in Belgium)

<sup>6</sup> <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-115881%22%7D>

Ms Grimmark and Ms Steen, two Swedish midwives, lost their European court case<sup>7</sup>. They wanted the right not to conduct abortions but the court argued that, if they did not want to do so, they could return to being nurses. The court also said that the Swedish health service had a right to insist they do all the tasks they were contracted to do and patients had the right to obtain their healthcare. Sadly, this case may mean that many people of faith will leave midwifery. Will doctors be obliged to conduct euthanasia in future?

The McArthur family run Ashers Bakery in Northern Ireland. Gay activist Gareth Lee ordered a cake from them with the slogan “Support Gay Marriage” on it. They were happy to sell Mr Lee a cake but not with the slogan because it went against their Christian beliefs on marriage. Mr Lee sued the McArthurs and won in the lower and appeal courts on the grounds that he had been discriminated against for being gay. Mr and Mrs McArthur argued that they did not know Mr Lee was gay but that the slogan violated their conscience. The courts argued that icing the slogan was the same as icing a cake supporting a rival football team and that it was not religious. In the end, the McArthurs won their case in the UK Supreme Court<sup>8</sup>. Some gay rights activists supported their victory, knowing that a gay baker would not have wanted to ice a cake calling for the banning of same-sex marriages.<sup>9</sup>

So sometimes the courts support the expression of faith in the workplace, sometimes they do not and it is not always possible to predict the outcome. It is far better if difficulties can be resolved through dialogue rather than formal complaints or the law. This needs both employee and employer to be reasonable, trying to understand the other’s perspective and to find a compromise solution. Maybe a Christian does not want to have to start working on a Sunday but the boss thinks the person is really needed. Perhaps it is possible for the individual to be given the time to attend their church service but then come to work. Neither side gets 100% of what they want but they compromise.

Is it OK to share your faith or views at work? Yes and no. You are there to work, and such conversations should not disrupt that. Sharing your opinions or offering to pray for others can be inappropriate, perhaps abusing authority over a colleague or the vulnerability of a client, especially in a therapeutic or educational setting. Relationships can be upset and the situation can be regarded as harassment or imposition. This is especially the case when you have a more senior position. But

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<sup>7</sup> <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%222001-201915%22%5D%7D> & <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%222001-201732%22%5D%7D>

<sup>8</sup> <https://www.supremecourt.uk/cases/docs/uksc-2017-0020-judgment.pdf>

<sup>9</sup> <https://www.petertatchellfoundation.org/ashers-gay-cake-verdict-is-victory-for-freedom-of-expression/>

friendly, natural conversation should be fine as long as they are welcomed by all participants and do not interfere with work. And it is good for the employer to encourage an atmosphere where all conversation is respectful. No one should be bullied or victimised.

This briefing shows that freedom of religion or belief in the workplace is not a simple thing. The work someone has been contracted to do must be done. The employer, colleagues and clients should be respected. The person who has the faith or belief also deserves to be respected and not obliged to hide their identity. But there are not always clear answers to difficulties that can arise.

In the end however, we should base our behaviour and rules on the acceptance that differences of belief exist and always will. We must find ways to work together in an atmosphere of mutual tolerance. Anticipating problems, raising issues in good time and being willing to find compromise solutions are all good ways of guaranteeing the work gets done and staff are retained and productive.

## FURTHER RESOURCES

- Christianity in the workplace – an employer’s guide to Christian beliefs <https://lawcf.org/resources/christianity-in-the-workplace>
- Libre de le dire” <http://libredeledire.fr/>
- “Speak up” <https://www.eauk.org/what-we-do/initiatives/speak-up>
- “Rede frei!” [https://akref.ead.de/fileadmin//user\\_upload/2019\\_RedeFrei\\_20190716\\_WEB.pdf](https://akref.ead.de/fileadmin//user_upload/2019_RedeFrei_20190716_WEB.pdf)