

Transcripts are generated automatically using AI and may contain errors or omissions.

Lisa Nagele-Piazza (00:00)

Welcome to The FP 5: Five Things for Your 9-to-5. We help employers make sense of the fast-moving world of workplace law and compliance by breaking down topics into five parts. I'm Lisa Nagele-Piazza from the Fisher Phillips Content team.

When an employee asks for a religious accommodation, employers and HR managers hopefully already know they need to take the request seriously. But the difficult question is: when can you actually say no? That question has gotten more complicated since the Supreme Court raised the bar for showing an undue hardship. And now the EEOC has made religious accommodation an enforcement priority.

Andria Ryan joins us today to help employers understand where that line is. Andria is a partner in Fisher Phillips's Atlanta office and co-chairs our Hospitality Industry Group. She spends much of her practice counseling employers through day-to-day workplace decisions and defending employment discrimination claims. Andria, thanks for being on the show today.

Andria Ryan (01:01)

Thanks Lisa, it's great to be here.

Lisa Nagele-Piazza (01:03)

So, you've spent years helping employers make difficult workplace decisions. What makes religious accommodation requests particularly challenging for HR teams and managers?

Andria Ryan (01:13)

You know, I think any accommodation request is difficult for HR and managers and in-house legal. Any accommodation request poses some real challenges. But religious accommodation requests are, I think, more challenging. And one of the reasons is because there's no verification. With religious accommodations, you have to go on a level of trust and a little bit of faith, which, no pun intended, tells you they need this accommodation. There's not much more inquiry and there's no more verification you can require as an employer.

Lisa Nagele-Piazza (01:46)

Yeah, it seems like a careful balance, 'cause you don't want to start challenging somebody's religious beliefs for sure.

Andria Ryan (01:52)

You don't. And then there's always the issue of, you know, is this a religious request or is it some sort of personal or secular kind of request? HR and managers have to make those distinctions, and we don't have to do that in a lot of other situations.

Lisa Nagele-Piazza (02:13)

And that leads us to our first thing for today. Employers now have a higher bar to clear before denying a religious accommodation. So let's start with the legal standard, because this changed significantly with the Supreme Court's decision in 2023 in *Groff v. DeJoy*. Andria, what did *Groff* change about the way employers have to evaluate religious accommodation requests?

Andria Ryan (02:35)

Yeah, Lisa, the *Groff* decision was really a major change. The religious accommodation, the standard for an employer denying a religious accommodation request was pretty low. It was a *de minimis* standard. If there's a *de minimis* amount of burden, then you could deny the request. And the Supreme Court looked at that and said, absolutely not, in so many words.

Lisa Nagele-Piazza (02:57)

De minimus just means like really tiny, like just ...

Andria Ryan (03:00)

A limited, a very limited burden. You know, the *Groff* case was interesting. He was an employee at the Postal Service. And he had a Sabbath on Sunday that he honored and had for many, many years been given Sunday off because the mail is not delivered on Sunday, right? So pretty easy to grant. But then the Postal Service started delivering for Amazon.

Lisa Nagele-Piazza (03:26)

Oh, okay.

Andria Ryan (03:26)

So they started requiring Postal Service employees to work on weekends, or on or Sundays, doing additional deliveries. And that's when the conflict arose. And so the Supreme Court looked at it and said, and looked at the issue and asked "what is an undue hardship, when you can deny it?," and said "it's a substantial, it's a burden that's substantial. It is not *de minimis*."

Lisa Nagele-Piazza (03:47)

Okay, got it. So I'm assuming then that this is very individualized, but it's it seems also complicated because again, like you said, you don't want to be challenging somebody's religious beliefs, but how can employers kind of look at these situations and decide, you know, whether the accommodation is gonna create an undue hardship? Like could it be an undue hardship for one employer and not another?

Andria Ryan (04:12)

Certainly it could be. And I think we gotta take a little bit of that apart, right? So first an employee comes forward with a religious accommodation request. If they are stating something that on its face, in good faith, looks to be a spiritual belief, a religious-based, a spiritually-based belief requirement that conflicts with something, a schedule or something they need to do at work, we're generally supposed to take that at face value. It's a very rare case where an employer should say, "I don't believe you. Where you, you know, you've done other things that don't demonstrate that."

I had one example that came along during COVID. And I almost, you know, I almost thought the client was kidding me because they had a mandatory COVID vaccine, right? That was one employment requirement. And they had dozens of employees come forward and say, "I don't want to take the COVID vaccine because of my spiritual belief, 'my body's a temple,'" lots of reasons. And they said, "We're gonna grant many of these, Andria, but we have this employee who's come forward and said his 'body is a temple,' he's not taken the COVID vaccine, but the guy smokes two packs of cigarettes a day."

Lisa Nagele-Piazza (05:14)

I was thinking of that.

Andria Ryan (05:16)

His body is a temple, right? So other than that, very, very rare situation, we are, as an employer, generally expected to accept the employee's word that this is their spiritual belief. And then move on to the next step.

Lisa Nagele-Piazza (05:33)

Sure. I can't help but think of the Flying Spaghetti Monster case from like what a decade ago, I guess, where that just seemed kind of outside the limits of sincerely-held religious belief.

Andria Ryan (05:47)

And sincerity is important, right? Is it sincere? Most people are generally sincere about their religious beliefs. But back to an earlier point, this is something that I think employers find, you know, you can just say this and I'm supposed to, you know, there's no other verification of this. And that's true. Generally, there's no other verification. You can't ask them to go to their pastor or their minister or their or their rabbi to verify. It's just frowned upon generally by the EEOC and the courts.

Lisa Nagele-Piazza (06:23)

Our second thing for today is, you know, coworker frustration and scheduling headaches are usually not enough to justify saying no to a religious accommodation. So I think this is where employers get really tripped up because, you know, an accommodation might be genuinely inconvenient for the employer. Other employees might complain, you know, a manager might need to do the schedule over again. So there's a lot of issues that come up, but you know, inconvenience isn't necessarily an undue hardship. So can you talk a little bit about, particularly for hospitality employers, where scheduling gets really complicated, what they're looking at here. If it's a busy weekend schedule, I feel like maybe sometimes managers or coworkers might say, that person just wants Saturdays or Sundays off or something like that. But you know, we're taking these seriously as we've established.

Andria Ryan (07:13)

Yeah, and it doesn't feel fair. Hospitality is one area, right? Most hotels are open 365 days a year, seven days a week, 24 hours a day, right? Or hospitals. So we have this issue in healthcare. Retail. Not that any employer has the potential for this this issue, but it really often rises to the top with companies that are open seven days a week.. So fair scheduling is expected and we you know for employment morale purposes.

And scheduling is often, anecdotally, I would say it's probably the number one religious accommodation issue that HR professionals and we face as employment lawyers. So, what I think is important to point out though is that if the employee truly has a sincerely-held religious belief that they cannot work on the Sabbath, whether that's Saturday or Sunday, it's usually Saturday or Sunday, it requires some creative scheduling.

Lisa Nagele-Piazza (08:13)

Yeah.

Andria Ryan (08:14)

The fact that the manager needs to be creative about scheduling is not an undue hardship. And the fact that other employees are going to see that as unfair is not an undue hardship.

Lisa Nagele-Piazza (08:26)

Yeah.

Andria Ryan (08:27)

I often point out if you've got an employee that says, I can't work Saturday because that's my Sabbath, remember that they can work Sunday and they can work extra Sundays. They can work all the Sundays that other employees don't want to work, Mother's Day and Father's Day and Easter Sunday and all those Sundays. So it takes a little creativity. And it might be a pain for a supervisor who just wants to rotate everybody through, you know, every fourth Saturday or every third Saturday or whatever it is.

Lisa Nagele-Piazza (08:57)

Sure.

Andria Ryan (08:58)

It takes a little creative scheduling. But it is important that we do it. We have a legal obligation to do it, and we've had for a long time. This is not Title VII is a fairly old law, 1964. And the Supreme Court's just given us a really high new burden to face.

Lisa Nagele-Piazza (09:12)

Yeah, absolutely. So what if accommodating the request creates overtime costs?

Andria Ryan (09:18)

It in overtime is certainly one cost, but the Supreme Court has just told us we have to look at all the potential costs, whether that's financial costs, it could be it could be non-financial costs, it could be administrative costs, it could be operational costs, health and safety issues. So we have to look at all of those factors. But overtime alone is not going to be a deciding factor, because it's gonna depend on your business. It's gonna depend on the size of your business, your operating costs, your other expenses. Undue hardship, because that's the standard for denying it, undue hardship is a very high burden. And so overtime costs alone are not generally gonna rule the day.

Lisa Nagele-Piazza (09:59)

Yeah.

That leads to our third thing for today. Employers can still deny requests when the burden is substantial and it's supported by evidence. And you know, so far we've talked about why employers need to be careful about saying no, but employers do still have the ability to deny an accommodation when there is a genuine undue hardship. So what does a stronger undue hardship case look like?

Andria Ryan (10:30)

The stronger undue hardship case generally looks at this safety and health issues and the burden it places on other employees, not just scheduling burdens, but are we able to safely staff an engineering department, for example, if we, you know, how small is our engineering department? We've got one site, right, to keep the building running, for fire safety and things like that. So it's often a safety or a health issue that will rule the day. The other

thing that you have to look at is “Can I operate? Can we operate this department with one employee not being scheduled on a certain day?”

Lisa Nagele-Piazza (11:07)

Okay, yeah. That makes sense.

Andria Ryan (11:09)

So I look sometimes and I say, you can probably have enough valet parkers at a hotel to rotate people through on a Saturday.

Lisa Nagele-Piazza (11:20)

Mm-hmm.

Andria Ryan (11:20)

But do you have enough engineers that can fix your HVAC system if it goes down in the whole hotel. You know, do you have enough qualified engineers? So looking at it like that is the way it should be looked at versus an inconvenience.

Lisa Nagele-Piazza (11:35)

That's interesting, yeah, because sometimes I think we think about hotels and retail establishments as sort of huge operations with lots of employees. Sometimes they're a lot smaller. And even for the larger businesses or hospitals, or businesses where this comes up a lot, you know, you do have those niche positions, as you were saying, that you know, you might have a lot of employees, but you might not have a lot that can cover that type of work on a given day.

Andria Ryan (12:02)

Exactly. And it's those kinds of things that we have to be looking at, of course, and documenting when we're making that analysis.

Lisa Nagele-Piazza (12:08)

Yeah. And then I think that a lot of employers think about the actual financial cost too. When does that cost become substantial?

Andria Ryan (12:16)

Really it mostly depends on the size of the company. Larger companies are expected to absorb larger costs than smaller companies. And so remember though, if your defense for denying an accommodation is “we can't afford it,” you are likely going to be, if legally challenged, you're gonna likely be asked to open your books.

Lisa Nagele-Piazza (12:37)

Yeah.

Andria Ryan (12:38)

And that's often something a lot of companies don't want to do.

Lisa Nagele-Piazza (12:41)

Yeah, that's a really good point. So yeah, so how should employers be thinking about the realistic risk? Because, you know, it probably hasn't actually caused a harm yet. They're sort of planning out "if we make this accommodation, then it will cause a harm." How should they sort of approach that analysis?

Andria Ryan (13:00)

Well, I think you just said it, and that's "is it a realistic risk?" And that's really the biggest standard as well. We always have "but what ifs?" But what if we don't have enough lifeguards on duty? This could cause a safety problem. And that's fine to look at, but it needs to be a realistic risk. You're right, we don't have to wait for harm to happen to deny an accommodation, but we need to defend the decision that it was a realistic decision.

Lisa Nagele-Piazza (13:35)

You're listening to the FP 5. I'm Lisa Nagele-Piazza, and we're here with Andria Ryan. Andria is a partner in Fisher Phillips's Atlanta office and is co-chair of our Hospitality Industry Group. Just a quick reminder: we've linked a couple of insights in this episode's show notes with practical tips on understanding the standard around religious accommodations.

Our fourth thing: consistency is key. And I think this is just true throughout employment and labor laws. You know, you have to be consistent. So your own workplace practices can sometimes undermine an otherwise legitimate denial if you're not consistent. How does consistency factor into the religious accommodation analysis?

Andria Ryan (14:18)

Lisa, that's a great question. And I'm gonna point out two things about consistency. You are absolutely right. As employment lawyers, we preach consistency. HR professionals preach consistency. And it's what often trips us up in accommodation situations, because we tell frontline managers "you must be consistent," and then we expect them to change something like a schedule or an employee that asks for it because of a religious accommodation. We're asking them to be inconsistent in that situation.

And it's something we've got to train to. We have to teach our frontline managers and supervisors that when an employee asks for an accommodation, yes, we know they're asking for something, they're asking to be treated differently than the rest of that department. But we have a legal obligation to look at it and see if it's possible, if it's reasonable, if it presents an undue hardship.

So it's hard because we preach consistency so much. That said, once we engage in the process of discussing an accommodation and we decide yes or no to grant it, we need to be consistent about that decision.

Lisa Nagele-Piazza (15:35)

Yeah.

Andria Ryan (15:36)

We've granted it in similar situations. Why would we be not granting it in this situation? What's different about this department, this shift, this particular operation where we couldn't grant it in situation number two, where we've granted it in situation number one.

Lisa Nagele-Piazza (15:50)

Yeah, absolutely. And I think to me too, in addition to schedule accommodations, religious attire probably comes into play here a lot too, with maybe policies like for uniforms or not wearing hats and then making accommodations for head coverings and things like that as well, making those exceptions.

Andria Ryan (16:08)

Yeah, I would say dress appearance policies, special time off, break times for prayer. You know, those are those are some of the more common ones. Again, scheduling rises to the top almost always. But you know, and days off, and days off. But yeah, appearance policies, if we're going to allow some employees to wear a head covering like a baseball cap, for example, why would we prohibit a head covering that's a religious-based head covering?

Lisa Nagele-Piazza (16:36)

Yeah, absolutely. I remember going into a fast-food restaurant once. I can't remember which one it was, but the head coverings were incorporated into the uniform and I was just so impressed with it. I was like, that's the way, that's the way to do this.

Andria Ryan (16:49)

Well, twenty years ago there was a, I won't name it, but although their cases are public, but a fashion retailer that had a look and they wanted you to wear their clothes and all their sales associates wore their colognes and perfumes and all that. And their look did not include head coverings. And they had multiple lawsuits from folks that wanted to wear head coverings for religious reasons and they lost them all. The company lost them all because undue hardship is very difficult to prove in those circumstances. The look just didn't win the day.

Lisa Nagele-Piazza (17:26)

So our fifth and final thing for today, let's close by walking through what employers should actually do when a religious accommodation request comes in. So Andria, if you were building the process from scratch for an employer, what should happen between the moment an employee raises the issue and when the company makes its decision?

Andria Ryan (17:49)

Lisa, I would love to build a process for every single client and company I work with. I would love to build a process. I am a huge advocate of formalizing many other processes, but certainly this one. And that is any request for an accommodation, whether it's for religion as we're talking about today, whether it's disability, whether it's pregnancy-related conditions; build a process, a formalized process, not too formal, but formal enough. So that when a manager or supervisor gets a request, and is trained to recognize the request, right? Somebody asking for a day off, or regular days off, because of their religion is a request for religious accommodation. It gets directed to HR or whoever's acting in HR's capacity, and the employee fills out a form and says, "This is the accommodation I need." They attest to it. I think it's important that they say in writing, "This is the accommodation I need." Because number one, we have to evaluate: is it a religious accommodation or is it something else? Is it personal? Is it secular? Is it political? I mean, there's oftentimes a lot of reasons people don't want to do things.

Lisa Nagele-Piazza (18:53)

Sure.

Andria Ryan (18:53)

So make the request, and then the interactive process starts that initiates the interactive process. And the EEOC and the courts say, “You as an employer are required to engage in this process,” and they refer specifically to it as the interactive process. Prove that you did it, and then justify your decision at the end. And so in a religious accommodation, as I mentioned earlier, we started, you don't get to send a note to their, you know, high priest or their rabbi or their, they may not even have one. Some spiritual beliefs don't have brick and mortar buildings associated.

Lisa Nagele-Piazza (19:29)

That that's a good point too, because my understanding is that the employee doesn't necessarily have to follow the standard religion, for it to be like a sincerely-held belief.

Andria Ryan (19:41)

Right, that we would all recognize. Wouldn't be nice if we just have a list of “here's all the records, here's their various requirements.” But that's not what the law says. The law says a spiritual belief, if it's spiritually based, which of course puts a bit of a burden on the employer to determine whether that's a legitimately spiritually-based belief. Err on the side of yes. So, but we initiate that process so that someone can take control of it. Hopefully, someone in an HR capacity takes control of “What are they asking for? What are the operational needs? What are the substantial hardships that would be caused if we grant this accommodation request? How can we overcome them? Because if we can overcome them, we don't have an undue hardship.”

Lisa Nagele-Piazza (20:30)

Yeah.

Andria Ryan (20:30)

Because we overcome them, and so I know that it takes some hand holding and guidance from HR or Legal to Operations to say, “Are you sure this can't be done? Let's think about it this way. Can we look at the schedule a little bit more creatively? I know it takes a little bit more time for you as a supervisor to do it this way, but is it doable?” And the answer is often yes.

Lisa Nagele-Piazza (20:56)

If an HR professional concludes, or the legal team concludes we're going to deny this accommodation request because it does genuinely cause an undue hardship, how should that be approached? How should they be documenting that and communicating with the employee?

Andria Ryan (21:10)

Well, same thing. We're gonna tell the employee we're denying it. I'm gonna tell them generally why. And I say generally because I don't think every detail of every operational hardship needs to be documented, but it needs to be documented somewhere. Because if we get a claim for failure to accommodate for religious beliefs, that's the defense. The defense is “We have engaged in the interactive process, we looked at operational issues, and we concluded that it would be an undue hardship for the following three reasons, two reasons, five reasons, that we cannot grant this accommodation as an undue hardship.”

Lisa Nagele-Piazza (21:42)

Well, is there anything else before we wrap up that you think is important for employers to know about religious accommodations?

Andria Ryan (21:49)

Yeah, I said this earlier and I'll repeat it. This is not a new law. We have a new standard. But this accommodation requirement for employers predates the Americans with Disabilities Act and the Pregnant Workers' Fairness Act. It's been in the law since 1964. And the standard has been so low that we just haven't seen litigation over the years, you know, eye-popping verdicts on it. But the Supreme Court really changed that for us. And so now that we've got a significantly higher standard on religious accommodation, we've had the ADA in place since 1990, we've now got the Pregnant Workers' Fairness Act, which has an accommodation requirement. It's time to really pay some attention to your accommodation process and how employees request them, how you evaluate them, and how you grant or deny them.

Lisa Nagele-Piazza (22:47)

And Andria, we're officially at the end of the show, but before we wrap up, this is the part where we get to know you a little better with five questions. Are you ready for them?

Andria Ryan (22:56)

I think I am.

Lisa Nagele-Piazza (22:57)

First, what's your ideal way to spend a completely free Saturday?

Andria Ryan (23:04)

Oh, it's so rare. It's so rare. But in the past I would have said spending it watching my kids play sports, sitting out on a Saturday afternoon watching a softball game. My daughter's now out at college, so now I think I have to lay on the sofa. Watch a college football game and put my feet up.

Lisa Nagele-Piazza (23:22)

That's a good plan. I always try to keep my Saturdays completely free if I can. Just not I don't even like to schedule a movie for a Saturday, just so I have one day a week, if possible, to just do nothing.

Andria Ryan (23:34)

Special day. It's a really special day.

Lisa Nagele-Piazza (23:36)

Absolutely. What is one place you could happily visit over and over again?

Andria Ryan (23:42)

I would visit the Rocky Mountains on a motorcycle over and over again.

Lisa Nagele-Piazza (23:47)

Any particular spot?

Andria Ryan (23:49)

You know, I've been fifteen straight years with a group of with what we would loosely call a motorcycle gang.

Lisa Nagele-Piazza (23:57)

Oh fun.

Andria Ryan (23:58)

Most of them are from the hotel industry and we go different places, starting in Denver and spreading out from there. So, no particular place. It's just, it's just nice to be with all of them.

Lisa Nagele-Piazza (24:11)

That's awesome. See, that's what I love about hosting this show too, is that I just learn something new about our attorneys every time. That's great.

You've spent a lot of your career working with the hospitality industry. When you stay at a hotel, can you actually relax or do you find yourself just immediately noticing everything about how it's run?

Andria Ryan (24:34)

Yes. Yes, I can relax and I will tell you I see the good and the bad.

Lisa Nagele-Piazza (24:38)

Mhmm, sure.

Andria Ryan (24:39)

I tend to be, a, you know, glass half-full kind of person anyway, but I see the good. I'll often see service or an employee and think, "Wow, I have some clients that would really love to hire you." But I do see the bad and I'll see you know service glitches, but I really also worry about security issues. When I see bad security issues, it really raises, you know, it really gets my attention.

Lisa Nagele-Piazza (25:02)

For sure. Yeah. I travel a lot and I'm the type of person where every time I leave the hotel room I make sure the door is locked. I go down to the desk and I check out in person, I don't just drop the key off. I'm like very, very scared of somebody running up my account or going into my room and charging up room service. So I pay attention to those things too.

Andria Ryan (25:23)

When you spend enough time in the industry, you realize what can go wrong, and that's often where it goes wrong.

Lisa Nagele-Piazza (25:29)

Do you prefer texting or calling?

Andria Ryan (25:31)

I prefer well, I have three children grown. So I text, I'm capable. But calling, I like calling 'cause you can't get the story from a client, from the your children, from your friends, you can't really get the full story in a text.

Lisa Nagele-Piazza (25:46)

That's so true. Even though calling seems like it's on its way out, it's still much more personable.

Andria Ryan (25:51)

It is, and you can you can dig a little bit deeper and that's what we do as lawyers, that's you know, what we do as parents, so ...

Lisa Nagele-Piazza (25:58)

Yeah, for sure. And the fifth and final question. What's one piece of career advice you would give a young lawyer?

Andria Ryan (26:06)

I would tell any young lawyer to make yourself invaluable in some way.

Lisa Nagele-Piazza (26:12)

Yeah.

Andria Ryan (26:13)

Be reliable, be dependable, be really smart in one certain area of the law, be a go-to person for something or many things, but certainly one or two things.

Lisa Nagele-Piazza (26:25)

Absolutely. Well, I think that's a perfect place to wrap up.

All right, well that's all the time we have for now. Thanks again for being on the show, Andria.

Andria Ryan (26:35)

Lisa, it was a pleasure.

Lisa Nagele-Piazza (26:38)

And thank you for listening to the FP5. You can find links to a couple of insights on religious accommodations and the undue hardship standard in this episode's show notes, and we'll see you next week.

Just a reminder, listening to this podcast doesn't constitute legal advice and doesn't establish an attorney-client relationship. For more information, visit fisherphillips.com/legal-notices.