



## Guarantees Not Required—For Now

COURT RULES FOR EMPLOYER IN RELIGIOUS-BASED SCHEDULING ACCOMMODATION CASE

Insights

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Healthcare industry employers routinely face staffing shortages and scheduling problems. National shortages are well-publicized, and the problem continues to grow as the demand for healthcare workers rises along with the age of the baby boomer population. The Bureau of Labor Statistics anticipates a 15 percent increase in registered nursing jobs between 2016 and 2026. Home health or personal care aide jobs are expected to grow at the staggering rate of 41 percent over the same time period.

This high demand for qualified employees makes it difficult for you to ensure proper staffing and coverage. Even the absence of one healthcare provider during a shift can have a significant impact. So what should you do when an employee refuses to work certain shifts based on religious beliefs?

### Employer's Obligations

Title VII of the Civil Rights Act of 1964 prohibits religious discrimination by employers. Not only must you treat people equally regardless of religious beliefs, you must provide reasonable accommodations for employees' sincerely held religious beliefs, if the accommodations do not impose an undue burden on your business operations. But determining what "reasonable" and "undue burden" mean can be difficult—especially for employers that operate 24/7.

In the 1975 case of *Trans World Airlines, Inc. v. Hardison*, the Supreme Court explained that requiring an employer to bear more than a "de minimis" cost to accommodate an employee's religious belief causes an undue burden on the employer. The 11th Circuit Court of Appeals, which handles cases arising out of Alabama, Florida, and Georgia, recently addressed similar issues in the case of *Patterson v. Walgreens*. Reiterating the Supreme Court's guiding principles, the *Patterson* court held that Title VII does not require employers to guarantee that an employee will never be scheduled to work on days that conflict with the employee's religious beliefs.

However, you should not view the *Patterson* decision as providing you *carte blanche* permission to ignore an employee's scheduling requests. Instead, each situation must be viewed on case by case basis.

### Court Rejects Guarantee Request

Darrell Patterson began working as a customer care representative for a Walgreens call center in 2005. As a Seventh-day Adventist, Patterson's religious beliefs prohibited him from working on the Sabbath (sundown Friday through sundown on Saturday). He told management of his religious beliefs when he was hired, and the company initially accommodated his request.

During his employment, Patterson earned several promotions, eventually becoming one of two trainers at the Orlando facility. Continuing to accommodate Patterson's beliefs, Patterson's supervisor scheduled regular training classes between Sunday and Thursday. Occasionally, however, business emergencies required that trainings be conducted on the Sabbath. For these instances, Walgreens allowed Patterson to swap shifts with other employees, which Patterson did on several occasions. If his scheduling requests could not be accommodated and Patterson missed work, he was disciplined for the absence.

In August 2011, the Alabama Board of Pharmacy ordered Walgreens to stop call center activities at an Alabama facility within two days. As a result, Walgreens needed to immediately train employees to handle an additional 50,000 monthly calls. On a Friday, Walgreens instructed Patterson to conduct an emergency training the next day, which was a Saturday. Patterson refused.

Patterson's supervisor told him that if he could not conduct the training, he needed to find someone to do so. Patterson did not report to work on the Sabbath and did not secure coverage for the training.

When he returned to work after his religious observance, he met with his supervisor and a human resources representative. Patterson reaffirmed that he would refuse work on the Sabbath under any circumstances, and the human resources representative suggested that Patterson look for another position within Walgreens that had a larger employee pool from which he could find others to swap shifts. Patterson asked for a guarantee that he would not be required to work on the Sabbath, and Walgreens could not provide one.

Because Patterson was one of only two trainers at the Orlando facility, and the other trainer would soon be leaving the company, Walgreens concluded that it could not accommodate Patterson's request that he never be scheduled to work on a Friday night or Saturday. Therefore, Walgreens terminated Patterson's employment.

Patterson filed suit in a Florida federal court, alleging that Walgreens violated Title VII's religious protections. The lower court ruled in favor of Walgreens, finding that the employer reasonably accommodated Patterson by permitting him to either swap shifts with other employees or transfer to another position and that Walgreens would suffer an undue hardship if it was required to guarantee that Patterson never work on the Sabbath.

On appeal, the 11th Circuit Court of Appeals upheld the dismissal. In its decision, the court reiterated that Title VII does not require an employer to offer an employee several accommodations or provide the employee with a particular accommodation. Rather, "an employer may be able to

or provide the employee with a particular accommodation. Rather, an employer may be able to satisfy its obligations involving an employee's Sabbath observance by allowing the employee to swap shifts with other employees, or by encouraging the employee to obtain other employment within the company that will make it easier for the employee to swap shifts and offering to help him find another position." Like the lower court, the 11th Circuit also recognized that Patterson's requested accommodation in light of the emergent nature of the August 2011 training caused an undue burden on Walgreens.

### **What Does This Mean For Employers?**

While the *Patterson* case was certainly a "win" for employers, the case is not over. Patterson has asked the U.S. Supreme Court to review the decision and provide additional guidance on an employer's obligation to accommodate an employee's religious based requests. Numerous religious organizations have filed "friend of the court" briefs, urging the Court to accept the case and strengthen religious protections. The Supreme Court is currently reviewing the response from Walgreens, which was just filed on January 14, before deciding whether to hear Patterson's case.

While the full implications of the *Patterson* decision are unknown, this case sheds light on employers' accommodation duties. While emergent situations and unreasonable requests may save an employer from civil liability, employers must take each employee request seriously and work with the employee to determine whether a reasonable accommodation can be made. Additionally, given the current economic demand for healthcare providers, employees are often recruited to work for competitors. A company's decisions regarding reasonable religious accommodations may have legal—as well as staffing—implications, especially when an employee can easily move to an employer who will accommodate their requests.

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