

Insights, News & Events

# COMING CLEAN ABOUT RELIGIOUS DISCRIMINATION: HOW A HOTEL'S "SINS" RESULTED IN THE "HOLY GRAIL" OF VERDICTS FOR A DISHWASHER

Publication  
Mar 1, 2019

A Florida federal jury recently handed down a shocking \$21.5 million verdict in favor of a dishwasher alleging religious discrimination when she was fired after refusing to work Sundays. This case begs the question...how did this happen?! And what can you do to make sure it doesn't happen to you?

## THE HOTEL'S SEVEN DEADLY SINS

This story begins with Plaintiff Marie Jean Pierre, hired by the Conrad Miami Hotel as a dishwasher in April 2006. Pierre belonged to the Soldiers of Christ Church, a Catholic missionary group. She alleged the hotel knew, from the start, that her religion forbade her from working on Sundays.

### *Sin No. 1 – Scheduling Pierre For A Sunday*

The hotel accommodated Pierre's request for Sundays off from her initial hire date in April 2006 up to about March 2009. However, the hotel then scheduled her to work on a Sunday. In response, Pierre resigned, explaining that she could not violate her religious beliefs. According to her religion, Sundays were to be a day of rest. To persuade her not to quit, the hotel

## Service Focus

Employment Discrimination  
and Harassment

Litigation and Trials

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## Industry Focus

Hospitality

agreed to give Pierre all Sundays off and Pierre rescinded her resignation. If only this story ended there...

### *Sin No. 2 – Tossing Away Accommodation Requests*

Fast forward to late 2015, when the hotel hired a new Kitchen Manager. Pierre, and her pastor, wrote the new manager letters explaining why she could not work Sundays. Instead of taking Pierre's request seriously, the Kitchen Manager threw her letters away.

### *Sin No. 3 – Changing Course After Previously Accommodating Pierre*

Initially, Pierre implemented her own accommodation by swapping schedules with coworkers to avoid working Sundays. The Kitchen Manager took no issue with this at first, but then, out of nowhere, demanded that the practice stop.

### *Sin No. 4 – Inconsistently Enforcing Policies, Procedures, And Rules*

It was bad enough that the Kitchen Manager did not like Pierre swapping schedules with coworkers for her own personal religious reasons. What's worse is that he allowed other non-religious employees to swap schedules without any legitimate distinction for the difference in practice.

### *Sin No. 5 – Not Engaging In An "Interactive Process" With Pierre*

There was no evidence that the Kitchen Manager ever evaluated whether Pierre's only request for religious accommodation—Sundays off—was reasonable, which could have been accomplished through a simple interactive process.

### *Sin No. 6 – Terminating Pierre For "Unexcused Absences"*

On Sunday, March 27, 2016, the Kitchen Manager reprimanded Pierre's coworker and sent her home,

telling her that he wanted Pierre there to replace her. Pierre obviously did not come to work that day since it was a Sunday. The final nail in the hotel's coffin came four days later when it fired Pierre for misconduct, negligence, and "unexcused absences."

### *Sin No. 7 – Failing To Document The "Unexcused Absences"*

Unfortunately for the hotel, no documentation of Pierre's "unexcused absences" existed, which made it extremely difficult to defend its actions. Ouch.

## **THE 10 COMMANDMENTS FOR AVOIDING RELIGIOUS DISCRIMINATION CLAIMS**

So what can we learn from the hotel's seven deadly sins? Here are the 10 commandments you should follow in order to avoid a similar fate.

### *No. 1 – Thou Shalt Have An Up-To-Date Handbook Complete With A Religious Accommodation Policy*

It may seem obvious, but this often gets overlooked. An up-to-date handbook that includes a religious accommodation policy will go a long way in defending a religious discrimination claim. It will show that you not only take religious accommodations seriously enough to implement a policy in the first place, but that your managing agents have a legally compliant policy that they are expected to follow.

### *No. 2 – Thou Shalt Not Ignore Notice Of An Employee's Request For Religious Accommodation*

One of the hotel's cardinal sins happened when the Kitchen Manager threw away the letters from Pierre and her pastor requesting a religious accommodation. You simply cannot ignore an obvious request for accommodation. Notice triggers your obligation to kick start the interactive process and at least consider the employee's religious accommodation request.

### *No. 3 – Thou Shalt Honor An Employee’s Religious Beliefs*

The law defines “religion” extremely broadly in this context. In fact, “religion” is defined so broadly that it not only includes traditional organized religions such as Christianity, Judaism, and Islam, but also religious beliefs that are new, uncommon, not part of a formal church or sect (some courts have found witchcraft and an Ethical Society, for example, to be “religions”), only subscribed to by a small number of people, or that seem illogical or unreasonable to others. To further complicate things, “religion” even includes Atheism.

Safe to say, the law is so broad that you should probably default to assuming an employee’s claimed “religion” is legitimate, unless you have strong, concrete evidence otherwise (or, unless your employee’s alleged “religion” is the Ku Klux Klan, as the EEOC and courts have held the KKK does not qualify). While you may want to reject your employee’s seemingly “made-up” religion, don’t—without first checking with legal counsel. It probably qualifies as such under the law.

### *No. 4 – Thou Shalt Assess Whether An Accommodation Is Possible*

Federal law requires you to reasonably accommodate an employee who has a sincerely held religious belief, practice, or observance that conflicts with a work requirement. Accommodation requests most often relate to schedules, dress and grooming policies, and religious expression or practice at work. While federal law does not require you to discuss religious accommodation requests with employees before denying them, practically speaking, you should. In fact, some courts have found an employer lacked evidence to establish undue burden by not discussing with the employee.

Thus, while the law doesn’t require it, courts want to see some evidence of an “interactive process” before denying an employee’s religious accommodation

request. To that end, make sure you document your interactive process. The devil is in the details—if there is no documentation, it might as well have never happened.

### *No. 5 – Thou Shalt Provide Reasonable Religious Accommodations—Unless It Causes An Undue Burden*

What is a “reasonable accommodation” anyway? Legally, an accommodation is not “reasonable” if it merely lessens rather than eliminates the conflict between religion and work. In other words, eliminating the conflict between a work rule and an employee’s religious belief, practice, or observance means accommodating the employee without unnecessarily disadvantaging the employee’s terms, conditions, or privileges of employment. Where there is more than one “reasonable” accommodation, you are not obligated to provide the employee’s preferred accommodation.

The exception to this commandment is undue burden. You can refuse to provide a reasonable accommodation if it would pose an undue hardship, i.e., if the accommodation would impose “more than *de minimis* cost” on your business operations. If a proposed reasonable accommodations amounts to an undue burden, you are obligated to explore alternative accommodations.

Generally, the payment of administrative costs necessary for an accommodation—such as costs associated with rearranging schedules and recording substitutions for payroll purposes, or infrequent or temporary payment of premium wages—will not constitute more than *de minimis* cost. Whereas the regular payment of premium wages, or the hiring of additional employees to provide an accommodation, will generally cause an undue hardship.

### *No. 6 – Thou Shalt Not Take An Adverse Action Based On An Employee's Religion*

Arguably, the hotel's biggest problem came when the Kitchen Manager terminated Pierre for "unexcused absences" four days after he discovered she swapped shifts with a coworker to avoid working a Sunday. The timing alone created a strong inference that his reason for terminating Pierre was because she refused to work on Sundays, i.e., because of her religion. Even worse, no documentation existed to back up those "unexcused absences," leading to the conclusion that her unexcused absences directly correlated to her religious absences. Pay attention to the timing of an adverse action following an accommodation request, and make sure your documentation supports the adverse action.

### *No. 7 – Thou Shalt Consistently Enforce Policies*

Consistency is everything. Inconsistency leads to disgruntled employees, and disgruntled employees tend to sue. Happy employees (usually) do not (unless maybe if you operate in California). Had the hotel consistently maintained its ability and willingness to accommodate Pierre's religious needs, that lawsuit likely never would have happened.

### *No. 8 – Thou Shalt Train Your Managers*

Manager training is one of the most important things you can do to defend yourself from discrimination claims. Proper training of the Kitchen Manager above could have saved the hotel \$21.5 million. Managers need to understand when they are on notice of the need for an accommodation and how to go about processing and documenting the interactive process to consider reasonable accommodations.

### *No. 9 – Thou Shalt Include Your Favorite Employment Law Attorney In Your Analysis*

The very nature of the interactive process requires an individualized assessment. That means you must look at each employee who requests an accommodation and each separate accommodation request in a vacuum in order to determine the feasibility of reasonably accommodating that request. This process

involves a careful risk-benefit analysis that really should include your attorney so you understand the risk involved.

*No. 10 – Thou Shalt Monitor Changes In The Law*

Finally, an ounce of prevention is worth a pound of cure. Staying up to date on changes in the law is one of the most important things you can do to avoid future claims because it allows you to get ahead of potential problems by changing your practices in real time. One way you can stay up-to-date is by subscribing to [Fisher Phillips' alert system](#).

While each situation is a little different, using these “commandments” can go a long way in helping you avoid any cardinal sins.

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