

# An Employer's Guide to Islamic Religious Practices





## About CAIR

The Council on American-Islamic Relations (CAIR) is the largest American Muslim civil rights and advocacy organization in the United States. Its mission is to enhance understanding of Islam, protect civil rights, promote justice, and empower American Muslims. CAIR-California is the organization's largest and oldest chapter, with offices in the Greater Los Angeles Area, the Sacramento Valley, San Diego, and the San Francisco Bay Area.

Demographers say that Islam is one of the fastest growing religions in the United States. The information contained in this booklet is designed to educate employers about the sincerely-held and/or religiously-mandated practices/beliefs of Muslim employees, which at times require employers to provide religious accommodations in compliance with state and federal laws.

**Disclaimer:** The materials contained herein are not intended to, and do not constitute legal advice. Readers should not act on the information provided without seeking professional legal counsel. Neither transmission nor receipt of these materials creates an attorney-client relationship between the author and the receiver.

## Commonly Used Islamic Terms

**Eid (EED):** A day of festivity, major religious holiday.

**Halal (Hah-LAAL):** Permissible by Islamic law.

**Hij'ab (Hee-JAAB):** Clothing Muslim women wear in public. It is generally loose-fitting and includes a head covering.

**Jum 'ah (JOO-mah):** Friday congregational prayer, the Muslim weekly worship service.

**Kufi (KOO-fee):** A cap sometimes worn by Muslim men.

**Qur'an (QUR-aan):** Islam's scripture, sometimes spelled Koran.

**Ramadan (RAHM-a-daan):** The month of fasting.

# U. S. Legal Protections of Religious Rights

Islamic practices are, in legal terminology, bona fide religious beliefs, and those who practice them regard them as compulsory religious duties. Observances such as prayer, fasting, pilgrimage, and religious celebrations are long-held practices of members of the Islamic faith. Such expressions are protected by the following provisions in the Bill of Rights and federal law:

- The First Amendment to the Constitution of the United States, which protects the free exercise of religion.
- Title VII of the 1964 Civil Rights Act, which provides that an employer may not discriminate against a person because he/she adheres to a particular faith, and that employers must accommodate an employee's religious practices unless doing so would cause undue hardship to the employer.

Moreover, there are many state laws that contain similar provisions protecting religious rights. In the private sector, a growing number of corporations are modifying their rules and procedures to show sensitivity to the increasing number of Muslim employees and customers.

Both state and federal law prohibit discrimination at the workplace. The laws that protect employees from discrimination are:

## **LAW**

### **Title VII of the Civil Rights Act of 1964**

## **PROTECTS AGAINST**

Employment discrimination on the basis of race, color, religion, national origin, and sex by both private and public-sector employers, with at least 15 employees.

### **Immigration Reform and Control Act of 1986 (IRCA), part of the Immigration and Nationality Act (INA)**

Protects individuals from employment discrimination by employers with 4-14 employees based on immigration or citizenship status, and prohibits document abuse discrimination.

### **CA Fair Employment and Housing Act**

Prohibits employers from discriminating on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Covers private and public-sector employers with 5 or more employees (and 1 or more for harassment claims).

California law and federal law, specifically the Fair Employment and Housing Act ("FEHA") (Cal. Gov't Code §§ 12900-12996) and Title VII of the Civil Rights Act of 1964 ("Title VII") (42 U.S.C. § 2000e) respectively, protect California employees from discrimination based on factors such as religion, race, and national origin, amongst others listed above. FEHA and Title VII forbid harassment, disparate

treatment and impact, failure to provide reasonable religious accommodations, and retaliation for requesting religious accommodations. It is considered discrimination if an employee receives less favorable or differential treatment because of a specific, protected characteristic they have, such as a religious belief.

Prohibited discriminatory actions by employers include:

- **Disparate Treatment:** occurs when an employer treats applicants or employees differently based on their protected trait (i.e., religion, race, color, national origin, sex) or lack thereof. It does not matter whether the difference is motivated by bias against or preference toward an applicant or employee.
- **Disparate Impact:** occurs when employers adopt policies applicable to all employees with no apparent intent to discriminate, i.e. facially neutral, but such policies have a disproportionately negative impact on those with a certain protected characteristic. For example: an employer applies an English-speaking only policy to a workforce that includes employees who are non-English speakers.
- **Harassment:** unwelcome conduct that is based on a protected characteristic. Harassment becomes unlawful where: enduring the offensive conduct becomes a condition of continued employment, or the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.
- **Failure to Provide Reasonable Religious Accommodations:** employers are required to provide reasonable religious accommodations for religious beliefs, practices, and observances if the beliefs are sincerely held and the reasonable accommodation poses “no undue hardship” on the employer. Employers should accommodate for flexible scheduling, voluntary shift substitutions or swaps, job reassignments, lateral transfers, and exemptions to dress or grooming rules, such as allowing an employee to wear the hijab or kufi when there is a “no head covering” policy or allowing an employee to have a beard when there is a “clean shaven” policy. Employers should consider adjusting the work environment so employees can practice their religion freely.
- **Retaliation:** occurs when an employer takes a materially adverse action because of the employee’s engagement in protected activity or because the employee made a complaint. A “materially adverse action” is any action that might deter a reasonable person from engaging in protected activity. Examples of this include, denial of promotion, non-hire, denial of job benefits, demotion, suspension, or discharge, after an employee requests a religious accommodation.



## Daily Prayer

Islam urges God consciousness in an individual's life. To that end, Islam mandates that believers perform prayer five times each day.

1. Morning prayer may be offered from break-of-dawn until just before sunrise.
2. Noon prayer may be offered from just after midday until afternoon.
3. Afternoon prayer may be offered from late afternoon until just before sunset.
4. Sunset prayer may be offered from sunset until darkness.
5. Night prayer may be offered throughout the night hours.

Before prayer, Muslims are required to wash their faces, hands and feet with clean water. This washing is normally performed in a restroom sink. During the act of worship, Muslims stand, bow and touch the forehead to the ground. Prayer may be performed in any quiet, dry, clean place. During the prayers, the worshipper will face toward Mecca (generally northeast in the United States). If requested, Muslim employees should be provided with a space to perform their prayers uninterrupted and other workers should not walk in front of the worshipper during prayer. During prayer, a Muslim is fully engaged. He or she may not respond to a ringing telephone or conversation. Fellow employees should not take offense if the worshipper does not answer their call during the prayer. However, in case of an emergency, a Muslim will respond to an announcement by stopping the prayer immediately.

## Time and Scheduling Considerations

The time it takes to perform the washing and the prayer is usually about 15 minutes. Employers must allow employees to take breaks during their work hours to perform the mandated prayers. Employees who have flexibility in taking breaks may schedule them to fit their prayer times. For example:

- Employees working regular day hours may schedule their breaks to fit noon and afternoon prayer – depending on location – between noon and 5 p.m.
- Retail employment shifts from 10 a.m. to 6 p.m. (or 11 a.m. to 8 p.m.) imply that Muslim store employees may need to perform noon, afternoon and sunset prayers in the workplace in some states, especially during winter.
- Night shift workers may need to pray night and morning prayers on site. In other more controlled work environments, employers must work out a reasonable arrangement for those employees to pray within the prescribed time period.

## Friday Congregational Prayer

Friday is the day for congregational worship, called Jum'ah. The prayer generally takes place at a mosque during the noontime prayer and includes an address or sermon, and lasts a total of 45 to 90 minutes. Unless an undue hardship arises for the employer, a Muslim employee should be accommodated with the required time off to attend Jum'ah.



## Islamic Holidays

Islamic holy days and festivals follow the lunar calendar. Like the solar calendar, the lunar calendar has twelve months. However, a lunar month, which is marked by the appearance of a new crescent in the horizon, may last only 29 days. A lunar year is about eleven days shorter than the solar year. This means that Islamic festivals occur about eleven days earlier each year. There are several days on the Islamic calendar with special religious significance.

Eid is celebrated by Muslims twice a year. The first Eid, known as Eid al-Fitr, is celebrated after the end of the month of Ramadan. The second Eid, known as Eid al-Adha, is celebrated beginning on the tenth day of the twelfth Islamic month. The festivals include congregational prayers, family visitations and the exchange of gifts. Celebrating Eid requires that Muslims take one day off twice every year. Employees should be allowed to request for time off or arrange a schedule shift. There should be no undue penalty for the reasonable accommodation.

## Ramadan Fast

The month of Ramadan, the ninth month of the Islamic lunar calendar, is the period in which Muslims are required to fast. Fasting requires refraining from eating, drinking and smoking from break-of-dawn to sunset. Ramadan is a period of personal restraint and renewed focus on moral conduct. It is also a time to empathize with those who are less fortunate and to appreciate what one has. Fasting does not mean that Muslims cease to work.

An employee observing the fast will not be able to eat during typical lunch times. However, they will need to eat after sundown, and/or, for those working night shifts, before dawn. Mutually convenient adjustments should be made. For example, a work shift could be shortened by the length of the lunchbreak if the break is not taken. Islam provides relief for many of the burdens of travelers. A traveler is exempt from fasting during the month of Ramadan.

## Pilgrimage

Pilgrimage plays a significant role in many faiths. In Islam, it is one of the five “pillars,” or basic obligations, of the religion. Muslim adults are required to go on a pilgrimage to the city of Mecca at least once in their lifetime. Muslims perform the rituals of the pilgrimage during the second week of the twelfth month of the lunar calendar. However, considerable variations exist in trip arrangements, and travel may take between ten to twenty-one days. Requests for time off to perform religiously-mandated pilgrimage should be granted by employers.

## Dietary Requirements

The Qur'an, Islam's revealed text, prohibits the consumption of alcohol, pork, and pork byproducts. Practicing Muslims are careful about the food they consume and about how it is prepared. Many practicing Muslims follow certain standards – called halal (permissible) – of slaughter and preparation of meat and poultry. Employers should be mindful when providing catering for in-office lunches and other work-related events. Airline companies and other parties that serve food to Muslims may order these special items (mainly meats) from certified halal food providers. If this is not possible, employees should be given choices that meet Muslim dietary requirement (such as vegetables, eggs, milk and fish). Muslim employees working in the food industry should be excused from serving or preparing pork and alcohol.

## Appearance

Islam prescribes that both men and women behave and dress modestly. Muslims believe men and women should be valued and judged by their intelligence, skills and contributions to the community, not by their physical attributes. There are a number of ways in which Muslim men and women express such teachings.

**Men:** Some Muslim men wear beards for religious reasons. Cleanliness is required by Islamic teachings. Should there be safety and health considerations, employers may require employees with beards to use proper covering such as hair nets or masks. Also, some Muslim men wear a small head covering, called a kufi.

**Women:** When in public, many Muslim women wear loose-fitting, non-revealing clothing. Some Muslim women wear attire known as hij'ab. This attire, which may vary in style, usually includes covering the hair, neck, and body, except for the face and hands. Some Muslim women may wear a face veil.

California's FEHA directs employers to reasonably accommodate for religious beliefs and observances, as they relate to appearance including the wearing and carrying of religious clothing, head or face coverings and other artifacts such as jewelry, kufis, and hij'abs, as well as religious grooming practices including facial hair. Employers may wish to modify dress code policies so that religiously-mandated attire is addressed as a diversity issue. For example, many corporations have a policy forbidding the wearing of "hats." This rule may be amended to exempt items such as kufis and hij'abs.



## Other Considerations

**Shaking Hands:** Some Muslims will be reluctant to shake the hand of an unrelated person of the opposite sex. This should not be taken as an insult, but as a sign of sincerely-held religious belief.

**Eye Contact:** The Qur'an teaches Muslim men and women to "lower their gaze" when communicating with unrelated persons of the opposite sex. In observing this teaching, some Muslims may avoid sustained eye contact, in certain circumstances. This should not be taken as an insult or as an indication of an unwillingness to communicate.

**Social/Work Events:** Many Muslims are reluctant to take part in social gatherings celebrating religious holidays of other faiths or where alcohol is served. These employees should not be penalized for not participating in such functions. Such events should not be mixed with business.

## Some Examples of Impermissible Employer Discrimination

*Between 2009 and 2015, Muslims made up less than two percent of the U.S. population and accounted for 5,468 or approximately twenty-one percent of all religious discrimination charges filed with the EEOC.<sup>1</sup>*



### Headscarves and Look Policies

Samantha Elauf, a young Muslim woman, wore her headscarf to an employment interview with retailer Abercrombie & Fitch in 2008. Elauf never mentioned her religion, and the assistant manager conducting the interview did not ask. After the interview, however, the assistant manager asked the district manager about Elauf's headscarf because she knew that hats were not allowed. She had assumed the scarf

was for religious purposes and was not sure whether it would be permissible on the store's floor. She was unequivocally told not to hire Elauf. Despite scoring high marks on the "competencies" required for the job, Elauf was denied the position for violating the store's "look policy."

<sup>1</sup> U.S. Equal Employment Opportunity Commission (EEOC), Charges Filed on the Basis of Religion - Muslim or National Origin - Middle Eastern FY 1995 - FY 2015, [https://www.eeoc.gov/eeoc/statistics/enforcement/religion\\_muslim\\_origin\\_middle\\_eastern.cfm](https://www.eeoc.gov/eeoc/statistics/enforcement/religion_muslim_origin_middle_eastern.cfm)

Elauf contacted the Equal Employment Opportunity Commission (EEOC) and, together, they sued Abercrombie & Fitch for its discriminatory hiring practices. Abercrombie argued that its policy was not discriminatory because it prohibited all types of headgear, and so was not based on religion. It also argued that the burden was on Elauf to request accommodation. Title VII of the 1964 Civil Rights Act provides that employers must provide “reasonable accommodation” to its employees so long as the accommodation does not cause undue hardship. The U.S. Supreme Court held that employers must provide such accommodation even if the employee, or prospective employee, did not ask for it.

### **Patterns of Harassment**

Abercrombie has since changed its “look policy” to allow for certain kinds of headgear, including hijabs.

In 2010, the EEOC sued JBS Swift, a meat packing plant with locations in Greeley, Colorado and Grand Island, Nebraska, on behalf of 160 Somali immigrant employees. There are allegations of other Swift employees cursing



these Somalis for being Muslim, throwing blood, meat, and bones at them, and interrupting their prayer breaks. The tension came to a head when employees requested that JBS accommodate their need to leave the production line to pray at or near sundown during the month of Ramadan. The employees were unable to come to a suitable agreement with JBS, and several employees were suspended or terminated for “job abandonment.” The EEOC filed suit and claimed that JBS discriminated against its Muslim employees on the basis of religion by engaging in a pattern or practice of retaliation, discriminatory discipline and discharge, harassment, and denying its Muslim employees reasonable religious accommodations.

The courts were a bit inconsistent deciding on this issue. While the Court granted summary judgment in favor of the Nebraska JBS plant and found that allowing its Muslim employees to leave the production line for evening prayer to be an “undue burden,” the case in Colorado is still winding through the legal system. Although the case was not definitively decided at the time of this publication, the Colorado Court did hold that summary judgment was not appropriate for the Greeley plant and further investigation was necessary in order to prove a system of discrimination.

These cases brought against the same company in different locations really prove that the courts look at these issues on a case-by-case basis. The results imply that employers that refuse an accommodation in violation of Title VII must provide specific evidence demonstrating the “undue burden” that the accommodation would cause.



### **Undue Burdens on Employer**

Mahad Abass Mohamed and Adkiarim Hassan Bulshale were two Somali truck drivers for a company called Star Transport. When Star Transport asked them to deliver shipments containing alcohol, they refused and said their faith would not permit them to transport alcohol. Consequently, Mohamed and Bulshale were fired.

The EEOC sued on their behalf, and Mohamed and Bulshale were awarded \$240,000. Star Transport admitted that it often “swapped loads between drivers” and that it would not have been difficult to accommodate the request. If there is no undue burden on the employer, it should do its best to accommodate its religious employees.

### **Beard Policies**

Shaheed Khan was awarded \$50,000 after McDonald’s, his employer, refused to let him wear a beard to work. Khan was a crew trainer at a McDonald’s in Fresno, California. In 2005, he asked if he could wear a beard to work and explained his religious reasoning. After he was told no, he quit.

The EEOC worked out the \$50,000 settlement for Khan, and McDonald’s agreed to reinforce training managers about its anti-discrimination policies.



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