



# The Center for Equity and Inclusion

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The University of Texas at Austin

Religious Accommodation for Applicants and Employees Procedure and Practice Guide (Procedure and Practice Guide for the administration of HOP 3-3012, *Religious Accommodation for Applicants and Employees*)

Effective Date: [DATE]

Last Revised Date: [DATE]

## **I. Procedure and Practice Guide Policy Statement**

The University of Texas at Austin (“University”) is committed to maintaining a nondiscriminatory work and educational environment and therefore prohibits discrimination in employment and in all University programs and activities on a wide variety of bases, including race, color, sex, national origin, age, disability, citizenship, genetic information, veteran status, sexual orientation, gender identity, gender expression, and religion. These prohibitions are included in University policies and procedures as well as federal and state law, including Title VII of the Civil Rights Act of 1964 and Chapter 21 of the Texas Labor Code.

The University is strengthened by its global and multicultural character and is committed to diversity and equal opportunity in employment and education. This commitment includes embracing religious diversity and cultivating a community of inclusion and respect. As such, the University prohibits discrimination against employees and applicants for employment based on religious beliefs, practices, and affiliation. In addition, the University provides reasonable accommodation for individual’s sincerely held religious beliefs and practices unless providing a reasonable accommodation would result in undue hardship to the University, including undermining the University’s core values of integrity, honesty, trust, fairness, and respect toward peers and community.

## **II. Reason for Practice Guide**

The University of Texas at Austin’s Center for Equity and Inclusion (CEI) establishes this procedure and practice guide to assist the University in carrying out its responsibilities in administering and enforcing applicable federal and state law and University and/or Board of Regents’ policies related to religious discrimination and reasonable religious accommodation.

This procedure and practice guide details the procedures for requesting and processing religious accommodation requests as outlined in Handbook of Operating Procedures 3-3012 (*Religious Accommodation for Applicants and Employees*).

### III. Scope & Audience

These guidelines apply to all University employees (faculty and staff, including student-employees, full-time and part-time) and applicants for employment with the University who request religious accommodation pursuant to University policy.

### IV. Definitions (specific to this practice guide)

- A. Applicant: An individual seeking consideration for employment with the University.
- B. Decision-maker: A management official (e.g., supervisor, department chair, or other equivalent university official) in the requesting party's chain of command with the authority to approve or deny a request for religious accommodation.
- C. Employee: A member of the University's staff, full or part-time, including faculty and student-employees.
- D. Essential Function: A fundamental job duty of an employment position, as opposed to marginal functions. A job function may be considered essential for any of several reasons including, but not limited to: the reason the position exists is to perform that function; a limited number of employees are available to perform that function; and/or the function is specialized so that the incumbent is hired for his or her expertise or ability to perform the particular function.
- E. Facilitator (CEI Staff Member): The Center for Equity and Inclusion (CEI) staff member appointed to facilitate the interactive process between the requesting party and the management official/Decision-maker.
- F. Interactive Process: The process by which the individual requesting a religious accommodation and the management official/Decision-maker interact to discuss possible reasonable accommodations considering the totality of the circumstances.
- G. Religious Belief or Practice: A belief, practice, or observance that includes moral or ethical beliefs as to what is right and wrong, that is sincerely held with the strength of traditional religious views, even if no religious group espouses such beliefs, or the religious group to which the individual professes to belong may not accept such belief. Social, political, or economic philosophies, as well as mere personal preferences, are not religious beliefs or practices.
- H. Religious Accommodations for Applicants and Employees: Modifications or adjustments to the work environment or the application process that allows an applicant for employment or an employee to practice his or her religious beliefs without creating an undue hardship to the University.
- I. Undue Hardship: An accommodation, considering the totality of the circumstances, that would impose more than a minimal (*de minimis*) cost or burden on the University. Generally, an accommodation will be considered an undue hardship if it will result in the inability of the employee to perform an essential function of his or her position.

## V. Contacts

Center for Equity and Inclusion (CEI)	512-471-1849	<a href="http://www.equity.utexas.edu">http://www.equity.utexas.edu</a> email: <a href="mailto:cei@austin.utexas.edu">cei@austin.utexas.edu</a>
Human Resources - Strategic Workforce Solutions (SWS)	512-475-7200 512-232-3523	<a href="http://www.utexas.edu/hr/index.php">http://www.utexas.edu/hr/index.php</a> email: <a href="mailto:hws.sws@austin.utexas.edu">hws.sws@austin.utexas.edu</a>
Employee Assistance Program (EAP)	512-471-3366	<a href="http://www.utexas.edu/hr/eap">http://www.utexas.edu/hr/eap</a> email: <a href="mailto:eap@austin.utexas.edu">eap@austin.utexas.edu</a>
Unit/department Human Resource representative	N/A	<a href="https://hr.utexas.edu/hrpro/lookup/">https://hr.utexas.edu/hrpro/lookup/</a>

## VI. Responsibilities & Procedures

### A. Overview:

It is the University's practice to provide reasonable accommodation for individual's sincerely held religious beliefs and practices unless providing such reasonable accommodation would result in undue hardship to the University, including undermining the University's core values of integrity, honesty, trust, fairness, and respect toward peers and community.

1. In making reasonable religious accommodation decisions, the University/employing unit considers the specific circumstances of each case, the totality of the circumstances, and weighs a variety of factors, including whether the accommodation would create an undue hardship.
2. University policy imposes responsibilities and obligations on both the individual requesting the accommodation and the University/employing unit. The person requesting the accommodation is obligated to make the University/employing unit aware of the need for religious accommodation in advance and is expected to participate and cooperate in the interactive process.
3. Once a request is made in accordance with this policy, the University/employing unit will explore possible reasonable accommodations to address the individual's religious beliefs or practices. When more than one accommodation is feasible, the University/employing unit may select any of the feasible accommodations, provided the accommodation will effectively eliminate the religious conflict. It may be necessary for the University/employing unit to request the employee/applicant to provide documentation or other authority to support the need for the accommodation. In addition, the University/employing unit may need to discuss the nature of the religious belief(s), practice(s) and accommodation with the religion's spiritual leader (if applicable) or religious scholars to address the request for a religious accommodation. The University/employing unit may not accommodate requests that would create an undue hardship.

B. Responsibilities:

1. **The Center for Equity and Inclusion (CEI)** is responsible for facilitating the interactive process between the employee making the request and the applicable management official/Decision-maker to determine the appropriate reasonable accommodation, if any, under the circumstances. CEI also has responsibilities in resolving disagreements concerning religious accommodation decisions. See Section VII.G (“Resolving Disagreements”) supra.
2. **University Human Resources – Strategic Workforce Solutions (SWS)** is responsible for processing requests for religious accommodation from applicants seeking employment with the University.
3. **Unit senior managers/supervisors** (e.g., department chair, director-level or equivalent university official) are responsible for processing and approving or denying requests for religious accommodation from their employees.
4. **Employees** are responsible for initiating requests for religious accommodation through their immediate supervisor. The requesting employee is obligated to participate and cooperate during the interactive process to determine whether a requested accommodation can be approved.
5. **Applicants** are responsible for initiating requests for religious accommodation by contacting University Human Resources – Strategic Workforce Solutions at the contact information listed in Section V. The requesting applicant is obligated to participate and cooperate during the interactive process to determine whether a requested accommodation can be approved.

C. Procedures:

1. To ensure proper **Record Keeping** regarding requests for religious accommodation, applicants/employees should make their request by completing the “UT Austin Request for Religious Accommodation Form” (see Section VII.A “Forms” supra) and submitting it to the appropriate Decision-maker. Upon receipt of an oral or otherwise written request, the Decision-maker will ask the applicant/employee to complete the appropriate form.
2. **Applicants** requesting religious accommodation for any stage of the application process must:
  - a. complete a “UT Austin Request for Religious Accommodation Form” (see Section VII.A “Forms” supra);
  - b. submit the request/form to University Human Resources – Strategic Workforce Solutions;
  - c. if requested, provide documentation to support the request; and
  - d. participate and cooperate in the interactive process.

Note: Such requests should be made as soon as reasonably possible during the application and recruitment process. Failure to provide reasonable notice may impact the University’s ability to accommodate the request.

3. **Employees** requesting religious accommodation must:

- a. complete a "UT Austin Request for Religious Accommodation Form" (see Section VII.A "Forms" supra);
- b. submit the request/form to his or her immediate supervisor or department chair;
- c. if requested, provide documentation to support the request; and
- d. participate and cooperate in the interactive process.

Note: Such requests should be made as soon as reasonably possible, generally at least 30 days, in advance of the desired accommodation. Failure to provide reasonable notice may impact the University's ability to accommodate the request.

4. If the receiving supervisor does not have designated decision making authority concerning these matters, the receiving supervisor will refer the request to a unit/department staff member(s) with such authority.
5. The **Decision-maker**, following the receipt of the request/form, will:
  - a. engage in an interactive process/discussion with the applicant/employee requesting the accommodation;
  - b. notify and consult with the Center for Equity and Inclusion and any other individual/office reasonably involved in the process regarding the request;
  - c. issue a written decision to the applicant/employee approving or denying the request.

D. Interactive Process:

1. Reasonable accommodation decisions are determined on an individual basis considering the totality of the circumstances following the conclusion of an interactive process. Once a request has been made in accordance with this policy, the Decision-maker must initiate an interactive process/discussion with the applicant/employee. The individual requesting the accommodation is obligated to participate and cooperate in the process. The Center for Equity and Inclusion is available to facilitate the process.
2. In determining whether to approve or deny a religious accommodation request, the **Decision-maker** will:
  - a. confer with anyone reasonably necessary to the decision making process, including a CEI facilitator, the employee's immediate supervisor, a more senior official in the unit, and/or a human resources staff member;
  - b. identify the essential functions or core work-related duties of the individual's position;
  - c. consider the work-related duties of current or prior employees in that same or substantially similar position;
  - d. assess the impact of the requested accommodation on the performance of the essential functions of the individual's position and the operation of the department or unit; and
  - e. assess all other potential issues posed by the request, such as impact on other employees.

3. The following factors are among those that may be included in the individualized assessment of religious accommodation requests:
  - a. nature of the accommodation request;
  - b. duration of the request;
  - c. alternative accommodations;
  - d. financial impact;
  - e. impact on the operation of the department/unit;
  - f. impact on other employees of the department/unit;
  - g. ability of the individual to perform essential functions of the position if the accommodation is granted;
  - h. the University's core values of integrity, honesty, trust, fairness, and respect toward peers and community; and/or
  - i. all other applicable factors.
4. Potential accommodations that may be reasonable depending on the circumstances of the particular case include but are not limited to:
  - a. flexible scheduling (*e.g.*, flexible arrival and departure time, floating or optional holidays, flexible work breaks, working through lunch break in exchange for early departure);
  - b. voluntary shift substitutions or swaps;
  - c. modification of non-essential job functions;
  - d. modification of workplace dress or grooming policies.

## **VII. MISCELLANEOUS PROVISIONS**

### **A. Forms:**

The UT Austin Religious Accommodation Request Form may be found at:  
[https://secure2.compliancebridge.com/utexas/images/303\\_header1/HOP%203-3012%20Religious%20Accommodation%20Request%20Form\\_UT%20Austin.pdf](https://secure2.compliancebridge.com/utexas/images/303_header1/HOP%203-3012%20Religious%20Accommodation%20Request%20Form_UT%20Austin.pdf)

### **B. Time frame:**

Requests for accommodation will be processed within a reasonable period of time based upon the facts and circumstances. Requests not involving extenuating circumstances will be processed and the accommodation, if granted, provided as soon as possible but not more than 30 business days from the date of the request.

### **C. Interim Accommodation:**

The Decision-maker may provide interim accommodation(s) while the applicant/employee's request is being processed or if an approved accommodation cannot be promptly implemented.

D. Changes to an employee's assignment/unit:

Employees whose work schedules, positions, work units or duty locations substantively change, must submit a new request for a religious accommodation by following the procedures set forth in the policy and this guide.

E. Effect on Pending Personnel Actions:

The filing of an accommodation request will not stop or delay any evaluation or disciplinary action related to an employee who is not performing up to acceptable standards or who has violated University rules or policies.

F. Record Keeping:

Materials relating to an applicant/employee's religious accommodation, including the request and any other documentation, will be shared only for valid school/business reasons and will be maintained by the Center for Equity and Inclusion.

G. Resolving Disagreements:

If an applicant/employee's request for religious accommodation is denied, he or she may seek redress through the Department of Investigation and Adjudication's investigation and resolution procedures. These procedures allow for informal and/or formal investigation of the denial decision pursuant to the University's Nondiscrimination Policy (HOP 3-3020).

H. Retaliation Prohibited:

Retaliation of any kind against anyone for requesting a reasonable religious accommodation is strictly prohibited. Individuals who believe they are experiencing retaliation should contact the Department of Investigation and Adjudication.

## VIII. FREQUENTLY ASKED QUESTIONS

1. When does the policy require an employer/unit to accommodate an applicant or employee's religious belief, practice, or observance?
  - The policy requires an employer/unit, once on notice that a religious accommodation is needed, to reasonably accommodate an employee whose sincerely held religious belief, practice, or observance conflicts with a work requirement, unless doing so would pose an undue hardship.
2. How does an employer/unit learn that accommodation may be needed?
  - An applicant or employee who seeks religious accommodation must make the employer/unit aware both of the need for accommodation and that it is being

requested due to a conflict between religion and work. Under the policy, this notice is provided through the UT Austin Religious Accommodation Request Form.

- Employer-employee cooperation and flexibility are key to the search for a reasonable accommodation. If the accommodation solution is not immediately apparent, the employer should discuss the request with the employee to determine what accommodations might be effective. If the employer requests additional information reasonably needed to evaluate the request, the employee should provide it. For example, if an employee has requested a schedule change to accommodate daily prayers, the employer may need to ask for information about the religious observance, such as time and duration of the daily prayers, in order to determine whether accommodation can be granted without posing an undue hardship on the operation of the unit. Moreover, even if the employer does not grant the employee's preferred accommodation, but instead provides an alternative accommodation, the employee must cooperate by attempting to meet his religious needs through the employer's proposed accommodation if possible.
3. Does an employer have to grant every request for accommodation of a religious belief or practice?
- No. The policy requires employers/units to accommodate only those religious beliefs that are religious and "sincerely held," and that can be accommodated without an undue hardship. Although there is usually no reason to question whether the practice at issue is religious or sincerely held, if the employer has a bona fide doubt about the basis for the accommodation request, it is entitled to make a limited inquiry into the facts and circumstances of the employee's claim that the belief or practice at issue is religious and sincerely held, and gives rise to the need for the accommodation.
  - Factors that – either alone or in combination – might undermine an employee's assertion that he sincerely holds the religious belief at issue include: whether the employee has behaved in a manner markedly inconsistent with the professed belief; whether the accommodation sought is a particularly desirable benefit that is likely to be sought for secular reasons; whether the timing of the request renders it suspect (e.g., it follows an earlier request by the employee for the same benefit for secular reasons); and whether the employer otherwise has reason to believe the accommodation is not sought for religious reasons.
  - However, none of these factors is dispositive. For example, although prior inconsistent conduct is relevant to the question of sincerity, an individual's beliefs – or degree of adherence – may change over time, and therefore an employee's newly adopted or inconsistently observed religious practice may nevertheless be sincerely held. An employer also should not assume that an employee is insincere simply because some of his or her practices deviate from the commonly followed tenets of his or her religion.
4. When does an accommodation pose an "undue hardship"?



- An accommodation would pose an undue hardship if it – would cause more than *de minimis* (minimal) cost on the operation of the employer's / unit's business. Factors relevant to undue hardship may include the type of workplace, the nature of the employee's duties, the identifiable cost of the accommodation in relation to the size and operating costs of the employer/unit, and the number of employees who will in fact need a particular accommodation.
- Costs to be considered include not only direct monetary costs but also the burden on the conduct of the employer's/unit's business. For example, an undue hardship may be found where the accommodation diminishes efficiency in other jobs, infringes on other employees' job rights or benefits, impairs workplace safety, or causes co-workers to carry the accommodated employee's share of potentially hazardous or burdensome work. Whether the proposed accommodation conflicts with another law/policy may also be considered, including whether the proposed accommodation would undermine any of the University's core values of integrity, honesty, trust, fairness, and respect toward peers and community.
- To prove undue hardship, the employer/unit will need to demonstrate how much cost or disruption a proposed accommodation would involve. An employer cannot rely on potential or hypothetical hardship when faced with a religious obligation that conflicts with scheduled work, but rather should rely on objective information. A mere assumption that many more people with the same religious practices as the individual being accommodated may also seek accommodation is not evidence of undue hardship.
- If an employee's proposed accommodation would pose an undue hardship, the employer should explore alternative accommodations.

5. What if co-workers complain about an employee being granted an accommodation?

- Although religious accommodations that infringe on co-workers' ability to perform their duties or subject co-workers to a hostile work environment will generally constitute undue hardship, general resentment or jealousy of co-workers will not. Undue hardship requires more than proof that some co-workers complained; a showing of undue hardship based on co-worker interests generally requires evidence that the accommodation would actually infringe on the rights of co-workers or cause disruption of work.

6. Can a requested accommodation be denied due to security considerations?

- If a religious practice actually conflicts with a legally/policy mandated security requirement, an employer need not accommodate the practice because doing so would create an undue hardship. If a security requirement has been unilaterally imposed by the employer and is not required by law or policy, the employer will need to decide

whether it would be an undue hardship to modify or eliminate the requirement to accommodate an employee who has a religious conflict.

7. What are common methods of religious accommodation in the workplace?

- An employer/unit may use a variety of methods to provide reasonable accommodations to its employees. Some of the most common methods are:
  - Scheduling changes, voluntary substitutes, and shift swaps;
  - An employer may be able to reasonably accommodate an employee by allowing flexible arrival and departure times, floating or optional holidays, flexible work breaks, use of lunch time in exchange for early departure, staggered work hours, and other means to enable an employee to make up time lost due to the observance of religious practices. Eliminating only part of the conflict is not sufficient, unless entirely eliminating the conflict will pose an undue hardship by disrupting business operations or impinging on other employees' benefits or settled expectations.
  - Moreover, although it would pose an undue hardship to require employees involuntarily to substitute for one another or swap shifts, the reasonable accommodation requirement can often be satisfied without undue hardship where a volunteer with substantially similar qualifications is available to cover, either for a single absence or for an extended period of time. The employer's obligation is to make a good faith effort to allow voluntary substitutions and shift swaps, and not to discourage employees from substituting for one another or trading shifts to accommodate a religious conflict. However, if the employer is on notice that the employee's religious beliefs preclude him not only from working on his/her Sabbath but also from inducing others to do so, reasonable accommodation requires more than merely permitting the employee to swap, absent undue hardship.
  - An employer does not have to permit a substitute or swap if it would pose more than a minimal cost or burden to business operations. If a swap or substitution would result in the employer having to pay premium wages (such as overtime pay), the frequency of the arrangement will be relevant to determining if it poses an undue hardship. As an example, the EEOC presumes that the infrequent payment of premium wages for a substitute or the payment of premium wages while a more permanent accommodation is being sought are costs which an employer can be required to bear as a means of providing reasonable accommodation.
  - When an employee's religious belief or practice conflicts with a particular task, appropriate accommodations may include relieving the employee of the task or transferring the employee to a different position or location that eliminates the conflict. Whether such accommodations pose an undue hardship will depend on factors such as the nature or importance of the duty at issue, the availability of others to perform the function, and the availability of other positions.

8. Are exceptions to dress and/or grooming rules reasonable?

- When an employer has a dress or grooming policy that conflicts with an employee's religious beliefs or practices, the employee may ask for an exception to the policy as a reasonable accommodation. Religious grooming practices may relate, for example, to shaving or hair length. Religious dress may include clothes, head or face coverings, jewelry, or other items. Absent undue hardship, an employer/unit will need to accommodate the employee's religious dress or grooming practices.
- Some courts have concluded that it would pose an undue hardship if an employer/unit was required to accommodate a religious dress or grooming practice that conflicts with the public image the employer wishes to convey to customers. While there may be circumstances in which allowing a particular exception to an employer's dress and grooming policy would pose an undue hardship, an employer's reliance on the broad rubric of "image" to deny a requested religious accommodation may amount to relying on customer religious bias ("customer preference") in violation of law/policy. There may be limited situations in which the need for uniformity of appearance is so important that modifying the dress code would pose an undue hardship. However, even in these situations, a case-by-case determination is advisable.

9. Is the use of the workplace facility for a religious observance reasonable?

- If an employee needs to use a workplace facility as a reasonable accommodation, for example use of a quiet area for prayer during break time, the employer should accommodate the request under the policy unless it would pose an undue hardship. If the employer allows employees to use the facilities at issue for non-religious activities not related to work, it may be difficult for the employer to demonstrate that allowing the facilities to be used in the same manner for religious activities is not a reasonable accommodation or poses an undue hardship. The employer is not required to give precedence to the use of the facility for religious reasons over use for a business purpose.

10. Is accommodating prayer, proselytizing, and other forms of religious expression reasonable?

- Some employees may seek to display religious icons or messages at their work stations. Others may seek to proselytize by engaging in one-on-one discussions regarding religious beliefs, distributing literature, or using a particular religious phrase when greeting others. Still others may seek to engage in prayer at their work stations or to use other areas of the workplace for either individual or group prayer or study. In some of these situations, an employee might request accommodation in advance to permit such religious expression. In other situations, the employer will not learn of the situation or be called upon to consider any action unless it receives complaints about the religious expression from either other employees or customers.

- Employers should not try to suppress all religious expression in the workplace. University policies and federal/state law require that employers accommodate an employee's sincerely held religious belief in engaging in religious expression in the workplace to the extent that they can do so without undue hardship on the operation of the business. In determining whether permitting an employee to pray, proselytize, or engage in other forms of religiously oriented expression in the workplace would pose an undue hardship, relevant considerations may include the effect such expression has on co-workers, customers, or business operations. For example, if an employee's proselytizing interfered with work, the employer would not have to allow it. Similarly, if an employee complained about proselytizing by a co-worker, the employer can require that the proselytizing to the complaining employee cease. Moreover, if an employee was proselytizing an employer's customers or clients in a manner that disrupted business, or that could be mistaken as the employer's own message, the employer would not have to allow it.