**Prayer Breaks and Other Religious  
Accommodation Questions[[1]](#footnote-1)**

**Sheila Engelmeier, Esq.\***

**612-455-7723**

[sheilae@e-ulaw.com](mailto:sheilae@e-ulaw.com)

**Thomas E. Marshall, Esq.**

**612-455-7732**

[tomm@e-ulaw.com](mailto:tomm@e-ulaw.com)

**Colin K. Thomsen, Esq.**

**612-455-7771**

[colint@e-ulaw.com](mailto:colint@e-ulaw.com)

**Engelmeier & Umanah, P.A.**

**706 Second Avenue South**

**Suite 1100**

**Minneapolis, MN 55402**

**\* MSBA Certified Labor and Employment Law Specialist**

**Prayer Breaks and Other Religious Accommodation Questions**

**TABLE OF CONTENTS**

**Page No.**

Introduction 1

The Law of Religious Accommodations: Basics & Background 3

*EEOC v. Abercrombie*: A New Chapter 5

Cases Following *Abercrombie* Show The Game Has Changed 7

What Counts as A “Sincerely Held” Religious Belief? 10

A “De Minimis” Obligation – With A Catch 12

Post-*Abercrombie*, When Are An Employer’s Obligations Triggered? 13

What Are An Employer’s Best Practices? 15

**Introduction**

As the American workplace has become more diverse, employers are increasingly asking themselves what obligations the law imposes on them to accommodate the religious beliefs and practices of their employees. These questions are asked in the nexus between two strong currents of American culture - at the intersection of commerce and religion. While the law in this area seems simple on its face, implementing it in the real world involves a delicate balancing act that can yield surprising outcomes.

Take for example a company in Milwaukee, Wisconsin, that manufactures motorized equipment - snow blowers, lawn mowers, etc. The company happened to employ a few dozen Muslim employees, most of whom were immigrants from Somalia. As practicing Muslims, they were obligated to pray five times a day; the time for each prayer is set relative to the position of the sun in the sky, and so the time changes a bit each day, and significantly from season to season (or over daylight savings time). This causes some difficulties for the employer, because if one section of its assembly line shuts down, work on the other sections will be thrown off; the company relies on having its line moving swiftly and efficiently at all times.

Each employee, regardless of their religion, was entitled to a half hour break for lunch in the middle of the day and two 10-minute breaks during each half of their shift. The Muslim employees complained that the short and regimented break schedule did not allow them adequate time to pray. In crafting its response, the company had, in effect, two options. One, they could continue bending the rules, hoping to get by with minimal disturbance to their production schedule, and avoid a lawsuit.

Instead, the company went with a second option, and doubled-down on their break policy. The company told their employees that going forward, the *only* time an employee would be allowed to take a break for any purpose was within the times already scheduled - regardless of what their religious needs or practices might be.[[2]](#footnote-2) As a result, 14 Muslim employees resigned in protest, while another seven were fired for taking unsanctioned breaks. There was an immediate public outcry, speculation about litigation, and threats to take the matter to the EEOC.

Although the last chapter in the real-world case upon which this hypothetical is based has yet to be written (and as of the end of April, 2016, we found no evidence suit has been filed) it’s safe to say that this employer’s approach, while potentially “legal,” may well serve to invite legal challenges and intervention by the EEOC. Moreover, while accommodating the religious needs of these employees may have posed an “undue hardship” to this particular employer, the undue hardship analysis might not be the same in a different scenario.

This paper surveys the law of religious accommodation under Title VII, examine some recent shifts in the law following a significant 2015 case handed down by the United States Supreme Court, and conclude by examining what an employer’s best practices on this issue are.

## The Law of Religious Accommodations: Basics & Background.

Title VII of the Civil Rights Act, in addition to other discrimination protections, prohibits discrimination based on religion, including the failure to reasonably accommodate an employee’s sincerely-held religious beliefs. Title VII proscribes two categories of unlawful employment practices. First, it is illegal for an employer “to fail or refuse to hire or to discharge” or otherwise discriminate against any individual “because of” their religion. 42 U.S.C. § 2000e-2(a)(1). Claims brought under this theory are typically referred to as “disparate treatment” or “intentional discrimination” claims. *EEOC v. Abercrombie & Fitch Stores, Inc.*, 135 S. Ct. 2028 (2015). Second, it is also unlawful to limit, segregate, or classify” employees or applicants “in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual’s race, color, religion, sex, or national origin.” 42 U.S.C. § 2000e-2(a)(2). Claims brought under this provision are typically described as “disparate impact” claims. “The term ‘religion’ includes all aspects of religious observance and practice, as well as belief.” 42 U.S.C. § 2000e(j).

In effect, an employer must provide a reasonable accommodation to their employees’ sincerely-held religious believes, unless the employer can demonstrate that the employee’s religious observance cannot be accommodated without “undue hardship.” 42 U.S.C. § 2000e(j). This language is very similar to that used in other categories of discrimination law. For example, under the Americans with Disabilities Act (ADA), an employer must generally provide a reasonable accommodation to a qualified disabled employee unless so doing would incur an “undue hardship.” 42 U.S.C. §12112(b)(5)(A). However Title VII establishes a very different set of standards for what constitutes an “undue hardship” when it comes to religious accommodations. *See, e.g., Muller v. Hotsy Corp.*, 917 F. Supp. 1389, 1408 (N.D. Iowa 1996) (citing case law and the House Committee on Education and Labor to note difference in meaning of “undue hardship” between Title VII and the ADA). Requiring an employer to bear more than a *de minimis* cost to provide religious accommodation constitutes an undue hardship. *T.W.A. v. Hardison*, 432 U.S. 63 (1977) (accommodation not required where employee’s requested accommodation would have violated legitimate seniority system and incurred greater than *de minimis* cost to employer); *Mann v. Frank*, 7 F.3d 1365 (8th Cir. Mo.1993) (“Any cost in efficiency or wage expenditures that is more than *de minimis* constitutes undue hardship.”).

Until very recently, a prima facie case of religious discrimination was understood to involve three elements, namely, that “a plaintiff must show he (1) has a bona fide religious belief that conflicts with an employment requirement, (2) informed the employer of such conflict, and (3) suffered an adverse employment action.” *Ollis v. Hearthstone Homes, Inc.*, 495 F.3d 570, 575 (8th Cir. 2007). If the plaintiff successfully established these elements, the burden then shifted to the employer to show a legitimate, nondiscriminatory reason for the adverse action; the burden would then shift back to the plaintiff to show that the employer’s reason is pretextual. *Id*.

However, as discussed below, the United States Supreme Court significantly changed the second element, such that no actual knowledge of the employee’s belief (or any conflict caused thereby) is now required to make out a prima facie case.

***EEOC v. Abercrombie*: A New Chapter.**

In 2015, the Supreme Court drastically changed the game within the field of religious discrimination cases in *EEOC v. Abercrombie & Fitch Stores, Inc.*, 135 S. Ct. 2028 (2015). The plaintiff in that case was a Muslim woman who appeared at an interview dressed in a headscarf seeking work as a sales associate in one of the defendant’s retail clothing stores. *Id*. at 2031. During the interview with the store’s assistant manager, religion was not discussed, and the applicant never mentioned that she was Muslim, nor indicated in any way that she wore the scarf for religious reasons. *Id*. The assistant manager rated the applicant as qualified to be hired, but worried that her headscarf might violate the company’s “look policy,” or dress code, which prohibited employees from wearing “caps” (a term the policy did not define). *Id*. The assistant manager sought guidance from the store manager, who did not respond, before going to the district manager. *Id*. The assistant manager told the district manager that she guessed (correctly, as it turned out) that the applicant wore the scarf for religious reasons. *Id*. The district manager told the assistant manager not to hire the applicant because all head-coverings violated the policy, whether they were worn for religious reasons or not. *Id*.

The EEOC brought suit, and won $20,000 for the applicant after a trial. *Id*. The Tenth Circuit reversed, holding that “ordinarily an employer cannot be liable under Title VII for failing to accommodate a religious practice until the applicant (or employee) provides the employer with actual knowledge of his need for an accommodation.” *Id*.

The Supreme Court reversed in an opinion by Justice Scalia. *Id*. at 2034. The Court began its analysis by noting that the phrase “because of” appears in many discrimination statutes, and typically indicates that “but-for” causation is required. *Id*. at 2032 (citing University of Tex. Southwestern Medical Centerv. Nassar, 133 S. Ct. 2517 (2013)). Title VII, however, uses a relaxed standard, and prohibits even making a protected trait a “motivating factor” in an employment decision. *Id*. (citing 42 U.S.C. §2000e-2(m)). Next, the Court wrote that it is “significant” that Title VII does not impose a knowledge requirement, whereas other comparable statutes do. The Court used the example of the ADA, which requires employers to make “reasonable accommodations to the knownphysical or mental limitations” of an applicant or employee. *Id*. at 2033 (citing 42 U.S.C. §12112(b)(5)(A) (emphasis added)).

The Court, citing no statute or case, continued on to say that the disparate-treatment provision of Title VII “prohibits certain motives, regardless of the state of the actor’s knowledge.” *Id*. (emphasis in original). “Motive and knowledge,” the Court wrote, “are separate concepts.” *Id*. “An employer who has actual knowledge of the need for an accommodation does not violate Title VII by refusing to hire an applicant if avoiding that accommodation is not his motive,” while “an employer who acts with the motive of avoiding accommodation may violate Title VII even if he has no more than an unsubstantiated suspicion that accommodation would be needed.” *Id*.

The Court held that “the rule for disparate-treatment claims based on a failure to accommodate a religious practice is straightforward: An employer may not make an applicant’s religious practice, confirmed or otherwise, a factor in employment decisions.” *Id*. Actual knowledge by the employer of an employee’s need for religious accommodation might make proving a discriminatory motive easier, but it is not required to establish liability. *Id*. In a footnote, the Court added that it was “arguable” that motive cannot be proven unless the employer at least suspects that the practice at issue is religious in nature, but, because that question was not disputed in the case before them, the Court refused to resolve what level of awareness, if not knowledge, by the employer is actually required under Title VII. *Id*. at Fn. 3.

**Cases Following *Abercrombie* Show The Game Has Changed.**

As of early May, 2016, nearly 30 cases have cited *Abercrombie* since it was decided last year. Some of these cases demonstrate that the Supreme Court’s decision has significantly lowered the bar for religious discrimination claims.

For example, in January, 2016, a federal district court in Pennsylvania denied summary judgment against the Title VII claims of an atheist employee who never told his evangelical Christian employer that he was an atheist, due in part to *Abercrombie*’s relaxed standards. In *Mathis v. Christian Heating & Air Conditioning, Inc.*, the plaintiff was an HVAC installation technician who happened to be an atheist. 2016 BL 20195, \*2 (E.D. Pa. Jan. 25, 2016). The defendant was his former employer, a for-profit corporation owned by a self-described born again Christian. *Id*. at \*1. In depositions, the owner stated that he named his company “Christian Heating & Air Conditioning” because it was “dedicated to the Lord.” *Id*. Like all employees, the plaintiff was required to drive a company truck featuring the company logo, which included a dove, intended as a Christian symbol. *Id*. Employees were also required to wear a photo ID badge. *Id*. at \*1-\*2. The front of the badge featured the company name and logo, as well as the employee’s name and picture. *Id*. at \*2. The back of the badge featured the company’s mission statement which included the lines, “This company is not only a business, it is a ministry. It is set on standards that are higher than man’s own. Our goal is to run this company in a way most pleasing to the Lord.” *Id*.

The plaintiff worked for the defendant for almost two years. *Id*. During that time, the plaintiff alleged, the owner of the company repeatedly encouraged him to go to church, as he did with many other employees. *Id*. The plaintiff would respond by telling the owner that he did not appreciate the owner trying to “push [his] religion.” *Id*. However, the employee never told the owner or anyone else in management that he was an atheist. *Id*. The plaintiff did however use a piece of tape to cover up the mission statement on the back of his ID badge. *Id*.

On the day he was terminated, the plaintiff was telling a co-worker about some problems he was having with a property he owned. *Id*. at \*3. The owner interjected to say that the plaintiff would not have these problems if he went to church. *Id*. The plaintiff responded by telling the owner once again that he did not want to discuss religion with him. *Id*. Shortly thereafter, the owner noticed the tape on the back of the plaintiff’s badge. *Id*. When the owner asked the plaintiff about the tape, the plaintiff told him he had put it there because he did not agree with the mission statement. *Id*. The owner told him, “You’re going to wear it or you’re done.” *Id*. When the employee refused, the owner told him he could no longer work for the company. *Id*.

The employee sued, claiming that the defendant had failed to accommodate his religious beliefs and fired him in retaliation for exercising those beliefs in violation of Title VII and the Pennsylvania Human Rights Act. *Id*. at \*5. The defendant moved for summary judgement on all the plaintiff’s claims, which the court denied. *Id*. at \*6.

The court first considered whether an atheist could show that he held sincere “religious” beliefs that are protectable by Title VII. *Id*. at \*10. The court answered the question in the affirmative, quoting a Seventh Circuit case for the proposition that “If we think of religion as taking a position on divinity, then atheism is indeed a form of religion.” *Id*. (citing *Reed v. Great Lakes Companies, Inc.*, 330 F.3d 931, 934 (7th Cir. 2003)) Next the court rejected the defendant’s argument that the plaintiff’s beliefs, although sincere, did not conflict with any job requirement. *Id*. The court noted that plaintiff was required to wear the badge at all times, and with both sides uncovered, including the mission statement, which plainly expressed religious beliefs with which the plaintiff did not agree. *Id*.

Next the court considered the second element of the plaintiff’s prima facie case, which the court analyzed by applying both pre- and post-*Abercrombie* standards. First, the court held that the plaintiff had at least raised a genuine issue of material fact as to whether or not the plaintiff had “informed” the defendant of a conflict between his religious beliefs and a job requirement. *Id*. Then, citing *Abercrombie*, the court held that the plaintiff had presented sufficient evidence that would allow a reasonable jury to conclude that he had been fired “because of” his atheism. *Id*. The court reasoned that under *Abercrombie*, Title VII “does not require him to prove that he advertised his atheistic beliefs to his employer, nor does it require that he prove that he phrased his disagreement with the mission statement in terms of his atheism.” *Id*. at \*11-\*12. Instead, the plaintiff “need only show that defendant acted upon an improper motive when it terminated his employment and/or when it failed to accommodate him.” *Id*. at \*12. The court held that this threshold had been met because the evidence showed that the owner had told the plaintiff that he had to remove the tape from his badge or be “done,” i.e., terminated. *Id*.

In *EEOC v. JetStream Ground Servs*., 2015 BL 317175 (D. Colo. Sept. 29, 2015), the defendant company, Jetstream, won a contract to provide cabin-cleaning services for United Airlines at Denver International Airport, taking over from a company called Airserve. At the time of the transition, Jetstream announced that it would interview Airserve’s former employees and “re-hire” some of them. *Id*. at \*2. Per Jetstream’s policy, cabin-cleaners had to wear pants when on the job, even if they requested to be allowed to wear skirts for religious reasons; and there was a dispute as to whether or not the company allowed employees to wear a hijab or headscarf, either as a practical matter or as a matter of policy. *Id*. When a number of Muslim women who had previously worked for Airserve were not hired by Jetstream (or were quickly laid off), the women filed charges with the EEOC. *Id*. After a protracted conciliation process, Jetstream offered some of the women a cash settlement, but refused to pay others anything. *Id*. at \*6. The EEOC sued, and Jetstream brought a motion for summary judgment against some of the plaintiffs’ claims. *Id*.

Jetstream argued that, even under *Abercrombie*, it had no obligation to accommodate one of the women, Amina Oba, because she had never informed the company that she was Muslim, or that her beliefs required her to wear a hijab and a skirt. *Id*. at \*13. Instead, Ms. Oba reported to work in a skirt and hijab, changed for work, and changed back into, and out of her personal clothing for prayer breaks during the work day. *Id*. at \*7-\*8. According to the district court, Ms. Oba’s donning-and-doffing practice provided sufficient evidence of a prima facie case, post-*Abercrombie*, at least for the purposes of summary judgment. *Id*. at \*14.

**What Counts as A “Sincerely Held” Religious Belief?**

As noted above, the law protects only “sincerely held” religious beliefs. Although relatively few cases consider this point – and most employers would do well not to question the sincerity of their employees’ beliefs – the issue is not always taken as a given by courts considering religious accommodation claims.

For example, in an unpublished 2009 opinion, the Minnesota Court of Appeals upheld the decision of an unemployment law judge (“ULJ”) denying unemployment benefits to a group of Muslim meatpackers who had argued they were forced to quit their jobs when their employer refused to accommodate their religious needs. *Osman v. JFC, Inc.*, 2009 Minn. App. Unpub. LEXIS 1352, 2009 WL 5091919 (Minn. Ct. App. Dec. 29, 2009). The plaintiff former employees had worked at a chicken-processing plant and claimed that their faith required them to perform an early morning prayer called Fajr. *Id*. at \*2. However, the plaintiffs, who had been members of an earlier federal class action suit, offered conflicting views on when this prayer was supposed to be performed. *Id*. at \*4. Some evidence was presented indicating that any time between dawn and sunrise was sufficient, while other evidence indicated that a narrower window of 30-45 minutes after dawn was the correct timeframe. *Id*. at \*6. Under either standard, the timing of the Fajr prayer time changed daily; this caused problems at the plant, which adhered to a tight daily schedule, aspects of which were imposed by federal law. *Id*. at \*2-\*3. The employer established a floating-break program that allowed most employees to take a break within their chosen timeframe. Id. at \*3-\*4. However, pursuant to a settlement agreement reached in a federal class action lawsuit, the company replaced the floating-break program with a standardized schedule for the Fajr prayer that all employees who wanted to pray would have to adhere to. On the morning the new program was implemented, a number of employees walked off the job to pray at an unsanctioned time. *Id*. at \*5. The employer insisted they sign a corrective action notice before returning to work; when they refused, the employer had them escorted from the facility. *Id*. at \*6.

A ULJ ruled that the plaintiffs had failed to demonstrate sufficient “good reason” to leave their jobs. *Id*. at \*9. Affirming the ruling of the ULJ, the Minnesota Court of Appeals held the plaintiffs’ religious beliefs were not sufficiently “sincere” in large part because of the ambiguity surrounding the timing of the Fajr prayer. *Id*. at \*14-\*15. The court reasoned that “[t]he sincerity of a religious belief is a quintessential fact question that often hinges on credibility and whether the applicant has been consistent in observing or honoring the belief” and noted that different members of the prior class and the present group of plaintiffs had differing interpretations of their obligations regarding the Fajr prayer. *Id*. at \*14.

**A “De Minimis” Obligation – With A Catch.**

As a general rule a “de minimis” cost is one that would require an employer to spend a “more than minimal” amount of money or incur a greater than minimal inconvenience. *T.W.A. v. Hardison*, 432 U.S. 63 (1977). Employers are not required to undermine their own seniority systems or a collective bargaining agreement in order to accommodate an employee’s religious beliefs or practices. Nonetheless, what counts as a *de minimis* cost or inconvenience is a highly fact-specific determination, and courts may scrutinize an employer’s practices closely.

*EEOC v. Star Transport*illustrates this last point. The plaintiffs in *Star Transport* were two Muslim truck drivers who worked for the defendant trucking company. (No. 13-cv-1240, C.D. Ill. Oct. 19, 2015.) The company handled the transport and delivery of many different kinds of cargo, including a small amount of alcoholic beverages. Order Den. Mot. for Summ. J. at 2. Nonetheless, the plaintiffs felt that transporting any quantity of alcohol would violate their religious beliefs and Islamic law. *Id*. In separate incidents, when each plaintiff was informed he would be transporting a load containing alcoholic beverages, each refused, and each was fired in turn. *Id*. at 5.

The defendant employer admitted liability but disputed whether it could be held liable for punitive damages. *Id*. at 4. Under Title VII, liability for punitive damages arises when the defendant engages in discrimination with malice or reckless indifference to the civil rights of others. *Id*. at 6, quoting 42 U.S.C. § 1981a(b)(1). After a trial on the damages question alone, a jury awarded the drivers $20,000 each in compensatory damages, and $100,000 each in punitive damages. Equal Employment Opportunity Commission, Jury Awards $240,000 to Muslim Truck Drivers In EEOC Religious Discrimination Suit, Oct. 22, 2015, *available at* https://www.eeoc.gov/eeoc/newsroom/release/10-22-15b.cfm**.**

Although one can only speculate as to the jury’s reasoning, certain facts of the case likely contributed to the large award. First, the court, denying in part cross-motions of summary judgment, noted that the employer’s human resources and personnel managers had not received any training on anti-discrimination laws or the company’s policies. Order Den. Mot. for Summ. J. at 6. Indeed, one key manager claimed never to have heard of Title VII, and had no awareness that the company might be obligated to accommodate an employee’s religious practices. Id. The court also noted that the plaintiff employees had been fired immediately, in a likely violation of the company’s own “progressive discipline” policy, and that no one else had been fired for violating the company’s “forced dispatch” policy, despite many infractions that were not religiously-motivated. *Id*. at 3. Additionally, the court found that it was possible for the company to note any driver’s preferences or needs in its own computer system, meaning that the company could have easily made a note of the plaintiffs’ accommodation needs and adjusted accordingly. *Id*. at 2. Finally the court found that it only took the company a few hours to find replacement drivers for the loads the plaintiffs had refused to take. *Id* at 3.

**Post-*Abercrombie,* When Are An Employer’s Obligations Triggered?**

When is an employer obligated to consider religious accommodation issues now, after *Abercrombie*? Justice Scalia offered some insight as to the Court’s opinion on this question, as follows:

[S]uppose that an employer thinks (though he does not know for certain) that a job applicant may be an orthodox Jew who will observe the Sabbath, and thus be unable to work on Saturdays. If the applicant actually requires an accommodation of that religious practice, and the employer’s desire to avoid the prospective accommodation is a motivating factor in his decision, the employer violates Title VII.

*EEOC v. Abercrombie & Fitch Stores, Inc.*, 135 S. Ct. 2028, 2033 (2015).

This passage could be interpreted in many different ways. Perhaps the employer should provide the applicant with a copy of their policy and ask if the applicant sees any potential obstacles regarding compliance with the policy. Perhaps the employer could escape liability simply by having and consistently enforcing a neutral policy, in the above example, as to schedule. However, later in the *Abercrombie* opinion Justice Scalia ruminated on such policies and seemed to foreclose on the possibility that facial neutrality was sufficient, stating:

Abercrombie’s argument that a neutral policy cannot constitute ‘intentional discrimination’ may make sense in other contexts. But Title VII does not demand mere neutrality with regard to religious practices—that they be treated no worse than other practices. Rather, it gives them favored treatment, affirmatively obligating employers not ‘to fail or refuse to hire or discharge any individual . . . because of such individual’s’ ‘religious observance and practice.’ An employer is surely entitled to have, for example, a no-headwear policy as an ordinary matter. But when an applicant requires an accommodation as an ‘aspec[t] of religious . . . practice,’ it is no response that the subsequent ‘fail[ure] . . . to hire’ was due to an otherwise-neutral policy. Title VII requires otherwise-neutral policies to give way to the need for an accommodation.

*Id*. at 2034. On its face this passage could be interpreted as saying that facially-neutral policies that incidentally burden a religious practice violate Title VII; but we think the Court is merely re-stating that an employer can insist on enforcing their facially-neutral policy, but only if they show that the accommodation would present an “undue hardship,” i.e., a greater than *de minimis* burden. But it leaves unanswered the question of, *when* does the need for accommodation arise?

In the simplest terms, the holding of *Abercrombie* must be that an employer’s obligations to accommodate begin when the employer at least suspects that an employee or applicant may need a religious accommodation. Therefore, the safest policy is if the employer has any reason to suspect that an employee may need an accommodation, to assume that their accommodation obligations have been triggered.

**What Are An Employer’s Best Practices?**

*Clear policies, preferably in writing, consistently enforced*

Employers would be well advised to think carefully about the expectations they set for employees and the rules for behavior, attendance, dress[[3]](#footnote-3) and more in the workplace, and to advise their employees of these policies in writing.

Equally important, an employer should enforce their own policies consistently. Occasional (and even one-time) bending of the rules could create a serious problem.

An obvious reminder that comes from some of the post-Abercrombie decisions involves the importance of company policies. An employer’s workplace policies should include an anti-harassment and discrimination policy covering all protected categories, including religion. Such policies must also include the opportunity to bypass the employee’s immediate supervisor with concerns, an assurance that no retaliation will result from making harassment or discrimination reports, and an assurance (and an actual practice) that all complaints will be taken seriously and addressed appropriately.

*Training*

Another big reminder: To avoid liability, employers MUST (not *should*) train their managers to recognize and appropriately handle employee requests for religious accommodation, as well as concerns about discrimination. Managers should be well-versed in the company’s anti-harassment, discrimination and accommodation policies, and be prepared to handle requests for religious accommodation with sensitivity and respect, even when (or especially when) a particular practice cannot be accommodated.

Appropriate documentation is an essential component of any risk-avoidant employer’s handling of accommodation, harassment and discrimination issues.

1. All rights reserved. The reproduction or utilization of this work in any form or by any electronic, mechanical, or other means, known now or hereafter invented, including xerography, photocopying, and recording and in any information storage and retrieval system is forbidden without the permission of Engelmeier & Umanah, P.A. or Sheila Engelmeier, Esq.  These materials may not be changed or reprinted in any other form without the permission of Engelmeier & Umanah, P.A. or Sheila Engelmeier, Esq. [↑](#footnote-ref-1)
2. This inflexible approach to breaks would likely not have passed muster under Minnesota law, for reasons other than religious accommodation. Employees in Minnesota have a basic entitlement to reasonable bathroom breaks. Minn. Stat. § 177.253 provides that employers must allow their employees “adequate time” within each 4 hour period to use the nearest restroom. Ordinarily this is considered paid time (unlike statutorily-required meal breaks, discussed below). The law does not define “adequate time” but the Minnesota Rules mandate that rest breaks of less than 20 minutes may not be deducted from the total hours worked by an employee. Minn. R. 5200.0120. This understanding comports with federal regulations, which provide that rest breaks of less than 20 minutes must be paid. 29 CFR § 785.18 (describing regulations promulgated pursuant to the federal Fair Labor Standards Act). Minnesota law also provides that “nothing in this section prohibits employers and employees from establishing rest breaks different from those provided in this section pursuant to a collective bargaining agreement.” Minn. Stat. § 177.253, Subd. 2.

   Employer bathroom break policies that follow the letter of the law may nonetheless give rise to actionable claims when they are applied inflexibly. In *Prince v. Electrolux Home Prods.*, the defendant manufacturing company allowed its employees a 30-minute lunch break and two 10-minute breaks during 8-hour shifts. 2014 U.S. Dist. LEXIS 18704 \*1-\*2 (D. Minn. Feb. 14, 2014). In other words, the company allowed the bare minimum required by Minnesota law. Moreover, although additional breaks were nominally allowed, they were strongly discouraged. For example, the company issued a memo to all its employees entitled “Opportunity Lost,” exhorting all workers to follow break policies to the letter and to ask supervisors to cover for them when they had to step away from their stations. *Id*. at \*3-\*5. The plaintiff, a former assembly line employee, claimed to have a medical condition that forced her to go to the bathroom more often than the policy allowed. *Id*. at \*5. One day she allegedly asked her supervisor to cover for her while she went to the bathroom, but the supervisor did not respond. *Id*. Eventually the employee urinated in a box by her workstation. She was subsequently fired. *Id*. at \*6.

   The employee sued under Minn. Stat. § 177.253 and made other claims. In its motion to dismiss, the company raised two arguments on the bathroom break claim. First, the company argued that the two 10 minute breaks, plus the employee’s 30-minute lunch break (which spanned across both four-hour halves of her eight-hour shift), provided adequate time to use the restroom. *Id*. at \*21. Second, the company argued that because a collective bargaining agreement applied, it was not required to abide by the “adequate time” provision under Minn. Stat. § 177.253, Subd. 2. *Id*.

   The district court rejected both arguments. *Id*. at \*22.First, the court agreed with the plaintiff that because the statute does not specifically define “adequate time,” judgment as a matter of law under these circumstances was inappropriate. *Id.* Second, because the collective bargaining agreement did not specifically define the term either, the company had not demonstrated that it was not required to abide by the statute. *Id*. [↑](#footnote-ref-2)
3. Some of these authors believe the Supreme Court’s decision in *Abercrombie* sounds a warning that employers must ensure dress codes is truly necessary before demanding strict compliance. [↑](#footnote-ref-3)