Labor & Employment Law Strategic Global Topics

Summer 2017 edition
Religion in the workplace
In this issue, we focus on:
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Religion in the workplace

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The globalized and diverse workplace of today brings many persons together coming from very different backgrounds, cultures, and religions.

The freedom to practice one’s religion is a constitutional or legislative right in many countries around the world.

When it comes to the workforce and the workplace, these issues may raise some concerns for employers. Indeed, are there limits to the actual practice of religion during working hours. What can the employer allow and what limits might there be in curtailing the practice of religion in the workplace?

These are many questions with which a multinational must now deal on a regular basis.

In this edition of the EY Labor and Employment Law hot topics guide, we explore these issues and look to find the right balance between the employee’s rights and the employer’s rights.

Roselyn Sands
Global and EMEIA Labor & Employment Law Leader
Argentinean aspects of religion at work

Argentina upholds the principle of religious freedom, whereby individuals can freely practice their faith without limitations, provided that the practices do not disrupt lawful and moral order, or accepted customs.

This principle also applies to the workplace, where it allows workers to practice their religion freely and not be discriminated against on religious grounds.

Article 14 of the Argentine Constitution lists the civil rights of all inhabitants, which include the right to “freely profess their faith.” This right also includes protection for “moments of sacred time.” Article 20, which upholds the rights of foreigners, protects their religious freedom too.

In this regard, the Government has to guarantee the right to religious freedom, providing — when establishing holidays — the necessary protection of religious festive days so that individuals may celebrate those events, whether by participating in services, observing proper moments of rest or through practices indicated by their religion.

In other words, the possibility of celebrating religious festivities is “contained” in the right to religious freedom, within the limits entailed by this right. In our opinion, the right to religious freedom implies establishing conditions for the faithful to be able to observe and celebrate religious festivities appropriately.

Public holidays

In this context, some regulations that govern public holidays and non-working days were passed on religious grounds. Firstly, Law No. 24.445, which reinstated 8 December as a public holiday (Day of the Immaculate Conception of the Virgin Mary). This legislative initiative took place because “historical, cultural and religious considerations” mean that the “religious character of the Argentine people has been marked by profound and widespread devotion to the Virgin Mary.”

Subsequently, other laws and decrees were enacted and deserve special recognition due to their implications for the protection of religious freedom. For inhabitants professing Judaism, one law declared the holidays of Jewish New Year — Rosh Hashanah (two days) and the Day of Atonement — Yom Kippur (one day) as non-working days. Moreover, a recent decree added the four days of Passover.

Additionally, for all inhabitants professing Islam non-working days were declared for Islamic New Year — Hegira; for Eid al-Fitr, which marks the end of Ramadan; and for the Feast of Sacrifice — Eid al-Adha. The law also states that individuals who do not normally work during the religious festivities indicated above will accrue compensation and enjoy all other rights emerging from the employment relationship as if they had worked during the festivities.

Protection against discrimination in the workplace

The Argentine Employment Contract Law prohibits any type of discrimination among workers on the basis of sex, race, nationality, religion, political or trade union affiliation or age.

Moreover, employers shall provide equal treatment to all workers in equal situations. It is considered unequal treatment whenever there is arbitrary discrimination on the grounds of sex, religion or race, but not so when the different treatment stems from principles of common good, such as those based on greater efficiency, industriousness or performance of tasks by the worker.

After a reform was introduced in 2013, employers are now banned from doing surveys or inquiries into workers’ politics, religion, trade union affiliations, cultural opinions or sexual preferences during the employment relationship or with the aim of ending such relationship. Workers may freely express their opinion about these aspects in the workplace, provided this does not alter the regular performance of tasks.

Based on these regulations, there are several case law precedents where courts have ruled in favor of workers who were discriminated against on religious or other grounds, thus supporting their freedom to practice their faith.

Final comments

Argentine society, formed largely by immigrants of different nationalities and religions, does not usually discriminate on the grounds of religion or race beyond some isolated incidents that have occurred in recent years.

In any case, our laws and judges make sure inhabitants are able to exercise their religious freedom in their personal lives and in the workplace in Argentina.
Religion in Chilean labor law

Chile is a country in which the population is predominantly Catholic, and it has various religious holidays that are non-working days.

Regarding this matter, Chilean calendar has many Catholic religious festivities and nowadays the country is opening to other religious cults, such as evangelicalism.

In spite of the above, at the present time there is no bill with the possibility to include other religious festivities to the calendar or for granting labor permits for the exercise of different religious cults.

Nevertheless, according to Chilean Law, the parties (employer and employee) can freely state religious permits in their labor contracts, both individually or collective. In fact, there is a case of a big Chilean company where the day of celebration of “Yom Kippur” (a Jewish celebration), is given as a non-working day for its employees.

As to work environment, several areas of the country have had an increase in the Jewish population, evangelicalism and Asian immigrants, who coexist in a free and respectful environment. As a result, there is little or no problem in the workplace caused by different religions or beliefs.

According to Chilean law, the Constitution safeguards freedom of conscience, creed and religion as a fundamental right. Moreover, labor laws protect freedom of conscience, creed and religion by forbidding acts of discrimination in the workplace. In fact, Chilean law forbids any form of discrimination:

- The Chilean Constitution forbids any form of discrimination in the workplace not based on ability or personal adaptation.
- Furthermore, according to Article 2 of the Chilean Labor Code, any form of discrimination violates labor rules. Article 2 defines discrimination as distinctions, exclusions or preferences based on race, sex, color, age, marital status, union membership, religion, political ideology, nationality or social origin with the intention to end or change an opportunity or employment.

No employer can set conditions to hire or not hire an employee based on those discriminatory circumstances. Thus, any job offer is considered discriminatory and in violation of labor rules if special requirements are imposed regarding race, sex, color, age, marital status, union membership, religion, political ideas or any of the aforementioned factors.

Notwithstanding, no distinction, exclusion or preference based on personal qualifications required for a specific job shall be considered as discrimination. However, there are some special rules that provide exceptions about age, nationality, sex and factors characteristics that are not considered as discrimination.

Moreover, labor laws list a specific act to protect employees against discriminatory conduct or any kind of breach of fundamental rights, granted by the Constitution, in their employment relationship. Chile’s Protection of Fundamental Rights supports the freedom of conscience, creed and religion in the workplace.

In general, there have been a few cases of discrimination by religion. In 2010, there was a polemic case in which a call center’s female employee was discriminated against and insulted by her superiors for professing the Muslim religion. Her claim was brought before the Labor Authority and Labor Court.

The Labor Court stated that the labor law seeks to protect employees’ dignity, which includes having the right to equal treatment by their colleagues. The creed that she professes cannot be a reason for a negative distinction, especially if it has not affected her performance in the three-plus years she has worked there. Consequently, the Labor Court deemed that the company violated the employee’s fundamental rights.

Therefore, religion in the Chilean workplace is directly related to its legal system. Chilean labor laws protect freedom of conscience, creed and religion of all people, through the prohibition of any form of discrimination — and with a special act to protect employees specifically.
Religion in the workplace – not an issue yet

One effect of globalization and European integration is that employers have the option to hire employees from a variety of countries and religious backgrounds. A diversified team can often bring about heightened creativity and innovation but may also cause certain issues or even conflicts to arise.

Freedom of religion is guaranteed by the Charter of Fundamental Rights and Freedoms. Therefore, the Labour Code, together with the Employment Act and the Anti-Discrimination Act, regulates the general obligation for employers to provide equal treatment to all employees in respect of their working conditions, including receiving remuneration and other emoluments paid in cash or in kind for their work, conditions for their vocational training and opportunities for furthering career development (promotions), regardless of their beliefs or religion.

Czech law regulates two particular areas: a ban on religion-based discrimination and prohibiting employers from requesting information on an employee’s religious affiliation.

Nondiscrimination

According to the decision of the Supreme Court of the Czech Republic, an act taken by an employer, whether it be directly or indirectly, that results in an employee being disadvantaged against other employees is considered discrimination.

The main law governing the right to equal treatment and protection against discrimination in various daily situations is the Anti-Discrimination Act. It applies not only to employment but also, in particular, to independent business activity, professional training, access to employment and membership in employers’ and employees’ organizations. The Anti-Discrimination Act recognizes the following discriminatory grounds:

- Racial or ethnic origin
- Nationality
- Sex
- Sexual orientation
- Age
- Disability
- Religion and beliefs
- Political views

Differential treatment in recruitment on the grounds of religion is permitted in the case of employees of churches and religious organizations. This applies where the nature of the work, or the context in which it is carried out, means that a particular religion or belief constitutes a genuine, legitimate and justified occupational requirement with regard to the ethos of the church or religious organization.

According to the European Court of Justice, all employers are entitled to prohibit their employees from visibly wearing any religious symbols; however, this only can be enforced under nondiscriminatory internal regulations.

The Czech courts have yet to deal with the issue of religion in the workplace.

Information requested by an employer

Employment legislation stipulates that an employer may not require an employee or a job applicant to provide any information that does not directly relate to the performance of work and the employment relationship, or obtain such information from another source. This prohibition applies particularly to information about the employee’s religion, pregnancy status, family and property situation, sexual orientation, origin, trade union membership, membership of political parties or movements, or criminal record. However, where there is a justified need to obtain this information because of the nature of the work, or because of a legal requirement, the employer may obtain information about an employee’s pregnancy status, family and property situation, or criminal record.

Employees’ “sensitive” personal data receives special protection. An employee’s personal data relating to religious or philosophical beliefs is considered to be sensitive. Sensitive data may be processed only if the employee has given express consent, save for exceptional circumstances.
Danish tradition on religion in the workplace

Denmark has only experienced limited cases due to religion — but all of them challenging the limits of the free managerial rights of the employer. The European Court of Justice (ECJ) has now ruled in line with the Danish mandatory Anti-Discrimination Act by verifying one of the guiding Danish cases on religious discrimination.

Recent developments

Two recent rulings from the ECJ have confirmed the prevailing legal position in Denmark that employers may legally enforce company policies that require employees who have customer contact — thus being representatives of the company — to appear neutral and thereby refrain from wearing symbols that can be associated with religious, political or philosophical orientation, etc. The Belgian and the French courts presented the cases in question to the ECJ respectively.

The ECJ cases in question

The Belgian case concerns a female Muslim receptionist whose employment was terminated by her employer. The women insisted on wearing her head scarf, though the company’s work council had approved a policy that determined no employee was allowed to wear symbols or perform rituals that could be associated with religious, political or philosophical orientation, etc. The ECJ stated that a general ban of religious headwear does not constitute direct discrimination but can be indirect discrimination if the ban (i) puts persons with certain religious beliefs at a disadvantage compared with others and (ii) is not grounded in objective, just and reasoned purposes.

The French case again concerns a female Muslim whose employment terminated after having received a complaint from a client for wearing a head scarf. Following discussions with the employer, she refused to comply with the company policy prohibiting employees from wearing head scarves when attending meetings with clients. The company had, upon hiring the employee, underlined that the company respected religious beliefs but could not allow her to wear her head scarf when with clients. The ECJ referred to the distinctions on direct and indirect discrimination from the Belgian case.

The meaning for Danish employers

In 2005, the Danish Supreme Court decided that an employer could forbid employees from wearing headwear, including religious headwear, during the course of their work, if the prohibition was grounded in the company’s objective and reasoned aim of being neutral in relation to religious, political or philosophical orientation, thereby neither being direct nor indirect discrimination.

EY notes that the new rulings from the ECJ are therefore in line with the prevailing legal position in Denmark. This means that Danish employers can maintain any current policies that do not discriminate against employees directly or indirectly if their reasoning is considered objective and necessary.

Further, any employer having a policy regarding headwear or religious symbols must make sure the policy is clear and explicit and does not go beyond what is necessary. In the two aforementioned cases, the ECJ deemed work with client contact as fulfilling the requirement of not going beyond necessity. Consequent enforcement of the policy is again advised in order to support equal treatment of all employees, thereby avoiding potential discrimination. The issue of necessity was at the heart of the French case, which the ECJ sent back to the French courts to decide.
Limited legal praxis regarding religion in the workplace

The Finnish Constitution (731/1999) provides freedom of religion (Section 11) and protection against discrimination (Section 6). Freedom of religion and conscience entails the right to profess and practice a religion, the right to express one’s convictions and the right to be a member of, or decline to be a member of, a religious community. However, no one is under the obligation, against their conscience, to participate in the practice of a religion.

Discrimination in the workplace, including discrimination due to religion, is prohibited in the Employment Contracts Act (55/2001) and the Non-Discrimination Act (1325/2014). The employer must treat employees equally, unless deviating from this is justified in view of the duties and position of the employees.

Discrimination occurs, for instance, if an employee is not hired due to their religious conviction, even if the case is not about conscientious work. Discrimination arises also in situations where employees are not allowed to wear religious clothes – headwear, for example – even if this is not required for conducting the employee’s work, and this places some employees in unequal position due to their religion when compared with employees of other religions.

In general, religion is not a very visible issue at work in Finland. Christianity is the major religion in Finland, with more than 70% of the people being Evangelical Lutheran. Situations and practices are likely to change due to immigration and globalization.

There have been few legal cases regarding religion in the workplace in Finland, thus there are no clear rules or practices in place regarding prohibited and permitted actions. However, there are certain confirmed grounds on which the employer can prohibit the use of religious accessories at work. Hygiene and safety at work are emphasized, and they outweigh people’s right to religion in this respect.

For example, helmets are mandatory on construction sites. On the other hand, requirement for neutral, firm-wide clothing might not permit banning, for example, the use of scarves.

In 2014, an employer had banned the use of scarves in the workplace, and the district court ruled in favor of the employee, since the employer did not have a firm-wide ban on religious symbols in place or other adequate reasons for the prohibition.

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There are cases in Finland in which an employer has been found guilty of employment-related discrimination, and only in a few of these cases have the judgments been based on the fact that the employee has been put at a disadvantageous position due to their religion.

The Regional State Administrative Agencies (AVI) supervise discrimination in workplaces, and AVI Southern Finland has considered only four cases related to religious characteristics so far. One of them concerned the use of wearing religious turbans while driving a bus. Since there were no safety-related reasons, AVI ruled in favor of the employee. Contrary to above, in 2006, the district court ruled that the employer had not been guilty of discrimination when banning the use of a scarf in a restaurant, since strict hygiene rules required that the same scarf should not be worn in the kitchen and dining room.

The National Non-Discrimination and Equality Tribunal (formerly called The National Discrimination Tribunal) considered a case where an entrepreneur and his employees had been prohibited to pray in the workplace. Site management claimed that the praying would be against the constitutional right not to participate in the practice of religion against a person’s will, as it would happen in the same recreation room shared with other employees of the workplace. The court ruled in favor of the working site management. Similar situations are expected to become more common in Finland due to the country’s changing demographic.
The ECJ clarifies the issue of religious symbols in the French workplace

Business and religion appear to be remote by nature. The working world leaves very little room for religious symbols. Religion exists in an employee's private life but usually does not appear in the workplace. It is precisely for this reason that when a religious fact comes to light at work, the shock can be brutal, particularly in a sensitive context, due to certain religions becoming stigmatized by recent events.

The ECJ admitted on 14 March 2017 that private companies may restrict the wearing of religious, political or philosophical signs by their employees in order to implement a policy of neutrality. The ECJ indicates that, to avoid discrimination, the prohibition should not target any particular religion and respect the principle of proportionality. On the other hand, in the absence of such an internal rule, the request of a client not to be in contact with an employee wearing an Islamic head scarf, for example, cannot be proper grounds for dismissal.

Neutrality must be proportionate and nondiscriminatory

Apart from religious considerations, French employees are, in principle, free to choose what they wear at work. However, the employer may impose certain restrictions on this individual freedom, provided that they are justified by the nature of the task to be performed and proportionate to the goal intended. Based on this principle, French case law tolerates clothing constraints motivated notably by health and safety considerations.

Judges also recognize the right of the employer to maintain control of the company’s image with customers. Provided that restrictions are not excessive in relation to the intended purpose, the employer may, therefore, prohibit certain attitudes or clothes in the name of company interests and assumed customer expectations.

In a very famous and publicized case dated 25 June 2014, the French Court of Cassation validated the dismissal of a nursery employee who refused to remove her Muslim head scarf despite the restrictions imposed by the internal rules of the nursery. As she was regularly in contact with children and their parents, the court held that the clothing restrictions and, in this case, the restriction of freedom of religion were legitimate.

Since this decision, the “Macron” law dated 8 August 2016 has amended to the French Labor Code, making it possible for the employer to include religious neutrality in the internal rules of the company. This neutrality must be justified by the exercise of other fundamental freedoms or rights, or by the necessity of the proper functioning of the company, and must be proportionate to the intended goal.

The recent ECJ decision in Belgium has the same line of argument. In this case, the employee informed her employer that she wanted to wear an Islamic head scarf during her working hours. As the company specializes in reception services, the employer refused and decided to include in the company’s internal rules the prohibition of visible signs of the religious, philosophical or political beliefs of employees in the workplace. Because of the employee’s persistent desire to wear an Islamic head scarf, her employer dismissed her.

In religious matters, the client is not always right

Although the employer may prohibit certain attitudes or clothes in the name of company interests, the request of a single customer cannot be considered as essential and decisive, and cannot be used as grounds for dismissal.

These are the circumstances in a second case, also dated 14 March 2017, in which a French employee, working on a client’s premises, is the subject of a complaint from a client, who wanted the employee to remove her head scarf. When the employee refused, the employer dismissed her, justifying the decision due to the client’s wish. The Court of Cassation asked the ECJ about the validity of such a dismissal.

In its decision, the ECJ underlined that the difference in treatment cannot be based on religion itself but on a characteristic related to it, which must be regarded as a legitimate and proportionate occupational requirement. This qualification is very strict.

The notion of a genuine occupational requirement refers to a requirement that cannot be derived from subjective considerations, such as the desire to take into account the particular wishes of a customer. Moreover, nothing in the nature of the employee’s activity – she was a design engineer – required her to remove her head scarf. The dismissal was therefore discriminatory, according to the European Directive.

This decision is based on the European Directive dated 27 November 2000, giving the reference framework for combating discrimination at work.

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Religion in the workplace – does anything go?

Managing and integrating diverse religious beliefs at work can be a hard job for an enterprise at times. Sometimes, beliefs (and rituals) of the employees may collide with work requirements and targets. For example, an employee insisting on multiple breaks for religious prayers may, ultimately, not be able to carry out contracted services. Here, the Regional Labour Court of Hamm understandably held that the employer may intervene (LAG Hamm, judgment dated 18 January 2002 – 5 Sa 1782/01). On the other hand, the same court, only shortly thereafter, held that an employee may well have the right to leave his workplace for (short) prayers, as long as it can be reasonably expected from the employer to adapt his job routine without hampering the overall organization.

In certain situations, an employee may refuse to comply with instructions or even carry out given tasks if due to recognizable religious reasons. One example of a case acknowledged by court was an engineer refusing to assist in the development of weapons for chemical warfare due to the (Christian, among other religions) commandment “You should not kill.” In such a case, disciplinary sanctions would be inappropriate. However, as long as the employee refuses to carry out his tasks, he cannot, of course, claim remuneration. Even though, in principle, there shall be no remuneration without services rendered, there may still be cases where employees may keep their remuneration claims nonetheless. For example, should the employee be required to fulfill religious duties, such as attending their church wedding, there may be a claim to paid special leave of absence.

What can prove problematic, though, is when the employer seeks to prohibit religious behavior for personal reasons, such as wearing a religious scarf, as is common with Muslim women. A number of court decisions have already been given, mostly in favor of the women. The reason is that only in few cases will the mere wearing of a scarf jeopardize the work of the organization or otherwise impact the employer (the Kopftuch-Urteil or “scarf case”: BAG, judgment dated 10 October 2002–2 AZR 472/01). But – here as elsewhere – should the employer be able to prove that the wearing of a scarf would hinder the employee in duly rendering her services, cause economic damages or otherwise negatively affect the company’s reputation, the employee ultimately may face dismissal. In any case, clothing policies must be appropriate. Where the religious belief of an employee demands the wearing of certain clothing, the employer in turn has to respect this and seek to arrange for a suitable approach for both parties. But again, when objective and legitimate requirements such as accident prevention oppose, this will be different. As an example, the requirement for wearing a helmet will not necessarily justify prohibiting the wearing of a scarf or other items, as long as the helmet still can be worn safely and properly. But should a given combination turn out to be problematic – imagine combining a turban and helmet – the employer may obviously insist that the helmet shall prevail.

In the field of public administration, things are even more complicated. Generally, civil servants are subject to stricter requirements than employees in the private sector. The reason is that Germany sees itself as a religiously and ideologically neutral country and may not declare itself in favor of or against a certain religion. Therefore, it is no longer permissible to hang crucifixes in German classrooms (BVerfG, judgment dated 16 June 1995 – BvR 1087/91) and, therefore, it is problematic when teachers, representing the public educational system, wear Islamic head scarves (BVerfG, judgment dated 24 September 2003 – BvR 1436/02). In this regard, most federal states have meanwhile enacted laws imposing on teachers of public schools an obligation to religious neutrality with regard to their choice of clothing.

On 12 May 2017 the Bundesrat (Federal Assembly) passed a law providing that civil servants as well as soldiers are no longer allowed to veil their faces during work, as the religiously or ideologically motivated veiling of the face would contradict the duty of neutrality of government representatives. Under the same law, veiled women are legally obliged to uncover their faces in order to prove their identity, for instance during a passport control.

These, and other cases, show the potential conflict that may arise when people want to express their religious beliefs at work. Employers often face challenges when it comes to accommodating different religious faiths and values, and using them positively in their enterprises.
Religion in the Greek workplace

The Greek constitution recognizes Greek Orthodoxy as the “prevailing religion” and states that freedom of religious conscience is inviolable providing for freedom of worship under the protection of the law. The ministers of all known religions are subject to the same supervision by the State and to the same obligations towards it as those of the prevailing religion, while no person is exempted from discharging his obligations to the State or may refuse to comply with the laws by reason of his religious convictions.

Furthermore, Greece, by virtue of the Law 3304/2005, established the regulatory framework in employment and occupation concerning the fight against discrimination based on racial or ethnic origin, religious or other beliefs, disability, age or sexual orientation. Law 3304/2005 incorporates Directive 2000/43/EC, implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, and Directive 2000/78/EC, which establishes a general framework for equal treatment in employment and occupation.

This issue was further elaborated through Law 4443/2016, which replaced Law 3304/2005 and, among others, lays down the framework for combating discrimination on the grounds of religion or belief in regard to employment.

More specifically, the law establishes the “principle of equal treatment”, i.e., it prohibits any direct or indirect discrimination whatsoever on any of the grounds.

Furthermore, the law applies to all persons employed, in public or private sectors, with regards to:

- Conditions for access to employment, including selection criteria and recruitment conditions
- Access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience
- Employment and working conditions, including dismissals and pay
- Membership of, and involvement in, an organization of workers or employers, or any organization whose members carry on a particular profession, including the benefits provided for by such organizations
- Any person who has suffered discriminatory behavior, in violation of the principle of equal treatment, is entitled to seek legal protection even after the termination of the respective employment relationship.

The law provides that the burden of proof in a discrimination claim lies with the respondent and not the claimant.

It should be noted that prior to the establishment of this legal framework – and pursuant to Article 288 of the Greek Civil Law, Article 4 (points 1 and 2) and Article 22 (point 1) of the Greek Constitution – Greece established extensive case laws (although not specifically related to discrimination in the workplace due to religion) in relation to the obligation of the employer to treat its workforce equally when providing voluntary employment benefits to it.

In practice, a case related to a violation on the grounds of religion or belief may be brought before Greek civil courts following an employee’s relevant complaint; however, there are not extensive civil case laws specifically related to the issue.

Employees affected may also address their complaints to the Greek Ombudsman.

More specifically, the Greek Ombudsman is the national equality body, with a mandate to combat discrimination and promote the principle of equal treatment irrespective of gender, racial or ethnic origin, family or social status, religious or other beliefs, disability or chronic disease, age, sexual orientation, gender identity or gender characteristics. But again, there are not extensive case laws related to discrimination in workplace due to religious faith, while there is case law of the European Court of Human Rights against Greece related mainly to the treatment of objectors of conscience by the Greek Army Forces (Papavasilakis vs Greece, Case no 66899/14) as well as to Greece’s conviction for providing for religious oath during court proceedings (Dimitras vs Greece, Case no. 34207/08 and no 6365/09).

Despite the rich and dynamic legal framework, deriving from the transposition and implementation of EU legal texts, (i.e. European legislation and case law), as well as the relevant implementation practices, the large majority of citizens seem to remain not fully and/or functionally aware of labor rights associated with freedom of religion in the workplace.
An overview of religion in the workplace in India

India is a diverse country. Consequently, the country’s workforce is also made up of persons from widely varied backgrounds – cutting across borders of region, gender, caste and religion. In light of this background, the importance of strong antidiscrimination laws is paramount in India.

The country has implemented laws concerning nondiscrimination on certain factors, including gender, disability and pregnancy. These laws are applicable to both public and private enterprise and are enforced strictly. However, the legal framework for protection of religious minorities from discrimination in the workplace remains at a relatively nascent stage in comparison to other jurisdictions, which is especially concerning in light of the diversity of India.

Some of the founding principles of the country were equality and pluralism and these have been enshrined within the Constitution of India. The Constitution of India, under Article 14, guarantees equality before law for every citizen of India. Article 15 provides that there shall be no discrimination by the state on the basis of race, caste, gender, place of birth or religion. However, these constitutional safeguards are only enforceable against the state or an instrumentality of the state. The definition of the word “state” is set out in Article 12 of the Constitution of India, which makes it clear that private enterprises are, subject to the enactment of any specific laws in this regard, not required to guarantee equality in any respect.

The current legal framework in India provides protection for religious minorities only in matters of public employment. This protection is a fundamental right enshrined in Article 16 of the Constitution. This implies that in matters of employment by the Government or an instrument of the Government, such as a public sector undertaking, there cannot be any discrimination on the basis of religion – whether in relation to hiring or promotions. The recourse provided to address discrimination is to file a writ before a High Court or the Supreme Court.

Certain states in India have instituted a scheme of affirmative action by providing reservations for backward classes of minority religions in state employment. This reservation may only be given to identified “backward classes” and not to all members of a religion. The test is that the identified classes must be socially and educationally disadvantaged. This move of “positive discrimination” has drawn some criticism and remains hotly debated.

However, in relation to matters of private employment, there is no statute that guarantees nondiscrimination on the basis of religion, although there have been numerous efforts over the years to introduce an omnibus anti-discrimination law that would ensure equality in all spheres of employment, including private enterprise. This move is because in the last few decades a number of lucrative opportunities have arisen in private sector employment and opportunities in the government sector have either stagnated or diminished. Private employers are not bound to follow the same rules and procedures that are imposed on public employers and have a free hand in determining hiring, promotions and other workplace rules. Diversity and inclusivity initiatives by private players have been a voluntary exercise and have been primarily confined to large employers and corporations that have an international presence. However, the exercise of introducing these inclusivity initiatives are being increasingly adopted by employers to make them an attractive option for employees and to ensure that they are able to attract and retain the best talent.

In addition to equity in hiring, the other important aspects of ensuring religious equality in the workplace are providing employees the flexibility to determine their attire and their food and enabling them to observe customs that are integral to their faiths. Employers are also increasingly ensuring that their employees are provided holidays to observe religious festivals specific to their faith.

In India, there have been a few cases of discrimination on the basis of religion in the past few years, such as a case involving a diamond exporter that gained national notoriety for denying a candidate the job solely on the basis of his religion.

While employers in the private sector are increasingly opting voluntarily to observe antidiscrimination practices the implementation of an anti-discrimination law is yet to be addressed by the country’s lawmakers and is possibly in purgatory on account of political considerations owing to the sensitive nature of the issue.
Religious profession and professional interests

Following the provisions of Article 19 of the Constitution of the Italian Republic, all persons have the right to profess their own religious faith freely in any form and to practice it in private or in public, provided that the religious rites are not contrary to public morality. Therefore, the term “religion” might be referred to both the belief of a person and, at the same time, to the exercise and the display of such faith.

Nevertheless, the recognition of such rights, particularly the exercise of religious freedom in the working relationship, may conflict with the freedom to conduct a business, also granted by the Constitutional Chart within Article 41.

For example, the legitimate interest of the business to generate profit may bring the need to show a standardized image of its employees and, consequently, of the company, and this may conflict with the right of the employees to dress according to their religious convictions. Still, in the exercise of their management power, the employer may object to the employee requiring the right to leave their workstation during the workday in order to carry out the necessary acts for worship.

Therefore, in labor relationships, religious protection must be balanced with the freedom of private economic initiative and, in pathological cases, this balance can only be entrusted to the judge, called to apply antidiscriminatory rules and to provide an adequate response to meet the challenge of these differences.

Discriminatory behavior and remedies

Under Italian legislation, the prohibition of discrimination finds its legal basis on the principles outlined by Article 3 of the Constitution, which guarantees to all citizens equality before the law without distinction of sex, race, language, religion, political opinions, personal or social conditions.

The Italian Legislature stated that direct discrimination occurs when, due to the existence of a protected factor (i.e., among others, religion or personal convictions), a person is treated less favorably than how another would be treated in a similar situation. In parallel, indirect discrimination occurs in every case of prejudicial treatment resulting from the adoption of any criteria that, in a proportional way, decreases the proportion of workers belonging to – among others – a particular religion and demands nonessential requirements for carrying out work.

The employees addressed with such unfair behaviors receive an important means of protection through Law 300/1970 (the Workers’ Statute), in order to safeguard the privacy of the employees, in first place the Article 8 of such Law prohibits the employers from investigating on political, trade-union affiliation and religious opinions of the employees. Such prohibition also concerns any information not relevant in order to assess the professional skills of the employee.

By virtue of Article 15 of the Workers’ Statute, the discriminated worker may appeal to the Labor Court in order to obtain the nullity of certain acts or facts of the employer – including hirings, dismissals, transfers, disciplinary sanctions and any other acts affecting the career of the employee – if deemed discriminatory by the judge. In cases of collective discriminations, Article 16 of the Workers’ Statute provides employees or the trade unions with the right to promote a judicial action in order to contrast discriminatory behaviors.

In such cases, the employees may also rely on the inversion of the burden of proof, since the employer is required to demonstrate the nonexistence of the discriminatory grounds in their behavior.

The procedure provided by the Workers’ Statute has been in practice replaced by a special procedure, provided by the Article 38 of the Legislative Decree 198/2006 (the Equal Opportunities Code), characterized by remarkable celerity. In case of discrimination, the discriminated worker, the Unions or the Counsellor for Equal Opportunities may appeal to the judge in order to obtain quickly an order of termination of any discriminatory behavior and the removal of its effects. Alongside this action, Article 37 of the Equal Opportunities Code also provides another action that can be promoted individually by the Counsellor for Equal Opportunities when discriminatory practices regard employees groups.

Furthermore, with specific reference to discriminatory dismissals, a basic level of protection for employees was first implemented by Law 604/1966, which sanctioned as null the dismissal for religious affiliation. Subsequently, Law 108/1990 provided the dismissed employees with the reinstatement of their jobs in all cases of discriminatory dismissals, regardless of the company’s dimensional requirements. The reinstatement of the worker dismissed on discriminatory basis has been recently strengthened and generalized by Article 18 of the Workers’ Statute as reformed in 2012 by the Jobs Act, which applies to all employees hired after March 2015.
The employment relationship and freedom of religion

Employment in Mexico, as a social phenomenon structured by the law, has been linked somehow with certain religious traditions. Mexico being a religious society, it is logical and easy to understand that influence on the employment laws, and the challenge from a legal perspective that could arise from the fact that such framework has been informed by only one religion, which is Roman Catholicism.

For instance, the mandatory holiday calendar in Mexico includes some religious festivities, such as Christmas and New Year’s Day. In addition, it is common practice that employers grant some days of the holy week and some other Catholic festivities as leaves of absence, such as 12 December which are not included in the mandatory holiday calendar.

With respect to the weekly work shift, the Mexican Federal Labor Law (FLL) states that employees shall have one day off that will, preferably, be Sunday (also a Catholic day of observance). If employees work on Sunday, they will be eligible for an extra payment (25% of the daily wage).

As mentioned, the fact that some regulations and the common practice tend to privilege the religious festivities of one religion could trigger some legal complexities in terms of the right of freedom of religion.

The Mexican Constitution and the international treaties ratified by Mexico assert freedom of religion, which encompasses, among other rights, the right to observe and exercise religious beliefs and freedom from discrimination on the grounds of religious beliefs.

Moreover, Article 2 of the FLL introduces the principle of decent work by means of which any employment relationship shall be governed and construed in accordance with the principle of human dignity that includes, of course, antidiscrimination rules on the grounds of religious beliefs.

From a practical perspective, employees who profess a different religion might not be able to take a leave of absence in order for them to participate in a festivity of their religion.

In such a scenario, the employees may have to fail to work, which would be considered as an unjustified absence and, therefore, will not receive salary payment. The fact that an employee has no guarantee to participate in any religious festivity and, moreover, will be subject to salary sanctions, may lead the employee to argue an act of discrimination.

Based on the human rights doctrine and the pro homine principle (the court should always rule the case by considering the best interest of the individual), it is reasonable to expect that eventually the employer might be compelled to follow the “reasonable accommodation” principle as it is construed in other jurisdictions.

Under such a principle, the employer shall make appropriate arrangements to adjust the employment relationship in order to guarantee equal treatment among employees, provided that such measures do not adversely alter the natural course of business.

Up to this moment, there is no binding precedent with respect to the “reasonable accommodation” principle but, in order to avoid a potential claim grounded on discrimination, some companies in Mexico have implemented rules and procedures to guarantee the freedom of religion and instrumental actions to prevent discrimination.

As provided by the Constitution, the labor boards in Mexico are compelled to rule a litigation by observing not only the FLL but also the Constitution and international treaties.

In an eventual litigation grounded in a religious discrimination argument, the existing legal framework (national and international) would be sufficient for the labor board to determine that the alleged discrimination case has enough merits to be heard.
Relevant legislation

New Zealand has a relatively informal and relaxed culture on religion in the workplace. While New Zealand’s calendar and public holidays are largely based on Christian ceremonies, New Zealand has growing communities of other religious groups. There is no specific legislation governing religion in the workplace, but a number of statutes give employees the right to express themselves religiously, and make it unlawful to discriminate on religious grounds.

The New Zealand Bill of Rights Act 1990 (NZBORA) – that applies only to bodies and persons performing a public function – affirms the right to freedom of thought, conscience, religion and belief (Section 13); to express religion and belief in worship, observance, practice or teaching (Section 15); and for minorities to be free from discrimination (Section 20).

The Human Rights Act 1993 (HRA) prohibits discrimination based on religious beliefs and creates an obligation on employers to accommodate an employee’s religious beliefs reasonably, provided that it does not unreasonably disrupt the employer’s activities (Section 28(3)). It also provides that employers must not discriminate on religious grounds when considering applicants.

The Employment Relations Act 2000 (ERA) is based on a duty of “good faith” between employer and employee. This includes parties dealing with one another in an open and communicative manner using reasonable processes and procedures.

The Human Rights Commission also has a report, Religious Diversity in the New Zealand Workplace, which is a useful guide.

Case law and media

There are relatively few religious discrimination cases in New Zealand compared with some other countries.

Human Rights Commission v Eric Sides Motor Co Ltd [1981] 2 NZAR 447 concerned an applicant who was refused an interview because she was not a “born-again Christian.” The advertisement was for a “keen Christian girl” to work as a forecourt attendant and the tribunal found that this breached the HRA.

Nakarawa v AFFCO New Zealand Ltd [2014] NZHRRT 9 concerned an employee who was dismissed for not being able to work from sunset Friday to sunset Saturday due to religious reasons. The tribunal held that the HRA imposes a mandatory duty on employers to accommodate religious practices so long as any adjustment does not unreasonably disrupt the employer’s activities. In that case, the employer had not explored accommodating the employee’s request and dismissing the employee was found to be discriminatory.

Meulenbroek v Vision Antenna Systems Ltd [2014] NZHRRT 51 also concerned an employee who was dismissed for refusing to work on Saturdays for religious reasons. The tribunal awarded NZ$40,000, as it found the employer had not done enough to accommodate the request.

In 2015 and 2016, there were separate instances in which two women, both Muslim and who wore hijab, sought to interview for positions in different stores, including a jewelry company, but were told they would not be successful or considered unless they were able to remove the hijab. The stores apologized publicly for both incidents, which were largely perceived with outrage by the public.

Requests to employers

If an employer receives a request to accommodate an employee’s religious practices, the employer has a duty to consider the request in good faith. This may include wearing certain religious attire, not working on certain days or times, or providing alternative food and drinks.

An employer is able to refuse requests if they would unreasonably disrupt their activities – a factual determination to be made “under the unique circumstances of the particular employer-employee relationship” (Nakarawa). It may be reasonable to refuse a request on health and safety grounds, or due to the nature and requirements of the business.

Under the Holidays Act 2003, an employee can also request to transfer a public holiday to another religious holiday (Section 44B). The employer must consider the request in good faith, but there is no obligation for the employer to agree to this, and the employer may have a policy preventing a transfer (Section 44C).
Religion and work
What are the restrictions to religious freedom in the workplace? In short: employers are permitted to prescribe behaviour in the workplace, but this may not incite to discrimination or inequality based on religion.

Forms of discrimination
In the Netherlands direct and indirect discrimination is prohibited, unless a statutory ground for exemption applies or an objective justification exists.

- Direct discrimination: a direct reference to a discriminatory feature regarding religion;
- Indirect discrimination: the regulations as such are not discriminatory, but they can result in discrimination for some employees or groups.

Pursuant to established case law of the European Court of Human Rights the following three questions must be answered positively, observing all relevant circumstances, to determine whether an objective justification exists:

1. Is there a legitimate purpose for indirect discrimination (for example: safety or health considerations)?
2. Are the means to reach the goal appropriate (what is the reason for choosing this mean)?
3. Are the means to reach the goal necessary (does it meets the requirements of subsidiarity and proportionality)?

The latter tests imply respectively the following:

- Is there another mean that can also be used and will result in less distinction?
- Is the mean proportionate in view of all interests involved?

Dutch Equal Treatment Act
Employers in the Netherlands have to comply with the Dutch Equal Treatment Act (“ETA”). The ETA prohibits unequal treatment on grounds of religion and belief. The ETA prohibits discrimination in all aspects of employment: firing and hiring, employment conditions, job training, promotion and working conditions. Distinction between employees is prohibited.

None the less, institutions on religious or philosophical basis, institutions of special education and institution on political basis are permitted with respect to their employees to distinguish by virtue of religion, in so far as these characteristics constitute a substantive, legitimate and justified professional requirement because of the nature of the particular professional activity or the context in which they are exercised, given the institution’s foundation.

Dutch Institute for Human Rights
The institute for Human Rights (“IHR”) exposes, protects, monitors and promotes human rights in the Netherlands through advice, research, information and individual judgment in case of discrimination at work.

The IHR reports annually on the situation in the Netherlands in the field of human rights, oversees equal treatment legislation and judges in individual cases whether any person is discriminated at work, in education or as a consumer. Although the decisions made by the IHR cannot force a party to comply with its decision, in practice, the decisions made by the IHR are usually accepted and followed by employers for reasons of avoiding negative publicity and unrest in the workplace.

The Dutch Works Councils Act
Employers must verify whether their regulations are compliant with European regulations, case law and/or the Dutch ETA. If not, employers have the obligation to supplement or change their regulations in accordance with the law.

In the Netherlands, it may be mandatory to involve the works council in supplementing or changing the regulations. Under the Dutch Works Councils Act (“WCA”) the endorsement of the works council is required for any intended decision by the entrepreneur to lay down, amend or withdraw employee benefits, such as regulations relating to working hours, pay or job-grading systems, working conditions, policy on appointments and dismissals or promotions. Also, the works council shall guard against discrimination in general within the company. This means the works council can request the employer to review or withdraw any regulation considered discrimination in the workplace.
Introduction

Norwegian law contains few rules that specifically regulate religion in the workplace, and most current norms and practices spring out of the fundamental principle of freedom of religion, the prohibition against discrimination on the grounds of religion and the general obligation of the employer to take into account individual circumstances in the organization and the arrangement of work. Norwegian working life mirrors the diversity of the population, and religious diversity in the workplace is common. Employers and employees have been encouraged to find pragmatic solutions to the different needs that arise from religious diversity without resorting to rigid rules.

Fundamental principles

Freedom of religion is protected by the Norwegian Constitution. Direct and indirect discrimination on the grounds of religion or belief is prohibited by law. Differential treatment is only permitted if it is necessary to achieve a legitimate aim and does not involve a disproportionate intervention.

The law also prohibits harassment on the grounds of religion or belief, i.e., acts, omissions or statements that have or are intended to have an offensive, frightening, hostile, degrading or humiliating effect.

All employers and employee organizations are required to make active, targeted and systematic efforts to promote equality and prevent discrimination based on religion or belief.

Religious holidays

Most public holidays in Norway are linked to Christian festivals, but employees’ rights in connection with public holidays apply irrespective of religion or belief. Employees who do not belong to the Norwegian Church have an additional right to up to two days of leave from work every year in order to observe the holidays of their religion. Employees can be required to compensate these days of leave by working an equivalent number of hours on other days. Additional leave that cannot be taken within the scope of statutory holidays is only permitted if agreed to by the employer. In deciding whether to grant leave, however, the employer must not discriminate on religious or other illegitimate grounds.

Right to pray during working hours

Freedom of religion means that all persons have the right to have or practice a religion, but there is no right for employees to practice their religion during working hours. Employers are not required to facilitate religious practice in the workplace by providing prayer rooms, and employees are not entitled to time off in order to pray. Any facilitation of religious practice in the workplace is at the discretion of the employer. However, the employer may not facilitate the practice of religion for some employees and not others.

Religious objection to performing certain tasks

In general, an employee cannot refuse to perform tasks on the grounds of religion or belief. For example, a Muslim employee in a kindergarten or health institution cannot refuse to help a child or patient eat on the grounds that the food contains pork. Similarly, an employee at a health institution cannot refuse to nurse or treat a patient of the other sex, or a person who is a homosexual, on the grounds of religion, belief or otherwise.
Religion in the workplace

According to the Political Constitution of Peru, an individual is entitled to profess whatever religion they choose. It is forbidden by law to discriminate against people because of their religion or religious beliefs.

The freedom of religion involves the exercise of the following rights:

- To profess the chosen religion and to change or drop its religious beliefs whenever the individual wants
- To practice, individually or collectively, in public or private, the rites, acts of worship and religious precepts
- To receive religious assistance regardless of the individual's condition (sickness or imprisonment, among others)
- To choose the moral and religious education of people in the individual's care
- To meet or associate with religious purposes
- To swear in accordance with the individual's religion
- To be buried pursuant to the individual's religious precepts or rites
- To commemorate the religious festivities and the sacred rest day, taking into consideration the employer and employees' rights

Notice that the freedom of religion can be exercised in a group or individually, unless such activities disturb the public order or are an offense against morals.

Under the labor relationship, the employer must not interfere in the employees' religious beliefs. Indeed, employers cannot coerce their employees in order to profess, change or drop a particular religion, nor discriminate against them for their beliefs. The employer must not consider the religion chosen by each employee when a decision in regard to labor activity is taken.

In line with the aforementioned, Peruvian labor legislation states that in cases of religious discrimination during the labor relation, employees could judicially claim the conclusion of the employer's behavior or terminate the labor agreement, including severance payment. In this case, prior to any decision about the judicial claim or the termination of the labor agreement, employees must require directly to their employer to change its behavior or an explanation about the decision considered as discriminatory by the employees. If the response given by the employer does not satisfy the employees, then they could start the judicial claim or terminate the labor agreement, requesting the payment of the severance indemnity.

In addition, if the employer ends the labor relationship due to the employee's religious beliefs, the employee could judicially claim the reincorporation in their position or severance payment.

Nevertheless, the freedom of religion not only involves the noninterference rule, but also asserts employers could support their personnel in order to practice religious rites or festivities.
Legal framework

In Poland the issue of religion in the workplace is strictly connected to issues of discrimination.

Poland has implemented EU antidiscrimination legislation into state labor law. This legislation established a legal framework in Poland for the issue of religion in the workplace. Thus, Article 113 of the Polish Labour Code (PLC) provides that no discrimination in employment, either direct or indirect, especially on the grounds of a person's religion, shall be allowed.

Discrimination would include, for example, the decision of an employer or immediate superior to remove an employee, against their will, from performing a specific service solely on the basis of their religion. Such discrimination in employment would therefore also occur if an employer accepts a client's request for a different service person solely due to religious bias.

The general rule indicated above was further elaborated upon in Article 183a of the PLC. According to this provision, employees shall be treated equally in regard to the establishment and termination of their employment relationship, the terms and conditions of employment, the promotion and access to training for the development of their professional qualifications, all without regard to their religion or denomination.

The only exception to this nondiscrimination rule is a provision that states that the limitation of access to employment on the grounds of religion, denomination or belief – introduced by churches and other religious associations, as well as any organizations whose ethos is based on religion, denomination or belief – is not contrary to the principle of equal treatment. Due to the nature of the activities of these churches or other religious associations and organizations, a person's religion or belief constitutes a genuine and justified occupational requirement that is proportionate to the achievement of a legitimate aim of different treatment of an employee.

In consequence, Polish law imposes an obligation on an employer to take responsibility for preventing discrimination in employment, including on the grounds of religion and denomination, which means that the employer should adopt appropriate internal procedures to determine the manner of action in discriminating situations. Generally, discrimination may occur from superiors and colleagues, as well as on the part of clients, and the employer is obliged to deal with all of these situations. Violation of this obligation is treated as a breach of employer obligations. Thus, in such cases the employee may, for example, terminate the employment agreement or seek redress by civil action.

Practice

In 2012, LOT Polish Airlines announced that, by virtue of provisions of a new internal bylaw on clothing policy, cabin crew employees will not be able to wear religious symbols in the workplace. This regulation had been widely discussed in Poland. Consequently, the airline withdrew the implementation of the new bylaw. At present, after judgment of the European Court of Human Rights (ECHR) in a similar case, Eweida v United Kingdom (2013), implementation of a bylaw forbidding the cabin crew to wear religious symbols should be treated as inadmissible.

The issue of religion in the workplace was also touched on in 2016 by the Polish Commissioner for Human Rights. In his memorandum, the Commissioner stated that discreet manifestation of religious beliefs of an employee in the workplace does not violate the rights and freedoms of others. The wearing of religious symbols by an employee should therefore be regarded as legitimate justification for its freedom of expression.

The future

From the Polish perspective, further practice in the field of religion in the workplace will be determined mainly by future case law of the ECHR and the Court of Justice of the European Union regarding discrimination.
Religion in the workplace

The working environment in Portugal has been free of labor issues related to religious expression, so far. In fact, laws and institutions in the country are shaped by a strong Catholic heritage – a faith assumed by 81% of the population – with other religions accounting for only 3.9%, which greatly reduces the field for conflicts in this area.

The legal framework in force expressly recognizes freedom of religion, including that of the workplace.

Recruitment procedure

Information regarding the religious practices of a job applicant is included in the right to privacy, and thus restricted to the employer when recruiting. Therefore, any questions, examinations or tests regarding the beliefs or religious practices of the applicant are forbidden, and the inaccuracy of any answers to such questions may not be used against the applicant in the future.

Work performance

It can be said that employees are not subject to any limitation due to their religious practices, in or outside the workplace, as long as these practices do not interfere with their work duties or cause damage to the employer. The existence of such interference or damage must be assessed on a case-by-case basis.

Key matters

Organization of working time: the weekly rest day of employees is generally Sunday, with only some permissible exceptions. This means that minority religious communities may be subject to discrimination on weekly rest days and other holidays. This issue is addressed by the Religious Freedom Act (Law no. 16/2001), which, under certain conditions, provides the right for employees to suspend work on dates and occasions of religious significance. In this regard, two important judicial decisions are worth mentioning. In the first of these, the Constitutional Court recognized the right of a magistrate of the Public Attorney’s office, who was a member of the Adventist Church, the right to be exempt from on-call duty on Saturdays, to be able to reserve that day as a holy day, a right that had previously been refused by all jurisdictions. Also, the Administrative Court of Appeal (North) condemned the Portuguese Bar Association, requesting that the organization scheduled the final bar exam of a trainee lawyer, who was a member of the Adventist Church, on a day other than Saturday, for the same reasons.

Praying at work: Portuguese law and case law do not expressly address this issue. However, some authors sustain that employees are free to pray in the workplace, even if there is no duty of the employer to facilitate this practice, and the same may even be forbidden on reasonable grounds, e.g., safety requirements, loss of due performance or damage to the image or reputation of the employer. Display of religious symbols at work: in such cases, there is no single correct answer, and an individual analysis of each case must be performed. In spite of the fact that the Court of Justice of the European Union (CJEU) has recently voiced in favor of the right to maintenance of a “neutral image” by employer companies, the Constitution of the Portuguese Republic imposes that this is weighted against the freedom of religion, which requires that valid reasons for the prohibition of religious symbols are found.

Dismissal

Under the Portuguese labor code, a dismissal resting strictly on religious grounds would constitute discrimination and thus be unlawful. Some situations may, however, be relevant grounds for dismissal or disciplinary action by the employer. The following situations can be distinguished: i) situations in which the employee entered into an employment relation implying certain tasks or duties that he subsequently refuses due to religious beliefs that were unknown to the employer at the time of admission; and ii) situations in which the employer allocates new duties or tasks to the employee that interfere with their religious beliefs. In relation to the first type of situation, it is generally considered that employees are not entitled to refuse to perform the work to which they are contractually obliged and that their refusal to perform such work may constitute grounds for termination or other disciplinary action. As to the second type of situation, it is generally considered that the employer is required to accommodate the religious beliefs of the employee to the extent that the undertaking does not suffer unjustified and excessive losses. However, such an assessment would rest mainly on the judgment of the employer, since, as previously stated, the existing case law is very limited and cannot be used as reliable guidance.
Religious discrimination

According to its Constitution, the Republic of Serbia is a secular country. Although there is no mandatory religion proclaimed by the Constitution, much of the population of Serbia is Christian Orthodox. With this in mind, the Serbian Orthodox Church has the unofficial privileged position over institutions of other religions.

While religious institutions still try to proclaim measures of social control, their impact in modern countries, such as Serbia, is limited. In the past couple of years religion seems to have lost its impact on several social sectors, but it continues to influence in some nevertheless.

Serbia, being a multireligious country, is trying to root out the problem of discrimination, especially in the employment relationship. The Constitution proclaims, as one of the fundamental human rights, the freedom of religion. Prohibition of religious discrimination is also proclaimed by the Constitution. In addition, Serbia has ratified and applies various international treaties and other acts of international organizations, such as the United Nations, the Council of Europe and the European Union, aimed at preventing discrimination and promoting equality. Also, there are numerous laws that prohibit discrimination in general, such as the Labor Law, the Anti-Discrimination Law and the Law on Prevention of Harassment in the Workplace. However, there is no specific piece of legislation solely covering religious discrimination.

In practice, there is very little discrimination in the workplace on a religious basis. Employers tend to respect all religions. For example, there have been no acts against Muslim women wearing hijab or prohibitive acts against Muslims regarding praying several times a day, or other related acts.

Notwithstanding the abovementioned, in practice, discrimination amongst employees in the workplace is different depending on the working surroundings and level of education of the employees. In a workplace with lower educated employees, stereotypes and prejudice about different religions are often present which leads to dissocializing and even harassment of members of religions other than Christian Orthodox.

Furthermore, religious holidays, such as Christmas and Easter, are non-working holidays in Serbia for every employee, no matter whether they are Christian, but the Law on State and Other Holidays prescribes an extra day off for people of other religions on their religious holidays.

Apart from legislation on the state level granting the protection from discrimination, in the regions where the religious minorities are more represented local regulations provide for higher level of protection to members of religions other than Christian Orthodox. For example, in region of Vojvodina schools are closed on main Catholic holidays, as well.

Although we do not see discrimination in the workplace in practice, there is a downside to this matter. Even though there are no limitations when it comes to religious beliefs, in general it has proven that discrimination (of any kind) is very hard to detect and even harder to prove. This may be the reason why employees who are religiously discriminated against in the workplace often do not want to expose themselves, because they don’t want the employer, or even society, to “label” them.

In general, the area of the Balkan Peninsula could be classified as a rather orthodox, conservative environment. This may be the reason for widespread moderate antagonism against non-Christian people and the reason that, although there is extensive legislation aimed at preventing discrimination in general, there is no specific piece of legislation protecting against religious discrimination in the workplace. It also does not appear that general antidiscrimination acts are being implemented in practice to any great extent.

Implementing and exercising anti-discriminatory policies and practice in full capacity is a process with many phases. Besides adopting the anti-discriminatory laws, consideration should be given to amending the legal framework as to enable affirmative actions (positive discrimination) for social marginalized groups of people, such are members of different (in particular minority) religions and cultures. Bearing in mind all the above, even though the Balkan Peninsula is not an ideal example of religious differences, religion in the workplace is respected and protected by numerous regulations and, in practice, religious discrimination is very rare.
Introduction

Singapore is a multicultural and multireligious society that values its diversity. Based on the most recent population census, the religious affiliations of Singapore's resident population are as follows: 44.2% are Buddhist or Taoist, 18.3% are Christian, 14.7% are Muslim, 5.1% are Hindu and 17.7% either have no religion or belong to other minority religions.

Singapore has no national religion, but the Constitution of the Republic of Singapore protects religious freedom.

Fair employment practices

The Employment Act does not specifically regulate religion in the workplace. However, the regulatory authorities encourage employers not to discriminate based on religion.

The Tripartite Alliance for Fair and Progressive Employment Practices (“TAFEP”) was set up to promote the adoption of fair, responsible and progressive employment practices among employers, employees and the general public in Singapore. Members include employer representatives, union leaders and government officials. TAFEP issues various guidelines on topics ranging from fair hiring practices, age management to grievance handling. These guidelines are not legally binding, but there are certain administrative measures that can be taken if they are not followed.

TAFEP's Tripartite Guidelines on Fair Employment Practices (“Guidelines”) state that employers should recruit and select employees by merit, regardless of religion, amongst other things. The Guidelines also state that religion is unacceptable as a criterion for recruitment except in cases where employees have to perform religious functions or fulfil religious certification standards as part of the job requirements. In such cases, the requirements should be clearly, objectively and sensitively presented.

Religious harmony in Singapore

Although there are no laws aimed specifically at regulating religion in the workplace, there are a number of regulations to maintain religious harmony in Singapore. They include the Maintenance of Religious Harmony Act and the Sedition Act. The former grants the government enforcement powers to maintain religious harmony, and the latter punishes any act or statement which has a seditious tendency.

Work arrangements

In practice, most employers do cater to employees' religious needs as a matter of custom and practice.

For example, as a matter of religious practice, Muslims in Singapore attend prayers on Fridays around lunchtime. Although there is no statutory requirement to provide Muslim employees with an extended lunch break, it is customary to cater to this practice.

It is usually up to the employee and the employer to come to a mutual agreement on their working arrangements. In the earlier example, an employee may agree to make up time for any work missed by staying later or coming in earlier.

In more established companies, common practices such as these would usually be incorporated into the employee handbook.

One other example would be the wearing of religious headgear. Some Sikh men in Singapore wear turbans, while some Muslim women wear the hijab. As the wearing of such religious headgear in the workplace is not statutorily regulated, employees will have to check if their headgear complies with the company dress code and other health and safety regulations.

For example, Muslim police women are not allowed to wear the hijab on duty. Similarly, Muslim nurses are not allowed to wear the hijab while working.

Employers should also be mindful of employees’ dietary restrictions. Most Muslims refrain from eating pork, most Hindus do not eat beef, some Buddhists are vegetarian and Catholics may refrain from eating meat on religious occasions. Muslim employees may also prefer to eat food that is certified halal. Employers and employees are generally mindful of such needs when arranging meals with team or clients. It is also common practice for certain employers to permit the separation of eating utensils and cooking equipment to cater to religious sensitivities.

Public holidays

Singapore's public holidays reflect its multicultural and multireligious nature. Official public holidays include the following: secular holidays, such as New Year's Day; Christian holidays, such as Good Friday and Christmas; Islamic holidays, such as Hari Raya Puasa and Hari Raya Haji; a Hindu holiday known as Deepavali; and a Buddhist holiday known as Vesak Day.

It is mandatory for employers to allow observation of these public holidays. If there are work exigencies, then employers can require the employee to work on a public holiday. Subject to certain exceptions, they will have to provide the employee with a substitute rest day.

Conclusion

At the end of the day, religion is an additional dimension to be considered by employers and employees when dealing with issues of diversity in the workplace. It is the shared responsibility of the employer and each employee to create a religiously sensitive workplace environment.

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Religion in the workplace

Until now, Slovakia has barely been touched by issues concerning religion in the workplace. However, due to trends in society resulting from globalization and migration, we can expect that this will change.

Slovak labor law does not specifically regulate the exercise of religious freedom in the workplace. The Labor Code provides only for general principles governing prohibition of discrimination on the grounds of belief or religion and the right to equitable and satisfactory working conditions (without any limitation on the grounds of belief or religion). Such rules were introduced by the new Slovak Labor Code effective as of 2001.

In the Slovak legislation, the basic principles of anti-discrimination rules are also incorporated in the Constitution of the Slovakia and in the so-called Antidiscrimination Act, which was adopted in 2004.

In addition, an employer should not request information on the religious affiliation of an applicant during recruitment. The local labor law is fully harmonized with EU legislation and has incorporated general principles of international treaties on the protection of human rights and fundamental freedoms.

Further, under the Slovak Personal Data Protection law, information revealing religious beliefs constitutes a special category of personal data. As such it enjoys a higher level of protection and its processing is prohibited, unless a particular legal basis for their processing exists.

Additionally, neither the labor law nor local court practice outline more specific conditions for exercise of religion in the workplace, with local courts handling cases of discrimination mainly on other grounds. Although this is largely the result of homogenous Slovak culture, the public is already starting to see more instances of labor law cases concerning religious discrimination, as published by local media. Recent changes in Slovak procedural codes, which introduced specialized courts with the competence to solve labor law disputes, suggest that local courts will be better prepared to solve such cases. As such, it is possible that also the number of these cases seen in court might increase.

Given a very general legal framework, employers tend to establish specific rules of behavior for employees in the workplace through internal policies and guidelines. These may, for example, govern dress codes or company-approved religious holidays.

Under some circumstances, specific limitations on the exercise of religious freedom in the workplace (particularly dress code-related) might be legitimately applied, for instance in the case of government employees and civil servants. This would apply particularly if these employees were representing their employers’ views. Similarly problematic, in rather a conservative environment, might be wearing a scarf or other religious symbol by a teacher or other employee at school, representing authority and having a significant influence on the students.

In general, specific rules of behavior for employees in the workplace should be objective, non-discriminatory and should not interfere unduly with employees’ rights.

What is sometimes problematic in this respect is that the global codes of conduct (in the case of multinational companies) are not properly implemented in the internal policies of local subsidiaries (Slovak law does not explicitly require a translation of internal policies into Slovak language; however, employees must be acquainted with, and thus understand, the internal policies, which should be binding for them). As such, discrepancies may arise in the interpretation of the exercise of religious freedom in various workplaces (sites) of one undertaking. Nevertheless, when performing due diligence for our clients, we rarely identify stringent conditions in internal policies or guidelines.

The local law provides for various means of protection in the event of discrimination (including discrimination on the grounds of religion). First, the employee may file a complaint with the employer. Additionally, they may bring legal action to claim financial or damage compensation, or compensation for non-monetary damage.

A peculiarity of Slovak law is that the burden of proof in anti-discrimination matters is always borne by the employer, i.e., the employer is obliged to prove that they have not breached the anti-discrimination rules. However, in our experience, employers tend to settle out of court, as they want to avoid adverse publicity. As such, we are currently not aware of any publicly-known court cases handling discrimination on the grounds of religion in Slovakia.
Religion in the workplace

Religion is an important part of life for many people and, considering the time that employees spend at their workplace daily, some difficulties may arise when the employer tries to juggle the company’s best interests and the employee’s right to practice their religion. In this article, we will focus on the challenges that employers face when dealing with religion in the workplace.

Discrimination and harassment

The starting point for any discussion on religion in the workplace is the Spanish Workers' Statute, which prohibits discrimination in labor relations in particular, along with the Spanish Constitution and the Organic Law of Religious Freedom.

Employees are protected from being directly or indirectly discriminated during their employment on the grounds of their religion or beliefs. In this sense, employees shall not be discriminated when being considered for a job either.

At work, harassment can come from the company’s management, through a supervisor of the worker, or from his/her co-workers. The employer’s protection must extend to both types of harassment: (i) the employer must refrain from harassing its employees, and (ii) the employer must prevent and repress any harassment that is taking place between its workers. If the employer knows that an employee is harassing another due to their religion or convictions and does not take the necessary measures to prevent it, a sanction may be imposed on the company.

Apart from the company’s bylaws and possible preventive measures, one of the employer’s main instruments against employees who harass other employees is the exercise of its disciplinary authority, including disciplinary dismissal.

Regulatory provisions and employers’ acts

The Workers’ Statute provides that any statutory orders, collective bargaining agreements’ clauses, individual agreements and unilateral decisions taken by an employer that lead to direct or indirect discrimination in the employment regarding pay, working hours and other work conditions, on the basis of religion or convictions, will also be considered null and void. In these cases, when the principle of equal treatment is breached, the discriminated employee will be able to file a claim in the labor courts, requesting compensation for damages. In this line, if an employee asserts his/her rights to equal treatment, and the employer consequently dismisses the employee, this dismissal will be deemed null and void, and the employer will have to reinstate the employee immediately.

A judgment of the Labour Court of Palma de Mallorca, dated 6 February 2017, recently declared that a company’s prohibition of wearing an Islamic head scarf in the workplace violated the right to religious freedom and was discriminatory. The court understood that the company did not have any policy of religious neutrality and added that the company did not specify any harm that resulted from the employee’s use of the Islamic scarf.

Working hours and rest time

One of the biggest difficulties comes when the employee’s desire to take time off for religious purposes conflicts with the potential productivity and profitability of the company. There are two rights that must be balanced: on the one hand, it is the employer’s right to seek the best interests of the company; on the other hand, it is the employee’s right to practice their religion freely.

Even though the company is not obliged to adapt its organization and schedule to the religious practices of its workers, the principle of good faith requires the employer to make reasonable accommodations to ease the exercise of the fundamental rights of the worker. In this sense, even though Sundays, for example, have been agreed with the Holy See to be the official weekly rest day in Spain, the courts have stated that this is a tradition in the country and does not only have a religious nature. The Constitutional Court of Spain established on 28 March 2011 that, when a religion is integrated into the tradition of the society, it cannot be alleged that the authorities intend to support a determined religious conviction. The requirements of other religious beliefs may be met if there is agreement between the parties. Hence, in Spain, an employer is not obliged to grant Muslim workers, for example, permission to perform religious practices, such as leaving their job on Fridays for their collective prayer time (Ruling of the Superior Court of Justice of the Basque Country, Spain, 15 October 2013). However, the employee may request it and may reach an agreement with the employer to recover the working hours in another moment.

All in all, the conflicts that may arise in this regard should be faced considering the principle of proportionality and analyzing whether the religious requests of the employee are reasonable enough to perform accommodations. It is clear that issues involving religion in the workplace are complex, and the company should consider requesting legal advice in order to prevent any disputes.

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Religion in the Workplace – Introduction

The principle of non-discrimination is central to the United Nations (UN) and the EU Conventions on Human Rights. It is based upon the fundamental principle of equal value and rights of all people and as such forms the cornerstone of the integrated effort and work toward equality. The Swedish Discrimination Act (SFS 2008:567) adopted by the parliament is largely based upon three different EU Directives. The purpose of the Act is to combat discrimination and in other ways promote equal rights and opportunities regardless of sex, transgender identity or expression, ethnicity, religion or other belief, disability, sexual orientation or age. According to the Act, direct discrimination involves someone being disadvantaged by being treated worse than someone else in a comparable situation. Indirect discrimination is when a person is adversely affected by a provision, criterion or procedure which appears to be neutral but may in fact be particularly disadvantageous to said individual. The Swedish Discrimination Ombudsman (DO) is a government agency and supervising authority which works on behalf of the Swedish parliament and government to combat discrimination and to promote equal rights and opportunities as set out in Swedish law.

Recent discrimination case regarding religious belief

The Swedish Labour Court ruled in April 2017 against a midwife who refused to perform abortions due to her Christian beliefs.

A midwife in Sweden was refused employment at three different hospitals within the Jönköping County due to her clear statement during job interviews that she refused to carry out abortions due to her religious beliefs. Prior to applying for employment, she had also appeared in the media expressing her negative opinions regarding abortions. Once the midwife was refused employment, she argued that she had suffered from discrimination based on her religion and that the county had violated her freedom of opinion and expression. The midwife filed a lawsuit against the county arguing that the county had violated her rights according to articles 9, 10 and 14 in the European Convention of Human Rights, and that she had suffered from direct and indirect discrimination according to the Swedish Discrimination Act.

Legal framework

Article 9.1 of the convention stipulates that everyone has the right to freedom of thought, conscience and religion. This right includes freedom to manifest religion or belief, in worship, teaching, practice and observance.

Article 9.2 of the convention stipulates that the freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Article 10 of the convention stipulates that everyone has the right to freedom of expression. This right includes, for example, the freedom to hold opinions.

Article 14 of the convention stipulates a prohibition of discrimination on grounds of religious beliefs, implying that the enjoyment of the rights set out in the convention shall be secured.

Judgment from the Swedish Labour Court

According to the Swedish Labour Court, the midwife had not suffered from direct discrimination, as the decisions by the county not to hire her were not based on her religious beliefs but on the fact that she intended to refuse to perform certain work tasks. Therefore, the county had neither violated the convention nor the act.

Further, the midwife had not suffered from indirect discrimination. The Swedish Labour Court stated that the county had stipulated a requirement that appeared neutral, but in fact had an unfair effect on individuals with certain religious beliefs. However, this requirement was justified by a legitimate purpose: health care for women seeking an abortion, according to Swedish law. Therefore, the county had neither violated the convention nor the act.

Regarding the violation of Article 10 of the Convention (freedom of expression), the Swedish Labour Court stated that the county’s decision not to offer the midwife any positions had been based on her professional limitations and not on her opinions regarding abortions. The fact that the midwife’s opinion regarding abortions had reached the county via a public statement did not, per se, imply that the county had violated the midwife’s freedom of opinion and expression.

Appeal to the European Court of Human Rights

The midwife filed an appeal to the European Court of Human Rights in June 2017.
Religion in the workplace

While Christianity is the predominant religion of Switzerland, the religious landscape is very varied. These religions need to be taken into consideration by Swiss employers that have certain obligations toward their workers, whatever their religion.

Freedom of religion and conscience

Article 15 of the Swiss Federal Constitution (Cst) guarantees freedom of religion and conscience to all individuals. Each person has the right to choose their religion or philosophical convictions freely, and to profess them alone or in community with others. Moreover, no person may be discriminated against, in particular on grounds of religious convictions (Article 8 Cst). Religious freedom and the prohibition of discrimination on grounds of religious convictions need to be respected in the workplace by Swiss employers. This duty is expressed in various legal provisions.

Obligation to protect the personality of the employee

According to Article 328 of the Swiss Code of Obligations (CO), the employer has the obligation to acknowledge and safeguard the employee’s personality rights. To this extent, the employer shall notably make certain that the religious freedom of the employee is respected and that they are not subject to any discrimination on grounds of religious convictions, not only by the employer but also by other employees (e.g., words or remarks of a religious nature).

Should the employer contravene to this obligation, the employee could be entitled to claim damages (including moral tort) arising therefrom. This would also be subject to criminal complaint for racial discrimination.

Nonetheless, the employee is subject to a duty of loyalty as regards the legitimate interests of the employer. This implies that the employee shall respect contractual commitments and comply with the employer’s guidelines. Limiting the employee’s freedom of religion and conscience could therefore occur in light of this duty, in particular when the employer has adopted clear, proportionate and nondiscriminatory guidelines.

Unfair termination of an employment agreement

In application of Article 336 CO, notice of termination is unlawful where given because the employee exercises a constitutional right, such as freedom of religion and conscience, unless the exercise of this right breaches an obligation arising from the employment relationship, or substantially impairs cooperation within the business. Therefore, the freedom of religion and conscience could, in theory, be limited by an obligation to be fulfilled by the employee or a preponderant interest of the employer.

Due to federal and cantonal constitutional principles, such as religious neutrality in public schools, several cases concerning the public sector and its officials have been brought before the courts. Unlike the public sector, very little case law exists in this matter in the private sector.

However, in a recent decision rendered in September 2016, the cantonal court of the canton of Bern deemed that a dismissal of an employee working in a laundry, who was wearing a veil, was unlawful, despite the security and hygiene arguments invoked by the employer.

Given that this decision was rendered at a cantonal level, it will not be applicable as precedent in Switzerland but may inspire other cantonal jurisdictions.

Holidays on religious grounds

In principle, Sunday is considered as the rest day in Switzerland. In application of the Swiss federal labor law, the cantons have the right to choose eight holidays in addition to the Swiss national day.

However, in addition to these nine holidays, workers are entitled to require special holidays on religious grounds. This right is applicable to any religion, religious community or sect.

The employer has to be informed of it at least three days in advance and is also entitled to require compensation in time from the employee for the time lost during their absence. Unless otherwise agreed upon between the parties, the employee is not entitled to any salary for such absence.

Moreover, the employer shall also grant the employee the necessary time in order to assist in a religious office.

A refusal by the employer should only be accepted under exceptional circumstances and be justified by superior interests to the freedom of religion of the employee. This should most particularly be observed where an employee is a believer or an observant.
A glance at religious discrimination in the workplace

According to the Vietnamese Ministry of Foreign Affairs, there are six major religions in Vietnam, namely Buddhism, Catholicism, Protestantism, Islam, Caodaism and Hoa Hao Buddhism. Although Vietnam is a multireligious nation, officially it is an atheist state with no national religion.

The right to freedom of belief and religion is protected in Article 24 of the Constitution of Vietnam. It provides that:

1. Everyone has the right to freedom of belief and religion, and may practice or not practice any religion.
2. All religions are equal before the law.
3. The state shall respect and protect the right to freedom of belief and religion.
4. No one has the right to infringe on the freedom of faith and religion or to take advantage of faith or religion to violate the law.

When it comes to religion in the workplace, there is a lack of clear legislative guidance for employees under Vietnamese law.

The Labour Code No. 10/2012/QH13 governs employment law in Vietnam and extends the constitutional right to religion by strictly prohibiting discrimination on the basis of religion. However, the Labour Code does not provide guidance as to what constitutes an act of discrimination on the basis of religion in the workplace and what protections employees have from discrimination. Without clear guidance, it is very difficult for employees to understand and assert their right to practice their religion in the workplace.

When an employee believes there are grounds to suggest that an employer has breached the Labour Code, the employee can make a complaint to the employer or the labor inspector to protect their rights. Within a time limit of seven days from the date of receipt of a complaint, the person resolving the complaint must accept jurisdiction and provide written notification of such acceptance to the complainant.

The employee must take the following steps when making a complaint:

1. The employee must lodge a complaint directly with the employer within 180 days from the date of the grievance, and the employer must settle the complaint within 30 to 45 days from the date of acceptance of the complaint.
2. If the employee does not agree the settlement with the employer, or the complaint has not been settled within the stipulated time, the employee can lodge a complaint with the chief inspector of the Department of Labour – Invalids and Social Affairs (DOLISA).

3. This must be completed within 30 days from the time of the settlement or the date the employee receives the first decision on the complaint settlement. The authority must settle a complaint within 45 to 60 days from the date of acceptance of the grievance.
4. If the employee does not agree with the decision of DOLISA, the employee has the right to institute court proceedings.

Individual employers, recruiters and management may be subject to monetary fines from VND5,000,000 to VND10,000,000 for an act of discrimination on the basis of religion. When the offender is an organization or corporate body, the fine is double the amount specified in the legislation.

Recently, the Law on Religion and Folk Belief No. 02/2016/QH14 was promulgated on 18 November 2016 and takes effect on 1 January 2018, further expanding constitutional rights to religion in Vietnam.
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