

Making a request for leave linked to Religious Observance

Every year the department is approached with enquiries from our members who feel aggrieved that requests for leave linked to religious holidays have been rejected by their employers.

Our members come from a very diverse set of backgrounds and effectively they reflect the communities where we live and the society at large. Many religions or beliefs have specific days of cultural or religious significance and the CWU believe that as long as our members give good notice on their requests for leave every reasonable effort should be made to accommodate these requests. Time off for such occasions should be allowed whenever reasonably practicable and should be taken from the member's leave entitlement in the normal manner or as a special leave request.

Religious holy days are based on different calendars, including the lunar calendar which is determined by phases of the moon. Important dates can fall within a range of days and sometimes the exact date is not being known until very close to the time. Where dates fall within high annual leave periods it maybe more difficult getting leave granted. Employers will cite operational requirements and maintaining a service but they should be pushed to ensure ALL reasonable requests are explored fully - in these situations the maximum visibility possible should be given to the employer.

What does the law say?

Employment Equality (Religion or Belief) Regulations 2003 were first introduced in December 2003 making it unlawful for employers to discriminate directly or indirectly when dealing with requests for time off for religious observance. This law also covers people who do not have a belief.

The original legislation has now been superseded by the Equality Act 2010. Whilst there is no express right to take time off, the law is clearly designed to attempt to accommodate peoples' religious and cultural beliefs and employers will be at risk of direct or indirect discrimination if leave linked to an employee's religion is refused and cannot be justified. For example rigid working patterns would be likely to result in indirect discrimination unless the refusal can be objectively justified. i.e. the employer will need to show that any requirement to work certain hours is justified as a proportionate means of achieving a legitimate aim. The employer would also need to demonstrate that it has achieved a reasonable balance in accommodating requests, versus disallowing unreasonable requests and that the process and decision making is fair and transparent demonstrating that one group of people are not being favoured over another.

Adopting a practical approach

- The Equality Department recommends that discussions with employees take place early in the year to help to determine the range of different religious practices in any operational unit – this will enable effective planning to take place. Our members should be encouraged to make early applications for such leave. It will also be worth making the employer aware that some religious festivals are subject to the phasing of the moon and so may not be known until within 4 weeks of the day. However, there should be sufficient information on the web to give members a reasonably accurate indication as to when a festival will fall.
- If a unit has a maximum number of employees that can be allowed away at any one time you may need to revisit this to secure an amendment to this during a period relating to a religious festival, where requests are likely to increase.
- If shortfalls exist seek flexible methods to resolve these. Custom and practice has seen early calls for volunteers to work overtime, or in some cases casuals have also been hired to allow people to have leave for religious festivals. The latter should be managed very carefully for obvious reasons and where possible overtime is a preferred facilitator. Split shifts or swaps should also be considered.
- It is good practice to encourage the employer to adopt a fully transparent process for determining who should be allowed off.
- In some circumstances our members can in theory apply for special leave, if annual leave channels are exhausted. This is in the spirit of exploring all possible options.
- Special leave can be unpaid or worked back at another point.
- Where our members make a request, the request and outcome must be recorded and a written response provided by the employer to the member.
- If a system of priority is in place due to a genuine incapability to give everyone time off, which can be justified, any member not being granted leave in one year should be given priority in the next year.
- If a member feels they have been unreasonably overlooked in a request to have leave linked to their religious beliefs or culture, then in the first instance this should be challenged with the line manager who has refused permission. They should be made aware of their employment rights but in the first instance a grievance should be considered by the individual.