



the **POWER** of **ONE**

A Guide to Sharing Your Faith in the Workplace for Teachers and Administrators in Public Schools

The First Amendment and Title VII of the Civil Rights Act of 1964 provide protection for educators seeking to practice their faith without undue interference from their employers. As an employee, a teacher or administrator enjoys protection from religious harassment by other employees or their supervisors, the ability to practice their faith without retribution and the right to request their employer to make a reasonable accommodation of their religious beliefs. A teacher or administrator does not lose their right to share their faith with their colleagues by virtue of employment in a school. No law requires public school employees to bury their religious faith while at work. Teachers and administrators alike may freely share their faith with their co-workers without fear of reprisal.

I. You Have A Right to Share Your Faith With Your Co-Workers During the Workday.

The Supreme Court of the United States quite clearly articulated that “First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate. This has been the unmistakable holding of this Court for almost 50 years.”¹

School administrators cannot prohibit religious discussions among teachers occurring outside of the classroom setting and not in the presence of students.² Teacher communications may only be suppressed when “the expression or its method of exercise materially and substantially interferes with the activities or discipline of the school.”³ Policies that prohibit all speech on a given topic are unconstitutional, even if they are rarely or never enforced.⁴ Teachers and administrators are thus free to fully communicate their beliefs to their colleagues much in the same way teachers are allowed to discuss football games, theater productions, movies, and the family vacation.

However, if a co-worker objects or otherwise indicates

¹ Tinker v. Des Moines Independent School District, 393 U.S. 503, 506 (1969).

² Texas State Teachers Association v. Garland Independent School District, 777 F.2d 1046, 1053 (5th Cir. 1985), affirmed, 479 U.S. 801.

³ Shanley v. Northeast Independent School District, 462 F.2d 960, 969 (5th Cir. 1972); see also Tinker, 393 U.S. at 505.

⁴ Texas State Teachers Association, 777 F.2d at 1055.

that speech directed at them is unwanted, you have an obligation to honor that person's wishes and not engage in harassment of that person.

II. Your Employer Cannot Discriminate Against You For Practicing Your Religion.

The Civil Rights Act of 1964 provides that "it shall be an unlawful employment practice for an employer...to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex or national origin..."⁵

Under this law, your employer cannot take any negative action against you because you are religious. Specifically, if other teachers are allowed to discuss various topics in the employee-only areas of the school, a school official cannot reprimand you for speaking about your faith. If teachers are allowed to wear jewelry, then you have a right to wear a cross to school without being required to hide it.⁶

III. Your Employer Must Accommodate Your Religious Faith.

Additionally, Title VII of the Civil Rights Act requires employers to accommodate their employees' religious practices. In order to fall under the protection of Title VII, an employee must:

⁵ Civil Rights Act of 1964, § 703 (a)(1), 42 U.S.C. § 2000e-2(a)(1).

⁶ Nichol v. Arin Intermediate Unit 28, 268 F.Supp.2d 536 (W.D. Penn. 2003).

(1) hold a sincerely held religious belief that conflicts with an employment requirement; (2) inform the employer about the conflict; and (3) be discharged, disciplined or subjected to discriminatory treatment for failure to comply with the conflicting employment requirement.⁷

If your religious beliefs encourage you to share your faith with those around you, you have the right to appropriately share your faith with your co-workers free from discrimination by your employer. If your employer has a policy that prohibits such communication, you should inform your employer of your sincerely held religious belief that conflicts with the policy prohibiting religious speech. An employer must take steps to accommodate your religious needs.⁸ A public school cannot issue blanket rules attempting to push religion out of the workplace, and must allow religious speech as long as it is not harassing or intimidating.

Your employer is not required to accommodate your religious needs if doing so would be an undue hardship.⁹ Undue hardship must be more than a mere inconvenience. Because every situation is unique, it is important to contact the Liberty Legal Institute regarding the type of accommodation you should expect from your employer. Schools may not attempt to hide behind "neutral" rules. Employers must actively seek to accommodate an employee's religious needs.¹⁰

⁷ Smith v. Pyro Mining, 827 F.2d 1081, 1085 (6th Cir. 1987); Turpen v. Missouri-Kansas-Texas Railroad Co., 736 F.2d 1022, 1026 (5th Cir. 1984); Heller v. EBB Auto Co., 8 F.3d 1433, 1438 (9th Cir. 1993).

⁸ Civil Rights Act of 1964, § 701(j), 42 U.S.C. § 2000e(j).

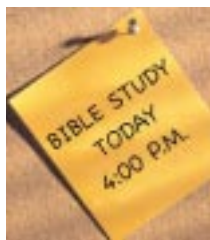
⁹ Trans World Airlines v. Hardison, 432 U.S. 63, 73-74 (1977); 29 C.F.R. § 1605.2(c).

¹⁰ Riley v. Bendix Corp., 464 F.2d 1113, 1115(5th Cir. 1972).



IV. Depending On Workplace Restrictions, You Have A Right To Post Religious Material On Work Bulletin Boards, Stuff Co-workers' Mailboxes And Use Workplace Email To Share Your Faith.

If the school allows outside groups, other teachers or individuals to post private messages on work bulletin boards, in co-workers' mailboxes or send private email messages, then the school has opened the door for you to use these means to spread your faith. If your school allows teachers or outside groups to place invitations to events or social gatherings on the bulletin board or in mailboxes, then you may place invitations to Bible clubs and churches in those same locations. If your school allows teachers to send private communications to each other using school provided email, then you may share your faith using email. In general, whenever a school allows teachers to communicate on any number of topics, then a school may not prohibit teachers from communicating ideas from a religious point of view.¹¹



V. You Have The Right To Be Free Of Harassment From Co-workers And Supervisors Because Of Your Religious Beliefs.

Not only must your employer accommodate your religious needs, your employer must also take steps to protect you from harassment for your religious beliefs and practices. First, just

¹¹ Tucker v. California Dept. of Ed., 97 F.3d 1204 (9th Cir. 1996).

as discussed before, your employer must take steps to accommodate your religious needs, including protecting you from harassment by co-workers and supervisors because of your religion. Second, your employer must also protect you from a hostile work environment. A hostile work environment is one where you suffer repeated intentional discrimination that negatively impacts you and your employer either encourages this behavior or does not take the necessary steps to stop it.¹²

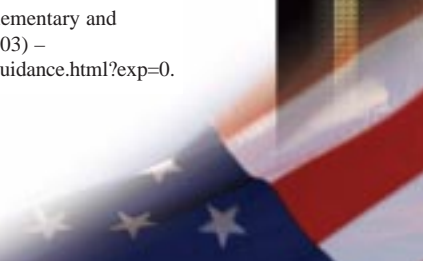
VI. You Have A Right To Hold Employee Prayer Groups (Bible Studies) On Campus.

If the school allows teachers to meet during non-instructional time in school facilities for meetings or conversation on any topic, then the school is prohibited from barring the use of school facilities for employee-only Bible studies during non-instructional time. According to the Department of Education, “[b]efore school or during lunch, for example, teachers may meet with other teachers for prayer or Bible study to the same extent that they may engage in other conversation or nonreligious activity.”¹³ Likewise, if the school allows outside groups or



¹² To make out a case for a religiously hostile work environment, “a plaintiff must demonstrate five elements: (1) the employee suffered intentional discrimination because of religion; (2) the discrimination was pervasive and regular; (3) the discrimination detrimentally affected the plaintiff; (4) the discrimination would detrimentally affect a reasonable person of the same religion in that position; and (5) the existence of respondeat superior liability.” *Abramson v. William Paterson College*, 260 F.3d 265, 276-77 (3rd Cir. 2001).

¹³ *Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools*, U.S. Department of Education (Feb. 7, 2003) – http://www.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html?exp=0.



individuals to use school facilities for meetings, then the school must give teachers the same access to school facilities for Bible study.¹⁴

VII. You Have A Right To Participate In Baccalaureate Ceremonies.

Educators have the right to attend and participate in their personal capacities in privately sponsored baccalaureate ceremonies. The Department of Education issued specific guidelines making this clear to all school districts in the United States.¹⁵

Conclusion

Your constitutional rights are important. Your rights, however, do not exist unless you exercise them. It is important to remember two things. First, you do not lose your constitutional rights to free exercise of religion and freedom of speech simply because you are an educator in a public school. You have the right to share your faith with other educators. Second, if you believe you are not allowed to fully exercise the constitutional rights discussed in this brochure or you have any questions, you should contact the attorneys of the Liberty Legal Institute at 972-423-3131.¹⁶

¹⁴ Lamb's Chapel v. Center Moriches Union Free Sch. Dist., 508 U.S. 384 (1993); Good News Club v. Milford Cent. Sch. Dist., 533 U.S. 98 (2001).

¹⁵ Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools, U.S. Department of Education (Feb. 7, 2003) – http://www.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html?exp=0.

¹⁶ The information contained herein is not intended to render legal advice. Factual and legal issues may arise that must be considered in each circumstance. If legal advice is necessary, the services of a competent attorney should be sought.



Your Rights
as an Educator



LABORERS IN FIELDS of EDUCATION (LIFE)
P.O. Box 1453
Los Fresnos, Texas 78566
(956)233-4512
LIFE4educators@aol.com
www.life4educators.org

LIBERTY LEGAL INSTITUTE

Liberty Legal Institute
903 East 18th St. Suite 230
Plano, Texas 75074
(972)423-3131
libertylegal@libertylegal.org
www.libertylegal.org

the **POWER**
of **ONE**

**Your Rights
as an Educator**

The information contained herein is not intended to render legal advice. Factual and legal issues may arise that must be considered in each circumstance. If legal advice is necessary, the services of a competent attorney should be sought.

Copyright © 2004 Liberty Legal Institute. All rights reserved. No part of this publication may be reproduced for commercial purposes, stored in a retrieval system, or transmitted in any form or by any means-electronic, mechanical, photocopy, recording, or any other-except for brief quotations in printed reviews, without the prior permission of the publisher.