

THE EMPLOYER'S GUIDE TO JUDAISM



THE BOARD
OF DEPUTIES OF BRITISH JEWS
PROUD TO REPRESENT THE COMMUNITY



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1. INTRODUCTION

Practising Jews work in all areas of industry, trade and professions, and are able to operate within a normal work environment while still fully observing their Judaism.

However, some Jewish practices may require some additional thought on the part of employers and employees and this guide is intended to explain Jewish law and offer support on how to overcome any possible hurdles.

For the fully observant Jew, Jewish law or *Halacha* provides a central model for how to lead an affirmed spiritual life. This means that it is not possible for the observant Jew simply to waive, for example, observance of the Sabbath. However, in most cases reasonable adjustments will mean that there is no conflict between being a fully observant Jew and a fully contributing member of the workforce.

Many jobs require set working hours and this can cause a clash with the Sabbath and festivals. However, current moves towards flexible working patterns can benefit almost all Jewish employees in adjusting their working hours on a Friday and compensate during the rest of the week, ensuring no loss to either the employer or the employee.

In addition, when life is at risk, Jewish law provides that most other laws must be disregarded in order to save life. Those working in the health and emergency services will therefore sometimes be allowed to work on Sabbath and Festivals or make other concessions, but they may wish to consult a Rabbi to confirm the details of this, and they may ask for assistance with tasks not directly contributing to saving life, such as taking notes.

For the few cases where reconciliation is impossible, this guide seeks to signpost how employers can determine or pre-empt this.

Of course, not all Jews practice the same level of religious observance. There may be Jewish employees or employers who will observe all, some, or none of the practices outlined. If there are several Jewish employees, each of their requests should be dealt with on a case by case basis, as what is suitable for one individual may not be suitable for another. If you have any questions about how to deal with a workplace issue related to Judaism, or have any other queries about Judaism, please get in contact with the Board of Deputies of British Jews, the national representative body of the Jewish community, who will work with you to achieve a resolution.

We have set out in this pamphlet our view of the present law and good practice in relation to employment practices in the area of religious observance. The Board of Deputies cannot accept any liability for actions you take in reliance on this document.

2. JEWISH PRACTICES

Sabbath and Festivals

The Sabbath (*'Shabbat'*) is the Jewish day of rest. It starts on Friday afternoon, about one hour before dusk and lasts for approximately 25 hours, until after dark the following day. As daylight hours vary, the beginning and end times of the Sabbath also vary throughout the year.

Jewish law requires Jews to refrain from various acts of 'work' on the Sabbath, in commemoration of God's cessation of work on the seventh day of creation, as described in the Book of Genesis. The prohibited acts of 'work' include travelling (other than by foot), writing, carrying, switching on and off electricity, using a telephone, and any transactions of a commercial nature including buying and selling.

As a result, practising Jews must leave work in sufficient time to arrive home by the onset of the Sabbath. At its earliest, the Sabbath begins in midwinter at around 3:30pm throughout the UK, but this does vary depending on date and exact location. An employee ought to be able to provide a calendar of times for their employer if necessary, and various websites also give a comprehensive guide to timings.

Like the Sabbath, Jewish festivals also begin before dusk on the previous day, sometimes requiring people to leave work early on the day before a festival in order to reach home on time. As the Jewish calendar is a lunar calendar, the dates of festivals vary from year to year, and can fall on any day of the week. It is however unusual for all of them to fall on weekdays in any single year. Passover and Pentecost sometimes coincide with Bank Holidays. The Board of Deputies keeps a list of festival dates for upcoming years on its website, and can always be contacted for further information where necessary.

The laws governing 'work' on festivals are for these purposes almost indistinguishable from those concerning the Sabbath, and the same prohibitions and restrictions apply.

In addition to Sabbath, Jews from orthodox communities observe 13 festival days, while Jews from progressive communities observe 7 days:

Distribution of Jewish Festivals around the calendar year:

Festival	Time of Year	Number of Festival Days
Passover (Pesach)	March / April	Two sets of two days separated by four semi-festive days (two sets of one day for Progressive communities)
Pentecost (Shavuot)	May / June	Two days (one day for Progressive communities)
New Year (Rosh Hashannah)	September / October	Two days (one day for Progressive communities)
The Day of Atonement (Yom Kippur)	September / October	One day
Tabernacles (Succot)	September / October	Two sets of two days separated by five semi-festive days (two sets of one day for Progressive communities)

Clothing and Modesty

Some observant Jewish men and women may have specific requirements regarding their dress. Some Jewish men cover their heads at all times with skull cap (also known as a 'yarmulka' 'kappel' or 'kippah'). Some observant Jewish women will wish to dress modestly, which may include not wearing trousers, short skirts or short sleeves. Some married Jewish women will also cover their hair, with a scarf, hat or wig. If an employer prevents a Jew from covering his head in accordance with this practice without good reason, this could be in breach of the 2010 Equalities Act. If an employer wanted to impose a restrictive dress code, they would have to justify their policies as being necessary, for example if there is a clear health and safety implication. An employer should look at ways of being sufficiently sensitive and flexible to accommodate the needs of the employee wherever possible. Additionally, some observant Jews will not want to be in a state of undress or have physical contact with members of the opposite sex. For some strictly orthodox individuals only, this may also extend to shaking hands. If in doubt, it might be better to wait to see if the individual offers their hand before offering yours. If you are unsure, it is also absolutely fine to ask.

Food

Jews are required to eat only Kosher food. The laws governing production of Kosher food are complex, and involve (but are not limited to) restrictions on what types of meat and fish can be eaten, which combinations of foods may be eaten together, and how foods are prepared. Jews who observe the dietary laws may require all food to be prepared under supervision in order to be satisfied that no prohibited ingredients have been used, and consequently may refuse even foods labelled 'vegetarian'. They may also wish to store and heat food separately from food that is not Kosher. There are several companies that will provide Kosher food for a special event if it is ordered in advance, if this is necessary. As detailed above, there are many different levels of religious observance, and some Jews may eat vegetarian or vegan foods. The employee's individual requirements should be discussed with them on a personal basis. None of this need conflict with any reasonable requirements of an employer. A prudent Jewish employee will check in advance of any business lunches, dinners or other such occasions whether arrangements can be made in order to accommodate her/his religious needs. Please note that caterers without Kosher supervision will not be able to make their own 'Kosher' foods. 'Kosher-style' foods made without proper Kosher supervision will not be Kosher, and Halal food cannot be substituted for Kosher food as some of the rules are different.

Prayer

Observant Jews pray three times a day, in the morning (usually before normal working hours), in the afternoon (often during lunchtime, or early evening in the summer months), and in the evening (after nightfall). An employer is not obligated to offer a quiet room for use by employees, but designating a room for prayer is an example of good practice. If an employee requests access to a quiet place for prayer in the working day, the employer may be acting in a discriminatory way if this request is refused when there is a room available and the request will not disrupt other employees. Prayer can take place during an employee's contracted lunch break, but there may not be any obligation for employers to release staff outside of their normal rest breaks. It is not clear cut about taking additional breaks and, if for example, other employees are allowed smoking breaks, a refusal for a 10 minute break at work could amount of direct discrimination because of religion or belief. Employees may therefore be asked to make up the time.

Some individuals, in particular observant men, may wish to attend prayers with a quorum (ten adult men according to the Orthodox tradition). This is especially true if the individual is in a period of mourning (see '*Bereavement*', below), where specific mourner's prayers can only be recited when praying with a quorum. In practice this may mean that they attend a synagogue in the morning and evening, before and after the working day, and if a quorum is running in the area, they may go out to services around lunchtime. If an employee is not working standard working hours, then the timings of the other services may need to be taken into consideration.

Bereavement

When a Jew dies, the funeral must take place as soon as possible following the death, sometimes even on the actual day of the death. Jewish employees may therefore need to attend a funeral at short notice. Delays to burial do sometimes occur (where, for example, an autopsy is required), but these are a time of tremendous trauma for the family of the deceased. After the funeral, the immediate family of the deceased (i.e. parents, children, siblings and spouses) mourn for seven days. This is known as *'the Shiva'*, meaning 'seven' in Hebrew. During the Shiva the immediate family stay at home, saying prayers and receiving condolences from well-wishers and often not working. A reasonable employer will treat attendance at a funeral and the Shiva as compassionate leave.

Colleagues, including non-Jewish colleagues, who wish to offer condolences may also wish to attend the funeral or 'Shiva', which is entirely appropriate. It is recommended that men and women dress modestly – covering knees and elbows – and that men cover their heads with a skull-cap.

Employers are obliged to permit employees to take reasonable time off, unpaid, to care for dependants, which covers time off to look after sick dependants as well as taking time off in consequence of the death of a dependant. 'Dependant' means a child, parent, spouse, partner of the employee, member of the employee's household, or a person for whom the employee has a primary care responsibility. The employee should give the employer some idea of how long the absence is likely to be or before the commencement of the absence. Time off for a funeral and Shiva can be easily accommodated under these rules.

During the 30 days following a death, some men do not shave or cut their hair, in accordance with Jewish law, and many observant Jews will not wish to listen to music or attend social events. Prayers for the deceased are recited for a year following the death of a parent, and for 30 days following the death of a child, sibling or spouse. During this time an employee may wish to arrange their working hours to accommodate going to communal prayers (see *'prayer'*, above), which occur in the morning, afternoon and evening. In most situations, an employee will be able to arrange to attend these prayers with little or no inconvenience to the employer. However a good employer will exercise discretion and consideration in allowing an employee time at the very start or end of the working day, or during their lunch break, to attend prayers.

3. UK LAW

The law affords various types of aid to Jews who wish to adhere to their beliefs without suffering discrimination because of their ethnicity or religion.

On 1 October 2010, the Equality Act 2010 came into force and replaced all existing equality legislation. Before the Act, the statutory rules on religion or belief discrimination were contained in the Employment Equality (Religion or Belief) Regulations 2003. The Equality Act 2010 now provides a single and consolidated source of discrimination law.

Religion and belief is one of the nine 'protected characteristics'¹ covered by the Equality Act prohibiting direct discrimination, indirect discrimination and harassment in the workplace in respect of religion and religious beliefs. The Act also prohibits victimisation in the workplace against employees who have brought proceedings under the Equality Act or intend to do so (*see below*). According to section 10(1), Equality Act, religion means 'any religion' with the explanatory notes listing Judaism as part of the definition.

Under the Equality Act 2010, the following acts are outlawed in the employment field:

- **Direct Discrimination.** Direct religion or belief discrimination occurs where, because of a religion or belief, a person (A) treats another (B) less favourably than A treats or would treat others (section 13(1) Equality Act 2010). For direct religion or belief discrimination to occur, it is essential to show that the less favourable treatment was 'because of' their religion or belief.

Direct discrimination cannot be justified, but an employer might be able to rely on an exception, perhaps by pointing to an occupational requirement to avoid liability.

- **Indirect Discrimination.** Indirect discrimination occurs where an employer applies a provision, criterion or practice to the employee that puts (or would put) the employee (a person of a particular religion or belief) at a disadvantage when compared to other persons. There will be no indirect discrimination if the employer's actions are objectively justified.

To establish justification, an employer will need to show that there is a legitimate aim (a real business need) and that the provision, criteria or practice is proportionate to that aim (that is, it is reasonably necessary in order to achieve that aim, and there are no less discriminatory means available).

For example, if an employer introduces a new rota at work that requires employees to work on Saturdays, this could amount to indirect discrimination if this could not be objectively justified.

- **Harassment.** Religion or belief harassment occurs where an employer engages in unwanted conduct related to religion or belief and the conduct has the purpose or effect of violating an employee's dignity, or creating an intimidating, hostile, degrading,

humiliating or offensive environment to the employee. Harassment need not always be targeted at an individual, but can consist of a general culture that, for example, appears to tolerate the telling of jokes deriding a particular religion.

- **Victimisation.** Victimisation occurs where an employer subjects an employee to a detriment because the employee has done, intends to, or is suspected of bringing proceedings under the Equality Act (for example making a complaint or taking legal action as a result of religious discrimination).

If an employer unlawfully discriminates against or harasses a job applicant or employee, they will be liable for their actions. Furthermore, anything done by one employee to another in the course of their employment is treated as having also been done by the employer, regardless of whether the employee's acts were done with the employer's knowledge or not.

However, there is a defence available to an employer if it can show that it took all reasonable steps to prevent an employee from committing a discriminatory act or from doing anything of that description.

Every employer should have a procedure to deal with employees' problems and complaints. In many work places, it is called 'the grievance procedure'. If one has a problem at work, it is important to follow a workplace's grievance procedure from the beginning (if possible). If a particular problem is not dealt with properly, an employee or employer may decide to take it to an employment tribunal.

Religious discrimination can involve infringement of the Human Rights Act 1998 (HRA) and/or the European Convention on Human Rights (ECHR) which was incorporated into UK law through the HRA 1998.

Article 9 of the ECHR provides unqualified protection for freedom of thought, conscience and religion. It also provides protection for the right to express or manifest religion or belief in worship, teaching, practice and observance. However, because manifestation by one person of his or her belief may have an impact on others, these rights are qualified and can be restricted in certain circumstances.

The case of *Eweida and others v United Kingdom [2013] European Court of Human Rights* was an important turning point in Article 9 jurisprudence, with the Court recognising that an individual's desire to express their religious belief *publicly*, beyond the context of church and home, could outweigh the interests of an employer.

¹ The nine protected characteristics under the Equality Act 2010 are Age, Disability, Gender Reassignment, Marriage and Civil Partnership, Pregnancy and Maternity, Race, Religion and Belief, Sex and Sexual Orientation.

The HRA 1998 imposes direct obligation on public authorities to ensure that Convention rights are protected but also provides employees of private bodies with some protection. This is because courts and employment tribunals must interpret UK legislation wherever possible, in a manner consistent with Convention rights.

4. ADDITIONAL HUMAN RESOURCES GUIDANCE

The Recruitment Process

It is imperative that discrimination does not occur at any point during the employment process, including during the interview before employment, or during the notice period at the end of employment. Employers must not discriminate against a Jewish candidate on the basis of their religion or religious requirements. Employers should not ask personal questions, including those relating to religious affiliation, unless they are directly relevant to the nature of the job. In order to mitigate future conflict, it is wise for employers to make clear to all applicants the duties and responsibilities expected, and what hours and days are required.

Applicants should consequently be able to assess if the job will conflict in any way with their religious requirements, and should be able to raise any potential issues at interview or at a timely juncture in the application process in order to discuss how these could best be resolved. An employer is not obliged to employ people whose religious requirements make it impossible for them to undertake crucial parts of the job, for example if the needs of a business genuinely require that certain tasks be performed on a Saturday. However this must be explained at interview stage.

Likewise, applicants ought to raise all relevant issues at the interview stage so as to avoid later misunderstanding. An employee should not be expected to enter into a contract of employment containing terms which are inconsistent with their religious observance. Prior to signing any contract or terms of employment, the terms ought to be sufficiently tailored to take into account any special requirements.

If an individual feels that they have been treated unfairly or not offered a job or promotion because of their religious requirements, they should seek specialist advice.

The Employee already in Employment

An employee already in employment who chooses to become more religiously observant or to convert to Judaism will have new requirements that were not needed previously. An employer ought to take the necessary measures to facilitate any new religious

requirements wherever possible, so as to avoid discrimination. We recommend that the employer and employee should work together to see whether it is reasonable or practical to adapt the current job requirements to meet the employee's new religious requirements. The Board of Deputies is available to assist in such cases where this would be necessary.

Conflict Resolution

In general, it is always preferable to resolve an issue or conflict in an agreeable manner, with both employer and employee making reasonable adjustments to ensure that a mutually satisfactory solution can be reached. Any agreement should be confirmed in writing, so as to avoid future confusion if there are changes in management.

When this is not possible, external bodies may be able to assist in amicably resolving a dispute. The Board of Deputies is available to explain and speak with employers about the needs of their Jewish employees, and look into suggestions based on previous experiences of best practice that may be suitable in each individual situation. If the employee is a member of a trade union, it may be helpful to involve his or her union representative in relevant discussions. The Equality and Human Rights Commission (EHRC) can be contacted for guidance on how to deal with workplace disputes in line with the latest equalities legislation, and the Advisory, Conciliation and Arbitration Service (ACAS) is able to assist in resolving workplace disputes and can investigate and support individual cases.

By far the most common workplace dispute concerning religious observance for Jewish employees concerns the prohibition on working on the Sabbath and festivals, and so we devote a section to discuss that specific issue here.

Over the course of a year, for someone working a Monday-Friday standard working week, Sabbath observance requires leaving work early on a Friday afternoon by varying degrees throughout the year. For employees needing to complete a set number of hours in a week, this can easily be made up working earlier or later on other days of the week to compensate for the extra time. Many other issues such as significant deadlines on Fridays can be avoided by an employee's careful planning of their workload. As long as agreements are made when the deadline is first set, then it is likely that a conflict on Friday afternoon can be avoided. Although there is nothing in the Equality Act 2010 that specifically requires an employer to provide time off on a Friday, the employer does have to be careful in case a policy to refuse the time off might amount to indirect discrimination (see *The Law: Indirect Discrimination* above). The prospective employer and employee should both try to establish the extent to which it is reasonably practicable to vary existing working practices to cater for Sabbath and festival observance. In some limited instances it will be totally impractical but in most others it will cause little or no disruption. Often the position

would be no different to situations where an employee is occupied with a more important matter, is absent on sick leave, is on holiday, or is unavailable for some other reason. People normally understand that others cannot always be available at a moment's notice. The experience of other people can be invaluable in making this assessment.

Jewish festivals can also normally be easily accommodated. Festivals can be taken as annual or unpaid leave and consequently cause little disruption as they are taken in short bursts rather than long blocks. They should easily fit into an employee's annual leave requirement as the Working Time Regulations 1998 have now made it mandatory for all workers to have 28 days paid holiday per year, although the 28 days may include bank and statutory holidays. Employees should try to give as much notice as possible of when holiday leave is required, so as to limit clashes with other staff members. In some kinds of employment, a Jewish employee may be able to make up hours on Sundays or may be prepared to be available during colleagues' holiday periods, including over Bank Holidays. Employers who have to cover a seven day week may therefore find this a positive advantage.

Managing time off for religious observance, in particular the festivals, can cause a problem in professions where it is expected that annual leave will be taken at certain periods of the year, most notably in schools and universities. There are practical solutions that can be used in solving this, including running extracurricular activities or trips to compensate for the time lost, scheduling lessons or lectures in advance for other days of the week when this is possible, or if necessary, allocating festival days as unpaid leave. Discussing a solution as far in advance as possible will help with achieving a satisfactory outcome, and this should be discussed on a case by case basis.

In the vast majority of cases, Sabbath and festival observance should not represent any significant inhibition to employees carrying out their jobs to their fullest potential. In the event that the issue does arise during the process of negotiations for employment or for people already in employment, we recommend the following:

1. Clarify the nature of the issue prior to agreeing the terms of employment where possible.
2. Discuss the manner in which the work to be carried out can be varied, if necessary to comply with the requirements of Sabbath and festival observance. These discussions should include someone other than the individual's manager, for example human resources personnel where possible. Any agreements should be formalised and put into writing to protect against future disputes emerging with a change of management.

5. ANTISEMITIC DISCRIMINATION IN THE WORKPLACE

Antisemitic discrimination can occur in the workplace in several contexts, including in the recruitment or promotion processes, in interactions between colleagues and from external sources, especially in roles involving interaction with customers. Whilst these instances cannot always be avoided completely, it is good practice for employers to supply adequate training to their staff on Judaism and antisemitism in order to limit the likelihood of such events occurring, and to also have in place effective grievance procedures to deal with issues should they arise. There is often a noticeable rise in recorded antisemitic incidents when tensions rise between Israel and its neighbours. Employers should be additionally alert for antisemitism targeted at Jewish employees during times of increased tension.

It goes without saying that an individual ought not to be disadvantaged in being considered for a position or in their professional development merely on the basis of their religion, and if this is the case, then a prompt and fair investigation should follow. Likewise, antisemitism should not be tolerated in interactions between staff and customers.

If you are concerned about an antisemitic incident occurring in your workplace, the incident should be reported to the police on 999 (emergency) or 101 (non-emergency), and to the Community Security Trust (CST), the body responsible for monitoring antisemitism in the UK who have Third Party reporting status, on 020 8457 9999. The CST is also able to give further advice on handling antisemitic incidents, and can provide training where appropriate.

6. USEFUL CONTACTS

If further information or advice is required, you may wish to contact:

- The Board of Deputies of British Jews, on 020 7543 5400 or at www.bod.org.uk;
- For issues in Scotland contact The Scottish Council of Jewish Communities (SCoJeC) on 0141 638 6411 or at scojec@scojec.org;
- The Equality and Human Rights Commission (EHRC) provide guidance on how to deal with workplace disputes, in line with the latest equalities legislation, and can be contacted via www.equalityhumanrights.com;
- The Advisory, Conciliation and Arbitration Service (ACAS) assist in resolving workplace disputes and can provide advice based on a personal situation. Their latest guidance can be accessed via www.acas.org.uk and they can also be contacted on 0300 123 1100;
- The Community Security Trust (CST), on 020 8457 9999. Antisemitic incidents can be reported at www.cst.org.uk. In an emergency, always contact the police first;
- The police on 999 (emergency) or 101 (non-emergency);
- A trade union official (if applicable);
- A solicitor.

The Board of Deputies of British Jews is the voice of British Jewry – the only organisation based on cross-communal, democratic, grassroots representation. It is the first port of call for Government, media and others seeking to understand the Jewish community's interests and concerns.

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