# **A MESSAGE FROM THE SECRETARY**

**Religious Exercise and Liberty in the Workplace**

**December 2019**

Religious liberty was a founding principle of this Nation. Our Founding Fathers sought to build a country where voices expressing spiritual views were an integral part of American life without fear of retribution. Beyond enshrinement within the Constitution, various Federal laws have been enacted to promote these principles. Furthermore, recent Supreme Court cases have expressed the importance of respect and tolerance in religion, while recognizing the important role that religion plays in the lives of many Americans.

In 2017, the President signed Executive Order 13798, Promoting Free Speech and Religious Liberty, as an effort to guide Executive Branch agencies to implement policies with implications for the religious liberty of their constituents and organizations. In support of this, the Department of Veterans Affairs (VA) reissued religious directives to allow for religious literature, symbols, and displays on facility grounds. This revision reduced restrictions on religious based events, singing religious songs, and VA sponsored holiday displays which include religious symbols. This served as an initial step in ensuring consistent application of religious guidelines.

In support of the updated directives, VA developed the frequently asked questions document below. This outlines the Department’s stance on issues involving faith in the workplace. Please ensure that all managers and supervisors are informed and understand the responsibilities regarding this guidance.

These changes highlight the Department’s commitment to the religious expression rights of its Veterans, employees, and visitors. As a Department, we should strive to ensure that the observance and practice of these principles are accommodated in all activities.

Thank you for your continued support of America’s Veterans. I wish you all a blessed and safe holiday season.

Robert L. Wilkie

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Department of Veterans Affairs (VA)

Religious Exercise and Expression in VA Facilities and Property

Under the Charge and Control of VA

# Frequently Asked Questions

December 2019

1. **May the Department of Veterans Affairs (VA) employees exercise and express their faith in the VA workplace?**

Yes, employers must make accommodations for employees’ exercise of religion and may not permit discrimination or harassment on the basis of religion. As the 2017, Attorney General Guidance on Federal Law Protections for Religious Liberty states “federal employees may keep religious materials on their private desks and read them during breaks; discuss their religious views with other employees, subject to the same limitations as other forms of employee expression; display religious messages on clothing or wear religious medallions; and invite others to attend worship services at their churches, except to the extent that such speech becomes excessive or harassing.” The Free Exercise Clause of the First Amendment allows for persons “to act or abstain from action in accordance with one’s religious beliefs.” Title VII prohibits discrimination on the basis of religion and requires employers to accommodate the religious beliefs and practices of their employees unless such accommodation poses an undue hardship to the organization and its business operations. For more detailed information, please see the [Guidelines on Religious Exercise and Religious Expression in the Federal Workplace](https://www.congress.gov/bill/103rd-congress/house-bill/1308) and the [Office of Personnel Management Rule for Compensatory Time Off For Religious Observance](https://www.federalregister.gov/documents/2019/04/29/2019-08533/compensatory-time-off-for-religious-observances-and-other-miscellaneous-changes).

1. **May Veterans exercise and express their faith in VA facilities?**

Yes. VA must ensure that where Veterans are in its care and charge, their rights to exercise and express their faiths are protected. Specifically, Veterans Health Administration (VHA) Directive 1111 (1) states that “spiritual and pastoral care must be integrated into the comprehensive health care, medical benefits package under 38 Code of Federal Regulations (C.F.R.) §17.38.” In non-VHA facilities, VA may need to take affirmative steps to provide opportunities for Veterans to practice their religion. While in VA facilities, Veterans are subject to the rules regarding the use of those facilities including 38 C.F.R. 1.218. These rules include the requirement in [38 C.F.R. 1.218(a)(14) [PDF]](https://www.govinfo.gov/content/pkg/CFR-2014-title38-vol1/pdf/CFR-2014-title38-vol1-sec1-218.pdf) that any service, ceremony, or demonstration must be authorized by the head of the facility or designee.

1. **May members of the public exercise and express their faith in VA facilities?**

To the extent that members of the public have a valid reason to be in VA facilities, such as Veterans receiving or seeking care, visitors, and volunteers, VA must ensure that their rights to express and exercise their faiths are protected and that they are free from governmental establishment of religion. Members of the public while in VA facilities are subject to the rules regarding the use of VA facilities including 38 C.F.R. 1.218. These rules include the requirement that any service, ceremony, or demonstration must be authorized by the head of the facility or designee. See 38 C.F.R. 1.218(a)(14). The facility head or designee should consult with the Office of General Counsel (OGC) before making decisions regarding a request in order to allow for consistent and informed decisions.

1. **Is it permissible for VHA Facilities to receive donations of cards and gifts for distribution to patients and residents in VHA facilities if the cards and gifts include a religious message?**

Yes. VA greatly appreciates holiday donations, gifts, and volunteerism by individuals and organizations on behalf of Veterans of all faiths and backgrounds. Only certain officials at VHA facilities have been delegated authority to accept donations and gifts. See [VHA Handbooks 4721 [PDF]](https://www.va.gov/vhapublications/ViewPublication.asp?pub_ID=7485) and [1620.01 [PDF]](https://www.va.gov/vhapublications/ViewPublication.asp?pub_ID=2165). Those officials are the facility Director, the Chief of Chaplain Service, and the Chief of Voluntary Service. These VHA officials will accept donations of cards and gifts, including cards and gifts with religious messages, including those pertaining to religious holidays such as Christmas, Hanukah, or Ramadan for distribution to patients and residents. Per VHA Directive 1111 (1), Chaplain Service and Voluntary Service will collaborate to review holiday cards and gifts and distribute them in accordance with the individually expressed preferences of patients and residents. The recipients will be informed of the name of the donor.

1. **Does VA allow outside groups or individuals to sing religious and secular songs during holidays on VA property (under the charge and control of VA)?**

On VA property (under the charge and control of VA), events by outside groups or individuals, such as services, ceremonies, or demonstrations, are welcomed but must be authorized by the head of the facility or designee. See 38 C.F.R. 1.218(a)(14). Per VA Directive 0022, VA is committed to inclusivity and nondiscrimination and evaluates all performances in public areas on a case-by-case basis. The policy outlined in VA Directive 0022 does not explicitly mention the singing of religious songs; however, the policy allows for religious symbols, which would include the performance of religious songs, (including those directly pertaining to religious holidays such as Christmas, Hanukah, or Ramadan) if the performance “follows in the longstanding tradition of monuments, symbols, and practices that simply recognize the important role that religion plays in the lives of many Americans.”

1. **Does VA allow outside groups or individuals to set up displays with religious and secular items on VA property (under the charge and control of VA)?**

On VA property (under the charge and control of VA), events sponsored by outside groups or individuals, such as services, ceremonies, or demonstrations, are welcomed but must be authorized by the head of the facility or designee. See 38 C.F.R. § 1.218(a)(14). Per VA Directive 0022, “religious symbols may be included in a passive display, including a holiday display, in public areas of VA facilities, if the display is of the type that follows in the longstanding tradition of monuments, symbols, and practices that simply recognize the important role that religion plays in the lives of many Americans.” Further, “this policy governs public areas, not displays in VA chapels during and in-between religious services. It also does not apply to private displays in employees’ workspaces that are not generally accessible to the public.” VA evaluates all displays in public areas on a case-by-case basis in accordance with the policy stated above. VA particularly encourages the placement of diverse religious symbols together in passive displays in public areas. The top official at each VA facility is encouraged to form a local committee representing diverse faith traditions to implement displays in a manner consistent with this policy. For VHA facilities, these committees must include chaplains. The committees are encouraged to seek individual input from representatives of community stakeholders, such as Veterans Service Organizations (VSO). If a question or concern arises at any VA facility from either an internal or external source regarding a proposed display, local officials must contact the Director of the Chaplain Service at the National Chaplain Center (NCC) for guidance, and the Director must consult with Office of General Counsel (OGC) before providing advice to local officials.1.218(a)(14).

Example:

If the head of the facility or designee approves a Veteran Service Organization's request to set up a display recognizing Prisoners of War and Missing in Action, the decision to authorize the display must be based on whether doing so will benefit VA patients, beneficiaries and/or employees, and whether the activity will interfere with the operations of the facility. VA must remain neutral regarding the views expressed by the group, to include the use of any religious or secular items in the display.

1. **May a VA-sponsored display, such as a holiday display, include religious symbols in a public area of a VA facility?**

Per VA Directive 0022, VA may include “religious symbols in a passive display, including a holiday display, in public areas of VA facilities, if the display is of the type that follows in the longstanding tradition of monuments, symbols, and practices that simply recognize the important role that religion plays in the lives of many Americans.” Further, “this policy does not govern displays in VA chapels during and in-between religious services. It also does not apply to personal displays in employees’ workspaces that are not generally accessible to the public.” As the 2017 Attorney General Guidance on Federal Law Protections for Religious Liberty states “federal employees may keep religious materials on their private desks and read them during breaks; discuss their religious views with other employees, subject to the same limitations as other forms of employee expression; display religious messages on clothing or wear religious medallions; and invite others to attend worship services at their churches, except to the extent that such speech becomes excessive or harassing.” VA evaluates all displays in public areas on a case-by-case basis in accordance with the policy stated above. The top official at each VA facility is encouraged to form a local committee representing diverse faith traditions to implement displays in a manner consistent with this policy. For Veterans Health Administration (VHA) facilities, these committees must include chaplains. The committees are encouraged to seek individual input from representatives of community stakeholders, such as Veterans Service Organizations (VSO). If a question or concern arises at any VA facility from either an internal or external source regarding a proposed display, local officials must contact the Director of the Chaplain Service at the National Chaplain Center (NCC) for guidance, and the Director must consult with OGC before providing advice to local officials.

1. **Are VA employees authorized to have office holiday celebrations?**

Yes. VA employees may organize holiday celebrations. Supervisors holding or permitting VA office holiday parties must conform to the following ethics rules:

1. Participation must be voluntary. Employees must not be coerced to participate in any way, including planning, preparation, financing, cleanup, or attendance.
2. Supervisors must not solicit contributions. Employees may pool funds for the purchase of office party supplies and refreshments. To prevent any appearance of coercion, however, non-supervisory employees should do the soliciting and collecting. A contribution amount may be suggested, but a required contribution amount may not be set, e.g., $5 for GS-12 and under, but $10 for GS-13, is not allowed.
3. Employee gift exchanges must follow the ethics rules. In general, an employee may not accept a gift from an employee who earns less or give to an official superior. There are a number of exceptions to these general rules. For example, an employee can accept a gift from an employee earning less if the two employees are not in a senior-subordinate relationship and there is a personal relationship between the two employees that would justify the gift, or the gift is for an "occasional basis" event (like a holiday) and is valued at $10 or less.
4. **Is prayer permitted at VA-sponsored events?**

Yes, prayers such as invocations and benedictions at VA-sponsored events are generally permitted. For example, invocations, and benedictions at swearing-in and retirement ceremonies are permitted provided the subject individual requests such observances. VA officials must ensure that such observances do not suggest Government endorsement or preference for one faith over another. Participation in such observances must be voluntary, and the religious message must not coerce or solicit adherence to the beliefs contained therein or disparage any faith or belief. VA officials should be mindful of and sensitive to the diverse belief systems of all individuals and should consider whether the nature of the event makes it appropriate to solemnize the occasion with prayer. Also, Title VII requires that the employer accommodate an employee who asks to be excused from an employer-sponsored event for religious reasons, unless the employer can show undue hardship.

1. **What constitutes religious harassment under Title VII?**

The law against discrimination in the Federal workplace (Title VII) protects Federal employees from being subjected to a hostile environment, or discrimination based on religion or the lack thereof. Title VII’s prohibition against religious discrimination can be violated if the employee is subjected to a hostile work environment because of religion. An unlawful hostile environment based on religion might take the form of either verbal or physical harassment or unwelcome imposition of religious views or practices on an employee. A hostile work environment is created when the “workplace is permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim’s employment and create an abusive working environment.” See [EEOC Directive on Religious Discrimination](https://www.eeoc.gov/policy/docs/religion.html#_Toc203359508).

Whether particular conduct gives rise to a hostile environment or constitutes impermissible religious harassment will usually depend upon its frequency or repetitiveness, as well as its severity. The use of derogatory language in an assaultive manner can constitute statutory religious harassment if it is severe or invoked repeatedly. A single incident, if sufficiently abusive, might also constitute statutory harassment. However, although employees should always be guided by general principles of civility and workplace efficiency, a hostile environment is not created by the bare expression of speech with which some employees might disagree. In a country where freedom of speech and religion are guaranteed, citizens should expect to be exposed to ideas with which they disagree.

The examples below are intended to provide guidance on when conduct or words constitute religious harassment that should not be tolerated in the Federal workplace. In a particular case, the question of employer liability would require consideration of additional factors, including the extent to which the agency was aware of the harassment and the actions the agency took to address it.

Examples:

* 1. An employee repeatedly makes derogatory remarks to other employees with whom she is assigned to work about their faith or lack of faith. This typically will constitute religious harassment. An agency should not tolerate such conduct.
  2. A group of employees who share a common faith or are prejudiced against people of faith decides that they want to work exclusively with people who share their views. They engage in a pattern of verbal attacks on other employees who do not share their views. This conduct should not be tolerated.
  3. Two employees have an angry exchange of words. In the heat of the moment, one makes a derogatory comment about the other's religion. When tempers cool, no more is said. Unless the words are sufficiently severe or pervasive to alter the conditions of the insulted employee's employment or create an abusive working environment, this is not statutory religious harassment.
  4. Employees wear religious jewelry and medallions over their clothes or so that they are otherwise visible. Others wear buttons with a generalized religious or anti-religious message. These expressions are personal, protected expression and do not constitute religious harassment.
  5. In her private work area, a Federal worker keeps a Bible or Koran on her private desk and reads it during breaks. Another employee displays a picture of Jesus and the text of the Lord's Prayer in her private work area. This conduct is protected religious expression, not religious harassment, and does not create an impermissible hostile environment with respect to employees who do not share those religious views, even if they are upset or offended by the conduct.
  6. During lunch, certain employees gather on their own time for prayer and Bible study in an empty conference room that employees are generally free to use on a first-come, first-served basis. Such a gathering does not constitute religious harassment even if other employees with different views on how to pray might feel excluded or ask that the group be disbanded.

1. **When must VA accommodate employees' exercise of their religion?**

Federal law requires an agency to accommodate employees' exercise of their religion unless such accommodation would impose an undue hardship on the conduct of the agency's operations. Though an agency need not make an accommodation that will result in more than a de minimis cost to the agency, that cost or hardship nevertheless must be real rather than speculative or hypothetical: the accommodation should be made unless it would cause an actual cost to the agency or to other employees or an actual disruption of work, or unless it is otherwise barred by law. In addition, religious accommodation cannot be disfavored vis-a-vis other, nonreligious accommodations. Therefore, a religious accommodation cannot be denied if the agency regularly permits similar accommodations for nonreligious purposes.

Examples:

An agency must adjust work schedules to accommodate an employee's religious observance—for example, Sabbath or religious holiday observance if an adequate substitute is available, or if the employee's absence would not otherwise impose an undue burden on the agency. See 5 C.F.R. 550.1001.

* 1. An employee must be permitted to wear religious garb, such as a crucifix, a yarmulke, or a head scarf or hijab, if wearing such attire during the work day is part of the employee's religious practice or expression, so long as the wearing of such garb does not unduly interfere with the functioning of the workplace.
  2. An employee should be excused from a particular assignment if performance of that assignment would contravene the employee's religious beliefs and the agency would not suffer undue hardship in reassigning the employee to another detail.
  3. During lunch, certain employees gather on their own time for prayer and Bible study in an empty conference room that employees are generally free to use on a first-come, first-served basis. Such a gathering may not be subject to discriminatory restrictions because of its religious content.

In those cases where an agency's work rule imposes a substantial burden on a particular employee's exercise of religion, the agency must go further: an agency should grant the employee an exemption from that rule, unless the agency has a compelling interest in denying the exemption and there is no less restrictive means of furthering that interest.

Examples:

* 1. A corrections officer whose religion compels him or her to wear long hair should be granted an exemption from an otherwise generally applicable hair length policy unless denial of an exemption is the least restrictive means of preserving safety, security, discipline, or other compelling interests.
  2. An applicant for employment in a governmental agency who is a Jehovah's Witness should not be compelled, contrary to her religious belief, to take a loyalty oath whose form is religiously objectionable.

1. **Does VA recognize the public's right to religious expression at National Cemeteries?**

Yes. VA cares deeply that the First Amendment rights of the families of those patriots who are interred in our National Cemeteries and the rights of all who visit these national shrines are fully respected consistent with maintenance of the cemeteries as “national shrines as a tribute to our gallant dead.” 38 C.F.R. 2403(c).

1. **Does VA accommodate religious expression at public ceremonies held at VA National Cemeteries?**

Yes. VA National Cemeteries are consecrated ground for all Veterans who are honored there. VA ceremonies, such as those held on Memorial Day and Veterans Day, are inclusive and honor the faith traditions of every Veteran who served and sacrificed on behalf of this Nation. VA's paramount concern for special events/ceremonies is to ensure public safety and security and to preserve the dignity and solemnity of VA National Cemeteries as national shrines.

1. **Does VA accommodate religious expression at committal services held at VA National Cemeteries?**

Yes. VA values and respects Veterans and their families' right to committal services held at VA National Cemeteries that honor their faith tradition. The wishes of a deceased Veteran's family remain paramount in determining what, if any, religious expression will take place at a Veteran's committal service. Families are free to have a committal service with or without religious references or the display of religious or other symbols.

1. **How does VA handle requests from the public not to engage in religious expression at National Cemeteries?**

VA recognizes that our Veteran community is diverse in many aspects, and we respect the very private nature of the way families mourn the loss of loved ones based on their specific belief system, religious or cultural traditions and practices. For example, committal services at VA national cemeteries do not include religious elements if the families do not request them. In the event VA receives a complaint about an activity that is perceived as an unwelcome religious expression involving a loved one's gravesite, VA will honor the wishes of those individuals or family members to opt out of any activity.

For information regarding Religious Symbols in VA Facilities see [VA Directive 0022: Religious Symbols in VA Facilities](https://www.diversity.va.gov/policy/religion.aspx).

For information regarding Spiritual and Pastoral Care in the Veterans Health Administration see [VHA Directive 1111 (1), amended July 3, 2019](https://www.va.gov/vhapublications/publications.cfm?pub=1&order=asc&orderby=pub_Number).

For additional Frequently Asked Questions on Religious Expression, Religious Accommodation, and Religious Discrimination please visit the Equal Employment Opportunity Commission Web site:

[Religious Garb and Grooming in the Workplace: Rights and Responsibilities](http://www.eeoc.gov/eeoc/publications/qa_religious_garb_grooming.cfm);

[Religious Discrimination](http://www.eeoc.gov/laws/types/religion.cfm); and

[What You Should Know About Workplace Religious Accommodation](http://www.eeoc.gov/eeoc/newsroom/wysk/workplace_religious_accommodation.cfm).

For more information on office holiday celebrations, including a fuller specification of the various exceptions, contact [VA Government Ethics](mailto:governmentethics@va.gov?subject=Office%20Holiday%20Celebrations).

Questions regarding the Frequently Asked Questions, please contact the Director of the Chaplain Service at the National Chaplain Center at (202) 550-9351.

Questions regarding Diversity and Inclusion related topics and this Policy Guidance Memorandum, please contact the Office of Diversity and Inclusion at (202) 461-4131.

**PLEASE PRODUCE LOCALLY FOR ALL THOSE WHO DO NOT ROUTINELY ACCESS EMAIL DUE TO THEIR SPECIALTIES.**