

Department of
Veterans Affairs

Memorandum

Date: **AUG 19 2016**

From: Acting Assistant Secretary for Human Resources and Administration (006)

Subj: Update of Policy Guidance on Religious Exercise and Expression in VA Facilities and Property Under the Charge and Control of VA, dated November 7, 2014 (VAIQ 7718000)

To: Under Secretaries, Assistant Secretaries, and Other Key Officials

1. The Department of Veterans Affairs (VA) is committed to maintaining a diverse workforce and inclusive work environment and to protecting First Amendment freedoms. As our Nation becomes increasingly diverse, so do the religious affiliations and belief systems of its citizens. VA must be mindful and respectful of the diverse belief systems and the First Amendment rights of all its employees, Veterans, stakeholders, and others in the conduct of VA business.
2. The First Amendment to the United States Constitution prohibits the making of any law respecting an establishment of religion or prohibiting the free exercise of religion. The First Amendment has been interpreted to prohibit the government –including its employees acting in their official capacities – from endorsing, favoring, or inhibiting religion.
3. Title VII of the Civil Rights Act of 1964, as amended, prohibits discrimination on the basis of religion, among other bases, and protects all aspects of an employee's religious beliefs or practices. According to the United States Equal Employment Opportunity Commission for the purposes of Title VII, religion includes not only traditional, organized religions, but also beliefs that are theistic, non-theistic, new, uncommon, or unaffiliated with a formal church or sect. Accordingly, VA prohibits discrimination on the basis of religion and shall not endorse, favor or disfavor any faith or belief system.
4. VA honors and respects the humanity of all, and protects the freedoms and rights guaranteed for each of us. Please ensure that all managers and supervisors are informed and understand their responsibilities regarding this guidance and the attached Frequently Asked Questions document. Thank you for your unwavering support.


Meghan Flanz

Attachment

Department of Veterans Affairs
Religious Exercise and Expression in VA Facilities and Property
Under the Charge and Control of VA
Frequently Asked Questions
August 2016

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

Yes. Both the First Amendment of the Constitution of the United States and Title VII of the Civil Rights Act of 1964 as amended permit religious expression and exercise in the government workplace. The First Amendment states that Congress shall make no law respecting the establishment of religion or prohibiting the free exercise thereof. 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: <http://clinton2.nara.gov/WH/New/html/19970819-3275.html>.

2. 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 and that they are free from governmental establishment of religion. VA may need to take affirmative steps to provide opportunities for them to practice their religion. For example, VA provides chaplains and arranges for community clergy for Veterans who are hospitalized and wish to receive religious counseling. 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) that any service, ceremony, or demonstration must be authorized by the head of the facility or designee. The decision whether to authorize the event must be justified by a purpose other than one to sponsor, endorse, or inhibit a particular religion or religion generally.

3. 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, 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 decision whether to authorize the event must be based on a ground other than to sponsor, endorse, or inhibit a particular religion or religion generally.

Department of Veterans Affairs
Religious Exercise and Expression in VA Facilities and Property
Under the Charge and Control of VA
Frequently Asked Questions
August 2016

4. Is it permissible for Veterans Health Administration (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 and 1620.01. Those officials are the facility Director, the Chief of Chaplain Service and the Chief of Voluntary Service. These VHA officials have discretion to accept donations of cards and gifts, including cards and gifts with religious messages, for distribution to patients and residents. 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, cards and gifts.

5. 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). When deciding whether to allow outside groups or individuals to sing holiday songs in a particular location (e.g., in the lobby, an auditorium, or a chapel), the director of the VA facility must determine whether doing so will benefit VA patients, beneficiaries and/or employees and whether the activity will interfere with the operation of the facility.

If a VA facility director authorizes an outside group or individual to perform holiday songs, similarly-situated groups or individuals also must be permitted to use the space for such activities. Once the director authorizes holiday singing in a designated location, VA must remain neutral regarding the views expressed by the group or individual generally or in its holiday songs (e.g., religious or secular). Directors are encouraged to seek advice from VA Chaplain Service in making these decisions.

At all times, the government must ensure that it does not act in a manner that would lead a reasonable observer to conclude that it is sponsoring, endorsing or inhibiting religion generally or favoring or disfavoring a particular religion. The government must also ensure that it does not require or pressure its employees or others to participate in religious activities or to refrain from participation in such activities.

*VA can't restrict content of their songs.
VA can restrict where, when & how long.*

Department of Veterans Affairs
Religious Exercise and Expression in VA Facilities and Property
Under the Charge and Control of VA
Frequently Asked Questions
August 2016

6. 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). When deciding whether to allow outside groups or individuals to set up a display in a particular location (e.g., in the lobby, an auditorium, or a chapel), the director of the VA facility must determine whether doing so will benefit VA patients, beneficiaries and/or employees, and whether the activity will interfere with the operation of the facility.

If a VA facility director authorizes an outside group or individual to set up a display, similarly-situated groups or individuals also must be permitted to set up a display. Once the director authorizes a display in a designated location, VA must remain neutral regarding the views expressed by the group or individual generally (e.g., religious or secular) or as part of its display. Directors are encouraged to seek advice from VA Chaplain Service (to include the National Chaplain Center, the District Chief Counsel and the Office of Diversity and Inclusion) when making these decisions.

At all times, the Federal government must ensure that it does not act in a manner that would lead a reasonable observer to conclude that it is sponsoring, endorsing or inhibiting religion generally or that it is favoring or disfavoring a particular religion. The federal government must also ensure that it does not require or pressure its employees or others to participate in religious activities or to refrain from participation in religious activities.

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 (POW/MIA), 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. VA may request the Veteran Service Organization to clearly indicate ownership of the display through signage.

Department of Veterans Affairs
Religious Exercise and Expression in VA Facilities and Property
Under the Charge and Control of VA
Frequently Asked Questions
August 2016

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

Religious symbols may be included in a VA display in a public area of a VA facility provided the display does not favor one religion over another and conveys a primarily secular message. For guidance specifically about holiday displays, see VA Directive 0022, Religious Symbols in Holiday Displays in VA Facilities. Note that different policies govern displays for religious services in VA chapels or in employees' workspaces that are not generally accessible to the public. For more detailed information, please see paragraph 20 of VHA Handbook 1111.02, Spiritual and Pastoral Care Procedures, as well as the Guidelines on Religious Exercise and Religious Expression in the Federal Workplace:
<http://clinton2.nara.gov/WH/New/html/19970819-3275.html>.

8. 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:

- a) Participation must be voluntary. Employees must not be coerced to participate in any way, including planning, preparation, financing, cleanup, or attendance.
- b) 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.
- c) 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.

9. Is prayer permitted at VA-sponsored events?

Prayers such as invocations and benedictions at VA-sponsored events are permitted depending on the type of event and the following considerations. For example, invocations, and benedictions at swearing-in and retirement ceremonies

Department of Veterans Affairs
Religious Exercise and Expression in VA Facilities and Property
Under the Charge and Control of VA
Frequently Asked Questions
August 2016

are permitted provided the subject individual requests such observances. Such observances are not appropriate for routine staff meetings. 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 strictly 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.

10. 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 religious harassment, in the form of religiously discriminatory intimidation, or pervasive or severe religious ridicule or insult, whether by supervisors or fellow workers. 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:

- a) An employee repeatedly makes derogatory remarks about their faith or lack of faith to other employees with whom she is assigned to work. This typically will constitute religious harassment. An agency should not tolerate such conduct.
- b) A group of employees subjects a fellow employee to a barrage of comments about his sex life, knowing that the targeted employee would be discomforted and offended by such comments because of his religious beliefs. This