

Practice Note:
Religious Accommodations
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Introduction

Religious accommodations enable Service members to maintain practices consistent with their religious beliefs, that would otherwise conflict with military service. To that end, the Army, through its commanders, is directed to “accommodate individual expressions of sincerely held beliefs...which do not have an adverse impact on military readiness, unit cohesion, good order and discipline, or health and safety.”¹ The Army’s “compelling governmental interest in mission accomplishment” may only take precedence over the accommodation request if the “military policy, practice, or duty is in furtherance of a compelling governmental interest...[and] is the least restrictive means of furthering that...interest.”² In all other cases, commanders must accommodate a Service member’s religious practices when based on a sincerely held religious belief.³

Process

To obtain a religious accommodation, the Soldier must demonstrate both a sincerely held religious belief and a substantial burden to their religious exercise.⁴ When the Soldier has demonstrated both of these criteria, the commander, if not granting the accommodation, must demonstrate “how/why the government action furthers a compelling government interest and is the least restrictive means of furthering that interest.”⁵ Nevertheless, even if a requested practice is either not sincere or does not substantially burden a Soldier’s exercise of his or her religion, commanders are still “required to balance the needs of the Soldier against the needs of mission accomplishment.” This requires the commander, with the support of their judge advocate, to evaluate each case individually with the unique facts juxtaposed against military necessity.

Despite appearing to be, arguably, a kind of “reasonable person standard,” religious accommodation requests differ based on the specific needs and requirements of the Service member, increasing the challenge for commanders and their legal advisors. Service members may request a religious accommodation related to worship practices, dietary practices, medical care and immunizations, uniform wear and appearance, and personal appearance and grooming.⁶ Some examples include allowing religious head coverings, providing designated prayer spaces, accommodating dietary restrictions, and granting leave for religious observances. The goal is to ensure that Service members can practice their faith while serving in the Army and requires commander accommodation and support where militarily feasible.

Worship and Dietary Practices

Some religious groups worship on days or observe special holy days or periods that could conflict with the Soldier’s availability for duty. In such cases, unit commanders are “the designated decision authority for most worship and dietary practices...including procedures for appeal.”⁷ “Worship practices, [observance of] holy days, and Sabbath or similar religious observance requests will be accommodated to the greatest extent possible, consistent with mission accomplishment.”⁸ Accordingly, Army regulations permit commanders to accommodate requested worship practices without a formal accommodation request.⁹ In other words, where a Soldier’s normal availability for duty conflicts with worship or a holy day, these can be deconflicted without a formal process.

Although separate rations are closely related to worship practices, the Service member must still make an accommodation request for separate rations, but the request may be adjudicated at the command level.¹⁰ Such requests might reflect a religious prohibition on certain foods or a directive that food be prepared a certain way.¹¹ Even if dietary accommodations can be made

with existing authorized resources, the accommodation must be requested, evaluated, and approved.¹²

Once approved, worship and dietary practice accommodations are temporary and “subject to modification or revocation by immediate commanders.”¹³ In addition, upon a Soldier’s permanent change of station or reclassification into a new or secondary MOS, the GCMCA will review an approved religious accommodation.¹⁴

Medical Care and Immunizations

Service members may have religious beliefs that conflict with Army medical procedures, such as beliefs related to self-care or prohibitions against immunizations, blood transfusions, or surgery.¹⁵ When such conflicts arise, unlike accommodations for worship and dietary practices, commanders must coordinate for such accommodations with the appropriate healthcare provider as well as their judge advocate.¹⁶ Like any other accommodation, medical accommodations must be consistent with mission accomplishment which includes considering the potential risks to other persons in the unit as a result of the requesting Soldier’s exemption.¹⁷ It should come as no surprise then that unit commanders are the designated decision authority for medical exemptions not involving an exemption from immunization(s).

Among the medical exemptions a Service member might request is an application for religious exemption from immunization(s), which imposes additional obligations on the Soldier and considerations by the commander as well as approval for immunization exemptions being withheld to the Surgeon General (TSG).¹⁸ First, the Service member must request the exemption in writing.¹⁹ Then, it is the commander’s responsibility to arrange an interview between the requesting Service member and a chaplain, who will provide a memorandum summarizing the interview and addressing the religious basis and sincerity of the Soldier’s request.²⁰ Third, a

military medical provider will counsel the requestor on specific information about the disease(s) and detailed vaccine information, including benefits, risks, and potential risks of infection incurred by unimmunized individuals.²¹ Finally, the requestor's immediate commander must counsel the requestor that such an exemption constitutes noncompliance with immunization requirements and can impact the Service member's deployability, assignment, or travel.²² This counseling must address the factors of military necessity.²³ The commander will also recommend approval or disapproval of the request.²⁴ Upon completion, the commander will forward the request through command channels to TSG to approve or disapprove the exemption.²⁵ Nevertheless, even if such an exemption is approved, religious exemptions "may be revoked in the case of an imminent risk of exposure to a disease for which an immunization is available."²⁶

Once approved, medical care accommodations are temporary and "subject to modification or revocation by immediate commanders."²⁷ In addition, upon a Soldier's permanent change of station or reclassification into a new or secondary MOS, the GCMCA will review an approved religious accommodation.²⁸

Uniform Wear and Appearance

As a baseline, a Service member is permitted to wear an item of religious apparel while wearing the uniform unless the wearing of such apparel would interfere with the performance of the member's military duties or if the apparel is not neat and conservative.²⁹ Discrete items, such as a necklace or bracelet with religious significance, may be worn in uniform without submitting an accommodation request.³⁰ Religious accommodations that increase modesty, such as adding additional uniform items to the summer Army Physical Fitness Uniform (APFU), including commercial leggings under the APFU,³¹ or authorizing winter APFUs in summer, require

accommodation but may be informally authorized by commanders.³² However, the Service member must request a waiver to wear unauthorized apparel to cover exposed skin.³³

The most formalized process for religious accommodation in uniform wear and appearance concerns the wear of religious headgear, such as a hijab or turban. Religious headgear may be worn in uniform “whenever a military cap, hat, or other headgear is not prescribed” and “may also be worn underneath prescribed headgear, provided it does not interfere with proper wear, function, or appearance of the headgear.”³⁴ Requests must be in writing and explain the accommodation requested as well as the religious basis.³⁵ Upon receipt of a request, commanders are required to immediately notify the Office of the DCS, G-1 Command Policy Division, arrange an interview between the requestor and chaplain, and complete a recommendation memorandum including an explanation if the commander recommends disapproval.³⁶ “When evaluating sincerity, commanders may consider the credibility and demeanor of the applicant and the circumstances of the request. Although a religious practice does not have to be compelled by, or central to, a system of religious belief, commanders may evaluate the Soldier’s ability to articulate the religious basis and religious importance of the request.”³⁷

Both approval and disapproval for hijabs or turbans are reserved to GCMCA-level commanders or the first general officer in the chain of command.³⁸ Once approved, Service members must wear the authorized religious headgear in accordance with AR 670-1.³⁹ Furthermore, approved accommodations regarding the wear of a hijab or turban may not be permanently revoked or modified unless authorized by SECARMY or suspended for health and safety concerns.⁴⁰

Personal Appearance and Grooming

Service members may request a religious accommodation to grow and maintain a beard, whether trimmed or uncut.⁴¹ Like exemptions for religious headgear, requests must be in writing and explain the accommodation requested as well as the religious basis.⁴² Upon receipt of a request, commanders are required to immediately notify the Office of the DCS, G-1 Command Policy Division, arrange an interview between the requestor and chaplain, and complete a recommendation memorandum including an explanation if the commander recommends disapproval.⁴³ “When evaluating sincerity, commanders may consider the credibility and demeanor of the applicant and the circumstances of the request. Although a religious practice does not have to be compelled by, or central to, a system of religious belief, commanders may evaluate the Soldier’s ability to articulate the religious basis and religious importance of the request.”⁴⁴ Both approval and disapproval for beards are reserved to GCMCA-level commanders or the first general officer in the chain of command for beards up to two inches in length, as required by AR 670-1.⁴⁵ If the Service member requests a waiver to grow a beard longer than two inches, the waiver must be submitted to DCS, G-1, through the GCMCA with recommendation, for decision.⁴⁶ Approved accommodations regarding the wear of a beard may not be permanently revoked or modified unless authorized by SECARMY or temporarily suspended for health and safety concerns.⁴⁷

Separation Procedures

An enlisted Service member whose religious practices cannot be accommodated consistent with military necessity may request separation from the Army under AR 635-200.⁴⁸ Commissioned or warrant officers not in the regular Army who request separations for reasons of religious accommodation will apply for release from active duty under AR 600-8-24.⁴⁹ Regular

Army commissioned or warrant officers may apply for an unqualified resignation under AR 600-8-24.⁵⁰

Conclusion

The process for religious accommodations is complicated enough without considering the additional complexities of who must be involved, what they must provide, and who has the authority to approve or disapprove requested accommodations. The judge advocate is essential in the religious accommodations process, providing legal guidance and advice. Judge advocates can assist in reviewing and approving the requests for religious accommodations, ensuring they are appropriately documented, implemented, and routed. Judge advocates help ensure the accommodations comply with military regulations and policies while respecting the Service members' rights to exercise their religion freely.

¹ U.S. DEP'T OF DEF., INSTR. 1300.17, RELIGIOUS LIBERTY IN THE MILITARY SERVICES (01 Sep 2020) at 4 [hereinafter DoDI 1300.17].

² *Id.* at 5.

³ *Id.* at 4.

⁴ U.S. DEP'T OF ARMY, REG. 600-20, ARMY COMMAND POLICY (24 July 2020) para. 5-6.a.(2) [hereinafter AR 600-20].

⁵ *Id.* "Compelling government interests could potentially include safety, health, good order, discipline, uniformity, National Security, and mission accomplishment." *Id.* at para. 5-6.a.(4).

⁶ *Id.* at para. 5-6.d.

⁷ *Id.* at para. 5-6.e.(1).(a).

⁸ DoDI 1300.17, *supra* note i, at 14.

⁹ AR 600-20, *supra* note iv at para. 5-6.d.(1).

¹⁰ DoDI 1300.17, *supra* note i, at 14.

¹¹ AR 600-20, *supra* note iv4 at para. 5-6.d.(2).

¹² *Id.* at para. 5-6.d.(2). This does not include worship or dietary practices that involve the use of prohibited substances, such as peyote. Waivers to engage in practice involving the use of prohibited substances required approval by SECARMY (or his or her designee). *Id.* at para. 5-6.d.(1). For additional guidance on the use of Peyote, *see* DoDI 1300.17, *supra* note ii, at 15.

¹³ AR 600-20, *supra* note iv at para. 5-6.f.(1).

¹⁴ *Id.* at para. 5-6.f.(2)(b)-(c).

¹⁵ *Id.* at para. 5-6 d.(3).

¹⁶ *Id.* at para. 5-6 d.(3).

¹⁷ DoDI 1300.17, *supra* note i at 14.

¹⁸ AR 600-20, *supra* note iv at para. 5-6.e.(1)(b).

¹⁹ *Id.* at para. P-2 b.(1).

²⁰ *Id.* at para. P-2 b.(2)

²¹ *Id.* at para. P-2 b.(3)(a-c).

²² *Id.* at para. P-2 b.(4).

²³ *Id.* at para. P-2 b.(4).

²⁴ *Id.* at para. P-2 b.(4).

²⁵ *Id.* at para. P-2 b.(5).

²⁶ *Id.* at para. P-2 b.(8).

²⁷ *Id.* at para. 5-6.f.(1).

²⁸ *Id.* at para. 5-6.f.(2)(b)-(c).

²⁹ 10 U.S.C. § 774(a) (1987). “‘Religious apparel’ means apparel the wearing of which is part of the observance of the religious faith practiced by the member.” *Id.* at (d). “Factors that may be considered in determining whether an item of religious apparel interferes with military duties include, but are not limited to, whether the item: (a) Impairs the safe and effective operation of weapons, military equipment, or machinery. (b) Poses a health or safety hazard to the Service member wearing the religious apparel or to others. (c) Interferes with the wear or proper function of special or protective clothing or equipment (e.g., helmets, protective masks, wet suits). (d) Otherwise impairs mission accomplishment.” DODI 1300.17, *supra* note i, at 14.

³⁰ AR 600-20, *supra* note iv at para. 5-6.d.(4)(a).

³¹ U.S. DEP’T OF ARMY, REG. 670-1, WEAR AND APPEARANCE OF ARMY UNIFORMS AND INSIGNIA (26 January 2021) para. 3-16.d. [hereinafter AR 670-1].

³² AR 600-20, *supra* note iv at para. 5-6.d.(4)(b).

³³ *Id.* at para. 5-6.d.(4)(b).

³⁴ DODI 1300.17, *supra* note i, at 14-15.

³⁵ AR 600-20, *supra* note iv4 at para. P-3.a.(1).

³⁶ *Id.* at para. P-3.a.(1)-(4).

³⁷ *Id.* at para. P-3.a.(6).

³⁸ *Id.* at para. P-3.a.

³⁹ *See* AR 670-1, *supra* note 31 at para. 3-16.

⁴⁰ AR 600-20, *supra* note ivat para. 5-6.f.(2).

⁴¹ *Id.* at para. 5-6.f.(2).

⁴² *Id.* at para. P-3.a.(1).

⁴³ *Id.* at para. P-3.a.(1)-(4).

⁴⁴ *Id.* at para. P-3.a.(6).

⁴⁵ *Id.* at para. P-3.a.; AR 670-1, *supra* note 31 at para. 3-16.

⁴⁶ AR 600-20, *supra* note iv at para. P-3.b.

⁴⁷ *Id.* at para. 5-6.f.(2).

⁴⁸ *Id.* at para. 5-6.g.

⁴⁹ *Id.* at para. 5-6.g.

⁵⁰ *Id.* at para. 5-6.g.