

The right to religious freedom of workers. Breaks, holidays and religious symbols

The first way in which the employment relationship can affect the freedom of religion of workers is in the enjoyment of breaks, holidays or vacations. In this way, most of the breaks, the weekly on Sunday, holidays, Easter, Christmas, etc., coincide with those of the Catholic religion. Thus, the first question would be, what rights do workers who profess other religions have with days off and alternative holidays? In this sense, there are Laws that regulate the cooperation of the State with the most prominent religious confessions: Law 24/1992 with the Federation of Evangelical Religious Entities, Law 25/1992 with the Federation of Jewish Communities or Law 26/1992 with the Islamic Commission from Spain. All of them require that to change the days of rest, the mandatory agreement with the employer will be necessary, therefore, it can only be done if the employer wants, it cannot be imposed on the company. An agreement with the company is mandatory. The Constitutional Court, in STC 19/1985, has declared that this does not violate the right to religious freedom because the fact that the majority of breaks and holidays coincide with those of the Catholic religion is not for religious reasons, but rather for custom.

Secondly, examining the field of religious symbology and, in the same way, a certain religious confession can require the wearing of certain religious symbols on clothing. For its part, national jurisprudence had established in this regard, in the same sense, that the company is not obliged to allow religious symbols if they do not respect the work uniform or are prohibited (STC 19/1985, of February 13). Although some rulings from lower Courts can be found, such as the ruling of the Social Chamber no. 1 of Palma de Mallorca, of February 6, 2017, in the case of a worker who wears a veil and the company imposes several sanctions on her because she orders her to take it off for contravening the company's uniformity. It declares the nullity of said sanctions, for violating the right to religious freedom by not expressly prohibiting the company's rules regulating uniformity. In such a way that the veil was not expressly prohibited and that the worker did not show a careless appearance when using the veil, or that the colors used were not those of her own uniform. In short, the use of the veil is a manifestation of the worker's religious belief, the company does not maintain any policy of religious neutrality, obeying the prohibition imposed on it due to a purely aesthetic requirement, which is not comparable to the use of mere decorations to the use of the veil in this case, and that the company has not even invoked or proven the cause of any damage to its image derived from the use of the hijab, without the company also having any express prohibitive rule.

Now, despite the fact that this is the meaning of the pronouncements of the Spanish Courts and, until now, it was also the case in international ones, such as the European Court of Human Rights in Strasbourg; There is a recent ruling, dated January 15, 2013, that recognizes that it is discriminatory to prohibit wearing certain religious symbols. Specifically, the case involved a crucifix worn by an airline ground stewardess, if the company allows other workers to wear clothing that also has a religious meaning, such as turbans, veils, etc.

Thus, the high court considers that it is legitimate to prohibit these symbols in general, but not some of some religions and not others of others; The latter is what he considers discriminatory. In this sense, in a ruling of the Court of Justice of the European Union of March 14, 2017, and more recently in a ruling of November 28, 2023 (case C148/22). It is legitimate that the company has an interest in offering a neutral image, in this sense, to its clients and therefore, it is legitimate

to prohibit the use of religious symbols at work as long as it is done in a generalized manner. Likewise, they can be prohibited for security reasons. For example, if a worker operating dangerous machinery is wearing a crucifix, it can get caught in the machinery and cause an accident. Much more debatable, in the case of a nurse who wore a crucifix at work and, after the company changed her uniform for a lower-cut shirt, the crucifix dangled when she bent over, here also alleging safety reasons, since the risks of accidents are much less evident due to the nature of the work and it seems more like they were prohibited so as not to disturb patients of other religions.

It is legitimate, however, to force respect for the uniform and not to display religious symbols in the public sector. Specifically, a Muslim worker who worked in a French public hospital was ordered to remove her veil and refused, and the company did not renew the temporary contract she had. The European Court of Human Rights understands that the principle of secularism of the State and the public function takes precedence over the principle of religious freedom STEDH of November 26, 2015. However, the STEDH, of February 2, 2016, establishes that this respect for the principle of secularism and the requirement of neutral action in the sphere of their activity, cannot affect the worker's private sphere. Thus, a senior Turkish official is transferred to a lower position due to the fact that he has certain religious beliefs that, however, do not seem to have affected the form and manner in which he carried out his professional activity, since he does not express them in any way. some at work. On the contrary, it is clear that he was impartial in the exercise of his functions and that he had not developed an activity that could be classified as "integrity" in the religious field. However, he is transferred to a lower job, for the sole reason that his wife wears a veil. What violates the arts. 8 and 9 of the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe, which enshrine respectively the right to respect for private and family life and the right to freedom of thought, conscience and religion.

Thirdly, in the field of Social Security, religious freedom also extends as a conflict that has had to be resolved by jurisprudence, a topic that we understand should also be addressed throughout this text due to its special relevance. Thus, our courts have had the opportunity to resolve a lawsuit filed by a citizen who requested reimbursement of medical expenses derived from medical treatments in a private hospital, based on the existence of life-threatening risk. It was rejected for two reasons: firstly, because there was no denial of health care, but rather it was the plaintiff who refused to undergo the surgical intervention at the Bellvitge Hospital of the public network, because it required blood transfusion. blood, which is contrary to the religious beliefs of the plaintiff who was a Jehovah's Witness. In addition, the aforementioned hospital authorized her to go to another center in the public hospital network. Secondly, the appealed ruling considers that there is no urgency due to life-threatening risk, as required by art. 4.3 of RD 1030/06, because the intervention was preferential, as oncological interventions usually are, but not urgent, as evidenced by the fact. that it was carried out a month after it was not carried out at the Bellvitge Hospital.

The doctrine of the TC is reflected in its STC166/1996, in which it declares that the religious freedom of the patient must be weighed and the denial of public health care when it cannot be provided under the conditions required by the patient's religious beliefs, which Religious freedom does not include the requirement for different treatment in terms of SS health benefits, since art. 14 CE recognizes the right not to suffer discrimination, but not the hypothetical right to impose or demand differences in treatment. For its part, the doctrine of the Supreme Court on this matter has been clear and forceful from the beginning. The TS in SSTS of October 6, 2009, RJ

2009\7585; May 3, 1994. RJ 1994\5353 and April 14, 1993. RJ 1993\3338, maintains that there is no right to reimbursement, except in cases of vital urgency or unjustified denial of treatment, not understood as a refusal based on religious reasons.