



**U.S. Customs and
Border Protection**

MAY 16 2012

TO: Kristy L. Montes
Director, Field Operations-West
Office of Diversity and Civil Rights

FROM: Dr. Clifton Wilcox
Acting Director, Labor-Management Relations
Office of Human Resources Management

SUBJECT: Agency Head Review
Memorandum of Understanding – Reasonable Accommodation for Religious
Beliefs or Practices Directive

A handwritten signature in black ink, appearing to read "Clifton Wilcox", written over the "FROM:" line of the memo.

The attached Memorandum of Understanding (MOU) signed May 11, 2012, memorializes an agreement between the U.S. Customs and Border Protection (CBP) and the National Treasury Employees Union (NTEU) concerning the Reasonable Accommodation for Religious Beliefs or Practices Directive. The negotiated terms have been reviewed in accordance with 5 U.S.C. §7114(c) and under Department of Homeland Security, Customs and Border Protection Delegation Order 10-001 dated February 23, 2010.

The MOU does not violate existing law, rule or regulation, and is hereby approved. This approval does not constitute a waiver of, or exception to, any existing law, rule, regulation, or policy.

If you have any questions or need additional assistance, you may contact Don Stakes, Chief Labor Negotiator, by telephone at (202) 863-6335, or by electronic mail at Donald.Stakes@dhs.gov.

CC: Colleen M. Kelley, National President, NTEU
Jonathan Levine, Assistant Counsel for Negotiations, NTEU
Franklin C. Jones, Director, Office of Diversity and Civil Rights
Deborah Eres, Deputy Director, Labor-Employee Relations Field Services

Attachment

**MEMORANDUM OF UNDERSTANDING
BETWEEN
U.S. CUSTOMS AND BORDER PROTECTION (CBP)
AND
NATIONAL TREASURY EMPLOYEES UNION (NTEU)**

I. Introduction

This Memorandum of Understanding (MOU) is entered into by, and between the United States Customs and Border Protection, (hereinafter referred to as "Agency") and the National Treasury Employees Union (hereinafter referred to as "Union").

II. Background

On November 28, 2011, formal notice was served on the Union, expressing the Agency's desire to effectuate the Reasonable Accommodation for Religious Beliefs or Practices Directive. The parties held a teleconference briefing on January 20, 2012 and the Union provided bargaining proposals on February 3, 2012. On April 17, 2012, the Agency responded with an updated Directive, which incorporated many of the Union's bargaining proposal suggestions. The parties continued exchanging proposals back-and-forth and came to an agreement, which is memorialized herein.



III. Terms or Provisions of Agreement:

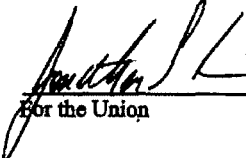
1. This MOU reflects the parties' agreement on all matters related to the Reasonable Accommodation for Religious Beliefs or Practices Directive.
2. The negotiated Reasonable Accommodation for Religious Beliefs or Practices Directive is attached.

IV. Effective Date and Termination

This MOU will be submitted for Agency head review immediately after the final signature of the chief negotiators. This MOU will become effective thirty-one (31) days after the date it is signed by the last chief negotiator or after Agency head review, whichever occurs first. Either party may request to reopen this MOU for revision or modification in accordance with Article 26 (Bargaining) of the CBP & NTEU National Collective Bargaining Agreement.

V. Signatures

 5/11/12
For the Agency Date
 5/11/12
For the Agency Date

 5/11/12
For the Union Date

U.S. CUSTOMS AND BORDER PROTECTION DIRECTIVE

CBP DIRECTIVE NO.

DATE: *****, 2012

ORIGINATING OFFICE: OC - DCR

REVIEW DATE:

SUBJECT: REASONABLE ACCOMMODATION FOR RELIGIOUS BELIEFS OR PRACTICES

1 PURPOSE

To set forth U.S. Customs and Border Protection's (CBP) policy regarding reasonable accommodation of religious beliefs and/or practices for employees and applicants for employment.

2 SCOPE

This Directive applies to all CBP employees and applicants for employment.

3 POLICY

It is the policy of CBP to prohibit discrimination against employees and applicants for employment based on religious beliefs, practices, or affiliation. In addition, CBP shall provide reasonable accommodation for the religious beliefs and/or practices of employees and applicants for employment unless providing a reasonable accommodation would result in undue hardship to CBP.

4 AUTHORITIES/REFERENCES

Title VII of the Civil Rights Act of 1964, as amended, as implemented through 29 C.F.R. Part 1605.

5 DEFINITIONS

- 5.1 **Applicant:** An individual seeking consideration for employment with CBP.
- 5.2 **DCR Staff Member (Facilitator):** The Office of Diversity and Civil Rights (DCR) staff member assigned to facilitate the interactive discussion between the employee and the management official and/or Decision-maker.
- 5.3 **Decision-maker:** A management official in the employee's chain of command with the authority to approve or deny a request for religious accommodation.
- 5.4 **Employee:** A member of CBP's permanent or temporary workforce, full or part-time, and in a competitive or excepted service position.

- 5.5 Interactive Process:** The process by which the individual requesting an accommodation and CBP management officials interact to determine the appropriate reasonable accommodation under the circumstances.
- 5.6 Religious Belief or Practice:** A belief or practice that is sincerely held with the strength of traditional religious views, including moral or ethical beliefs as to what is right and wrong. Social, political, or economic philosophies, as well as mere personal preferences, are not religious beliefs or practices.
- 5.7 Religious Accommodation for Applicants:** Modifications or adjustments to the application process that allow an individual to practice his or her religious beliefs without creating an undue hardship on CBP.
- 5.8 Religious Accommodation for Employees:** Modifications or adjustments to the work environment that will allow the employee to practice his or her religious beliefs without creating an undue hardship on CBP.
- 5.9 Undue Hardship:** An action that would impose more than *de minimis* cost or burden on the operation of the Agency.

6 RESPONSIBILITIES

- 6.1 The Office of Human Resources Management (HRM)** is responsible for processing requests for religious accommodation from applicants seeking employment with CBP.
- 6.2 The Office of Diversity and Civil Rights (DCR)** is responsible for facilitating the interactive process between the employee and the management official to determine the appropriate reasonable accommodation under the circumstances.
- 6.3 Local senior managers and supervisors** (e.g., Chief Patrol Agents; Directors, Field Operations; Directors, Air and Marine Branch, etc.) are the Decision-makers authorized to determine whether a requested accommodation will be approved or denied.
- 6.4 Employees** are responsible for initiating requests for religious accommodation through their immediate supervisor and cooperating during the interactive process necessary to determine whether a requested accommodation can be approved.
- 6.5 Applicants** are responsible for initiating requests for religious accommodation by contacting the Indianapolis or Minneapolis Hiring Center, as applicable.

7 PROCEDURES

- 7.1** An applicant requesting religious accommodation for any stage of the application process must submit a request for accommodation to the Indianapolis or Minneapolis Hiring Center, as applicable.

- 7.2 Employees shall request a religious accommodation through their immediate supervisor with as much advance notice as possible.
- 7.3 In the event of an emergency situation (e.g., terrorism attack, increased alert level, unforeseen staffing shortage, etc.), CBP reserves the right to temporarily adjust the work schedule of all employees, as needed, until the emergency situation has passed.

8 RECORD KEEPING REQUIREMENTS

To ensure that CBP maintains accurate records regarding requests for religious accommodation, the receiving supervisor shall ask the employee to complete the “CBP Religious Accommodation Request Form.” (See Attachment A).

9 PROCESSING EMPLOYEE REQUESTS FOR RELIGIOUS ACCOMMODATION

Upon receipt of the request, regardless of whether the employee has confirmed it in writing, the supervisor shall refer it to the DCR staff member assigned to provide service to the management area.

10 APPROVAL OR DENIAL OF THE REQUEST

- 10.1 The Decision-maker will issue a written decision to the employee approving or denying the request.
- 10.2 The written decision will also inform the employee of the right to file an informal EEO complaint within 45-calendar days from the date he or she receives the response if he or she wishes to pursue a claim of employment discrimination. For bargaining unit members, the notice will also inform the employee of the right to file a grievance under the applicable union-management negotiated grievance procedure.
- 10.3 Instructions for filing an informal EEO complaint can be found at the following web-address: <http://www.cbp.gov/xp/cgov/admin/fl/eoo/>.
- 10.4 Instructions for filing a negotiated grievance can be found at the following web-addresses: http://cbpnet.cbp.dhs.gov/linkhandler/cbpnet/hrm/for_employees/labor_news/bargain_agree.ctt/bargain_agree.pdf and https://cbpnetsecure.cbp.dhs.gov/sites/obp/Docs/HqPolicy/BP_NBPC_Contract.pdf.

11 TIME FRAMES

- 11.1 Requests for accommodation will be processed within a reasonable period of time based upon the facts and circumstances.
- 11.1.1 **Requests Not Involving Extenuating Circumstances:** If the request does not involve extenuating circumstances, it shall be processed and the accommodation, if granted,

provided as soon as possible but not more than **30 business days** from the date the request was initially made.

11.1.2 Requests Involving Extenuating Circumstances: The time for processing the request and providing the accommodation will be extended as reasonably necessary.

12 INTERIM ACCOMMODATION

The Decision-maker may provide an interim accommodation while the employee's request for a religious accommodation is being processed or if an approved accommodation cannot be promptly implemented, based on a totality of the circumstances.

13 CHANGES TO AN EMPLOYEE'S ASSIGNMENT

Employees whose work schedules, positions, work units or duty locations substantively change, must submit a new request for a religious accommodation by following the procedures/process set forth in this Directive.

14 APPEAL RIGHTS

14.1 If an employee's request for a reasonable accommodation is denied, he or she may appeal the decision to the Executive Director of the Office of Diversity and Civil Rights within 10 calendar days of receipt of the denial notice.

14.2 Filing an appeal with the Executive Director, DCR, does not toll the 45-calendar day time period allowable to file an informal EEO complaint or any contractually established time limit allowed for the filing of a grievance.

15 ADDITIONAL INFORMATION

For additional information or questions, please contact your local DCR staff member.

16 BARGAINING UNIT EMPLOYEES

This policy does not supersede any procedures contained in existing collective bargaining agreements (CBAs) covering bargaining unit employees within CBP. In addition, this policy must be used in conjunction with the negotiated procedures contained in existing CBAs.

17 NO PRIVATE RIGHTS CREATED

This document is an internal policy statement of CBP and does not create or confer any private rights, privileges, or benefits for any person or party.

Acting Commissioner
U.S. Customs and Border Protection

ATTACHMENT A:



**U.S. CUSTOMS AND BORDER PROTECTION
RELIGIOUS ACCOMMODATION REQUEST FORM**

Employee Information

Date: _____

Name of Employee Requesting Accommodation: _____

Position Title, Series and Grade: _____

Office Location and Address: _____ Work Phone # _____

Home or Cell Phone # _____

Are you a member of a collective bargaining unit? Yes ___ No ___ If "Yes" identify the bargaining unit: _____

Name of Immediate Supervisor: _____

Position/Title: _____ Work Phone # _____ E-mail: _____

Request for Religious Workplace Accommodation

A reasonable religious workplace accommodation is an adjustment to the work environment that will allow an employee to practice his/her religion without causing undue hardship on the conduct of CBP's business or operation. In order to consider your request for a religious workplace accommodation, please provide the following information:

Identify your religious practice or belief and state what work condition(s) conflict with the practice or belief. Also state the date(s)/frequency of the religious practice(s) (e.g., daily, weekly, monthly, etc.).

What specific workplace accommodation do you request? (e.g., leave, compensatory time, scheduling change, etc.)

If you have requested this religious accommodation previously, please state approximately when the request was made, the name of the individual who responded to the request, and the outcome of the request.

(IF NECESSARY, PLEASE USE ADDITIONAL SHEETS FOR ANY OF THE INFORMATION REQUESTED ABOVE)

I verify that the above information is complete and accurate to the best of my knowledge and I understand that any intentional misrepresentation contained in this request may result in revocation of any approved accommodation and/or disciplinary action.

Signature: _____ Date: _____

For Supervisor's Use Only

Date received: _____ Received by: _____

(Print and Sign)

Date referred to DCR: _____ Referred by: _____

(Print and Sign)