

The Office of Personnel Management's "Protecting Religious Expression in the Federal Workplace" Memorandum: What You Need to Know

Recently, Office of Personnel Management (OPM) Director Scott Kuper issued a [memorandum](#) detailing the rights and permissible behavior of religious federal employees under the Trump administration. The guidance simultaneously overstates the rights of individuals who would seek to proselytize their religious views while underemphasizing the rights of those to be free from unwanted religious conduct. Though appearing nowhere in the memorandum, federal employees should also be aware that current federal religious anti-discrimination law extends beyond theistic religious beliefs; for example, nontheistic beliefs such as humanism, agnosticism, or atheism are to be afforded the same legal recognition as those of the prominent faiths.

The aim of this document is to correct inferences made in the memorandum, while providing objective information to federal employees regarding the current state of the law on religious freedom in the federal workplace.

Harassment and Coercion

Above all, federal employees may not be coerced, explicitly or implicitly, into participating in religious activities or expressing particular beliefs. Coercion is a broad concept and can adopt many forms, including pressure from supervisors, peer pressure from colleagues, or fear of professional consequences, such as exclusion from advancement opportunities or poor performance reviews, for declining to conform. Even if framed as "friendly invitations" or "team-building," repeated or persistent efforts to involve someone in religious expression, when initiated by someone in a position of authority, will likely cross the line into coercive behavior.

Any federal guidance claiming that a supervisor's effort to convert a subordinate is immune from workplace civil rights laws due to its religious nature rests on untested legal theory and deviates significantly from the historically accepted standards. Indeed, participation in religious discussions, events, or displays must always be **voluntary** and free of any real or perceived consequences.

Similarly, federal employees have the right to be free from unlawful harassment in the workplace. Harassment becomes unlawful where 1) enduring the offensive conduct becomes a condition of continued employment, or 2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive. As such, illegal workplace harassment could absolutely take the form of repeated efforts to convert you, offensive remarks about your beliefs, or pressure to join religious activities, regardless of any OPM statement to the contrary.

Group Religious Activities

Federal employees may engage in religious activities with coworkers during non-duty time, such as lunch breaks. These gatherings are allowed so long as participation is voluntary and does not interfere with agency operations. You are not required to participate or respond to invitations to join such activities. Declining to participate cannot be used against you in any employment decisions.

One-on-One Religious Conversations

Federal employees may discuss religious beliefs with coworkers if the conversation is respectful, not disruptive, and not harassing. This includes sharing ethical or moral beliefs that hold a parallel place in an employee's life as religion. If someone continues a religious conversation after they've been asked to stop, it is advisable to document the incident and notify a supervisor. Repeated or blatantly unwelcome attempts at such conversation may constitute unlawful harassment.

As mentioned above, while supervisors do maintain some constitutional rights to religious expressions, they must ensure that their position of authority is not used to pressure subordinates. As such, some religious conversations that may be appropriate in the employee-to-employee context may be inappropriate in the context of supervisor and supervisee. If your supervisor continues to discuss religious matters with you after you've notified them that such conduct is not welcome, it would be advisable to contact an attorney to discuss your options.

Religious Expression in Public-Facing Roles

Federal employees may wear religious symbols or express personal beliefs in public areas, however all such expressions must remain personal and non-disruptive. Federal employees may not express their religious beliefs in a manner that would suggest that the expression represents an official policy of the federal government or that interferes with their ability to perform their jobs. If a religious expression makes others feel targeted or uncomfortable due to their own religious or moral beliefs, it is appropriate to ask whether the individuals are on break and whether a more private location could be used.

Religious Expression in Workstations

You are permitted to display religious or morally significant items in your personal workspace, including religious texts (e.g., a Bible, Quran, the Humanist Manifesto), jewelry or symbols with religiously or morally significant iconography (e.g., a cross, an inverted cross, a Star of David, or a Happy Humanist emblem), and posters or artwork that express religious or nontheistic beliefs, so long as such items are generally permitted in the office place. You can never be required to display any religious materials in your workplace.

Reporting Violations

If you think that you are being targeted because of your beliefs, you should contact an attorney to assist you with the process. American Atheists, the American Humanist Association, and the Freedom From Religion Foundation all accept intakes concerning discrimination against nontheists and can be reached at:

legal@americanhumanist.org

ffrf.org/legal/report-church-state/

atheists.org/legal/report-an-issue/

If you choose to pursue the process without representation you should follow the steps outlined in [this document](#) provided by the Equal Employment Opportunity Commission (EEOC). If you do not follow this process there is a strong chance that you will not be allowed to file a lawsuit in the future.

The Five Bullet Points in the OPM Memo

Before the OPM memo gets to specific situations, it offers this summary: *“Employees must be allowed to engage in private religious expression in work areas to the same extent that they may engage in nonreligious private expression. Agencies may, however, reasonably regulate the time, place and manner of all employee speech, provided such regulations do not discriminate based on content or viewpoint (including religious viewpoints). Agencies may require that employees perform official work while on duty, as opposed to engaging in personal religious observances.”*

In keeping with Supreme Court decisions, humanist, atheist, and agnostic beliefs should be treated in the same way as theistic religious beliefs. Here are the five bullet points in the OPM memo:

“Categories of employee conduct that should not result in a disciplinary or corrective action include but are not limited to:”

- ***Display and Use of Items Used for Religious Purposes or Religious Icons:*** *Employees should be permitted to display and use items used for religious purposes or icons of a religiously significant nature, including but not limited to bibles, artwork, jewelry, posters displaying religious messages, and other indications of religion (such as crosses, crucifixes and mezuzahs) on their desks, on their person, and in their assigned workspaces. An agency may restrict all posters,*

but an agency may not single out religious posters, such as those of a crucifix, a Bible verse, or a Star of David, for harsher treatment.

- **Expressions By Groups of Federal Employees:** *Agencies should allow one or more employees to engage in individual or communal religious expressions in both formal and informal settings alone or with fellow employees, so long as such expressions do not occur during on-duty time. Agencies should not restrict such expressions based merely on hypothetical or potential concerns.*

- **Conversations Between Federal Employees:** *Employees may engage in conversations regarding religious topics with fellow employees, including attempting to persuade others of the correctness of their own religious views, provided that such efforts are not harassing in nature. Employees may also encourage their coworkers to participate in religious expressions of faith, such as prayer, to the same extent that they would be permitted to encourage coworkers to participate in other personal activities. The constitutional rights of supervisors to engage in such conversations should not be distinguished from non-supervisory employees by the nature of their supervisory roles. However, unwillingness to engage in such conversations may not be the basis of workplace discipline.*

Examples: During a break, an employee may engage another in polite discussion of why his faith is correct and why the non-adherent should re-think his religious beliefs. However, if the nonadherent requests such attempts to stop, the employee should honor the request. On a bulletin board meant for personal announcements, a supervisor may post a handwritten note inviting each of his employees to attend an Easter service at his church.

Comment: This says supervisors are just as entitled to proselytize as everyone else. If you ask a coworker or supervisor to stop, they are supposed to stop. Harassment is the bar at which these conversations are supposed to terminate. We believe that the OPM memo sets that bar far too high. Harassment is very difficult to prove. If you believe a conversation has escalated to harassment you should immediately make notes about it in case you file a complaint. Most everyone now has a phone that could record such a conversation but you should consult state laws and federal government policy about recording a conversation.

It seems most likely that nonbelievers will be the target of proselytizing efforts, not people who have religious beliefs that happen to be different. It might help, depending on your office status and office culture, to let people know in advance that you are not open to efforts to convert you to anyone's religious beliefs.

- **Expressions Among or Directed at Members of the Public:** *An employee's fundamental rights, as a private citizen, of personal religious expression are not limited by the venue or hearer, or merely because the employee is a government employee, and therefore may not be suppressed due to the religious nature of the expression. However, when public employees make statements pursuant to their official duties, they are not speaking as citizens for First*

Amendment purposes, and the Constitution does not insulate their communications from employer discipline.

Examples:

- *A park ranger leading a tour through a national park may join her tour group in prayer.*
- *A doctor at a Veterans Affairs (VA) hospital may pray over his patient for her recovery.*

Comment: As a citizen, you can of course ask your VA doctor or any other federal employee not to pray over you or with you. If they persist you can ask for their supervisor and make the case that the employee must have something more important to do. These examples seem to contradict the “only on a break” restrictions cited for employee-to-employee religious discussions, a contradiction that should be explained.

• ***Expressions in Areas Accessible to the Public:*** *An employee’s ability to make religious expressions in their personal capacities in areas accessible to the public should be treated in the same manner as if those expressions are made in areas inaccessible to the public as their rights to free expression are not limited upon entering a public facility.*

Examples:

- *A security guard stationed at the front desk of a federal office building may display and use a crucifix, Bible, or use rosary beads.*
- *A receptionist in a doctor’s office at a VA Medical Center may pray with a coworker in the patients’ waiting area.*

Comment: If workers are praying in a patients’ waiting area or any other waiting area in a federal building, you could ask if they are on a break and, if so, whether there is a more private or less public location where they could pray.