

# **Religion in the Workplace in France, Germany and the United Kingdom**

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## **I. France**

In France, laicism/secularism ("laïcité") has been part of state policy since the law of 1905 was passed/adopted. The political system of the French republic is characterised by the exclusion of ecclesiastical control and influence. This doctrine applies to French employment law as well. Therefore, the practise of religion and the wearing of religious symbols during working hours may not be tolerated by employers.

### **1. Laicism/Secularism: Separation of Church and State**

- Sceptical attitude towards Catholic Church for historical reasons
- Law dating from 1905: separation of church and state
- Absolute prohibition of the practice of religion in government agencies
  - Principle of neutrality in schools and universities
  - Principle of neutrality with respect to co-operations within the framework of public-private partnerships (partenariats public-privé)

### **2. Religion in Private Companies**

- No explicit statutory foundations
- Bill rejected, June 2013
- Official policy of "observatoire de la laïcité":
  - General legal principles in private companies
    - Freedom of religion
    - Freedom of opinion
    - No discrimination
    - Principle of proportionality

### **3. Limits for Practising Religion in Private Companies**

- **Security and health risks**

- Risks caused by contact with chemicals
- Risks involved in use of machines
- Risk of infection
- **Aggressive proselytising**
  - Foisting one's own religious beliefs on others
  - General ideological discussions permissible
- **Obstacles for operating procedures**
  - Fulfilment of duties under the employment contract
  - Adherence to working hours
  - Compliance with company strategy

#### **4. The Baby-Loup Affair**

- Employee working in a childcare centre was dismissed for wearing a headscarf
- Highest civil court: dismissal unlawful
- Judgment appealed, referred back to court of appeals, reasons:
  - Dismissal discriminatory
  - Rules of operation not a valid barrier for employee's freedom of religion
- Court of appeals decision: dismissal lawful
- Final decision of Cour de Cassation expected on 16 June 2014

#### **5. Prohibition of Practising Religion in Private Companies**

- Paprec: inclusion of principle of secularism in rules of operation in response to the Baby-Loup Affair
- Adoption of the principles applicable in government agencies
- Doubtful whether this rule will be legally valid

## **II. Germany**

Germany pursues a tolerant policy towards public visibility of religion. The secular system is less rigorous than in France. In private companies, the wearing of religious symbols is

accepted as long as it has no negative influence on operational procedures. In the last few years, the headscarf debate led to controversies concerning German employment law.

### **1. Religious Symbols in Government Agencies**

- Partner-like relationship between church and state
- Reaction to "**headscarf judgment**" (2003)
  - Establishment of statutory rules
  - Wearing headscarves prohibited in 8 of 16 federal states (*Bundesländer*)
  - Christian symbols permitted in some cases
  - Court ruling in Bavaria: no violation of principle of equality

### **2. Religion in Private Companies**

#### **a) Employee**

- Freedom of religion (Article 4 of the Basic Law (*GG*)); duty of loyalty towards employer
- May refuse performance for reasons of conscience (§ 275 III of Civil Code (*BGB*))
- If applicable, must request transfer to another position

#### **b) Employer**

- General authority to issue instructions; employer has the right to claim full job performance
- May refuse payment of wages (§ 326 I of Civil Code)
- May issue notice of dismissal on grounds of conduct

### **3. Limits for Practising Religion in Private Companies**

- Impermissibility of refusal to work:
  - Breach of duty of consideration
  - Attempts at proselytising
  - Interference with operational procedures
  - Conflict was foreseeable at the time work was commenced

#### **4. Legality of Dismissal**

- Dismissal for reasons related to the individual conduct
- Legality of dismissal irrespective of the existence of a right to refuse performance
- Prerequisites for a dismissal
  - Negative prognosis
  - No option of assigning other work to employee
  - Overall assessment

### **III. United Kingdom**

In the UK, the idea of pluralism prevails. In contrast to Germany and France, the wearing of headscarves and other religious symbols in the workplace is widely accepted. However, the employees' freedom of thought, conscience and religion can be restricted when it comes to the violation of other people's rights and liberties (e.g. discrimination on grounds of sexual orientation).

#### **1. Religious Symbols in Government Agencies**

- Multicultural society
- Practice of religion at the workplace treated liberally
- Wearing of religious clothes or symbols in government agencies permitted
  - Teachers may wear turban or headscarf
  - Female police officers may wear headcovering

#### **2. Practising Religion in Private Companies**

- **Equality Act 2010**: protects positive and negative freedom of religion; prohibition of discrimination and harassment
- **Abortion Act 1967**: medical staff may refuse to carry out abortions
- **Human Fertilisation and Embryology Act 1990**: involvement in artificial inseminations may be refused
- **Industrial relations Act 1971**: an employee may refuse to join a union for religious reasons in a "closed shop"

### **3. Rulings of the ECtHR**

- Facts:
  - An airline employee and a nurse want to wear visible crosses as necklaces
  - Registrar of births, deaths and marriages refuses to perform a wedding for a same-sex couple
  - Couple therapist refuses to counsel same-sex couple
- Court actions based on Articles 9, 14 of the ECHR. ECtHR, 15 January 2013:
  - Decision concerning airline: dismissal violates Art 9 of the ECtHR
  - Decision concerning nurse: safety aspects in a hospital outweigh freedom of religion owing to risk of injury and infection
  - Other dismissals legal, employers' interests take precedence, broad discretion of national courts