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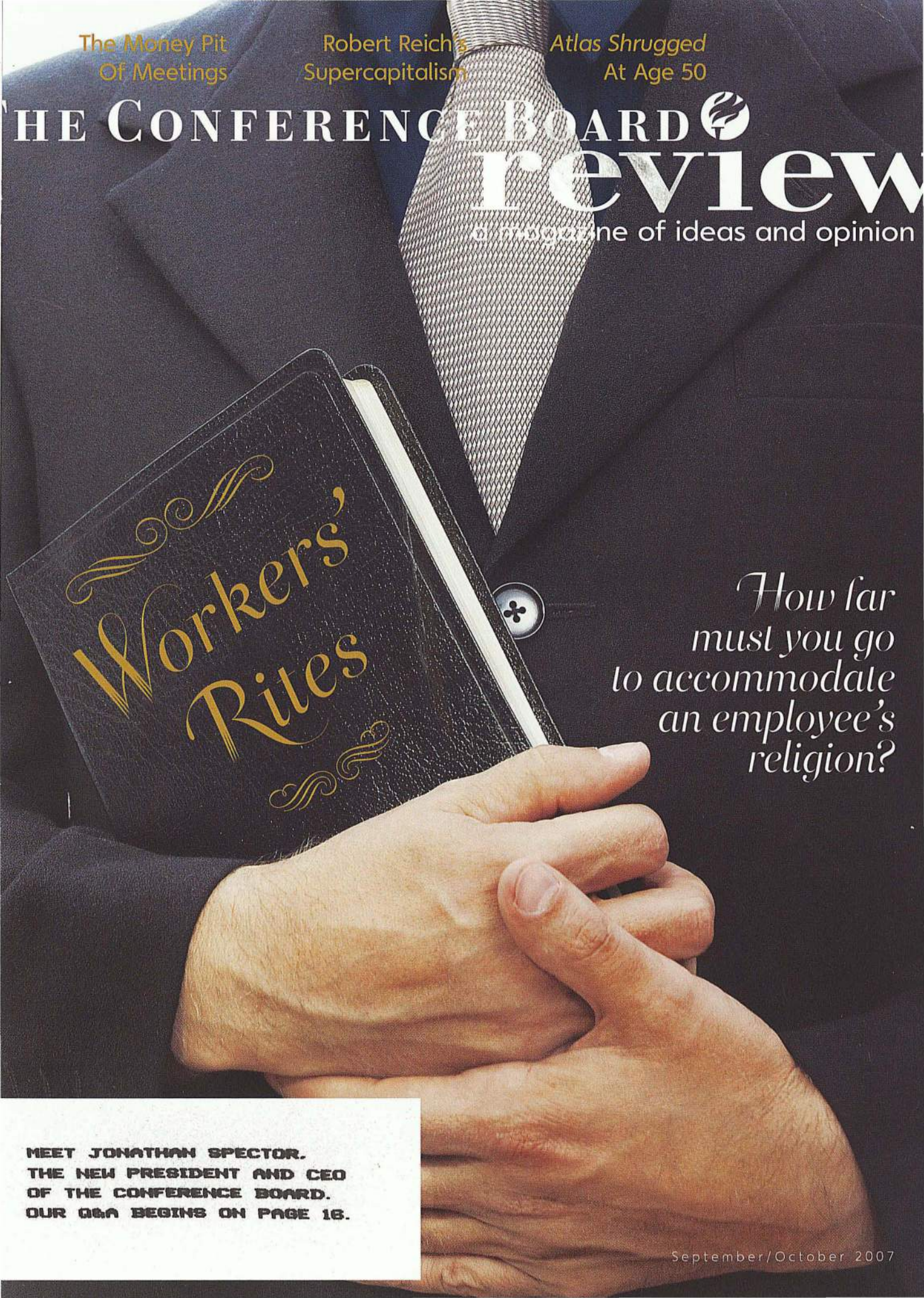


*How far must you go to accommodate an employee's religion?*

MEET JONATHAN SPECTOR. THE NEW PRESIDENT AND CEO OF THE CONFERENCE BOARD. OUR Q&A BEGINS ON PAGE 16.

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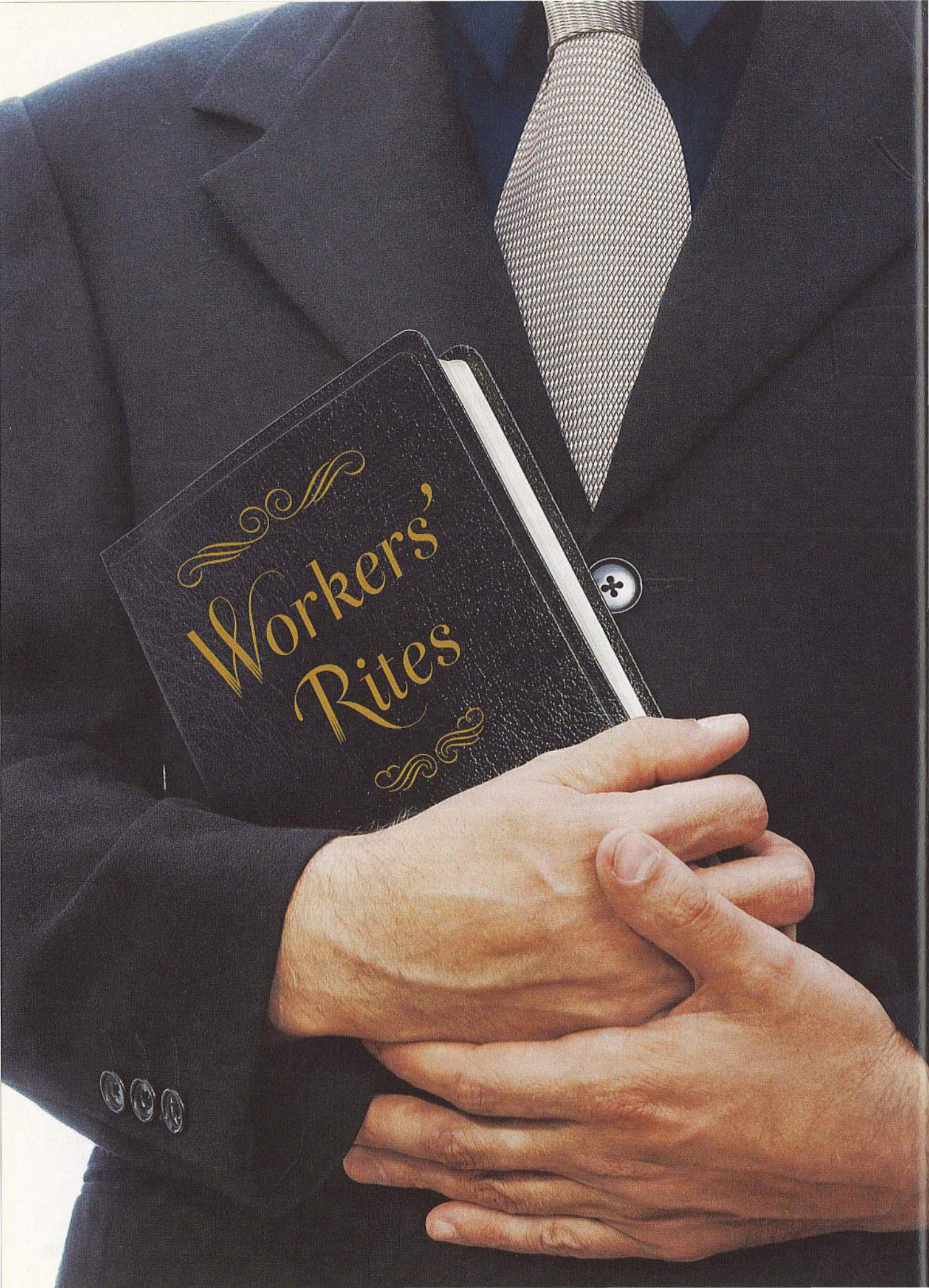
Workers'
Rites

# *What happens when an employee's freedom of religion crosses paths with a company's interests?*

By Vadim Liberman

Does your company have a witch who says she can't work on Halloween? What about an assistant who spontaneously chants in an unrecognizable language? OK, these are obviously unusual cases of employees bringing their religion into the workplace. But they share one commonality: They're real. And for every such worker, there are thousands more for whom faith is not something they check at the HQ front door. "Years ago, work was work, and religion was religion. People weren't thinking about bringing their faith to the office," says Ron Saunders, The Conference Board's senior manager of research working groups. "But over the past several years, especially after 9/11, as interest in religion has increased, people are more eager to integrate their faith and work lives."

Integration, however, is never problem-free. In fiscal 2006, the Equal Employment Opportunity Commission received 2,541 claims of religious discrimination in the workplace—almost 50 percent more than a decade earlier. That doesn't include the number of suits brought by employees without the EEOC's help, and it omits most workplace conflicts—those that never make it to court. According to the New York-based Tanenbaum Center for Interreligious Understanding, 66 percent of employees report "evidence of religious bias at work."

As religion increasingly collides with corporate policies and practices, companies are asking what is and isn't permissible behavior—for workers *and* for themselves.

Obviously, you can't fire someone just because her faith differs from yours. But what happens when you face situations that aren't so black and white—when the beliefs and practices of customers and co-workers come into play, not to mention the intricacies of employment law? To find out, we presented several sensitive case studies to diversity consultants, employment attorneys, and representatives from religious organizations, asking for their recommendations. Though no one was told at the time, each scenario was an actual court case. Below you'll find these experts' counsel—and a chronicle of how each case uncomfortably twisted its way to a conclusion. Where possible, we've included feedback from those involved in the cases.

## When Dressing Leaves a Bad Taste

**What if . . . you operate a restaurant chain whose dress code forbids visible tattoos, but one worker refuses to abide by the code because doing so would cover markings that his religion demands be kept exposed? What should you do?**

**In an ideal world . . .** allowing dress-code exceptions is one of the easiest concessions for employers to make, says Atlanta diversity consultant Harvey Coleman. But perhaps you're thinking that this is a non-issue: No *real* religion requires adherents to flaunt tattoos. Think again. "The law protects all sincerely held religious beliefs, not just those involving the most well-known religions," explains Andrew Altschul, a Portland, Ore.-based employment attorney. Courts have recognized religions with only two members—an employee and his mother. In this situation, Altschul recommends that you educate yourself about the worker's faith and discuss with him possible compromises.

"The law clearly requires employers to make reasonable accommodations," Coleman adds, "*if* those accommodations do not demand undo hardship for the organization." For example, ask yourself: Would altering the uniform jeopardize the worker's and others' safety? Would it damage the company's ability to promote a professional public image?

**In the real world . . .** when Red Robin Gourmet Burgers, which operates more than 350 casual-dining restaurants in North America, insisted that Edward Rangel, a food server at a Bellevue, Wash., restaurant, cover his tattoos to comply with the company's new dress code, Rangel protested. A believer in Kemetic Orthodoxy, a religion dating back to ancient Egypt, Rangel claimed that he received his 1/4-inch-wide tattoos encircling

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his wrists as part of a ceremony to symbolize his dedication to his creator. The religion allows for covering the tattoos only one month out of the year; concealing them at other times constitutes a sin.

Rangel had worked at Red Robin for six months, having explained his tattoos' religious significance to supervisors. When Red Robin instituted a new "Uniform/Appearance" policy, prohibiting visible body piercings and tattoos, Rangel told his boss that he could not comply.

He further pointed out what he saw as hypocrisy, given that one of his supervisors wore a crucifix, technically violating the chain's no-jewelry policy. Nevertheless, higher-ups threatened to fire Rangel if he didn't cover up, suggesting that he conceal his markings with wristbands or bracelets—which again would breach the restaurant's jewelry rules. Red Robin, adamant that Rangel's beliefs were merely personal preferences, then offered him a position involving no public contact. "That harks back to the old days when companies would say, 'We employ blacks—we just don't want them to be bank tellers,'" says Rangel's attorney, Kathy Barnard, a partner at Seattle-based Schwerin Campbell Barnard & Iglitzin LLP. "You cannot make the argument that because customers are biased, you should be able to hide your workers. Never mind the dignity issue here." Rangel refused the accommodation, Red Robin fired him, and Rangel sued.

*Does this mean that you automatically must allow employees to display their religious tattoos?*

The restaurant had claimed that Rangel's tattoos clashed with the eatery's family- and child-friendly image—though Red Robin was unable to cite any customer complaints or evidence that Rangel's tattoos were incongruous with the company's core values. (And those values themselves have come under fire: Then-CFO Jim McCloskey reportedly told investors that Red Robin has "Christian values" and seeks out "that all-American kid" from the suburbs to serve food—not one with "that urban kind of experience.") Rangel noted that he had gotten only some positive feedback from curious patrons.

A consent decree settled the case. The company paid Rangel $150,000 and agreed to educate managers on its new discrimination, harassment, and retaliation policy. Rangel took a job elsewhere as a customer-service telephone operator.

Does this mean that you automatically must allow employees to display their religious tattoos, or piercings, around the workplace? No, as a brouhaha involving Costco shows. When the discount giant instructed employee Kimberly Cloutier to comply with an updated policy of "no facial jewelry," she balked, citing her membership in the Church of Body Modification. Costco suggested that she cover her piercings with Band-Aids; when she rejected the proposal, Costco fired her.

A U.S. district court ruled that Cloutier's religion was genuine but did not require her to wear piercings at all times. The judge further stated that Costco's attempts at compromise were sufficient. "The search for reasonable accommodation goes both ways," the court stated, and Cloutier "offered no accommodation whatsoever."

## Game Over

**What if . . . you run a tech-support company, and a technician refuses to provide help to a client that manufactures violent computer-software games? A devout Christian, she claims that servicing the customer would violate her faith. You explain that no other accounts have available openings, but she still objects. What should you do?**

**In an ideal world . . .** "this woman has a legitimate right to refuse to work on this account if her particular faith supports nonviolence," insists Judi Neal, CEO of the International Center for Spirit at Work, a nonprofit that promotes spirituality in the workplace. Neal suggests keeping her on the payroll until you bring in a new account, explaining, "This might be a good time to send her for more technical training or to have her shadow a more senior person. Or if she is highly skilled, she could use this time to train others."

Hold on. Don't do anything just yet, says Andrew Altschul, who counsels that you first determine whether the technician's religious belief is sincere. For instance, she may oppose the distribution of violent games, but plenty of other people do too—regardless of religion. Therefore, the employee must explain exactly what in her religion justifies her stance. If her faith truly does conflict with her new duties, then Altschul recommends voluntary job swaps or reassignments as a compromise. "But if they are not available," he continues, "you don't have to create a new position for her, since doing so may be considered undue hardship if it infringes on other employees' job rights and benefits, diminishes the efficiency of other jobs, or causes co-workers to carry an extra share of the work."

But what if there is no reasonable accommodation? "Then servicing the account becomes a condition of employment," says Harvey Coleman, who contends that the level of "acceptable" violence is a matter of personal interpretation. "If the client is not breaking a law with its products, then it has a right to technical support." In that case, he says, the worker is out of luck.

**In the real world . . .** luck wasn't all she was out of. Frances Wagner was a customer-service rep for Tampa-based Sykes Enterprises, a provider of tech support to various com-

panies. For two years, Wagner worked on numerous business accounts at the company's call center in Sterling, Colo. She told Florida's *St. Petersburg Times* that she loved her job. "I'd stay after work and talk with other techs," she remarked. "I loved the idea of problem-solving." That love died when Sykes assigned Wagner to assist GTI, maker of computer games such as *Doom* and *Duke Nukem*. Deeming GTI's games violent, vile, and pornographic, Wagner notified her supervisor that her Lutheran religion forbade her from servicing the account, explaining that "to help children put trash in their computer was an abomination in the eyes of God."

After assigning Wagner some temp work, Sykes fired her a month later, maintaining there were no openings on other accounts. "The company said that, but it could've easily split up work so that she could service several accounts," says Nancy Weeks, a supervisory trial attorney at the EEOC. "Instead, they basically said, 'Look, we're just not going to change the way we do business for you.'"

But they should have. Wagner sued, and a court settlement ultimately forced Sykes to pay Wagner $80,000, expunge her personnel file of all negative references to her employment, and implement a policy addressing religious accommodation. Wagner, who later moved to California to become a real-estate agent, told the *Times*: "This was a shattering experience for me. "[Supervisors] all told me they wouldn't let their kids play those games, and yet they wanted me to put them on other children's computers."

*Top brass were concerned that potential clients might react negatively to Kolman's Mormon beliefs.*

## To Drink Is to Sell

**What if . . . it's customary for your salespeople to go for drinks with clients, but one of your workers refuses to imbibe? Doing so, he says, contravenes his Mormon faith. But you believe that his abstinence impedes his ability to sell effectively. What should you do?**

**In an ideal world . . .** you should respect your salesman's request to not be put in a position in which consuming alcohol is expected. "Drinking with customers should not be a performance objective," says Harvey Coleman. Instead, treat the worker as you would any other, by evaluating him based on his ability to reach sales targets.

"Can the company even demonstrate that his refusal to have drinks hurts sales?" asks Marc Stern, senior adviser for law and social justice at the American Jewish Congress. Stern recalls a case of an Orthodox Jew who applied to be a vacuum repairman at Sears and was rejected because he wouldn't work on Saturdays, the store's busiest day for repairs. The man took Sears to court, charging religious discrimination. The company had a solid case but for an inconvenient fact: An inspection of store records revealed that *Tuesday* was its busiest day. "A company should look at its records before making assumptions," Stern cautions.

Judi Neal points out that drinking with clients is hardly the only out-of-the-office way for salespeople to develop relationships with them. She recommends other activities, such as simply going to dinner or replacing a round of beers with a round of golf. "The employee's refusal to drink may actually help expand your repertoire of customer-relations activity and help your organization be more effective," Neal says.

**In the real world . . .** Michael Kolman, an Atlanta salesman for Bombardier Inc., a Montreal-based aircraft manufacturer, contended that the firm's VP of sales told him that his abstinence was hurting his ability to connect with potential clients, who would be "highly offended" by his behavior. Kolman was also allegedly told that part of a salesman's job is "wining and dining customers." Just one month prior, his supervisor had given him a positive performance appraisal. But shortly afterward, Kolman casually mentioned his Mormon faith to his boss, and, he says, his superiors became critical of his work.

He complained to the HR department; eight days later, Bombardier fired him. "They threw me in the street," Kolman complained, and he filed a religious-discrimination suit against his former employer. "From Bombardier's point of view, we don't discriminate against employees," a company spokesperson said at the time. The company claimed to have terminated Kolman for poor performance: He sold three jets in his first eight months on the job but only assisted on the sale of two used planes during his subsequent—and final—eight months. Kolman counters that nine of the company's other sixteen regional sales managers—all of whom kept their jobs—were much further from attaining their sales goals. Kolman also claims to have gotten along well with clients; though he wouldn't drink, he often accompanied them to dinner and acted as their designated driver.

A consent decree settled the case, and Bombardier paid Kolman $159,000, provided him with a positive letter of reference, and agreed to institute anti-discrimination training for its managers. Kolman eventually relocated to Denver, where he now sells single-engine-propeller planes.

Bombardier top brass were supposedly concerned that potential clients *might* react negatively to Kolman's Mormon beliefs, but what if customers were to actually express such discomfort? Suppose you have a new Muslim saleswoman on your team, and after several sales calls, you begin receiving informal feedback from potential clients that they are uncomfortable with the

woman's "Muslim appearance"—specifically, her headscarf. As a result, she's having trouble selling. What now?

For starters, "customer preference is never a justification for a discriminatory practice," states EEOC employment guidelines. "Notions about customer preference real or perceived do not establish undue hardship."

"It would be nice to go back to clients and say, 'If you have a problem with her appearance, then you have a problem with us,' but no company would ever say that," says Joseph Grieboski, president of the Institute on Religion and Public Policy, a Washington think-tank. Adds K. Joy Chin, a partner at employment law firm Jackson Lewis: "It would hurt both the employee and your business to have her remain in this assignment simply to prove a point to the customer. It may also cause the employee to feel she was being set up to fail, leading to possible future claims of a hostile work environment."

You should judge the worker, then, based on her ability to reach her sales goals—but explain that you don't want to fire her based upon lower sales. "You and the employee can then take time to think about ways to combat the problem," says Dina El-Nakhal of the Council on American-Islamic Relations. "It may be as simple as the employee exerting extra effort to assure clients of her professionalism, friendliness, and excellent customer service." Or, El-Nakhal adds, you may accompany her on sales trips—or meet with clients separately—to alleviate concerns.

If all that fails—and given that she might also be unhappy working with uncomfortable customers—you should propose a new assignment with other clients or another comparable position within the company. That's exactly what Alamo Rent-A-Car tried to do with Zeinab Ali. Hired as a management trainee, Ali was told by her new supervisor to either stop wearing her headscarf or face a transfer to a position involving infrequent customer contact. When Ali refused to remove her scarf, her boss moved her to a new post. Ali sued, alleging discrimination—and lost. In order for an employee to prove religious discrimination, it's not enough to show that she wasn't accommodated. She must also prove there was an adverse employment action, something Ali could not.

But Bilan Nur could. She, too, sued Alamo. For years, she was permitted to wear a scarf at the business's Phoenix airport location, but after the September 11 attacks, the company told her she was in violation of its dress code. Nur says she offered to make a headscarf out of the company's fabric and attach an Alamo patch, but Alamo fired her anyway. This past June, a jury awarded Nur $287,000.

Had Alamo offered Nur an accommodation, such as an alternate position, the company would have had to include comparable pay and conditions to her current role. "You should be careful that any reassignment is not perceived as retaliatory," says William Carnes, an employment attorney in Tampa, Fla. But what if a worker rejects a new position? Then you have no choice but to treat her as you would any other poorly performing salesperson, which may include firing her. As New Haven, Conn., employment lawyer Joseph Garrison puts it: "It's not a question of *total* accommodation but *reasonable* accommodation."

*Do you really have no choice? Not quite. You can—indeed, you must—make an exception.*

## An Unholy Union

**What if . . . you have a contract agreement with a union that stipulates that all your workers must become members, but one recent hire refuses to join? He says doing so would violate his religious beliefs. What should you do?**

**In an ideal world . . .** "you should negotiate with the union on what to do with the person," says Joseph Grieboski, "but if he's given an out from joining, it creates an atmosphere of exclusion for others in the company." Grieboski recommends asking the employee to explain his precise problem with union membership. Is it the paying of dues? Having to strike alongside other members? You can try asking the worker to comply with union rules without formal membership, but that creates another problem: Why should *other* workers pay dues?

In the end, you have no choice but to live up to your union contract, points out Patricia Pope, a Cincinnati diversity consultant. "You can't make this kind of exception for one person," she says. "End of story."

Not quite the end, actually. You can—indeed, you must—make an exception. According to U.S. labor law, "Any employee who is a member of and adheres to established and traditional tenets of teachings of a bona fide religion . . . which has historically held conscientious objections to joining or financially supporting labor organizations shall not be required to join or financially support any labor organization as a condition of employment." The law further states that that in lieu of paying union dues, the worker may donate the same amount of money to a non-religious, non-labor charity.

**In the real world . . .** David Cruz-Carrillo claimed that he could not join a labor organization because doing so was forbidden by his Seventh-Day Adventist Church. Though his temporary-worker job application noted his graduation from an Adventist college, he never mentioned during the hiring process that he would be unable to join the union, which maintained a bargaining agreement with his employer (the water and sewage authority of the U.S. commonwealth of Puerto Rico) that all permanent employees must belong.

After two years of employment, Cruz-Carrillo became a permanent worker and was told that he'd have to join the union. According to the union, Cruz-Carrillo again stated no objection to membership—rather, he rejected specific union practices: attending Saturday meetings, striking, taking a loyalty oath, and paying dues. To accommodate Cruz-Carrillo, the union offered to exempt him from meetings and strikes, to paraphrase its oath, and to transfer his dues to a nonprofit organization. Only after Cruz-Carrillo rejected these compromises, the union contends, did he refuse membership in any form. (Cruz-Carrillo claims that the union never offered any accommodations and that he opposed membership from the very beginning.) Eventually, the water authority fired Cruz-Carrillo, after which the EEOC filed a religious-discrimination complaint on his behalf. The court ruled in Cruz-Carrillo's favor, awarding him $133,136, and ordered his reinstatement.

Cruz-Carrillo went back to work, but the union didn't give up. It noted aspects of Cruz-Carrillo's behavior that contradicted the tenets of his religion: He had gotten a divorce, taken an oath before a notary upon becoming a public employee, and worked only five days a week when his religion requires toiling for six days. The union challenged not the validity of Cruz-Carrillo's beliefs but his sincerity.

*The union challenged not the validity of Cruz-Carrillo's beliefs but his sincerity.*

After years of winding through the legal system, the case was settled by a consent decree. Cruz-Carrillo received $75,000 and was allowed to work without joining the union, provided that he donate an amount equivalent to his dues to a secular charity.

What happens when a worker invokes his religion to object not to union membership but to how the union spends his dues? When electrical engineer Robert Beers, a Southern Baptist, discovered that the International Association of Machinists was backing political-action committees and other organizations that supported abortion and gay rights, he refused to pay further dues. After the union threatened to have Lockheed Martin fire him from his job at the company's Cape Canaveral Air Force Station facility, Beers took the union to court. Three years later, the union finally allowed him to pay his dues to a charity instead.

Few workers, of course, examine how unions spend their money—but that doesn't mean you shouldn't be prepared to mediate between your employees and your union. When it comes to choosing which side to support, the answer is clear: Side with the law.

## A Problem of Biblical Proportions

**What if . . . a group of Christian employees objects to your company's portion of diversity training dealing with gays and lesbians? To protest, they silently read the Bible when homosexuality comes up during a training session. What should you do?**

**In an ideal world . . .** "if the training emphasizes sensitivity and tolerance and does not require employees to accept homosexuality or some other belief or practice that conflicts with their religious beliefs, you likely would be within your right to require these employees, like all others, to attend training and refrain from non-work activity during it," explains Joy Chin. You should treat their behavior no differently than other acts of insubordination.

However, it's important to first find out exactly what the workers find objectionable and whether you can accommodate their complaints. "Courts view more favorably an employer that engages in efforts with an employee to offer reasonable accommodations than an employer that concludes peremptorily that nothing can be done," says Chin, who points to a case involving Albert Buonanno, a Christian employee at AT&T Broadband. Buonanno's beliefs prohibited him from approving, endorsing, or esteeming behavior and values that, in his view, repudiated the Bible. When AT&T required its workers to sign a document acknowledging receipt and understanding of its new employee handbook, he refused. He disagreed with the manual's statement, "Each person at AT&T Broadband is charged with the responsibility to fully recognize, respect and value the differences among all of us," including sexual orientation. Though Buonanno explained that he'd never discriminate, harass, or retaliate against any employee who happened to be gay, he could not claim to "value" homosexuality. He repeatedly refused to sign the document, and the company fired him.

A judge ruled that the company discriminated against Buonanno, since AT&T could easily have altered the language without causing undue hardship for itself. The court pointed out that had the company engaged in more dialogue with Buonanno, it would have discovered that the employee's only real challenge was to the use of the word "value." Removing it would have been a sensible accommodation. The court awarded Buonanno $146,269 in lost wages and benefits.

But what if you've spoken to employees, and they still feel that *any* inclusion of homosexuality in diversity training is offensive? Then you must allow the workers to read their Bibles, says employment lawyer Joseph Garrison, who adds, "It's an accommodation in and of itself." However, he notes that this doesn't exempt them from harassment laws—they should already know, even without the training, that they must treat gay and lesbian co-workers as respectfully as they would any other employees.

Do they? "Employees who take out their Bibles and disengage are also likely to behave in other counterproductive ways on the job, such as not sharing information with someone whom they know or suspect is gay," says Patricia Pope. Therefore, they may be unwilling to coach, develop, and promote gay workers. Diversity training is no different than other training programs, Pope continues. Would this behavior be tolerated if the session were on, say, safety? "That employees should leave their biases at the door is a reasonable expectation, not an imposition," she says. "Otherwise, you're inviting similar behavior, like men pulling out sports magazines during the gender portion of training."

"If these workers cannot support the company's culture, they can go through a normal process to address their concerns, not make such a demonstration," says Kent Humphreys, president of Christ@Work, a nonprofit committed to bringing Christianity into the workplace. He insists that this issue has less to do with gays and lesbians than with adherence to authority. Joseph Grieboski disagrees, saying that the suit has everything to do with employees wishing to make a political statement against homosexuals. He adds: "I don't think a court would ever uphold any lawsuit by them."

*To single out those reading the Bible, a jury decided, was discriminatory.*

**In the real world . . .** when three Christian employees at the Minnesota Department of Corrections (MDC) in Shakopee, Minn., discovered that a daylong training session would include a seventy-five-minute program titled "Gays and Lesbians in the Workplace," one of them sent an e-mail to the warden protesting that the mandatory training would "raise deviant sexual behavior for staff to a level of acceptance and respectability." The warden, hearing increasing rumors that other staff members also objected, issued a memorandum to all workers explaining that the program was part of "the facility's strong commitment to create a work environment where people are treated respectfully, regardless of their individual differences [and not] designed to tell you what your personal attitudes or beliefs should be."

The MDC allowed the three strong objectors to review the training material prior to the session, but they nonetheless concluded that the program constituted "state-sponsored indoctrination designed to sanction, condone, promote, and otherwise approve behavior and a style of life [that we] believe to be immoral, sinful, perverse, and contrary to the teachings of the Bible." They asked management to allow their absence from this portion of training.

The MDC denied their request, and when the program began, the workers pulled out Bibles and copied Scripture as a silent protest. According to Francis Manion of the American Center for Law and Justice, a religious-freedom nonprofit that represented the workers, training material included handouts that equated the belief that heterosexuality was superior to homosexuality with racism and anti-Semitism, as well as instructions that employees not speak about their spouses and children at work so as not to offend gay coworkers. "It was so over the top," says Manion, who notes that his clients got along well with gay employees.

When trainers complained after the session, the MDC reprimanded the workers, including making two of them ineligible for promotion for two years. The punished workers sued. Though they initially lost, they prevailed on appeal—not because they had a right to read the Bible but because other employees who were also not paying attention, either by dozing or reading magazines or doing paperwork, were never disciplined. To single out those reading the Bible, a nine-person jury decided, was discriminatory, and they awarded the three employees $78,000. Manion notes that the MDC could have avoided the fiasco by changing the language in the training material or by disciplining everyone not paying attention. Since the case's resolution, the training has been "toned down," he reports. "It's not as outrageous."

If nothing else, these examples illustrate what to do—or, rather, *not* to do—in order to avoid lawsuits. But accommodating a worker's faith is about more than just steering clear of a judge. It's a means to retain talent. "When people feel as if they can work in an environment that allows them to integrate their faith and bring their true selves to work, they are more productive," explains The Conference Board's Ron Saunders, who is in the process of forming a working group of executives to address corporate strategies dealing with religion in the workplace. Indeed, there's no sense in perpetuating problems with a productive employee if you can reasonably accommodate his religious convictions.

In fact, you can even create an atmosphere where religion can have a positive effect on the workplace, says Laura Nash, author of *Church on Sunday, Work on Monday*. She recalls a company that had evangelical and gay affinity groups; rather than disagree on issues of proselytizing and sexual orientation, the two groups agreed to work together on a fund-raiser for children with AIDS.

In the end, just remember: "Religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit" protection, according to the law. As more workers assert their religious rights at work, that very well may be corporate America's new golden rule.