

FREE AND EQUAL SERIES

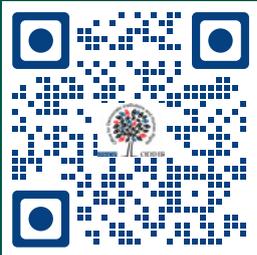


**Employment:
The Right to Freedom of
Thought, Conscience,
Religion or Belief of
Women at Work**



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Introduction

Women have the right to freedom of thought, conscience, religion or belief (FoRB), including in employment. In practice however, many women face a range of challenges related to their religion or belief. This threatens not only their right to FoRB, but also their effective participation in the labour market on an equal footing with men. Research shows that countries with high levels of legal restrictions on the practice of religions or beliefs often have lower levels of gender equality, including in the labour market.¹ Religious restrictions can significantly limit women's access to employment, decreasing their economic opportunities and increasing gender inequality.²

To ensure the full protection of women's right to FoRB in the labour market,³ OSCE participating States need to respond to specific challenges that women face in this area, identify protection gaps and address them to enable a fuller exercise of FoRB for women, and promote gender-sensitive approaches to regulating FoRB-related issues in laws and policies. This explainer offers OSCE participating States, businesspeople, unions, civil society organizations and religious or belief groups practical recommendations to ensure respect for, and protection of women's right to FoRB in employment.

“States have a duty to eliminate discrimination against women in the field of employment, including free choice of profession and the right to the same employment conditions as men.”

— 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW 11(1))

ODIHR's mandate to work on women's right to FoRB in the labour market is twofold: the OSCE is both committed to advancing the right to FoRB for everyone⁴ and to taking all necessary actions to promote the equal participation of men and women in economic life.⁵ More broadly, OSCE commitments related to the protection and promotion of all human rights and fundamental freedoms should be applied fully and without discrimination against women.⁶

1 Grim, Brian and Jo-Ann Lyon, Religion holds women back. Or does it?, World Economic Forum, 17 November 2015; See also, Asim Iqbal, Shafiqul Hassan, Haider Mahmood and Muhammad Tanveer, Gender equality, education, economic growth and religious tensions nexus in developing countries: A spatial analysis approach, Heliyon 8(11): e11394, 3 November 2022.

2 Freedom of Religion and Belief for Everyone: Women in Focus, Stefanus Alliance International, 2021, p. 28.

3 OSCE participating States have committed to, for example, “Take appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of gender equality, the right to equal pay for equal work and the right to equality in employment opportunities” (OSCE Ministerial Council, Decision No. 2/03, “Combating Trafficking in Human Beings”, Annex, para. 3.3, p. 45), and to promote equality for women in the economic sphere and fight against obstacles preventing women from fulfilling their potential in the economic sphere (OSCE Ministerial Council, Decision No. 14/04, Sofia, 7 December 2004, para. 44 (f)).

4 These include: Helsinki 1975, Vienna 1989, Copenhagen 1990, Paris 1990, Budapest 1994, Istanbul 1999, Maastricht 2003, Sofia 2004, Ljubljana 2005, Brussels 2006, Madrid 2007, Helsinki 2008, Athens 2009, Astana 2010, Kyiv 2013. See also OSCE/ODIHR (2022), Women need greater freedom of religion or belief, OSCE/ODIHR, video, 1 April 2022.

5 Helsinki 1975, Madrid 2007, para. 16; Vienna 1989, para. 15; Moscow 1991, para. 40.8.

6 Moscow 1991, para. 40.1.

Freedom of religion or belief at work: the legal framework

International human rights law protects an individual's freedom to have (or not have) a religion or belief, and to express, manifest and practice this religion or belief alone or in community with others, in private as well as in public.⁷ This includes in the workplace.⁸

All employees have the right not to be discriminated against on the grounds of religion or belief. An employer cannot treat an individual employee differently from others, based on their religion or belief or the employer's assumptions about an employee's convictions. Employers should not consider an employee's religion or belief as an indicator of their ability to perform specific tasks or fulfil responsibilities as an employee. An employee's convictions should not serve to impact, positively or negatively, their employment, promotion or dismissal.

Employees also have the right to be free from coercion and harassment. An employer cannot oblige or pressure an employee to engage in certain religious or belief practices, or otherwise express or manifest certain beliefs against their will, for instance, by requiring or pressuring them to wear religious clothing, to take part in religious ceremonies or to convert.

Finally, employees also have the right to express, manifest and practice their religion or belief at the workplace, although with certain limitations. Employers may define certain work-related obligations or rules which limit an employee's freedom to practice their religion or belief at the workplace.⁹ An employer can, for example, restrict certain religious practices based on legitimate security concerns. However, limitations must never amount to a simple overriding of the employee's freedom of thought, conscience, religion or belief, and they must not result in direct or indirect discrimination.¹⁰

International human rights mechanisms have encouraged employers to apply reasonable accommodation whenever possible.¹¹ The notion of reasonable accommodation obliges an employer to accommodate an employee's wish to manifest or practice their religion or belief, as long as this does not present disproportionate or undue hardship on the company.

7 See, for example, International Covenant on Civil and Political Rights (ICCPR), United Nations, GA Resolution 2200A (XXI), 16 December 1966, Article 18 and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, United Nations, GA Resolution 36/55, 25 November 1981.

8 See, ILO Declaration on Fundamental Principles and Rights at Work, International Labour Organization, adopted 1998, amended 2022.

9 See, for example, judgements of the European Court of Human Rights (ECtHR), e.g., *Case of Eweida and others v. the United Kingdom*, and the Court of Justice of the European Union (CJEU), e.g., *Achbita v G4S*, Case C-157/15, 14 March 2017, and *Bouagnaoui v Micropole*, Case C-188/15, 14 March 2017.

10 Interim Report of the Special Rapporteur on freedom of religion and belief, United Nations (A/69/261), General Assembly, (sixty-ninth session), 5 August 2014, para. 32.

11 The UN Special Rapporteur has argued for this, together with the Council of Europe's Committee on Legal Affairs and Human Rights, as well as others who are engaged in the promotion and protection of FoRB. Likewise, in its interpretation of the first of its ten principles, the UN Global Compact mentions "reasonable accommodations for all employees' religious observance and practices" as an example of how companies can support and respect human rights.

Failure to accommodate a person's wishes where such measures would not amount to a disproportionate or undue burden would, accordingly, qualify as discrimination.

Access to employment

Many women never enter the labour market. Factors related to religion or belief may hinder their access to employment.

Laws and policies may indirectly or directly restrict women's and girls' access to education on the grounds of religion or belief — and this has consequences for their future employment possibilities. This is the case, for instance, when educational institutions restrict or prohibit female students from wearing the Muslim headscarf, implicitly or explicitly hindering them from accessing education and, by extension, employment.¹²

In other cases, barriers to girls' and women's access to employment stem from the religious community itself; traditional gender norms and practices may determine which educational choices are 'appropriate' for women and girls, influencing their choice of profession. Indeed, certain religious communities may see specific labour market sectors as unsuitable for 'their' women.¹³

Women may also face societal pressure to prioritize their role as mothers and housewives. Religious traditions and arguments often play a central role in this. Research indicates that people from conservative religious communities often have negative views of working mothers and prefer a 'traditional' male-female division of labour, thus stifling women's opportunities to enter and remain in employment.¹⁴

12 *Leyla Şahin v Turkey*, App. No. 44774/98, ECtHR, 10 November 2005; *Dogru v France*, App. No. 27058/05, ECtHR, 4 March 2009, where the ECtHR upheld restrictions against women wearing a headscarf while attending lectures at a public university and sport classes at a secondary school respectively. Compare these cases with *Ahmet Arslan v Turkey and others*, App. No. 41135/98, ECtHR, 23 February 2010, where the ECtHR invalidated the conviction of 127 male members of a religious order for wearing the distinctive dress of their group while meeting in a public area. For commentary of these cases from a gender-based perspective see Bronwyn Roantree, *Gender and Religious Dress at the European Court of Human Rights: A Comparison of Şahin v. Turkey and Arslan v. Turkey* (2018) 17(1) *Fordham Law Review Online*, pp. 101-112.

13 Interview data from FoRB and gender equality mapping, ODIHR 2021-2022.

14 Guido Heineck, *Religion, Attitudes towards Working Mothers and Wives' Full-Time Employment. Evidence from Austria, Germany, Italy, the UK, and the USA*, *Papers of the Austrian Institute of Family Studies*: 39.

Challenges to women's right to FoRB at the workplace

Despite protections in international law and standards, many employees face barriers and challenges related to their religion or belief, disproportionately restricting their right to FoRB in the workplace. Women often face similar obstacles to men in this regard, but there are also many situations in which religion or belief-related challenges affect women differently to men, requiring particular attention to the intersections between religion and gender.

Stereotypical perceptions of women

Patriarchal religious norms and gender stereotypes play an important role in shaping the religiously-related challenges and barriers that women face in the workplace. Employers or co-workers may — consciously or unconsciously — apply overly rigid standards about what they consider to be appropriate religious behaviour for women and penalize or marginalize those who do not conform to these stereotypes. Patriarchal religious norms and gender stereotypes and prejudice may also affect the credibility given to women's voices, arguments and efforts at the workplace, by the employer as well as co-workers. For example, if men hold the conscious or unconscious bias that women would (naturally) be better to (and therefore should) confine themselves to the private, home environment, this may influence how they engage with women who challenge such expectations in their professional roles.

In some cases, employers consciously or unconsciously discriminate against certain employees because of their religion or belief, e.g., by limiting their career opportunities, equal pay or access to benefits. One example would be an employer who does not promote an employee or excludes her from particular tasks (e.g., customer contact), because she wears a headscarf, wears a large cross or otherwise visibly identifies with a particular religion. Another example would be if an employer does not interview someone for a job because her name is associated with a particular religion.

In other cases, employers restrict employees' religious practices, such as wearing religious symbols or attire, praying during work hours or taking time off to celebrate religious holidays.¹⁵ Sometimes, restrictive practices are formally integrated into a company's rules and policies; on other occasions, they are informally enacted. There may be legitimate reasons for restricting employees' religious practices — e.g., employers may restrict the wearing of headscarves for staff who use dangerous machinery or require staff not to fast when engaging in high-risk operations — but, whenever possible, employers should

¹⁵ Interview data from FoRB and gender equality mapping, ODIHR 2021-2022.

seek pragmatic solutions that can accommodate employees' wishes without requiring substantial changes or burdens on the part of the employer.

So-called 'neutrality policies' in the workplace can impact women's right to FoRB in different ways.¹⁶ These policies are often justified in terms of creating peaceful, tolerant working environments¹⁷ that provide customers with better services or, in the case of public employees, by the need to ensure the religious neutrality of public bodies in a secular state.¹⁸ However, a complete ban on any religious markers (attire or symbols) in the workplace — as a precondition of hiring or access to certain positions — may constitute disproportionate interference of an employee's FoRB if this ban is solely justified by the customer's assumed preferences or even overt requests not to be served by an employee wearing religious attire or symbols.

An example of reasonable accommodation

"In the United Kingdom Armed Forces, Muslim women are allowed to wear uniform trousers in place of a skirt and may wear a hijab (headscarf) except when operational or health and safety considerations dictate otherwise. Jewish Orthodox women may not want to wear trousers, short skirts or short sleeves; some may wish to keep their heads covered by a scarf or a beret."¹⁹

Last, but not least, many women also experience religiously-related harassment from co-workers. Amongst others, this can take the form of bullying, threats, inappropriate questions, comments or jokes, insults or exclusion. Concrete examples include co-workers making repeated jokes about a person's headscarf or cross, or expressing derogatory or stereotypical comments about their religion. Co-workers may also pressure a person to take part in activities that she finds inappropriate, such as intimate dancing at a company party or shaking hands with a man.

In some cases, harassment stems from members of the employee's own religious community, in the form of negative social control. This is the case, for example, when co-workers repeatedly check or control a person's religious behaviour or practices, online or offline, encouraging them to wear religious attire or symbols, pray more or otherwise live up to the religious requirements of the community.

16 See *Achbita v. G4S Solutions*, Case C-157/15, CJEU, 14 March 2017; *Bouagnaoui v. Micropole*, Case C-188/15, CJEU, 14 March 2017; *IX v. WABE e.V and MH Müller Handels GmbH v. MJ*, Joined Cases C-804/18 and C-341/19, CJEU, 15 July 2021; and *OP v. Commune d'Ans*, Case C-148/22, CJEU, 28 November 2023. In a broader context on the concept of religious neutrality see ECtHR cases *Dahlab v. Switzerland*, App. no. 42393/98, ECtHR, 15 February 2001, and *Lautsi v. Italy*, App. no. 30814/06, ECtHR, 18 March 2011. In a recent decision the CJEU extends this discretion to public employers (see *OP v. Commune d'Ans* Case C-148/22, CJEU, 28 November 2023); See also, Matteo Corsalini, The European "Cycle" of Neutrality, BYULAW International Center for Law and Religion Studies website, 26 April 2024.

17 The CJEU clarified for the first time that the aim of 'neutrality policies' may also be connected to the prevention of social conflicts among the workforce in its 2021 joined decision in *IX v. WABE and MH Müller Handels GmbH v. MJ*, Joined Cases C-804/18 and C-341/19, CJEU, 15 July 2021, para. 76.

18 Public employers can impose more neutrality requirements than private employers and, in particular, for public-facing roles.

19 Guide on Religion and Belief in the Armed Forces, UK Ministry of Defence, 17 June 2011.

Religious and belief organizations

Religious and belief organizations as employers present a particular set of considerations when it comes to women's right to FoRB and equality at the workplace.²⁰ The right to FoRB not only protects individuals' freedom to have and practice a religion or belief; it also protects the autonomy of religious and belief organizations in their internal affairs, ensuring they can function peacefully and free from arbitrary state intervention.²¹ The principle of autonomy includes the right for religious and belief organizations to select the leadership and membership of their choice, as well as to adopt rules regulating internal relations within the community. In other words, the principle of autonomy protects the rights of religious and belief organizations generally to hire, promote and fire employees in accordance with their belief systems.²²

"[T]he right of believers to freedom of religion encompasses the expectation that they will be allowed to associate freely, without arbitrary State intervention. The autonomous existence of religious communities is indispensable for pluralism in a democratic society and is thus an issue at the very heart of the protection which [protections of FoRB] affords."²³

Laws should generally respect the autonomy of religious institutions.²⁴ Thus, the question often arises as to how to reconcile state policies designed to promote gender equality in employment with religious autonomy. In general, the principle of autonomy should not be used to abuse women's labour rights, for example, to justify inequalities in salaries for equal work by citing the organization's belief system. However, there are other less clear-cut situations: Can a religious organization, for instance, fire a lesbian woman because her sexuality is seen to be incompatible with the organization's belief system?

Across the OSCE region, some jurisdictions put significant emphasis on the protection of the employer's religious autonomy. Others place greater weight on the rights of the employee (such as the rights to private or family life) and give more protection to religious employers when the employee fulfils clerical, teaching or representational roles. This means that the outcome of a judicial review in a religious autonomy case can vary by jurisdiction. In all cases, however, the employee's right to access to justice must be ensured.

20 These are defined by ODIHR as religious or belief communities recognized as independent legal persons in the national legal order. See *Guidelines on the legal personality of religious or belief communities*, OSCE/ODIHR and Venice Commission, 4 February 2015, p. 9, part III, para. 17.

21 See *Key Theme, Article 9, Autonomy of religious organisations*, ECtHR, last updated 31 August 2024.

22 The principle of autonomy typically applies to non-profit organizations. In some OSCE countries, however, the same protection is granted to religiously affiliated for-profit organizations, while the premises and scope of their protection remains a matter of legal and human rights debates.

23 *Fernández Martínez v. Spain*, App. No. 56030/07, ECtHR (Grand Chamber), 12 June 2014, § 127.

24 *Ibid.*, pp. 75-77.

Recommendations

The promotion and protection of FoRB encompass both solid protection of FoRB and categorical rejection of discrimination on the grounds of gender, including in the labour market. To guarantee the indivisibility and interdependence of all human rights, OSCE participating States are recommended to:

- **Ensure equal access to professional and university education.** Make sure that policies and rules in universities or other educational institutions do not discriminate — directly or indirectly — against particular religion or belief communities, hindering their equal access to education and, by extension, employment.
- **Promote the concept of reasonable accommodation to ensure maximum protection of FoRB in the workplace.** Engage in dialogue with employers, unions, representatives of religion or belief communities, women’s rights organizations and other relevant stakeholders to discuss how this can be integrated into policies and legislation.
- **Clarify the relationship between the principle of autonomy and gender equality.** Engage in dialogue with religion or belief organizations to discuss equal rights and opportunities for women in employment and labour relations. Develop guidelines for context-based assessments that take into account respect for the autonomy of religious groups, while upholding women’s rights and gender equality.
- **Ensure that authorities responsible for the working environment and other relevant authorities have expertise on FoRB and gender equality in the labour market.** This should include capacity to identify and assess different types of FoRB violations, as well as to advise employers on how to ensure a FoRB-friendly work environment.
- **Establish an anonymous complaints mechanism,** either with public employment or working environment authorities, the national human rights institution or similar, to enable individuals to complain if they have been subject to religiously-related discrimination, harassment or other FoRB violations.
- **Promote broader literacy on FoRB and gender equality in the labour market.** Organize public consultations with employers, religion or belief organizations, religious minority groups and women’s rights organizations to facilitate an informed dialogue on FoRB and women’s rights in labour relations.
- **Challenge patriarchal cultural and/or religious norms and stereotypes that hinder women’s access to education and the labour market,** e.g., through education and awareness-raising campaigns.

Above all, the employer is responsible for ensuring a diverse and inclusive working environment, where employees are free from discrimination or harassment on the

grounds of religion or belief or gender. States should consider offering the following advice to employers:

- **Send clear signals that their workplace encourages and appreciates diversity and inclusion.** Formulate an inclusion policy and guidelines for religious practices (use of religious attire, possibility of religious holidays and breaks, exemption from particular work assignments etc.).
- **Make room for employees' religious practices.** The fact that a workplace should be neutral with regard to religion or belief does not mean it has to be empty of religion or belief. A workplace with no space for employees' religious identities and practices can be experienced by many as exclusionary.
- **Find practical solutions** with regard to dress, food, holidays, prayer rooms, etc. Prioritize universal solutions and ensure that flexibility is not only offered to people with religion or belief needs, but to all.
- **Make it clear that their workplace does not tolerate discrimination or harassment on the grounds of religion or belief.** Ensure that existing policies and practices are not discriminatory. Establish a confidential complaints mechanism for employees to report harassment.
- **Make sure staff know about and understand each other's religions or beliefs.** Engage in dialogue with staff. Challenge patriarchal religious norms and gender stereotypes in the workplace.

This explainer series is prepared with the support of the ODIHR Panel of experts on FoRB. Panel members serve in their personal capacities as experts on the topic of freedom of thought, conscience, religion or belief, and not as representatives of their state, academic institutions, religious or belief communities or any other types of organization. ODIHR makes the panel's expertise available to participating States, OSCE field operations and non-governmental organizations.

This ODIHR factsheet series focuses on the right to freedom of thought, conscience, religion or belief in relation to gender equality. OSCE participating States have committed themselves to provide equal rights and opportunities for women and men, which is essential to peace, democracy and sustainable development (2004 OSCE Action Plan for the Promotion of Gender Equality and related decisions). States have an individual and collective responsibility for the implementation of such commitments, and ODIHR is mandated to assist participating States to this end. Each factsheet offers recommendations to participating States on how to make such commitments a reality for all women within the OSCE area:

“Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of [their] choice, and freedom, either individually or in community with others and in public or private, to manifest [their] religion or belief in worship, observance, practice and teaching. No one shall be subject to coercion which would impair [their] freedom to have or to adopt a religion or belief of [their] choice.”

— Article 18, ICCPR, paras. 1 and 2.

“The empowerment and advancement of women [through] the right to freedom of thought, conscience, religion or belief, thus contributing to the moral, ethical, spiritual and intellectual needs of women and men, individually or in community with others and thereby guaranteeing them the possibility of realizing their full potential in society and shaping their lives in accordance with their own aspirations.”

— Beijing Declaration, para. 12.

