

Legal Notes: December 2011

The recent changes in store opening times for Black Friday (now Thursday?) has led to speculation about stores being open on other holidays previously thought sacrosanct, such as Christmas. There was a time, not long ago, when stores not only didn't open on religious holidays and Sundays, but were forbidden from doing so, the "Blue Laws." These laws were in turn a carry-over from our Puritan traditions when religious strictures set aside Sunday as a day of rest. We still see this among the Amish community with the "No Sunday Sales" signs.

The law still protects those who hold religious beliefs that forbid work on religious holidays, such as days of worship. But barely.

Under Wisconsin law, the employee must first go to the employer and request an accommodation, usually not having to work the day of worship. The request must be ahead of the day and in time for the employer to make other arrangements to cover the position. In other words, the employee can't simply not report to work because it is a day of worship.

The employer must make a good faith effort to accommodate the employee. This means that the employer cannot simply reject the request without first making such an effort. The cases I've successfully handled in this area all involved an immediate rejection of a request for accommodation by a supervisor.

However, the effort of the employer does not need to be great. The law states that employer is not required to bear more than a slight cost to accommodate such an employee's request. Some examples of costs or efforts the employer is not required to bear include breaching a seniority system (such as a union contract), paying a premium wage to another to cover that shift, using supervisors to cover the shift (unless supervisors routinely do so) or simply leaving the position vacant.

If the worship of Mammon has gone too far in your workplace, do not be afraid to request an accommodation.