



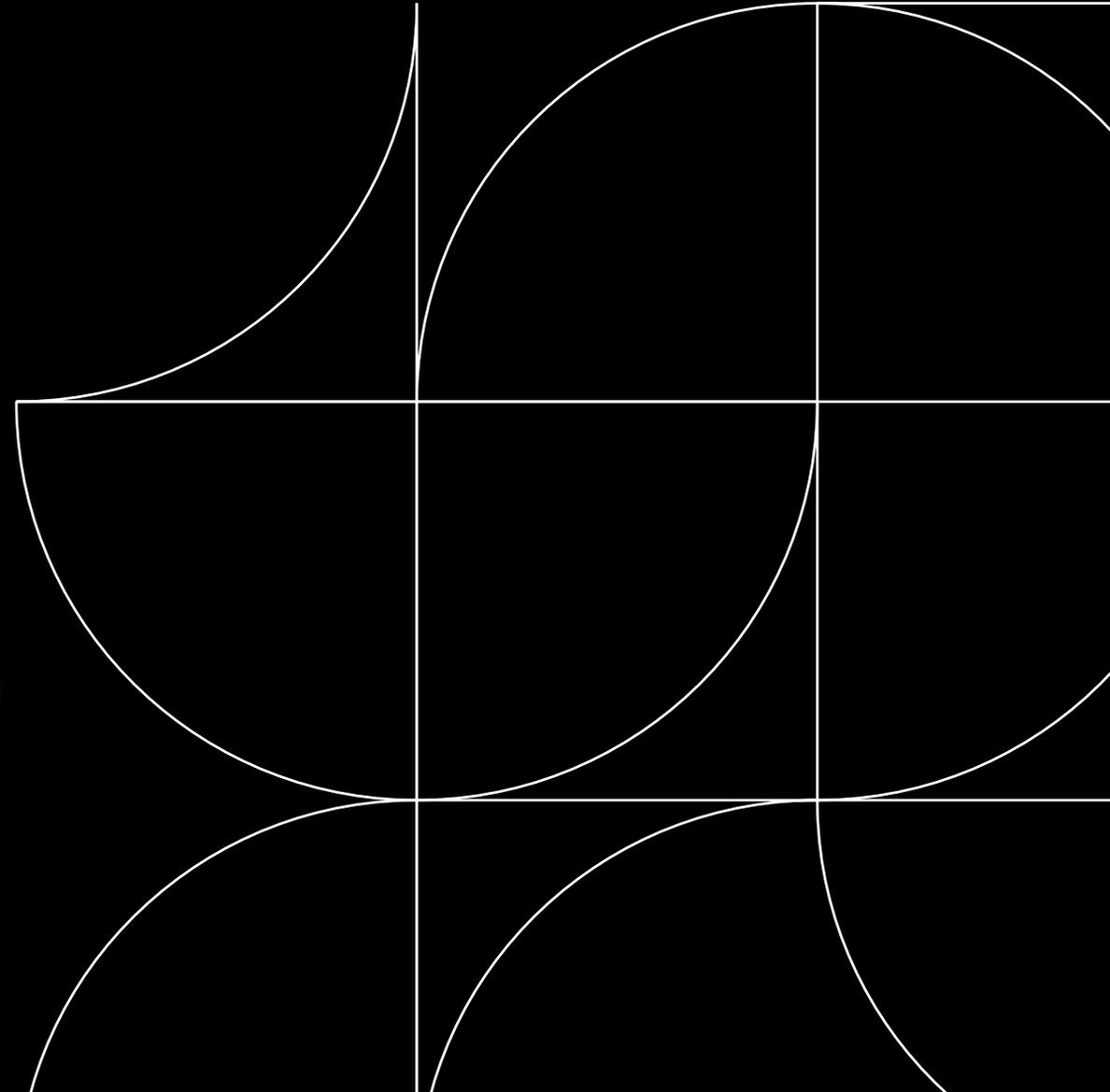
2026 Focus on Faith: Why Religious Discrimination and Accommodation Pose a Heightened Risk for Employers in 2026 and How You Can Prepare Right Now

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Seyfarth Shaw LLP

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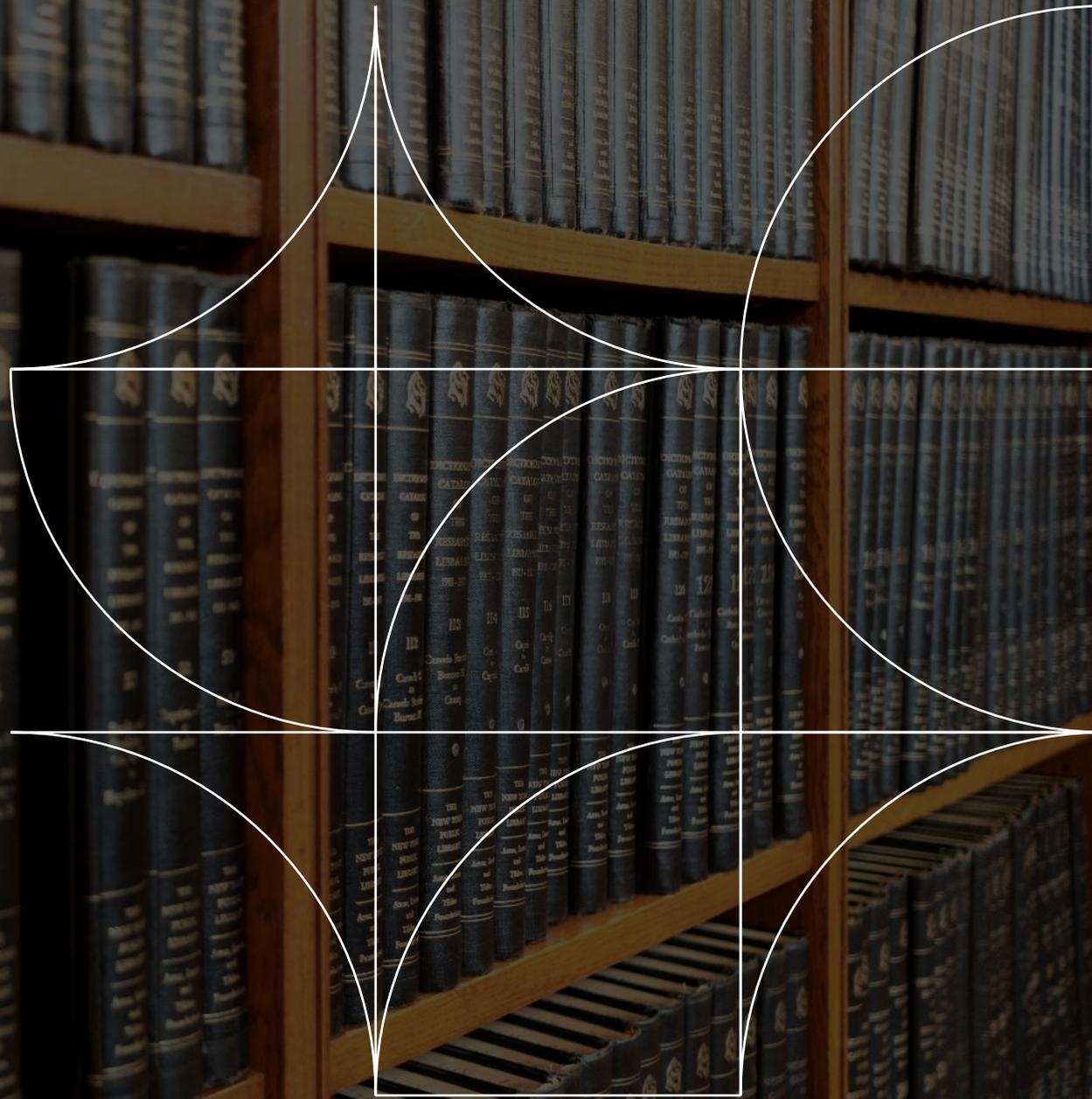
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Agenda

- 1 | The Legal Framework
- 2 | Best Practices
- 3 | Top 8 Do's and Don'ts
- 4 | Questions?

The Legal Framework





**More Requests,
More Litigation**



A New Wave of Religious Accommodation Requests is Pushing the Limits of the Law

- Public school orchestra teacher seeks an exception to district's policy to honor transgender students' chosen names and pronouns
- Employee of healthcare center who received COVID vaccine exemption seeks an exemption from requirement that she undergo weekly COVID testing based on online research that antigen tests contain "carcinogens"
- Employee of dental practice claims that her religious beliefs require her to wear a scrub skirt instead of pants



A New Wave of Religious Accommodation Requests is Pushing the Limits of the Law

- Employee of municipal fire department refuses to participate in act of hoisting Progress Pride flag on FD flagpoles during LGBTQ+ Pride Month HVAC technician claims that religious beliefs prevent him from “working alone with women”
- Former employee of major employer refused to participate in mandatory unconscious bias training because it was premised on ideas that “implicitly and explicitly reject” employee’s religious beliefs

A New Wave of Religious Accommodation Requests is Pushing the Limits of the Law

■ These are real cases!

- *Kluge v. Brownsburg Community School Corp.* (7th Circuit, August 5, 2025)
- *Detwiler v. Mid-Columbia Med. Ctr.* (9th Cir. Sept. 23, 2025)
- *EEOC v. The Teeth Doctors* (Aug. 4, 2025)
- *Little v. Los Angeles County* (C.D. Cal. May 4, 2025)
- *Wright v. Honeywell International, Inc.* (N.D. Ga. Feb. 28, 2025)



Law of Religious Accommodation

When an employee advises an employer of a **sincere religious belief** that conflicts with a job requirement, the employer must:

- engage in an **interactive process** with the employee to explore reasonable accommodations;
- either provide a **reasonable accommodation** or be able to show that it cannot do so without **undue hardship** to its business;
- avoid discriminating against the employee based on religion or retaliating against the employee for requesting an accommodation.

Sincere Religious Conflict

Sincere

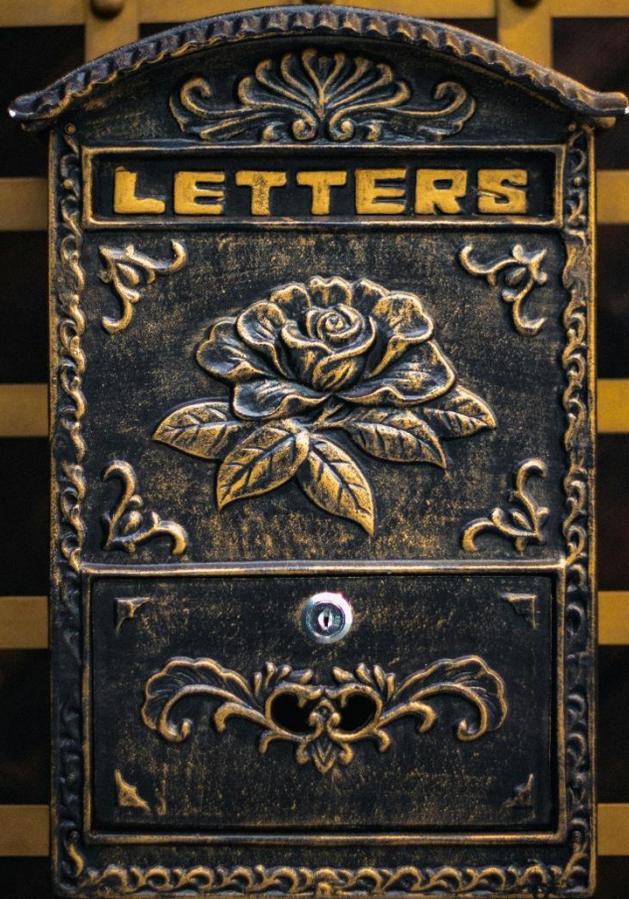
- Generally, sincerity is presumed or easily established
 - Unless objective evidence to the contrary (*get legal advice*)

Religious

- Need not be an organized religion
- Can be idiosyncratic to the individual
- Can be unfamiliar
- Can change over time; be newly adopted
- Purely secular, political beliefs are not protected
- Mixed religious / secular *may* be protected

Conflict

- Does the religious belief, observance or practice conflict with an employment requirement



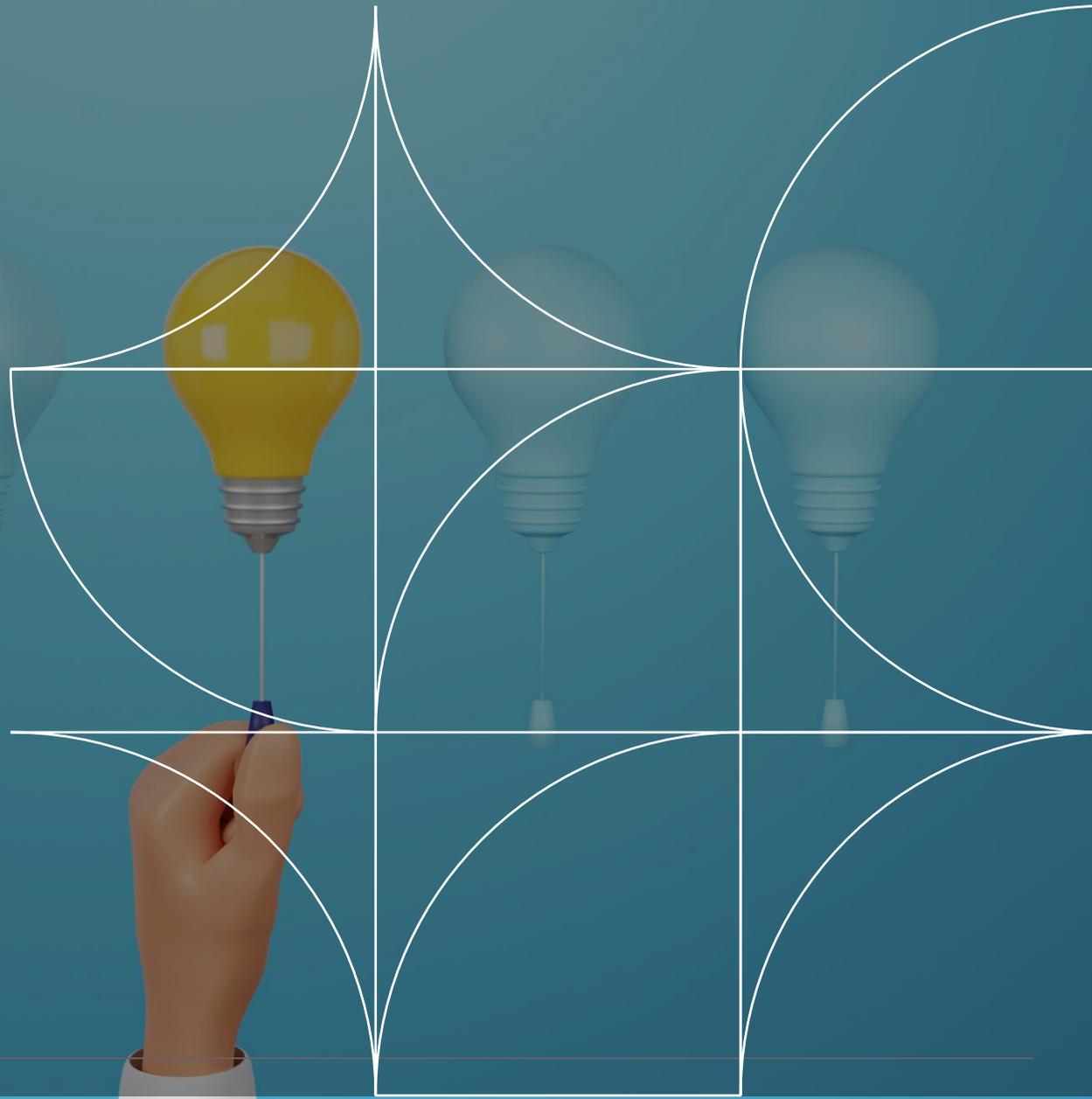
Supporting Evidence

- Not like disability where supporting evidence is required.
- Best practice **not** to require a clergy letter.
- But can ask for reasonable additional information
- Can be in employee's own words (or that of a person of their choice)



The Interactive Process is a Two – Way Street

In-House Counsel Wisdom



Interactive Process

- **Both the employer and the employee have roles to play** in resolving an accommodation request.
- In addition to placing the employer on notice of the need for accommodation, **the employee should cooperate** with the employer's efforts to determine whether a reasonable accommodation can be granted.
- Once the employer becomes aware of the employee's religious conflict, the employer should obtain **promptly** whatever additional information is needed to determine whether a reasonable accommodation is available without posing an undue hardship on the operation of the employer's business.

Interactive Process

- This typically involves the employer and employee **mutually sharing** information necessary to process the accommodation request.
- Employer-employee **cooperation and flexibility** are key to the search for a reasonable accommodation.
- If the accommodation solution is not immediately apparent, **the employer should discuss the request with the employee** to determine what accommodations might be effective.
- If the employer requests **additional information** reasonably needed to evaluate the request, the employee should provide it.

Supreme Court Clarifies The “Undue Hardship” Standard

The employer must show that the burden of granting an accommodation would result in **“substantial increased costs in relation to the conduct of its particular business.”**





What is most important is that ‘undue hardship’ in Title VII means what it says, and courts should resolve whether a hardship would be substantial in the context of an employer’s business in the commonsense manner that it would use in applying any such test.





Context is Everything

- The Court also held that courts must apply the test to take into account all relevant factors in the case at hand, including **the particular accommodations at issue** and their **practical impact in light of the nature, size, and operating cost of an employer.**



Can Burden on Coworkers Constitute “Undue Hardship”?

Two-Part Test

1. Does the requested accommodation negatively impact coworkers?
2. Does that negative coworker impact affect the conduct of the business?



Can Burden on Coworkers Constitute “Undue Hardship”?

What is Not Included

- Employee animosity towards:
 - a particular religion;
 - religion in general; or
 - the very notion of accommodating religious practice
- Same is likely true for adverse reactions of customers and clients
- Otherwise, Title VII would “be at war with itself”
None of these factors are “undue hardships” to an employer’s business



Overtime & Shift Swaps, Specifically

Overtime

- “Faced with an accommodation request like Groff’s, an employer must do more than conclude that forcing other employees to work overtime would constitute an undue hardship. Consideration of other options would also be necessary.”

Shift Swaps

- The Court specifically called out voluntary shift swapping as one option that is “necessary” to consider.



Telework as a Reasonable Accommodation

- July 16, 2025 OPM Policy Memorandum re: federal agency worker accommodations
- Guidance focuses on leave, telework, flex work, religious compensatory TO, and hybrid work arrangements and directs agencies to adopt a “**generous**” approach
- Agencies “strongly encouraged” to consider telework for a broad swath of religious practices
 - Sabbath/holiday observance
 - Scheduled prayers
 - Attendance at religious services
 - Meditation/fasting



What Else Can Be Undue Hardship?

- Health & Safety Risks (if quantifiable and provable)
- Violating the Law
- “Razor’s Edge of Liability”
- Hiring a new employee to do requestor’s job
- Paying employee not to work
- Permitting an employee to be disrespectful or discriminatory to others in the workplace*



Best Practices

Undue Hardship? Prove it!





Questions to Ask about Undue Hardship

- Questions to ask when considering whether a requested accommodation is an undue hardship, e.g.:
 - What is the financial cost of the accommodation?
 - What health and safety risks are at play, if any?
 - What is the business impact of the accommodation?
 - What is the impact on coworkers that will affect the business?
 - What is the duration of the requested accommodation?
 - How many employees are seeking the requested accommodation?

Documentation

- Document the request. **Date, request, reason.**
- Consider **talking points** to guide the interactive process.
- Document **interactive process**, including alternatives considered.
- Document **final accommodation** if any.
- Keep **legal advice** privileged and confidential.

Documentation

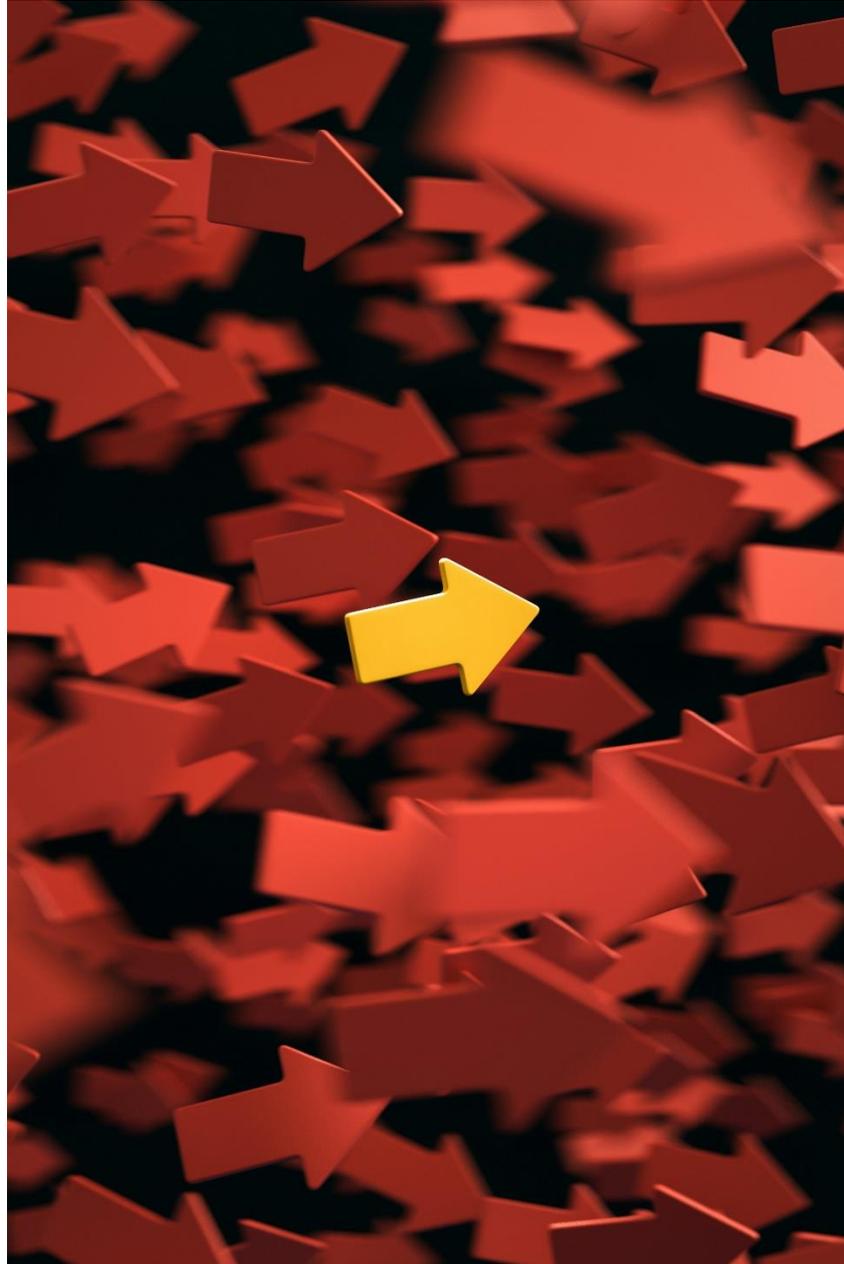
- Employee or applicant should receive a **written approval or denial** of religious accommodation request.
- Employer should continue to review any **new information** provided by the employee or applicant.



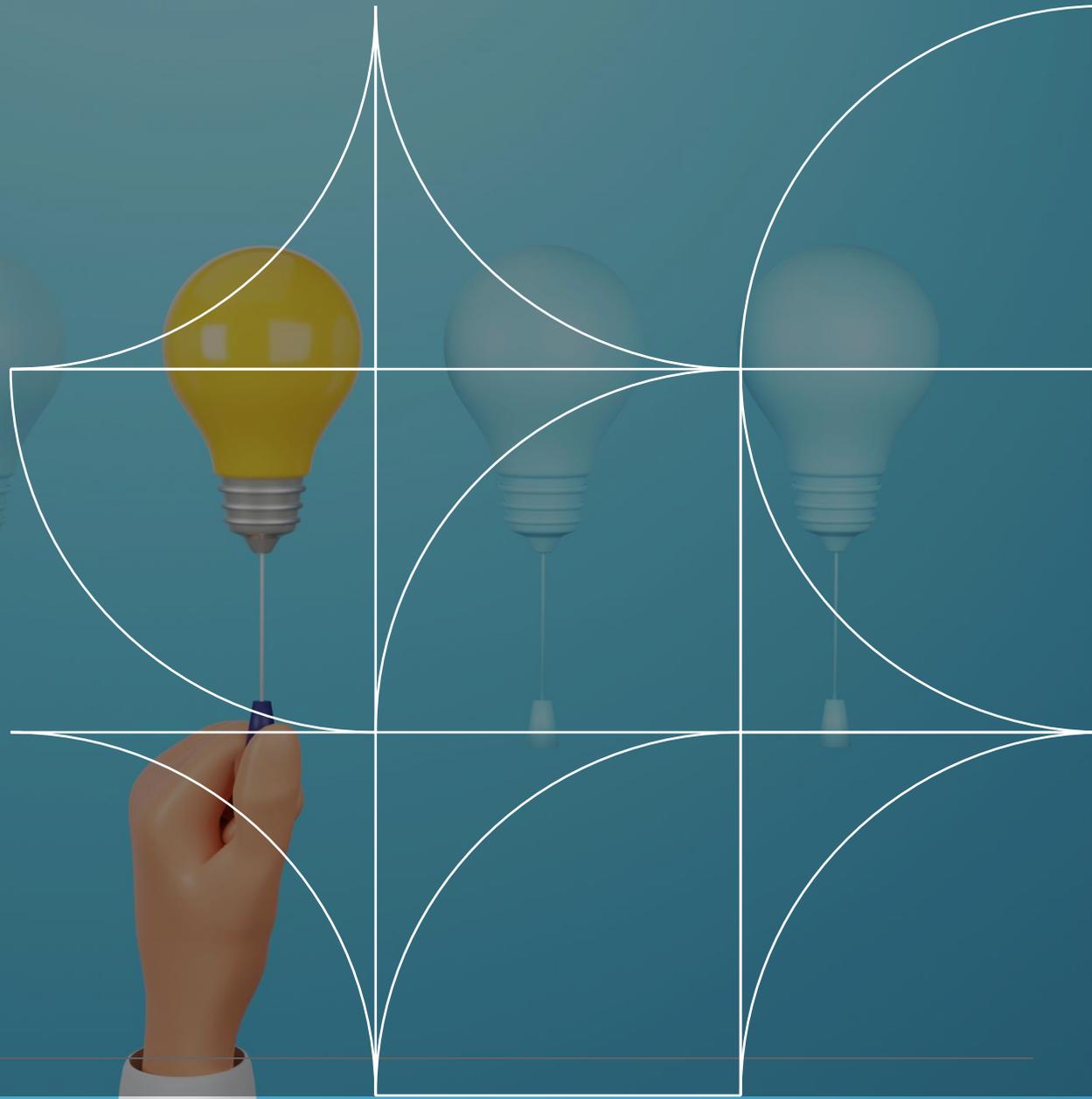
Real Life Examples

- How would we evaluate some of the most common religious accommodation requests under the new substantial costs test?
 - Health & safety issues
 - Sabbath observance
 - Prayer breaks
 - Facial Hair / Fit Test
 - Religious dress

Trends in Religious Accommodation Requests



In-House Counsel Wisdom





Do's and Don'ts

Do Tread Lightly on Sincerity

In general, presume that the religious belief is sincere. Under the law, a “sincere religious belief” doesn’t necessarily need to be from an organized religion, or practiced by many people, or long-held by the employee. Don’t Google a religion’s requirements. If this is the rare case where there is specific evidence of insincerity, or the request seems to be a purely secular preference, get advice from OGC.

Do Document the Interactive Process

Document all stages of the interactive process, including the request, the accommodations you offered, and the employee's response. If you reject a request, document why. Remember that such documentation, and any documents about the request (including e-mails) may be discoverable in any litigation. Keep the process moving, and the employee informed about the status.

Don't Be Close-Minded

Engage in a dialogue with the employee about possible accommodations. Think creatively. An employee observing the Sabbath might be able to swap shifts with a co-worker or be scheduled around services. A worker seeking a religious exemption to a safety policy forbidding long hair could be allowed to tie his hair up.

Do Weigh the Impact on Other Employees and the Company

Weigh the impact of the requested accommodation on other employees and the company. Will it impact other employees' schedules? Will it infringe on other employees' religious beliefs? Will it cost money, and if so, how much? Will it impact patient service? Ground your assessment in quantifiable facts, rather than speculation, as much as possible.

Will coworker impact affect the operations of the business?

Do Be Reasonably Consistent

Do not reject a request for a policy exception based on religion but allow the exception for secular reasons. Do not permit an accommodation for one religion but reject the same accommodation for another. Aim for a consistent approach.

Do Be Respectful

Respect the employee's religious practice. Do not argue with the employee about their practice or belief. Don't compare the employee's religious belief or practice with your own, or those of other employees, or cite a priest or rabbi's advice. An employee who feels disrespected is more likely to sue and can cite statements perceived to be disrespectful as evidence of discrimination or retaliation.

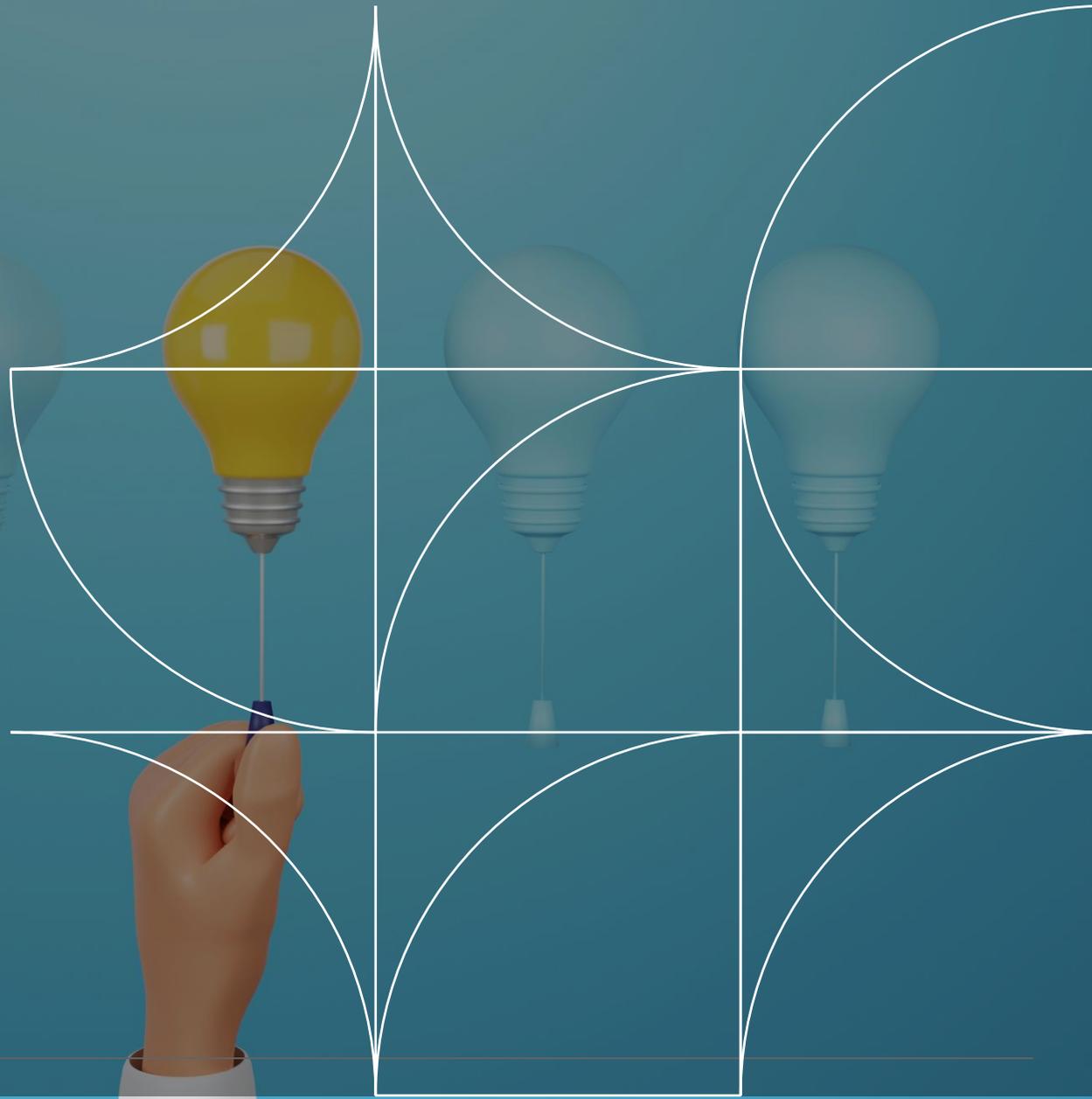
Don't Allow Retaliation

Ensure that there will be no retaliation against the employee for requesting an accommodation. Remind managers of anti-retaliation policies. Explain that many adverse actions — beyond just termination or demotion — can be viewed as retaliatory. If you learn that managers, or coworkers, are reacting negatively as a result of the request, investigate and take appropriate corrective action.

Do Get Advice from Counsel

Involve OGC. They can help you implement and document the interactive process and assess what is a “reasonable accommodation” or “undue hardship,” taking into account any specialized legal requirements in your jurisdiction.

In-House Counsel Wisdom





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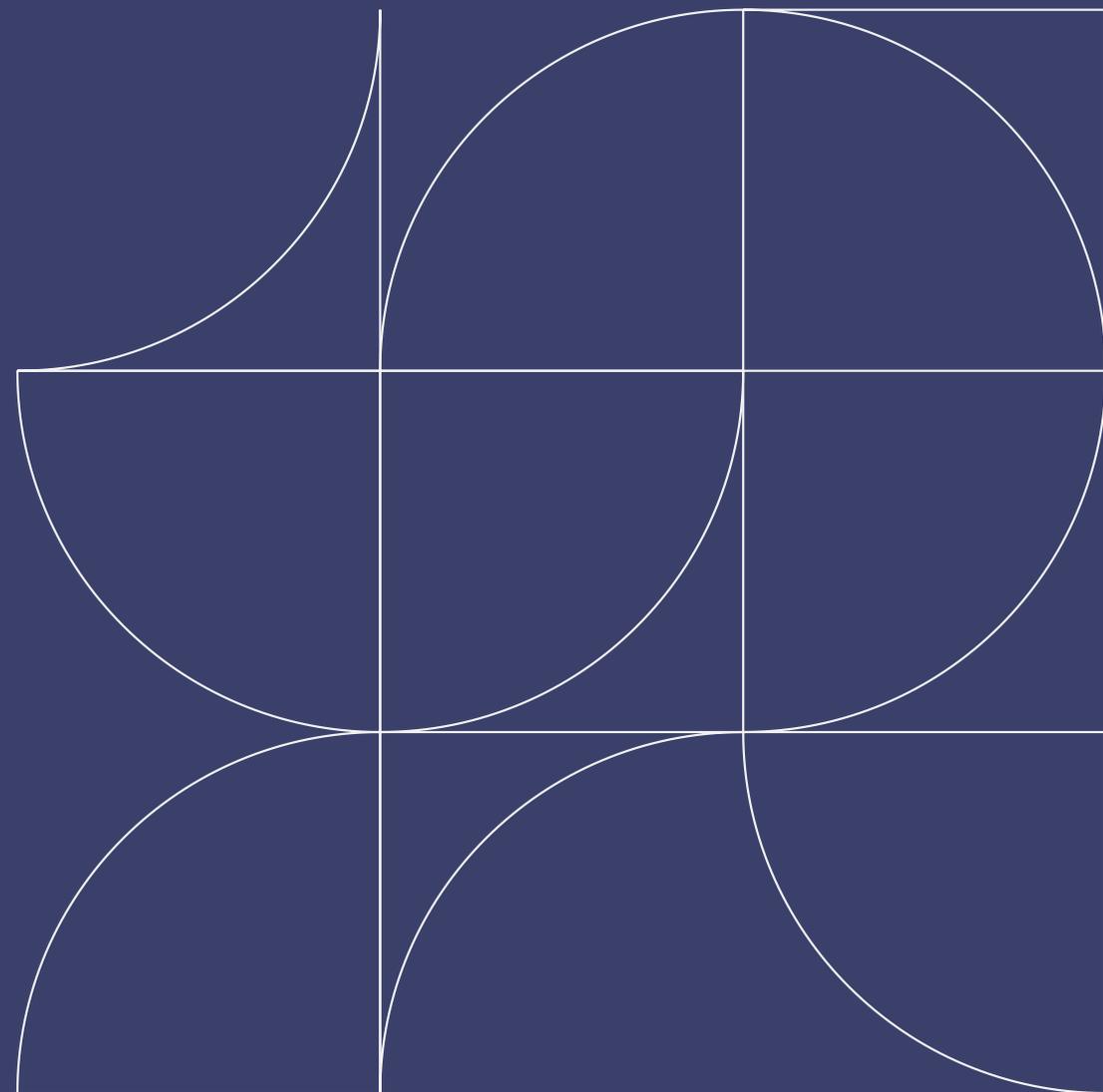
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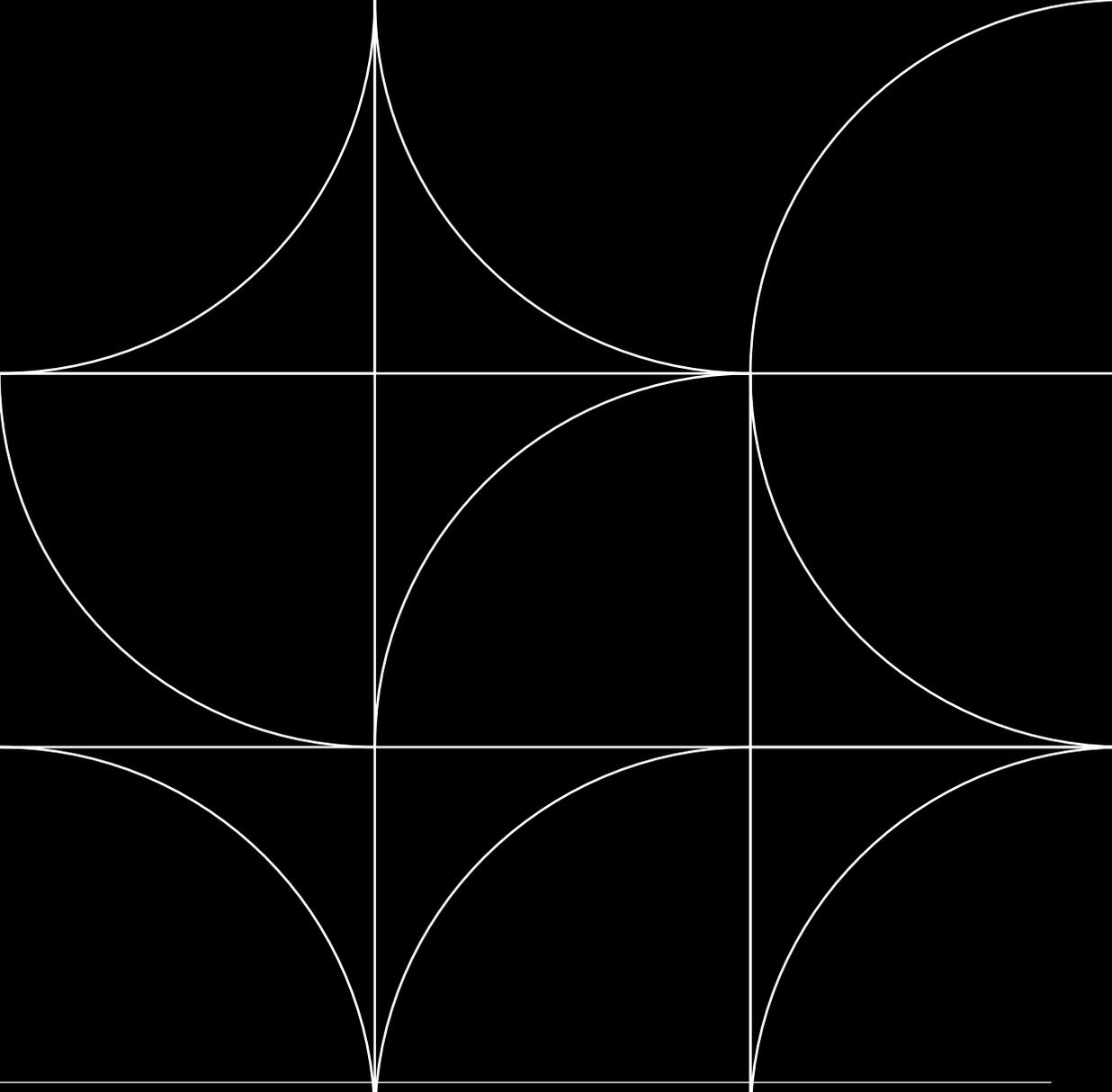
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Questions?



thank you



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