

Insight

IN-DEPTH DISCUSSION

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Hey, Where'd Everybody Go? Employers Beware— Solar Eclipse Mania Sweeps the Nation

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You look around the office in August, and suddenly, without warning, everyone is gone. Or perhaps human resources and managers are starting to realize that an unusual number of employees have just asked for the same time off. What's so special about August 21, 2017? What on Earth is going on?

For those of you still in the dark, a total solar eclipse will cross the continental United States, coast to coast, on Monday, August 21, an event that has not occurred for 26 years. Beginning in Oregon, the moon will slip between the sun and the Earth, aligning to block our view of the sun. The entire nation will witness a partial eclipse, while a total eclipse will take place along a roughly 70-mile wide swath, known as the path of totality. The path of totality will span across more than a dozen states.¹ Approximately 12 million Americans live in the totality path. Moreover, roughly 75 million people fall within a relatively short 200-mile drive of the eclipse's main trajectory—including residents of several major metropolitan areas such as Portland, OR; Denver, CO; Kansas City, MO; Nashville, TN; Atlanta, GA; and Charlotte, NC.

Predictions vary, but millions of Americans are expected to travel for this potentially once-in-a-lifetime occurrence.² South Carolina estimates that one million visitors will turn up. Crook County, in central Oregon, anticipates that 30,000 people will descend on Big Summit Prairie, where locals may see their county population easily double. The pinnacle of the eclipse will occur near Hopkinsville, Kentucky, a town of 33,000, which may welcome more than 100,000 eclipse watchers; local officials have already requested assistance from the National Guard. Across the country, festivals have been organized and portable toilets ordered. School districts have altered schedules to account for the event and the traffic. As eclipse

1 For more information about the eclipse, visit the NASA [Total Eclipse website](#).

2 See, e.g., Diane A. Kelly, *Two Minutes Of Darkness With 20,000 Strangers, FiveThirtyEight* (July 24, 2017, 2:02 p.m.).

mania spreads, employers should prepare for prospective workplace disruptions, particularly if they operate in or near the path of totality.

Who Turned Out the Lights?

If they have not already, employers may notice numerous vacation requests from employees intending to take time off to travel for and/or view the eclipse. Depending on business needs and employee interest in the eclipse, employers may need to limit the use of vacation or other time off. In anticipation of competing or last-minute requests for time off, employers should review their policies and consider how to handle a spike in such requests. Unionized employers should consult any collective bargaining agreements for any relevant terms. Employers may wish to disclose to employees, in advance, any plan for moderating requests. As with any privilege, if employers will grant time off to some employees to view the eclipse, but not others, employers will want to guard against claims of discrimination or favoritism. Of course, all requests should be evaluated fairly, consistent with the employer's policies and normal practices, which could be supplemented by a reward system or lottery system where requests are too overwhelming.

A related challenge for employers may be how to address absenteeism on August 21. If an employer maintains an absence policy, will it be strictly enforced? How will employers address suspicious unplanned absences? What about partial day absences? If absences would create operational difficulties, employers should consider communicating to employees in advance how the absence policy will be enforced in light of the celestial situation. A simple memo to all employees might be enough to reduce last-minute absenteeism. And, in jurisdictions allowing employees to take sick and safety leave with little notice or justification, employers will want to clarify that the provisions of those laws do not apply to voluntary absences for the purpose of viewing the eclipse. On the plus side, the eclipse itself will not last very long. The entire event lasts no more than three hours in any one location, and totality, where visible, lasts less than three *minutes*. Accordingly, some employees may be content to report to work and simply step outside to view the eclipse for a short period of time. That being said, employers should be ready if substantial numbers of workers intend to pop out for 30 minutes to watch the eclipse unfold. For example, employers with sufficient flexibility might consider hosting a group viewing event (with start and end times) or staggering "eclipse breaks" for employees to take turns away from their workstations.

In sum, employers should assess employee interest in the upcoming eclipse and then plan ahead to counter any absences or potential loss of productivity. Even if employees intend to come to work as scheduled, August 21 promises to be an unusual day.

It's the End of the World as We Know It . . .

By all accounts, total solar eclipses are impressive and powerful experiences, if not unnerving. Observers in the path of totality will literally see darkness fall in the middle of the day. During a total solar eclipse, the stars come out, the temperature drops, the wind shifts, and the shadows seem strange.

Given these dramatic changes, it is perhaps not surprising that different cultures and religions find special significance to solar eclipses. Indeed, at least one religious commentator suggests that the August 21 eclipse is a sign of the impending apocalypse.³ Employers should be aware of the possibility that employees may request accommodations based on their religious beliefs and practices concerning this cosmic event.

Under federal law, and most state antidiscrimination statutes, employers are forbidden from discrimination based on an employee's or applicant's religion. Title VII, for example, broadly defines "religion" and protects all aspects of religious observance and practice.⁴ According to the Equal Employment Opportunity

³ See Julie Zauzmer, [The first solar eclipse to cross America in 99 years is coming. To some, it's an act of God](#), Wash. Post (Mar. 15, 2017).

⁴ 42 U.S.C. § 2000e(j); 29 C.F.R. § 1605.2.

Commission (EEOC), protected faiths are not limited to major, well-recognized religions but also include “religious beliefs that are new, uncommon, not part of a formal church or sect, only subscribed to by a small number of people, or that seem illogical or unreasonable to others.”⁵ Thus, even if an employer does not agree that the eclipse has religious significance, the employer presumably cannot discriminate against an employee who sincerely believes so.

Moreover, Title VII, as well as some state laws, require employers to reasonably accommodate the religious practices of employees, unless doing so would result in undue hardship.⁶ The EEOC has explained that requests for such accommodation could include an employee “requesting a schedule change so that he can attend church services on Good Friday” or an employee seeking a change to comply with “his religious belief that working on his Sabbath is prohibited.”⁷ Consistent with this guidance, an employee’s request not to work on August 21 to attend religious services, or to engage in a religious observation during work, for example, could be protected by Title VII.

As a result, employers might want to consider reminding management, human resources, and other supervisory personnel of their legal duty to provide religious accommodations, absent undue hardship. They further will want to decide how this potential issue factors into any decisions about which employees will be permitted to take personal time for the eclipse. Finally, employers should bear in mind that the EEOC has taken the position that an employer cannot retaliate against an employee because he or she requested a religious accommodation.⁸

Total Eclipse . . . at the Mart?

Many towns and companies located in the path of totality have been preparing for years for this event, particularly in smaller communities anticipating significant crowds. But, beyond the staffing issues noted above, it is not too late for employers to consider how their operations might be affected by the eclipse as a practical matter.

Some employers, for example, might face supply shortages. Do you run a restaurant or shop in a main viewing destination or along the highway leading to such a spot? If so, will you be able to order and obtain sufficient stock to accommodate the additional business? Do you have enough workers available? Might there be a gasoline shortage, and would that affect your employees or suppliers? Has your locality asked you to turn off signage or other equipment for part of the eclipse?

Many employers are likely to see traffic snarls affecting business and/or staff. Such employers may want to evaluate whether certain employees can or should work from home. Additionally, employers should explore whether critical deliveries might be delayed due to traffic or other logistical glitches. In short, employers might want to take a look at their needs leading up to that week, including any planned meetings. Can people get to their worksites, meetings, interviews, etc. that day? Can any potential conflicts be rescheduled? In some respects, employers may want to think of the eclipse like inclement weather and develop back-up plans accordingly.

5 U.S. Equal Emp’t Opportunity Comm’n, [Questions and Answers: Religious Discrimination in the Workplace](#), Question 1 (Jan. 31, 2011).

6 42 U.S.C. § 2000e(j); 29 C.F.R. § 1605.2. The EEOC has explained that “undue hardship” for this purpose is a lower burden of proof for employers than the “undue burden” standard found in the Americans with Disabilities Act. Here, under Title VII, “undue hardship” would mean that the employer would incur “more than a *de minimis* cost” in accommodating the request. 29 C.F.R. § 1605.2(e); see also U.S. Equal Emp’t Opportunity Comm’n, [Questions and Answers: Religious Discrimination in the Workplace](#), Questions 6 to 13. Some state laws have a different standards for the duty to accommodate and what is an undue hardship.

7 U.S. Equal Emp’t Opportunity Comm’n, [Questions and Answers: Religious Discrimination in the Workplace](#), Question 1.

8 U.S. Equal Emp’t Opportunity Comm’n, [Questions and Answers: Religious Discrimination in the Workplace](#), Question 16; see, e.g., U.S. Equal Emp’t Opportunity Comm’n, [Best Practices for Eradicating Religious Discrimination in the Workplace](#), (July 23, 2008).

An Ounce of Prevention...

Last, but not least, employers should be aware of the safety risks posed by the eclipse. While we all were taught not to stare directly at the sun, the eclipse is sure to tempt. Nonetheless, without question, it is not safe to look at the sun until it is 100% obscured by the moon. People must protect their eyes during all phases of a partial eclipse, and during most of the total eclipse. Only during the few minutes of totality will it be safe to look directly at the sun, because its dangerous rays will be briefly hidden.⁹

Accordingly, all eclipse watchers should either view the event indirectly (i.e., using a pinhole projection method) or with special-purpose solar filter glasses. Ordinary sunglasses are not sufficient, but “eclipse glasses” are inexpensive and readily available. Employers might want to consider educating employees about this safety issue to help ensure that no one permanently damages their eyesight. NASA created a safety sheet, which could be distributed to employees to reinforce the message.¹⁰

Safety should be a particular priority for employers that plan to sponsor a viewing party for staff. Depending on numerous factors, which vary by state, employers theoretically could be subject to workers’ compensation liability for injuries suffered at a work-sanctioned eclipse event.¹¹ Employers might consider providing eclipse glasses or pinhole supplies for employee use, especially if they encourage workers to take a break to appreciate the event.

Of course, employers that have employees who will be driving or working outdoors during the eclipse, whether total or partial, will want to provide direction for how the employees is to handle the sudden darkness and other conditions resulting from the eclipse. Ultimately, employers should take some time now to assess how the August 21 eclipse may impact them. The buzz around this other-worldly phenomenon continues to grow, leaving employers with little choice but to embrace it to the extent possible. With some advance planning, the solar eclipse should be truly out of this world.

⁹ For more information, visit [NASA's safety page](#), which discusses options for viewing the eclipse safely.

¹⁰ The safety sheet—[How to View the 2017 Solar Eclipse Safely](#)—is available along with numerous other resources, including maps and pinhole cards, from the NASA eclipse [downloadables page](#).

¹¹ Workers’ compensation laws vary widely by jurisdiction. In general, however, workers’ compensation liability frequently turns on whether the employee was injured performing his or her duties or otherwise acting within the scope of employment. Injuries suffered at a company gathering may be compensable in many states, particularly if the event is formally sanctioned by the employer. Additional factors that might bolster a workers’ compensation claim include: (1) the location; (2) the employer’s level of encouragement for participation; and (3) the role of the employee at the function, if any.