

# RELIGIOUS FREEDOM

*A Guide to Your Rights*

## AMERICAN SAMOA





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*“Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.”*

*—Universal Declaration  
of Human Rights, Article 18*

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# **FREEDOM OF RELIGION AND WORSHIP IN AMERICAN SAMOA**

## ***1. What is the right to freedom of religion and worship?***

The right to freedom of religion is the right to have, adopt, preserve, or change your own religion. Closely tied to this right is the right to worship. The right to worship includes the right to believe, profess and practice, individually or collectively, the acts of worship or rituals of your preference. Likewise, people are free to abandon their religion, not to profess religious beliefs, and to refrain from practicing religious acts and rites.

The right to freedom of religion also protects people from being subjected to discrimination, coercion, or hostility because of their religious beliefs, as well as the right not to be forced to testify in a manner that violates such beliefs.

## ***2. What is the right to freedom of belief or conscience?***

This is a person's fundamental right to follow his or her personal reasoning and convictions and not to be subject to actions that are against his or her deeply held judgments of right and wrong.

## ***3. What are the laws that protect religious freedom?***

Article 1, Section 1 of the Constitution of American Samoa states: "There shall be separation of church and government, and no law shall be enacted respecting an establishment of religion or prohibiting the free exercise thereof...."

American Samoa is a territory of the United States of America. Therefore, the U.S. Constitution and federal law protect basic rights of Samoans. The First Amendment of the U.S. Constitution protects freedom of religion in terms very similar to the Samoan Constitution.



“Free exercise of religion” has been interpreted to mean that all are free to practice their religion without government interference, except in limited circumstances, such as when necessary to protect the rights and safety of others. Free exercise includes among other things the right to choose a religion or not, to worship according to one’s beliefs, to gather with others in public or private for religious purposes, to share one’s religion with others, to change religion, to publish religious materials and to be protected from discrimination and persecution based on religion.

The prohibition on the “establishment of religion” has a more complicated interpretation, but at a minimum it means that there can be no state religion, that the government cannot financially support religious activities, and that the government must remain neutral regarding religion and not favor one religious denomination over another.

“Free exercise” and “non-establishment” together protect the independence or “autonomy” between religion and the state. Among other things, this means that the government may not interfere in the internal affairs of religious organizations. Religious groups are free to determine their own organizational structure, membership requirements, teachings, leaders, teachers and other internal matters.

#### ***4. What is the official religion of American Samoa?***

There is no official religion, and the American Samoan Government does not have the power to establish or authorize an official religion. Rather, the First Amendment of the U.S. Constitution and American Samoa Constitution provide the framework for robust freedoms of religion and worship.



## ***5. What can I do when my right to freedom of religion and worship is violated?***

American Samoa is governed by law and all persons have a duty to uphold the law. Therefore, when a person's religious rights are violated, they have the following lawful means for redress:

- a. The High Court of American Samoa. The High Court is the highest American Samoan court. A person may apply to the High Court for redress if a territorial law or constitutional right is violated. The High Court can make a binding ruling for the protection of freedom of religion.
- b. U.S. federal courts. In certain instances, American Samoans may file a claim for violation of their Constitutional rights or federal law protecting their religious freedoms in a U.S. federal court.
- c. The U.S. Supreme Court. American Samoans are protected from violation of their U.S. federal rights, including those protected under the U.S. Constitution. Violations of U.S. Constitutional rights may, in certain instances, be appealed to the U.S. Supreme Court.

## **RELIGION IN THE PUBLIC SQUARE**

### ***6. Can I express my religious views in public?***

Yes. The right to religious freedoms established in the U.S. Constitution and the American Samoa Constitution protects every person from infringement on their religious practice. Every person has the right to participate individually or collectively, both in public and in private, in ceremonies, devotionals or actions of the respective religion, provided that they do not interfere with the lawful activities of others or force others to participate against their will.



## ***7. Can I share or preach my beliefs to others?***

Yes. The First Amendment of both the U.S. Constitution and the American Samoa Constitution guarantee every person the right of freedom of expression in public and in private to share religious beliefs, ideas, thoughts, and opinions with others. Likewise, people can come together to establish a religion, to adhere to an existing religion, or change their religious affiliation. This right is subject to the Establishment Clause which requires that state funded activities such as public schools cannot promote or give favor to such practice. For example, public officials may not promote religious activity using public facilities or funds. There is an exception for "ceremonial" or generic expressions of faith in the public sphere, which may be acceptable so long as they don't force others into expressing the same faith.

## ***8. Can I be part of a religious entity or organization?***

Yes. Under the law, people have the right to associate and participate in religious activities as communities, which includes, among other rights: the right to establish places of worship or gathering for religious purposes, to freely exercise their own ministry, to establish their own internal hierarchy, and to have and direct their own institutes of formation and theological studies. Generally, the law does not require religious entities or organizations that are not recipients of public funds to accept people into their group, as the freedom to disassociate and exclude is another important part of religious freedom.



## ***9. What are the government authorities that regulate religious entities?***

American Samoa does not have a government agency that oversees religious entities and activities. Nonetheless, religious organizations are regulated by the American Samoan Government for the same reasons people are regulated—to maintain civility, proper conduct, and the rule of law. The American Samoan Government regulates religious entities in the following ways:

- a. Church facilities are subject to land ownership, land use, and zoning laws.
- b. Church functions are subject to village ordinances and executive orders that may impose curfews and other restrictions on movement and assembly at certain times and places.

Church organizations are subject to anti-fraud, privacy laws, and intellectual property protections, and are not immune from civil or criminal liability for their acts. Because of this legal structure, religious entities may enjoy these benefits:

- a. The formal recognition of the American Samoan Government.
- b. Tax exemption granted by the American Samoa Revenue Authority on ecclesiastical, charitable, and/or educational non-profit activities.
- c. Exemption from business licensing requirements.
- d. Enjoyment of perpetual succession with the ability to sue and be sued in their own name.
- e. A statutory exception to communal land tenure ownership requirements in order to allow religious organization to own communal land dedicated to religious purposes.



## **RELIGIOUS FREEDOM IN THE WORKPLACE**

### ***10. What influence does freedom of religion have in the relationship between an employer and an employee?***

The laws that govern the employment relationship between employer and employee do not provide additional protections for employees' religious beliefs. Even so, the U.S. and American Samoa Constitutions prohibit discrimination based on religion, so the employer should not impose religious obligations on its employees. Nor should an employer force an employee to act in a way that is contrary to the employee's religious beliefs. An employee's religion should not impact his or her wages or other benefits. An employee's appointment should not be terminated because of his or her religious beliefs.

### ***11. What is the relationship between religious freedom and working hours?***

Religious public holidays in American Samoa includ Good Friday and Christmas. Government employees are entitled to annual leave in addition to public holidays. Private sector employees' annual leave entitlement is dictated by the terms of the employee's contract. Employees should discuss situations which could potentially impact religious observance and/or prayer with their employers, and employers should work to accommodate employees' religious beliefs and the expression of their beliefs.



## ***12. Can I wear religious clothing to work or refuse to wear part of a uniform because of my religious beliefs?***

While these actions are not specifically protected by law, there are constitutional rights to freedom of religion prohibiting religious-based discrimination. Employees should notify their employers in a timely manner of any needs or special circumstances that arise due to religious beliefs or practices. This allows the employer to be aware of such circumstances and honor the religious freedom of employees more adequately.

## **RELIGIOUS FREEDOM IN SCHOOLS**

### ***13. Can there be religion classes in public schools?***

Public schools are run by the government. Therefore, they must obey the First Amendment and not endorse any particular religious belief or practice in their curriculum. Public school curricula may, however, include courses and teaching about the influences of religion in history, literature, and philosophy.

### ***14. Is it mandatory for students to attend religious education or religious observances in their schools?***

In public schools, students are free to exercise their individual religious freedom rights. Public school teachers and officials are also free to exercise their individual religious freedom rights; however, when functioning as representatives of the school, they must observe the limitations imposed by the First Amendment. In general, these limitations prohibit a public school from endorsing or promoting religion in general or a specific religion in particular. A public school may not conduct or require religious observances such as class prayer, scripture reading, or loud-speaker devotionals. This limitation applies equally to non-denominational prayer. Public schools may teach about religion in an academic sense, but not as a means of promoting religion.



Likewise, religious art and music are acceptable in public schools as a cultural educational pursuit, unless they have the purpose of promoting religion. U.S. Supreme Court interpretation of these limitations is sometimes complicated. School officials, teachers, and parents of students should seek competent legal advice when in doubt.

These First Amendment limitations only restrict public schools. They do not apply to private and religious schools, which are free to promote religious beliefs and practices and to require religious observance.

### ***15. Can students refrain from attending school or scheduled school activities because of their religious beliefs?***

Students must attend school through grade 12, which typically includes kindergarten, six years of primary school (grades 1-6) and six years of secondary school (grades 7-12). Any absence from school should be justified by a written note from a parent or guardian, and consecutive absences should be limited so that students will not fall behind in their education.

Students can be excused from some school activities if they conflict with their religious beliefs. Parents or the interested parties should communicate with school leaders from the outset to discuss the religious reasons for not participating in activities or policies. Schools should be respectful of students who, because of their religious beliefs, do not participate in activities for religious reasons.



## ***16. Can students modify school uniforms because of their religious beliefs?***

Yes, in some cases. The First Amendment allows for mandatory uniform policies or dress codes in public schools. However, it also generally permits exemptions from such policies or codes for students to wear religious clothes, head coverings, symbols, or other attire. Parents or guardians of students should communicate with school leaders from the outset to discuss any religious reasons or concerns regarding a school's uniform and personal appearance policies.

## **MILITARY AND PUBLIC SERVICE**

### ***17. Is there mandatory military or public service, and if so, are there any religious exemptions?***

No, there is no mandatory military and/or public service in American Samoa. However, males eighteen years of age must register for the draft and are subject to conscription. In case of conscription, a conscripted person may object to military service as a conscientious objector, including on religious grounds if the conscription interferes with the free exercise of the person's religion by forcing them to act against their conscience.

## **RELIGION AND JUSTICE**

### ***18. Can I refrain from taking an oath in legal proceedings because of my religious beliefs?***

Yes. When you appear in court as a witness, you are entitled under the law to abstain from taking the oath and may instead make a simple affirmation to tell the truth. However, you may not be excused from testifying on the basis of religious belief.



## ***19. Can judges make decisions based on their religious beliefs?***

No. The final authority vested in the judiciary is exercised on behalf of the people of American Samoa to render justice to all manner of men and women without fear or favor or ill-will. All judicial duties must be completed without bias or prejudice based on race, sex, religion, or any other grounds.

## ***20. Is there any protection for statements made in confidence to religious leaders?***

Yes. Under the common law “clergy privilege,” which American Samoa recognizes, third parties, including courts, cannot compel religious leaders or advisors to disclose communications made by a communicant to them in confidence so long as the communication was made with a reasonable expectation of confidentiality. However, the privilege may not exist when confidential statements are made not for the purpose of seeking penance or advice, but for some other purpose.

Religious leaders have a discretionary duty to report confessions of child abuse or neglect and are immune from liability so long as the reporting is conducted in good faith. Communicant expressions of an intent to commit crimes also may not be considered privileged if the communicant was not clearly seeking spiritual advice.



# RELIGIOUS FREEDOM IN INTERNATIONAL LAW

In addition to local protections for religious freedom in individual countries, there are also different international instruments or legal documents that protect this right. In 1948, the right to freedom of religion and conscience was introduced by the Universal Declaration of Human Rights. Since then, there have been different covenants and conventions that establish and develop this right at the international level.

## *What protections do I receive under international law?*

International instruments establish that all people are equal before the law, regardless of their religion. These laws also state that no one may be discriminated against on the basis of religion. This is an offense against human dignity and is condemned as a violation of human rights and fundamental freedoms.

## *What freedoms do these international instruments include?*

- **Freedom of thought, conscience, and religion.**

This freedom includes freedom of thought on all matters, freedom to hold beliefs, freedom of commitment to religion or belief, and freedom of personal conviction. It does not allow any limitations on the freedom to have or adopt a religion or belief of one's choice. No one can be compelled to reveal his or her thoughts or adherence to a religion or belief.



- **Freedom to change religion or beliefs.**

All people have the right to leave their own religion or belief and to adopt another, or to remain without any belief at all. The use of physical force, penal sanctions, policies, or practices to force a person to adopt, change, or maintain a certain religion or belief is prohibited.

- **The freedom to manifest and profess your own religion or beliefs, individually and collectively, both publicly and privately.**

Everyone enjoys the right to peacefully manifest and share one's religion or belief with others without being subject to the approval of the state of another religious community. This right is not limited to members of registered religious communities. Moreover, registration should not be compulsory for religious communities or organizations in order to enjoy their rights.

- **The freedom to manifest your religion through teaching, practice, worship, and observance.**

The freedom to manifest religion or belief in worship, observance, practice, and teaching includes a broad range of acts:

- Worship and observance extends to ritual and ceremonial acts giving direct expression to belief, as well as various practices integral to such acts, including the building of places of worship, the use of ritual formulae and objects, the display of symbols, and the observance of holidays and days of rest.
- Practice and teaching of religion or belief include acts integral to the conduct by religious groups of their basic affairs, such as the freedom to choose their religious leaders, priests, and teachers; the freedom to establish seminaries or religious schools; and the freedom to prepare and distribute religious texts or publications.

- **The freedom of parents and guardians to have their children or pupils receive religious or moral education that is in accordance with their own convictions.**

Children enjoy the right to have access to religious education in accordance with the wishes, religious beliefs, or convictions of their parents or guardians. Likewise, children should not be forced to receive religious instruction that is contrary to the wishes of their parents or guardians. In accordance with the principle of the best interests of the child, the State should encourage an atmosphere of religious tolerance in schools and promote respect for pluralism and religious diversity.

### ***Are there any limitations to these freedoms?***

Yes. There are some limitations that are given by law, and their purpose is to protect public safety, order, health, morals, and the fundamental rights and freedoms of others. However, restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner.



# FINDING COMMON GROUND

As people, we have the freedom to choose, share, and live what we believe. We generally hold our religious freedoms and beliefs dear as guiding principles in our lives. Just as we value our own religion and beliefs, we should highly value all people's rights to religious freedom and belief. Knowing the importance of these freedoms, how can we share the principles of freedom of religion in our communities? Is there a way to find common ground when we interact with people holding different beliefs?

The following strategies may allow you to find common ground in your community:

## BECOME INFORMED

Before you can protect the religious beliefs of yourself or others, it is important to be informed and understand the rights and basic principles of freedom of religion. This brochure contains some relevant information with regards to your rights and the basics of freedom of religion. Seek to stay aware of changes in religious freedoms by watching developments that affect these freedoms in the news.

## LISTEN TO ALL SIDES

Listen and show concern for other people's religions and sincere beliefs. Even if you disagree with the beliefs, or convictions of another, seek to understand and to be respectful of his or her perspective. People's words, beliefs and actions are influenced by many factors. You should be sensitive to the feelings of others as you explain and pursue your positions, and you should ask that others not be offended by your sincere religious beliefs.



## **PRACTICE CIVILITY**

In order to live as a community with differences of opinion and beliefs, it is critical to know how to debate and not just what to debate. Your communications on controversial topics should not be contentious. All people should treat one another with civility and respect while striving to be accurate and fair. When your positions do not prevail, you should accept unfavorable results graciously and civilly. Remember to reject persecution of any kind, including persecution based on race, ethnicity, religious belief or nonbelief, and differences in sexual orientation.

## **PROMOTE TOLERANCE**

People must be able to peaceably live together while having differences. To live peaceably does not mean you need to abandon your positions; rather, it means you should strive to live peacefully with others who do not share your values or accept the teachings upon which they are based. Strive to teach values and standards of behavior to those around you without having them distance themselves or show disrespect to any who are different.

## **BUILD TRUSTED RELATIONSHIPS**

Build trusted relationships in your community among people of diverse opinions. You will be better able to protect the rights of others in a way that benefits everyone as you get to know more people and as those people come to understand each other's beliefs. Concentrate on what you have in common with your neighbors and fellow citizens. Then, as you work together, speak out for religion and the importance of religious freedom.



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