



LABOR & EMPLOYMENT DEPARTMENT

# ALERT

## NEW YORK CITY LAW CLARIFIES “UNDUE HARDSHIP” STANDARD FOR RELIGIOUS ACCOMMODATION REQUESTS

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A recent amendment to New York City’s Human Rights Law (“NYCHRL”), effective August 30, 2011, clarifies the rules pertaining to what New York City employers must demonstrate in order to lawfully refuse to accommodate the religious beliefs or practices of employees.

Specifically, the recently enacted amendment, called “The Workplace Religious Freedom Act” (“the Act”), amends the NYCHRL to make clear that its provisions are to be interpreted to be more protective of employees’ rights to religious accommodation than those provided under the federal anti-discrimination law, Title VII of the Civil Rights Act of 1964 (“Title VII”).

In order to understand the significance of this amendment, it is important to understand how the New York City law compares with the other laws that prohibit religious discrimination in the workplace. Three anti-discrimination laws apply to New York City employers - Title VII, The New York State Human Rights Law (“NYSHRL”), and the NYCHRL. Generally, all three prohibit discrimination on the basis of religion and require employers to provide a reasonable accommodation for the religious needs of individual employees, provided that the religious accommodation does not cause an “undue hardship” on the employer’s business. Some examples of common religious accommodations granted to employees include flexible scheduling, voluntary shift substitutions or swaps, and providing limited exceptions to various workplace policies (e.g., dress codes and safety policies).

New York’s state law is more protective of employees’ rights to religious accommodation than the federal law, because the standard used by the state to define “undue hardship” makes it more difficult for employers to prove that an undue hardship exists. In this regard, the NYSHRL requires an employer to show that the accommodation requires significant expense, significant difficulty, significant interference with safe or efficient operations, or a violation of a bona fide seniority system. In contrast, under Title VII, an employer may establish “undue hardship” merely by demonstrating that the accommodation would require “more than a de minimis cost.”

Prior to this recent amendment, the proper interpretation of New York City’s law remained a source of confusion for employers and courts. Because the NYCHRL did not define “undue hardship,” some employers and courts applied the federal “de minimis” standard, rather than the more stringent NYSHRL standard, when interpreting the meaning of “undue hardship” under the city’s law. The Act effectively bars such an approach by adopting the standard for “undue hardship” found in the state law. Specifically, using the same language in § 296(10)(d) of the NYSHRL, the Act defines “undue hardship” to mean “an accommodation requiring significant expense or difficulty (including a significant interference with the safe or efficient operation of the workplace or a violation of a bona fide seniority system).”

Further, tracking the same language in the NYSHRL,

the Act identifies various factors that should be evaluated when determining whether a particular accommodation constitutes an “undue hardship” for an employer. These include, but are not limited to:

- (i) the identifiable cost of the accommodation, including the costs of loss of productivity and of retaining or hiring employees or transferring employees from one facility to another, in relation to the size and operating cost of the employer;
- (ii) the number of individuals who will need the particular accommodation to a sincerely held religious observance or practice; and
- (iii) for an employer with multiple facilities, the degree to which the geographic separateness or administrative or fiscal relationship of the facilities will make the accommodation more difficult or expensive.

The Act does provide, however, that employers can establish that a religious accommodation will result in

undue hardship by showing that it will result in the inability of the employees at issue to perform the essential functions of the position in which they are employed.

Employers covered by the Act should consider reviewing their employment policies and procedures, employee handbooks, and job descriptions to ensure compliance with the statute. Employers should also review their procedures for reviewing and analyzing their employees’ requests for religious accommodation to ensure that all the factors cited above are duly considered in connection with each such request. In addition, job descriptions should be reviewed to ensure that all of the essential functions of each position have been captured and accurately described.

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