

Employer Obligations to Accommodate Religion Under New York Law

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In 2003, the New York State Human Rights Law was amended to prohibit employers from imposing any term or condition of employment that would require an employee to violate a sincerely held religious practice or belief in order to get or keep a job, absent a showing of undue hardship on the employer's business. This amendment significantly broadened the rights of employees to practice their religion without penalty by their employers.

The amended law prohibits employers from requiring employees to forgo a religious observance as a condition of employment. Thus, the amendment makes it unlawful for an employer to deny an employee permission for leave solely because the employee seeks to use that leave to accommodate a religious observance.

In addition to accommodating time-off requests for religious observance, the amended law requires employers to accommodate other religious beliefs, such as dress, hair style, beards and prayer requirements, unless doing so is an undue hardship. Any adverse employment action, including denial of advancement, because of an employee's exercise of his or her rights under the law, constitutes unlawful discrimination.

An employer may not refuse to accommodate an individual's protected religious needs without first engaging in a "bona fide effort" to grant the accommodation. The employer may deny the accommodation only if the employee's religious observance or practice is an undue hardship on the employer's business.

The amended law also creates a higher standard for showing that an accommodation would create an undue hardship. Before the amendment, almost any added cost or burden would have met the undue hardship test. As amended, the law requires employers to meet a more rigorous standard, similar to that under the Americans with Disabilities Act. For purposes of religious accommodation, "undue hardship" now means an accommodation requiring significant expense

or difficulty, such as a significant interference with the safe and efficient operation of the work place or of a bona fide seniority system. An undue hardship would also be found if the accommodation results in the employee's inability to perform an essential function of his or her position.

If an employee requests time off to observe the holy day of his religion and that day falls on a regular work day, and the employer allows employees to take regular work days off for personal reasons, the employer cannot deny the day off for religious observance. Even if the employer does not allow employees to take days off for personal reasons, the employee's requested accommodation for religious observance can be denied only if attendance during regular work days is an essential function of the job, or the accommodation would present an undue hardship.

Although the amended law broadens the rights of employees at the employer's expense, there is some good news. An employer is not required to pay premium pay, such as night shift or weekend differentials, if the work during those hours is to accommodate an employee's religious observance.

Employers would be well served to ensure compliance with the amended law. Employers should review and revise personnel policies and procedures so they do not conflict with the amended law's requirements. In addition, employers should train supervisors and managers on the requirements of the amended law and procedures for evaluating requests for religious accommodation. Finally, employers should assure that personnel decisions, particularly adverse ones, are not influenced by an individual's exercise of protected religious rights.

John M. Bagyi counsels and represents employers in a variety of labor and employment related contexts and is a Member in Bond, Schoeneck & King's Albany office. If you have a question you would like to submit, you are encouraged to do so by email (jbagyi@bsk.com), phone (518-533-3229) or fax (518-533-3299).