

STATE OF NEW YORK

4358

2025-2026 Regular Sessions

IN ASSEMBLY

February 4, 2025

Introduced by M. of A. FALL -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the executive law, in relation to requiring employers to engage in a good faith cooperative dialogue with employees who request accommodation due to a religious practice or observance

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivision 10 of section 296 of the executive law, as
2 amended by chapter 166 of the laws of 2000, paragraph (a) as amended by
3 chapter 154 of the laws of 2019, and paragraph (b) as amended and para-
4 graphs (c) and (d) as added by chapter 539 of the laws of 2002, is
5 amended to read as follows:
6 10. (a) It shall be an unlawful discriminatory practice for any
7 employer, or an employee or agent thereof, to impose upon a person as a
8 condition of obtaining or retaining employment, including opportunities
9 for promotion, advancement or transfers, any terms or conditions that
10 would require such person to violate or forego a sincerely held practice
11 of [~~his or her~~] such person's religion, including but not limited to the
12 observance of any particular day or days or any portion thereof as a
13 sabbath or other holy day or religious holiday in accordance with the
14 requirements of [~~his or her~~] such person's religion or the wearing of
15 any attire, clothing, or facial hair in accordance with the requirements
16 of [~~his or her~~] such person's religion, unless, after engaging in a bona
17 fide effort which shall include a cooperative dialogue, the employer
18 demonstrates that it is unable to reasonably accommodate the employee's
19 or prospective employee's sincerely held religious observance or prac-
20 tice without undue hardship on the conduct of the employer's business.
21 Notwithstanding any other provision of law to the contrary, an employee
22 shall not be entitled to premium wages or premium benefits for work
23 performed during hours to which such premium wages or premium benefits
24 would ordinarily be applicable, if the employee is working during such

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 hours only as an accommodation to [~~his or her~~] such employee's sincerely
2 held religious requirements. Nothing in this paragraph or paragraph (b)
3 of this subdivision shall alter or abridge the rights granted to an
4 employee concerning the payment of wages or privileges of seniority
5 accruing to that employee.

6 (b) Except where it would cause an employer to incur an undue hard-
7 ship, no person shall be required to be present or remain at [~~his or~~
8 ~~her~~] such person's place of employment during any day or days or portion
9 thereof that, as a requirement of [~~his or her~~] such person's religion,
10 [~~he or she~~] such person observes as [~~his or her~~] such person's sabbath
11 or other holy day or religious holiday, including a reasonable time
12 prior and subsequent thereto for travel between [~~his or her~~] such
13 person's place of employment and [~~his or her~~] such person's home,
14 provided however, that any such absence from work shall, wherever prac-
15 ticable [~~in the reasonable judgment of~~] and as agreed upon between the
16 employer and the employee pursuant to a cooperative dialogue, be made up
17 by an equivalent amount of time and work at some other mutually conven-
18 ient time, or shall be charged against any leave with pay ordinarily
19 granted, other than sick leave, provided further, however, that any such
20 absence not so made up or charged, may be treated by the employer of
21 such person as leave taken without pay.

22 (c) It shall be an unlawful discriminatory practice for an employer to
23 refuse to permit an employee to utilize leave or to refuse to engage in
24 a cooperative dialogue requested by an employee, as provided in para-
25 graph (b) of this subdivision, solely because the leave will be used for
26 absence from work to accommodate the employee's sincerely held religious
27 observance or practice.

28 (d) As used in this subdivision: (1) "undue hardship" shall mean an
29 accommodation requiring significant expense or difficulty (including a
30 significant interference with the safe or efficient operation of the
31 workplace or a violation of a bona fide seniority system). Factors to be
32 considered in determining whether the accommodation constitutes an undue
33 economic hardship shall include, but not be limited to:

34 (i) the identifiable cost of the accommodation, including the costs of
35 loss of productivity and of retaining or hiring employees or trans-
36 ferring employees from one facility to another, in relation to the size
37 and operating cost of the employer;

38 (ii) the number of individuals who will need the particular accommo-
39 dation to a sincerely held religious observance or practice; and

40 (iii) for an employer with multiple facilities, the degree to which
41 the geographic separateness or administrative or fiscal relationship of
42 the facilities will make the accommodation more difficult or expensive.

43 Provided, however, an accommodation shall be considered to constitute
44 an undue hardship if it will result in the inability of an employee to
45 perform the essential functions of the position in which [~~he or she~~]
46 such employee is employed.

47 (2) "premium wages" shall include overtime pay and compensatory time
48 off, and additional remuneration for night, weekend or holiday work, or
49 for standby or irregular duty.

50 (3) "premium benefit" shall mean an employment benefit, such as
51 seniority, group life insurance, health insurance, disability insurance,
52 sick leave, annual leave, or an educational or pension benefit that is
53 greater than the employment benefit due the employee for an equivalent
54 period of work performed during the regular work schedule of the employ-
55 ee.

1 (4) "cooperative dialogue" shall mean the process by which an employer
2 and employee engage in good faith written or oral dialogue concerning
3 such employee's needs for accommodation regarding such employee's obser-
4 vanance of a sincerely held practice of such employee's religion, poten-
5 tial accommodations that may address such employee's accommodation
6 needs, and the difficulties that such potential accommodations may pose
7 for such employer.

8 In the case of any employer other than the state, any of its political
9 subdivisions or any school district, this subdivision shall not apply
10 where the uniform application of terms and conditions of attendance to
11 employees is essential to prevent undue economic hardship to the employ-
12 er. In any proceeding in which the applicability of this subdivision is
13 in issue, the burden of proof shall be upon the employer. If any ques-
14 tion shall arise whether a particular position or class of positions is
15 excepted from this subdivision by this paragraph, such question may be
16 referred in writing by any party claimed to be aggrieved, in the case of
17 any position of employment by the state or any of its political subdivi-
18 sions, except by any school district, to the civil service commission,
19 in the case of any position of employment by any school district, to the
20 commissioner of education, who shall determine such question and in the
21 case of any other employer, a party claiming to be aggrieved may file a
22 complaint with the division pursuant to this article. Any such determi-
23 nation by the civil service commission shall be reviewable in the manner
24 provided by article seventy-eight of the civil practice law and rules
25 and any such determination by the commissioner of education shall be
26 reviewable in the manner and to the same extent as other determinations
27 of the commissioner under section three hundred ten of the education
28 law.

29 § 2. This act shall take effect immediately.