

105TH CONGRESS  
1ST SESSION

# S. 1124

To amend title VII of the Civil Rights Act of 1964 to establish provisions with respect to religious accommodation in employment, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JULY 31, 1997

Mr. KERRY (for himself and Mr. COATS) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To amend title VII of the Civil Rights Act of 1964 to establish provisions with respect to religious accommodation in employment, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Workplace Religious  
5 Freedom Act of 1997”.

6 **SEC. 2. AMENDMENTS.**

7 (a) DEFINITIONS.—Section 701(j) of the Civil Rights  
8 Act of 1964 (42 U.S.C. 2000e(j)) is amended—

9 (1) by inserting “(1)” after “(j)”;

1           (2) by inserting “, after initiating and engaging  
2           in an affirmative and bona fide effort,” after “un-  
3           able”;

4           (3) by striking “an employee’s” and all that fol-  
5           lows through “religious” and insert “an employee’s  
6           religious”; and

7           (4) by adding at the end the following:

8           “(2) As used in this subsection, the term ‘employee’  
9           includes a prospective employee.

10          “(3) As used in this subsection, the term ‘undue  
11          hardship’ means an accommodation requiring significant  
12          difficulty or expense. For purposes of determining whether  
13          an accommodation requires significant difficulty or ex-  
14          pense—

15                 “(A) an accommodation shall be considered to  
16                 require significant difficulty or expense if the accom-  
17                 modation will result in the inability of an employee  
18                 to perform the essential functions of the employment  
19                 position of the employee; and

20                 “(B) other factors to be considered in making  
21                 the determination shall include—

22                         “(i) the identifiable cost of the accommo-  
23                         dation, including the costs of loss of productiv-  
24                         ity and of retraining or hiring employees or  
25                         transferring employees from one facility to an-

1 other, in relation to the size and operating cost  
2 of the employer;

3 “(ii) the number of individuals who will  
4 need the particular accommodation to a reli-  
5 gious observance or practice; and

6 “(iii) for an employer with multiple facili-  
7 ties, the degree to which the geographic sepa-  
8 rateness or administrative or fiscal relationship  
9 of the facilities will make the accommodation  
10 more difficult or expensive.”.

11 (b) EMPLOYMENT PRACTICES.—Section 703 of such  
12 Act (42 U.S.C. 2000e–2) is amended by adding at the end  
13 the following:

14 “(o)(1) As used in this subsection:

15 “(A) The term ‘employee’ includes a prospective  
16 employee.

17 “(B) The term ‘leave of general usage’ means  
18 leave provided under the policy or program of an  
19 employer, under which—

20 “(i) an employee may take leave by adjust-  
21 ing or altering the work schedule or assignment  
22 of the employee according to criteria deter-  
23 mined by the employer; and

24 “(ii) the employee may determine the pur-  
25 pose for which the leave is to be utilized.

1           “(C) The term ‘undue hardship’ has the mean-  
2           ing given the term in section 701(j)(3).

3           “(2) For purposes of determining whether an em-  
4           ployer has committed an unlawful employment practice  
5           under this title by failing to provide a reasonable accom-  
6           modation to the religious observance or practice of an em-  
7           ployee, an accommodation by the employer shall not be  
8           deemed to be reasonable if such accommodation does not  
9           remove the conflict between employment requirements and  
10          the religious observance or practice of the employee.

11          “(3) An employer shall be considered to commit such  
12          a practice by failing to provide such a reasonable accom-  
13          modation for an employee if the employer refuses to per-  
14          mit the employee to utilize leave of general usage to re-  
15          move such a conflict solely because the leave will be used  
16          to accommodate the religious observance or practice of the  
17          employee.

18          “(4) It shall not be a defense to a claim of unlawful  
19          employment practice under this title for failure to provide  
20          a reasonable accommodation to a religious observance or  
21          practice of an employee that such accommodation would  
22          be in violation of a bona fide seniority system if, in order  
23          for the employer to reasonably accommodate such observ-  
24          ance or practice—

1           “(A) an adjustment would be made in the em-  
2           ployee’s work hours (including an adjustment that  
3           requires the employee to work overtime in order to  
4           avoid working at a time that abstention from work  
5           is necessary to satisfy religious requirements), shift,  
6           or job assignment, that would not be available to  
7           any employee but for such accommodation; or

8           “(B) the employee and any other employee  
9           would voluntarily exchange shifts or job assign-  
10          ments, or voluntarily make some other arrangement  
11          between the employees.

12          “(5)(A) An employer shall not be required to pay pre-  
13          mium wages or confer premium benefits for work per-  
14          formed during hours to which such premium wages or pre-  
15          mium benefits would ordinarily be applicable, if work is  
16          performed during such hours only to accommodate reli-  
17          gious requirements of an employee.

18          “(B) As used in this paragraph—

19                 “(i) the term ‘premium benefit’ means an em-  
20                 ployment benefit, such as seniority, group life insur-  
21                 ance, health insurance, disability insurance, sick  
22                 leave, annual leave, an educational benefit, or a pen-  
23                 sion, that is greater than the employment benefit  
24                 due the employee for an equivalent period of work

1 performed during the regular work schedule of the  
2 employee; and

3 “(ii) the term ‘premium wages’ includes over-  
4 time pay and compensatory time off, premium pay  
5 for night, weekend, or holiday work, and premium  
6 pay for standby or irregular duty.”.

7 **SEC. 3. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.**

8 (a) **EFFECTIVE DATE.**—Except as provided in sub-  
9 section (b), this Act and the amendments made by section  
10 2 take effect on the date of enactment of this Act.

11 (b) **APPLICATION OF AMENDMENTS.**—The amend-  
12 ments made by section 2 do not apply with respect to con-  
13 duct occurring before the date of enactment of this Act.

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