

106TH CONGRESS
1ST SESSION

S. 1668

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.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 29, 1999

Mr. KERRY (for himself, Mr. BROWNBACK, Mr. LIEBERMAN, Mr. HUTCHINSON, and Ms. MIKULSKI) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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 1999”.

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—

1 (1) by inserting “(1)” after “(j)”;

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

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

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

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

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

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

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

23 “(i) the identifiable cost of the accommo-
24 dation, including the costs of loss of produc-
25 tivity and of retraining or hiring employees or

1 transferring employees from one facility to an-
 2 other, in relation to the size and operating cost
 3 of the employer;

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

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

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

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

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

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

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

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

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

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

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

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

1 for the employer to reasonably accommodate such observ-
2 ance or practice—

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

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

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

20 “(B) As used in this paragraph—

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

1 due the employee for an equivalent period of work
2 performed during the regular work schedule of the
3 employee; and

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

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

9 (a) EFFECTIVE DATE.—Except as provided in sub-
10 section (b), this Act and the amendments made by section
11 2 take effect on the date of enactment of this Act.

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

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