

Civil Rights Council
Proposed Modifications to Fair Employment and Housing Act
Employment Regulations Relating to Religious Creed Discrimination and Accommodations

CALIFORNIA CODE OF REGULATIONS

Title 2. Administration

Div. 4.1. Department of Fair Employment & Housing

Chapter 5. Fair Employment & Housing Council

Subchapter 2. Discrimination in Employment

Article 8. Religious Creed

TEXT

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Article 8. Religious Creed

§ 11062. Reasonable Accommodation.

(a) An employer or other covered entity shall make accommodation to the known religious creed of an applicant or employee unless the employer or other covered entity can demonstrate that the accommodation is ~~unreasonable because it would impose an undue hardship~~. Refusing to hire an applicant or terminating an employee in order to avoid the need to accommodate a religious practice constitutes religious creed discrimination.

~~(ab)~~ A reasonable accommodation is one that eliminates the conflict between the religious practice and the job requirement and may include, but is not limited to, job restructuring, job reassignment, modification of work practices, or allowing time off in an amount equal to the amount of non-regularly scheduled time the employee has worked in order to avoid a conflict with his or her religious observances. ~~Unless expressly requested by an employee, an accommodation is not reasonable if it requires segregation of an employee from customers or the general public.~~

~~(b)~~ ~~In determining whether a reasonable accommodation would impose an undue hardship on the operations of an employer or other covered entity, factors to be considered include, but are not limited to:~~

~~(1) The size of the relevant establishment or facility with respect to the number of employees, the size of budget, and other such matters;~~

~~(2) The overall size of the employer or other covered entity with respect to the number of employees, number and type of facilities, and size of budget;~~

~~(3) The type of the establishment's or facility's operation, including the composition and structure of the workforce or membership;~~

~~(4) The type of the employer's or other covered entity's operation, including the composition and structure of the workforce or membership;~~

~~(5) The nature and cost of the accommodation involved;~~

~~(6) Reasonable notice to the employer or other covered entity of the need for accommodation; and~~

~~(7) Any available reasonable alternative means of accommodation.~~

(c) Reasonable accommodation includes, but is not limited to, the following specific employment policies or practices:

(1) Interview and examination times. Scheduled times for interviews, examinations, and other functions related to employment opportunities shall reasonably accommodate religious practices.

(2) Dress and Grooming Standards. Dress and grooming standards or requirements for personal appearance shall take into account “religious dress and grooming practices,” as defined in Government Code section 12926.

(3) Union Dues. An employer or union shall not require membership from any employee or applicant whose religious creed prohibits such membership. An applicant’s or employee’s religious creed shall be reasonably accommodated with respect to union dues.

(d) Whether a reasonable accommodation would impose an undue hardship on the operations of an employer or other covered entity must be determined in the particular factual context of each case. Factors to be considered include, but are not limited to:

(1) The size of the relevant establishment or facility with respect to the number of employees, the size of budget, and other such matters;

(2) The overall size of the employer or other covered entity with respect to the number of employees, number and type of facilities, and size of budget;

(3) The type of the establishment’s or facility’s operation, including the composition and structure of the workforce or membership;

(4) The type of the employer’s or other covered entity’s operation, including the composition and structure of the workforce or membership;

(5) The nature and cost of accommodation involved;

(6) Reasonable notice to the employer or other covered entity of the need for accommodation;

(7) Any available reasonable alternative means of accommodation;

(8) Impact of the accommodation on the operation of the facility, including but not limited to the impact on other employees and/or customers.

(e) An accommodation of an individual's religious dress practice or religious grooming practice is not reasonable if the accommodation requires segregation of the individual from other employees or the public.

(df) It is unlawful to discriminate or retaliate against a person for requesting reasonable accommodation based on religion, regardless of whether the employer granted the request.

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12926 and 12940, Government Code; *Opuku-Boateng v. State of Cal.* (9th Cir. 1996) 95 F.3d 1461, 1467 as amended (Nov. 19, 1996); *EEOC v. Abercrombie & Fitch Stores, Inc.* (2015) 575 U.S. 768-; *Balint v. Carson City, Nev.* (9th Cir. 1999) 180 F.3d 1047, 1054; *Tooley v. Martin-Marietta Corp.* (9th Cir. 1981) 648 F.2d 1239, 1243.