

104TH CONGRESS
2D SESSION

S. 2071

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 12, 1996

Mr. KERRY introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

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 1996”.

6 **SEC. 2. AMENDMENT.**

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”; and

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

5 “(2) As used in this subsection, the term ‘undue
6 hardship’ means an accommodation requiring significant
7 difficulty or expense. For purposes of determining whether
8 an accommodation requires significant difficulty or ex-
9 pense, the factors to be considered shall include—

10 “(A) the identifiable cost of the accommodation
11 in relation to the size and operating cost of the em-
12 ployer; and

13 “(B) the number of individuals who will need a
14 particular accommodation to a religious observance
15 or practice.”.

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

19 “(o)(1) For purposes of determining whether an em-
20 ployer has committed an unlawful employment practice
21 under this title by failing to provide a reasonable accom-
22 modation to the religious observance or practice of an em-
23 ployee or prospective employee, an accommodation by the
24 employer shall not be deemed to be reasonable if—

1 “(A) such accommodation does not remove the
2 conflict between employment requirements and the
3 religious observance or practice of the employee or
4 prospective employee; or

5 “(B)(i) the employee or prospective employee
6 demonstrates to the employer the availability of an
7 alternative accommodation less onerous to the em-
8 ployee or prospective employee that may be made by
9 the employer without undue hardship on the conduct
10 of the employer’s business; and

11 “(ii) the employer refuses to make such accom-
12 modation.

13 “(2) It shall not be a defense to a claim of unlawful
14 employment practice for failure to provide a reasonable ac-
15 commodation that such accommodation would be in viola-
16 tion of a bona fide seniority system if, in order for the
17 employer to reasonably accommodate to such observance
18 or practice—

19 “(A) an adjustment would be made in the em-
20 ployee’s work hours (including an adjustment that
21 requires the employee to work overtime in order to
22 avoid working at a time that abstention from work
23 is necessary to satisfy religious requirements), shift,
24 or job assignment, that would not be available to
25 any employee but for such accommodation; or

1 “(B) the employee and any other employee
2 would voluntarily exchange shifts or job assign-
3 ments, or voluntarily make some other arrangement
4 between the employees.

5 “(3)(A) An employer shall not be required to pay pre-
6 mium wages for work performed during hours to which
7 such premium wages would ordinarily be applicable, if
8 work is performed during such hours only to accommodate
9 religious requirements of an employee.

10 “(B) As used in this paragraph, the term ‘premium
11 wages’ includes premium overtime pay, pay for night,
12 weekend, or holiday work, and pay for standby or irregular
13 duty.”.

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

15 (a) EFFECTIVE DATE.—Except as provided in sub-
16 section (b), this Act and the amendments made by section
17 2 shall take effect on the date of enactment of this Act.

18 (b) APPLICATION OF AMENDMENTS.—The amend-
19 ments made by section 2 shall not apply with respect to
20 conduct occurring before the date of enactment of this
21 Act.

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