

# Assembly Bill 1964 (Yamada)

## The Workplace Religious Freedom Act of 2012

### SUMMARY

AB 1964 would clarify that undue hardship, as defined in the Definitions section of the Fair Employment and Housing Act (FEHA), applies to the Religious Discrimination section. The bill would also specify that religious clothing and hairstyles qualify as a religious belief or observance and that segregating an employee from customers or the public is not a reasonable accommodation of an employee's religious beliefs.

### BACKGROUND

The Fair Employment and Housing Act (FEHA) prohibits employers from discriminating or retaliating against employees and job applicants based on age (40 and over), ancestry, color, religious creed, disability (mental and physical) including HIV and AIDS, marital status, medical condition (cancer and genetic characteristics), national origin, race, sex, and sexual orientation. FEHA covers California employers with five or more employees.

With respect to religion, FEHA defines "religious belief or observance" as including, but not limited to, observance of a Sabbath or other religious holy day and reasonable time necessary to travel. Thus, scheduling is explicitly protected under law {GOV Sec. 12940(l)}. All other religious beliefs or observances, such as religious clothing and hairstyles, are implicitly protected.

FEHA requires employers to reasonably accommodate the religious needs of its employees unless doing so would constitute an "undue hardship" on the employer (GOV Sec. 12940). Reasonable accommodations vary on a case by case basis, but can include job restructuring, modified work schedules, and job reassignments. Both employers and employees have the obligation to make a good faith effort to explore alternatives.

Reasonable accommodations must also remove the conflict between the religious observance or practice and the job requirements. In a U.S. District Court decision, the court ruled that an employer could reasonably accommodate a Sikh employee by banning him from having face-to-face contact with the public, because the Sikh insisted on wearing a turban that was inconsistent with the company dress code {Birdi v. United Airlines, Corp, No. 99 C 5576, 2002 WL 471999, 2002 U.S. Dist. (N.D. Ill. 2002)}. No California courts have challenged this ruling.

Federal and state "undue hardship" definitions differ with respect to religious accommodation issues. Federal law follows a narrow U.S. Supreme Court interpretation of Title VII of the Civil Rights Act of 1964 (Title VII) where the court held that an accommodation causes undue hardship whenever that accommodation results in more than a "de minimis," or minimal, cost to the employer {Trans World Airlines, Inc. v. Hardison, 432 U.S. 63 (1977) 432 U.S. 63}. California's FEHA (GOV Sec. 12926) defines undue hardship as an action requiring "significant difficulty or expense," when considered in light of several factors, including the overall financial resources of the facilities involved and the number of employees. FEHA applies this "undue hardship" definition to all its protections unless otherwise specified. In addition, California regulations use the "significant difficulty or expense" definition.

### NEED FOR BILL

When evaluating failure to accommodate allegations, California courts have applied the federal court's "de minimis" definition to FEHA's religious discrimination section instead of using the "significant difficulty or expense" definition listed in statute {Soldinger v. Northwest Airlines, Inc. (1996) 51 Cal. App. 4th 345}. As a result, it is unclear which definition should apply. This confusion continues to undermine FEHA's religious protections.

In addition, employers continue to segregate employees (i.e. Sikhs and Muslims) away from customers and the public because of their appearance by claiming that the U.S. District Court decision allows them to do so.

AB 1964 would correct this by clarifying that the FEHA definition of undue hardship applies to the FEHA religious discrimination section. This bill will also specify that segregation is not a reasonable accommodation and that religious clothing and religious hairstyles are explicitly included as a religious belief or observance. In doing so, this bill will ensure that all religions receive equal protection under law and employees aren't put in a position where they can't perform their job because of who they are.

## **SUPPORT**

Sikh Coalition (Sponsor)  
American Civil Liberties Union (ACLU) of California  
Agudath Israel of California  
AJC Global Jewish Advocacy  
American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO  
California Employment Lawyers Association  
California Immigrant Policy Center  
California Nurses Association  
Church State Council  
Council on American Islamic Relations (CAIR)  
North American Religious Liberty Association-West

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