

111<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 4046

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

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## IN THE SENATE OF THE UNITED STATES

DECEMBER 17, 2010

Mr. KERRY introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To amend title VII of the Civil Rights Act of 1964 to establish provisions with respect to religious accommodations 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 2010”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1           (1) In enacting title VII of the Civil Rights Act  
2 of 1964 (42 U.S.C. 2000e et seq.) (referred to in  
3 this Act as “title VII”), Congress—

4           (A) recognized the widespread incidence of  
5 and harm caused by religious discrimination in  
6 employment;

7           (B) expressly intended to establish that re-  
8 ligion is a class protected from discrimination  
9 in employment, as race, color, sex, and national  
10 origin are protected classes; and

11           (C) recognized that, absent undue hard-  
12 ship, a covered employer’s failure to reasonably  
13 accommodate an employee’s religious practice is  
14 discrimination within the meaning of that title.

15           (2) Eradicating religious discrimination in em-  
16 ployment is essential to reach the goal of full equal  
17 employment opportunity in the United States.

18           (3) In *Trans World Airlines, Inc. v. Hardison*,  
19 432 U.S. 63 (1977), the Supreme Court held that  
20 an employer could deny an employee’s request for  
21 religious accommodation based on any burden great-  
22 er than a de minimus burden on the employer, and  
23 thus narrowed the scope of protection of title VII  
24 against religious discrimination in employment, con-  
25 trary to the intent of Congress.

1           (4) As a consequence of the Hardison decision  
2 and resulting appellate and trial court decisions, dis-  
3 crimination against employees on the basis of reli-  
4 gion in employment continues to be an unfortunate  
5 and unacceptable reality.

6           (5) Federal, State, and local government, and  
7 private employers have a history and have estab-  
8 lished a continuing pattern of discrimination in un-  
9 reasonably denying religious accommodations in em-  
10 ployment, including in the areas of garb, grooming,  
11 and scheduling.

12           (6) Although this Act addresses requests for ac-  
13 commodation with respect to garb, grooming, and  
14 scheduling due to employees' religious practices, en-  
15 actment of this Act does not represent a determina-  
16 tion that other religious accommodation requests do  
17 not deserve similar attention or future resolution by  
18 Congress.

19           (7) The Supreme Court has held in *Fitzpatrick*  
20 *v. Bitzer*, 427 U.S. 445 (1976) that Congress has  
21 clearly authorized Federal courts to award monetary  
22 damages in favor of a private individual against a  
23 State government found in violation of title VII, and  
24 this holding is supported by *Quern v. Jordan*, 440  
25 U.S. 332 (1979).

1 **SEC. 3. PURPOSES.**

2 The purposes of this Act are—

3 (1) to address the history and widespread pat-  
4 tern of discrimination by private sector employers  
5 and Federal, State, and local government employers  
6 in unreasonably denying religious accommodations in  
7 employment, specifically in the areas of garb, groom-  
8 ing, and scheduling;

9 (2) to provide a comprehensive Federal prohibi-  
10 tion of employment discrimination on the basis of re-  
11 ligion, including that denial of accommodations, spe-  
12 cifically in the areas of garb, grooming, and sched-  
13 uling;

14 (3) to confirm Congress' clear and continuing  
15 intention to abrogate States' 11th amendment im-  
16 munity from claims made under title VII; and

17 (4) to invoke congressional powers to prohibit  
18 employment discrimination, including the powers to  
19 enforce the 14th amendment, and to regulate inter-  
20 state commerce pursuant to section 8 of article I of  
21 the Constitution, in order to prohibit discrimination  
22 on the basis of religion, including unreasonable de-  
23 nial of religious accommodations, specifically in the  
24 areas of garb, grooming, and scheduling.

1 **SEC. 4. AMENDMENTS.**

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

4 (1) by inserting “(1)” after “(j)”;

5 (2) in paragraph (1), as so designated, by strik-  
6 ing “he is unable” and inserting “the employer is  
7 unable, after initiating and engaging in an affirma-  
8 tive and bona fide effort,”; and

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

10 “(2) For purposes of paragraph (1), with re-  
11 spect to the practice of wearing religious clothing or  
12 a religious hairstyle, or of taking time off for a reli-  
13 gious reason, an accommodation of such a religious  
14 practice—

15 “(A) shall not be considered to be a rea-  
16 sonable accommodation unless the accommoda-  
17 tion removes the conflict between employment  
18 requirements and the religious practice of the  
19 employee;

20 “(B) shall be considered to impose an  
21 undue hardship on the conduct of the employ-  
22 er’s business only if the accommodation imposes  
23 a significant difficulty or expense on the con-  
24 duct of the employer’s business when considered  
25 in light of relevant factors set forth in section  
26 101(10)(B) of the Americans with Disabilities

1 Act of 1990 (42 U.S.C. 12111(10)(B)) (includ-  
2 ing accompanying regulations); and

3 “(C) shall not be considered to be a rea-  
4 sonable accommodation if the accommodation  
5 requires segregation of an employee from cus-  
6 tomers or the general public.

7 “(3) In this subsection:

8 “(A) The term ‘taking time off for a reli-  
9 gious reason’ means taking time off for a holy  
10 day or to participate in a religious observance.

11 “(B) The term ‘wearing religious clothing  
12 or a religious hairstyle’ means—

13 “(i) wearing religious apparel the  
14 wearing of which is part of the observance  
15 of the religious faith practiced by the indi-  
16 vidual;

17 “(ii) wearing jewelry or another orna-  
18 ment the wearing of which is part of the  
19 observance of the religious faith practiced  
20 by the individual;

21 “(iii) carrying an object the carrying  
22 of which is part of the observance of the  
23 religious faith practiced by the individual;  
24 or

1                   “(iv) adopting the presence, absence,  
2                   or style of a person’s hair or beard the  
3                   adoption of which is part of the observance  
4                   of the religious faith practiced by the indi-  
5                   vidual.”.

6 **SEC. 5. EFFECTIVE DATE; APPLICATION OF AMENDMENTS;**  
7                   **SEVERABILITY.**

8           (a) **EFFECTIVE DATE.**—Except as provided in sub-  
9 section (b), this Act and the amendments made by section  
10 4 take effect on the date of enactment of this Act.

11           (b) **APPLICATION OF AMENDMENTS.**—This Act and  
12 the amendments made by section 4 do not apply with re-  
13 spect to conduct occurring before the date of enactment  
14 of this Act.

15           (c) **NO DIMINUTION OF RIGHTS.**—With respect to re-  
16 ligious practices not described in section 701(j)(2) of the  
17 Civil Rights Act of 1964, as amended by section 4(a)(3),  
18 nothing in this Act or an amendment made by this Act  
19 shall be construed to diminish any right that may exist,  
20 or remedy that may be available, on the day before the  
21 date of enactment of this Act, for discrimination in em-  
22 ployment because of religion by reason of failure to pro-  
23 vide a reasonable accommodation of a religious practice,  
24 pursuant to title VII of the Civil Rights Act of 1964 (42  
25 U.S.C. 2000e et seq.).

1 (d) SEVERABILITY.—

2 (1) IN GENERAL.—If any provision of an  
3 amendment made by this Act, or any application of  
4 such provision to any person or circumstance, is held  
5 to be unconstitutional, the remainder of the amend-  
6 ments made by this Act and the application of the  
7 provision to any other person or circumstance shall  
8 not be affected.

9 (2) DEFINITION OF RELIGION.—If, in the  
10 course of determining a claim brought under title  
11 VII of the Civil Rights Act of 1964 (42 U.S.C.  
12 2000e et seq.), a court holds that the application of  
13 the provision described in paragraph (1) to a person  
14 or circumstance is unconstitutional, the court shall  
15 determine the claim with respect to that person or  
16 circumstance by applying the definition of the term  
17 “religion” specified in section 701 of that Act (42  
18 U.S.C. 2000e), as in effect on the day before the  
19 date of enactment of this Act.

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