

CLIENT ALERT

California Enacts Legislation that Substantially Broadens Employers' Obligations to Provide Religious Accommodations

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California Governor Jerry Brown has signed [legislation](#) that significantly expands the obligations of California employers with respect to the accommodation of religious beliefs and observances under the California Fair Employment and Housing Act (FEHA). The amendments, which are scheduled to take effect on January 1, 2013, make three key modifications to the current law.

First, the amendments expand the definition of "religious creed," "religion," "religious observance," "religious belief," and "creed" to include "religious dress and grooming practices." Previously, "religious dress and grooming practices" were not specifically enumerated as practices/characteristics protected under the FEHA. The phrase "religious dress practice" includes "wearing or carrying of religious clothing, head or face coverings, jewelry, artifacts, and any other item that is part of the observance by an individual of his or her religious creed." In turn, "religious grooming practices" are defined to include "all forms of head, facial, and body hair" that are part of an individual's religious observance. The FEHA, as so amended, makes clear that both of these new phrases are to "be construed broadly." In contrast, the federal protections under Title VII of the Civil Rights Act of 1964 (Title VII) do not expressly include religious dress or grooming practices, although some federal courts have determined that such practices are protected under federal law.

Second, the amendments clarify the definition of what would constitute an "undue hardship" in the context of determining whether a particular religious dress or practice can be accommodated. Prior to this legislation, the FEHA required an employer to accommodate an employee's religious belief or observance unless such accommodation would cause an "undue hardship." Yet, what evidence was required to support an "undue hardship" defense was not specifically defined in the context of claims arising from religious beliefs or practices. As a result of the amendments, however, employers will now be required to demonstrate that a proposed religious accommodation would cause "significant difficulty or expense." This is a greater burden than that imposed on employers by federal law under Title VII, which has been interpreted to require employers to show only that accommodating employees' religious beliefs or observances would result in more than a *de minimis* cost to the employer.

Third, the FEHA, as amended by the legislation, will also expressly mandate that any proposed accommodation of a religious dress practice or grooming practice is not reasonable if it results in an employee being segregated from the public or from other employees.

These FEHA amendments will likely raise many questions and present novel issues of interpretation that will be presented to California courts for resolution. For example, courts may be called upon to develop criteria to determine whether a proposed accommodation of a religious practice or belief, or religious dress or religious-based grooming, is reasonable, or provide guidance as to what "significant difficulty or expense" means in the context of accommodating religious beliefs and observances. Undoubtedly, these determinations will be influenced by individualized factors, such as an employer's size and resources.

In light of these amendments, it is prudent for California employers to review their policies and procedures, regarding workplace dress and grooming codes and other related rules, in order to ensure that they do not run afoul of these heightened FEHA religious accommodation requirements. For employers who do not have such policies and procedures in place, it is advisable to develop and implement such rules. And, for employers with national operations, these amendments to the FEHA raise the question of whether they should implement yet another California-specific exception to standard policies and procedures, or adopt the FEHA's approach to religious accommodation issues across the board.

Should you have any questions regarding your reasonable accommodation practices with respect to religious beliefs and observances, please call you regular Crowell & Moring contact.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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