



Procedures for Implementing Reasonable Accommodation of Religious Observance or Practices for Applicants and Employees

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INTRODUCTION

New York State has long been committed to the proposition that every individual in the State has an equal opportunity to enjoy a full and productive life. This commitment to equal opportunity extends to the workplace. Under New York State law, employees are protected from acts of bias, harassment, prejudice or discrimination. This protection extends to those individuals who observe Sabbath or holy days, or who observe a manner of dress, hairstyle, beard, or other religious practice, in accordance with their religious beliefs. To enable qualified employees and applicants who engage in such observances or practices to contribute to the State's workforce, the State has a uniform policy to ensure the provision of reasonable accommodation to such individuals.

SECTION I: UNIFORM STATE POLICY

A. Policy Statement

Each agency, department, office and facility shall follow the Statewide Reasonable Accommodation Policy and Procedures, as set forth below, and communicate its commitment to provide reasonable accommodation to employees and applicants who engage in religious observances or practices.

The State of New York is committed to assuring equal employment opportunity for persons who engage in religious observances or practices. To this end, it is the State's policy to provide reasonable accommodation for religious observances or practices. This policy is based on the New York State Human Rights Law, the federal Civil Rights Act of 1964, Title VII, and all applicable Executive Orders and Memoranda. The policy applies to all employment practices and actions. It includes, but is not limited to, recruitment, the job application process, examination and testing, hiring, training, disciplinary actions, rates of pay or other compensation, advancement, classification, transfer and reassignment, promotions, and other terms, condition or privileges of employment.

By providing reasonable accommodations of religious observances or practices, the State and agency, as the employer, can:

- avoid requiring its employees to forego the observance of Sabbath or holy days, in accordance with the requirements of their religious beliefs;
- avoid requiring its employees to unnecessarily compromise their observance of particular manners of dress, hairstyle, beard, or other religious practices, in accordance with the requirements of their religious beliefs; and
- enhance the retention and upward mobility of qualified employees without regard for their religious observances or practices.

Reasonable accommodation must be considered in all employment decisions. The employer may not deny any employment opportunity to a qualified employee or applicant who is religiously observant, thus attempting to avoid the need to make a reasonable accommodation, unless the accommodation would impose an undue hardship. This protects the individual's right to equal job opportunity regardless of creed.

B. Employee Access to Information on Reasonable Accommodation

Every agency must periodically inform its employees of the Reasonable Accommodation Policy and Procedures. Acceptable means of communicating this information include distributing a copy of the policy and procedures to all employees annually via email;

referring to the policy on an annual basis in the agency's newsletter and advising employees of where the policy is available both in hardcopy and electronic format; and having division or program directors remind staff of the policy and procedures on an annual basis.

Information on reasonable accommodation is included in New York State's Employee Handbook, titled, "Equal Employment Opportunity in New York State, Rights and Responsibilities" ("Employee Handbook"). Information on the agency's internal discrimination complaint procedure, along with information on an employee's right to file a complaint under the Human Rights Law or the federal Civil Rights Act of 1964, Title VII, for alleged discriminatory acts is also included in the Employee Handbook.

The Reasonable Accommodation Policy should be made available at interviews.

The names and office phone numbers of key personnel involved in providing accommodation, including the agency's Designee for Reasonable Accommodation (DRA) shall be posted and the listing maintained by the agency's DRA. This listing shall also be provided to and made available from personnel offices and EAP coordinators.

SECTION II: NEW YORK STATE HUMAN RIGHTS LAW PROVISIONS

Section 296 of the New York State Human Rights Law contains the following provisions regarding the accommodation of religious observances and practices.

10. (a) It shall be an unlawful discriminatory practice for any employer, or an employee or agent thereof, to impose upon a person as a condition of obtaining or retaining employment, including opportunities for promotion, advancement or transfers, any terms or conditions that would require such person to violate or forego a sincerely held practice of their religion, including but not limited to the observance of any particular day or days or any portion thereof as a Sabbath or other holy day in accordance with the requirements of their religion, unless, after engaging in a bona fide effort, the employer demonstrates that it is unable to reasonably accommodate the employee's or prospective employee's sincerely held religious observance or practice without undue hardship on the conduct of the employer's business. Notwithstanding any other provision of law to the contrary, an employee shall not be entitled to premium wages or premium benefits for work performed during hours to which such premium wages or premium benefits would ordinarily be applicable, if the employee is working during such hours only as an accommodation to their sincerely held religious requirements. Nothing in this paragraph or paragraph (b) of this subdivision shall alter or abridge the rights granted to an employee concerning the payment of wages or privileges of seniority accruing to that employee.

(b) Except where it would cause an employer to incur an undue hardship, no person shall be required to remain at their place of employment during any day or portion thereof that, as a requirement of their religion, the employee observes as their Sabbath or other holy day, including a reasonable time prior and subsequent thereto for travel between the employee's place of employment and their home, provided however, that any such absence from work shall, wherever practicable in the reasonable judgment of the employer, be made up by an equivalent amount of time and work at some other mutually convenient time, or

shall be charged against any leave with pay ordinarily granted, other than sick leave, provided further, however, that any such absence not so made up or charged, may be treated by the employer of such person as leave taken without pay.

(c) It shall be an unlawful discriminatory practice for an employer to refuse to permit an employee to utilize leave, as provided in paragraph (b) of this subdivision, solely because the leave will be used for absence from work to accommodate the employees sincerely held religious observance or practice.

(d) As used in this subdivision:

(1) "undue hardship" shall mean an accommodation requiring significant expense or difficulty (including a significant interference with the safe or efficient operation of the workplace or a violation of a bona fide seniority system). Factors to be considered in determining whether the accommodation constitutes an undue economic hardship shall include, but not be limited to:

(i) the identifiable cost of the accommodation, including the costs of loss of productivity and of retaining or hiring employees or transferring employees from one facility to another, in relation to the size and operating cost of the employer;

(ii) the number of individuals who will need the accommodation to a sincerely held religious observance or practice; and

(iii) for an employer with multiple facilities, the degree to which the geographic separateness or administrative or fiscal relationship of the facilities will make the accommodation more difficult or expensive.

Provided, however, an accommodation shall be considered to constitute an undue hardship if it will result in the inability of an employee to perform the essential functions of the position in which he or she is employed.

(2) "premium wages" shall include overtime pay and compensatory time off, and additional remuneration for night, weekend or holiday work, or for standby or irregular duty.

(3) "premium benefit" shall mean an employment benefit, such as seniority, group life insurance, health insurance, disability insurance, sick leave, annual leave, or an educational or pension benefit that is greater than the employment benefit due the employee for an equivalent period of work performed during the regular work schedule of the employee.

In the case of any employer other than the state, any of its political subdivisions or any school district, this subdivision shall not apply where the uniform application of terms and conditions of attendance to employees is essential to prevent undue economic hardship to the employer. In any proceeding in which the applicability of this subdivision is in issue, the burden of proof shall be upon the employer. If any question shall arise whether a particular position or class of

positions is excepted from this subdivision by this paragraph, such question may be referred in writing by any party claimed to be aggrieved, in the case of any position of employment by the state or any of its political subdivisions, except by any school district, to the civil service commission, in the case of any position of employment by any school district, to the commissioner of education, who shall determine such question and in the case of any other employer, a party claiming to be aggrieved may file a complaint with the division pursuant to this article. Any such determination by the civil service commission shall be reviewable in the manner provided by article seventy-eight of the civil practice law and rules and any such determination by the commissioner of education shall be reviewable in the manner and to the same extent as other determinations of the commissioner under section three hundred ten of the education law.

SECTION III: DEFINITIONS AND PROCEDURES FOR HANDLING REQUESTS FOR REASONABLE ACCOMMODATION OF RELIGIOUS OBSERVANCES OR PRACTICES IN NEW YORK STATE AGENCIES

A. Definitions and Legal Standards

1. Creed

“Creed” encompasses belief in a supreme being or membership in an organized religion or congregation. A person is also protected from discrimination because of having no religion or creed, or being an atheist or agnostic.

2. Religion

“Religion” means an individual’s self-identification with a creed or religious tradition.

3. Sabbath or Holy Day Observance

“Sabbath or holy day observance” means refraining from normal employment, and/or attending religious services, in accordance with the requirements of the individual’s religion.

An employee is entitled to time off for religious observance of a Sabbath or holy day or days, in accordance with the requirements of their religion, provided it does not impose an undue hardship to their employer, as explained below.¹ Time off shall also be granted to provide a reasonable amount of time for travel before and after the observance.

The Human Rights Law provides that any such absence from work shall, wherever practicable in the reasonable judgment of the employer, be made up by an equivalent amount of time and work at a mutually convenient time, or shall be charged against any available personal, vacation or other paid leave; or provided however that any such absence not so made up or charged may be treated by the Employer as leave without pay.²

Leave that would ordinarily be granted for other non-medical personal reasons shall not be denied because the leave will be used for religious observance.³ Under no circumstances may time off for religious observance be charged as sick leave.³

The employee is not entitled to premium wages or benefits for work performed during hours to which such premium wages or benefits would ordinarily be applicable, if the employee is working during such hours only to make up time taken for religious observance. Human Rights Law § 296.10(a). “Premium wages” include “overtime pay and compensatory time off, and additional remuneration for night, weekend or holiday work, or for standby or irregular duty.” § 296.10(d)(2). “Premium benefit” means “an employment benefit, such as seniority, group life insurance, health insurance, disability insurance, sick leave, annual leave, or an educational or pension benefit that is greater than the employment benefit due

¹ Human Rights Law § 296.10(a).

² Human Rights Law § 296.10(b).

³ Human Rights Law § 296.10(c).

³ Human Rights Law § 296.10(b).

to the employee for an equivalent period of work performed during the regular work schedule of the employee.” § 296.10(d)(3).

Civil Service Law § 50(9) provides that candidates who are unable to attend a civil service examination because of religious observance can request an alternate test date from the Department of Civil Service without additional fee or penalty.

4. Religious Observance or Practice

“Religious observance or practice” includes Sabbath or holy day observance, and the observance of a manner of dress, hairstyle, beard, or other religious practice, which is a sincerely held practice of the individual’s religion.

An employee who, in accordance with their religious beliefs, observes a manner of dress, hairstyle, beard, or other religious practice, should not be unreasonably required to compromise the employee’s practice in the workplace. The employer is required by law to make a bona fide effort to accommodate an employee’s or prospective employees sincerely held religious observance or practice.⁴

5. Reasonable Accommodation of Religious Observance or Practice

“Reasonable accommodation of religious observance or practice” means refraining from imposing upon a person as a condition of obtaining or retaining employment, including opportunities for promotion, advancement or transfers, any terms or conditions that would require such person to violate or forego a sincerely held practice of the employee’s religion, unless, after engaging in a bona fide effort, the employer demonstrates that it is unable to reasonably accommodate the employee’s or prospective employee’s sincerely held religious observance or practice without undue hardship on the conduct of the employer’s business.

6. Undue Hardship

“Undue hardship” means an accommodation requiring significant expense or difficulty. Significant difficulty includes significant interference with the safe or efficient operation of the workplace or a violation of a bona fide seniority system.

Factors to be considered in determining whether the accommodation constitutes an undue economic hardship shall include, but not be limited to:

- (i) the identifiable cost of the accommodation, including the costs of loss of productivity and of retaining or hiring employees or transferring employees from one facility to another, in relation to the size and operating cost of the employer;
- (ii) the number of individuals who will need the accommodation to a sincerely held religious observance or practice; and
- (iii) for an employer with multiple facilities, the degree to which the geographic separateness or administrative or fiscal relationship of the facilities will make the accommodation more difficult or expensive.⁵

⁴ Human Rights Law § 296.10(a).

⁵ Human Rights Law § 296.10(d)(1).

An accommodation also constitutes an undue hardship if it will result in the inability of an employee to perform the essential functions of the position in which he or she is employed. In positions that require coverage around the clock or during hours, being available even on Sabbath or holy days *may* be an essential function of the job. Also, certain uniform appearance standards *may* be essential to some jobs.

B. Uniform Procedures for Processing Reasonable Accommodation Requests

This section describes the procedures for handling reasonable accommodation requests with respect to religious observance from applicants and State employees. It also articulates the role of the agency's DRA - the individual identified by the agency head to coordinate agency compliance obligations arising from the New York State Human Rights Law, and the federal Civil Rights Act of 1964, Title VII. This section identifies the options that are available to employees when an accommodation has been denied.

Many religious accommodations may occur without any formal request, or any discussion. For example, the wearing of religious headgear should be permitted, without discussion, in nearly all circumstances, unless it creates a specific concern, such as a safety concern or a conflict with an essential appearance standard. Likewise, time off for religious observance should be granted, where reasonable, through the normal process for requesting time off. Frequently, the religious nature of a request for occasional time off will require no discussion, unless the time off requires special consideration due to agency staffing needs.

Whenever a difficulty arises regarding an accommodation, the employee should clearly state the religious nature of the request. The supervisor should always consult with the agency's DRA before denying a request for reasonable accommodation of religious observance or practice.

Where a religious accommodation request cannot be resolved informally between the employee, the supervisor, and the agency's DRA (or where the request is of a type that should always be documented as noted below), a written request for accommodation should be submitted to the agency's DRA, to assure that the issue is reviewed, documented, and resolved in accordance with agency policy and the governing statutes.

Written requests for accommodation should be made using the "Request for Reasonable Accommodation of Religious Observance or Practice" form (*see Appendix*). These forms are provided by the agency and will be available from the DRA, as well as available online. Applicants, employees and other personnel are encouraged to make copies of the completed form for their records. At the end of the process, the original form is filed by the agency's DRA.

Certain types of requests for religious accommodation should always be documented using the formal "Request for Reasonable Accommodation of Religious Observance or Practice" form. This applies even if the request is easily granted. Documentation is important to assure fairness and uniformity in the responses to such requests. These include:

- long term, seasonal or permanent schedule changes, to provide time off for Sabbath or other religious observance;
- specific scheduled work breaks for prayer or other religious observances;
- use of state facilities (e.g. a private office or conference room) for prayer or other religious purpose; or
- *any* informal request that has been denied should be documented by the DRA.

The agency's DRA is responsible for maintaining records regarding the number of accommodations that involved a written request, and the outcome of those requests.

To request an accommodation, an individual need not mention the Human Rights Law, the Civil Rights Act, or use the phrase "reasonable accommodation". Rather, the individual need only let the employer know that s/he needs a change or adjustment related to a religious observance or practice.

The accommodation process should not be adversarial in nature.

1. Who May Request a Reasonable Accommodation of Religious Observance or Practice?

Employees or applicants who wish to engage in a sincerely held practice of the individual's religion, may request a reasonable accommodation, regardless of title, salary grade, bargaining unit, employment status (permanent, contingent, temporary or provisional) or jurisdictional classification (exempt, non-competitive, competitive or labor class). An employee may request a religious accommodation at any time, regardless of prior nonobservance.

a. Applicants

The agency must provide a reasonable accommodation of religious observance during the application process to applicants who request such accommodation. For example, an interview date may fall on a holy day that is observed by the applicant, requiring that an alternate date be arranged. Reasonable accommodation requests may be received by agency personnel and/or the agency's DRA.

b. Current Employees

Current employees may request a religious accommodation through either their first-line supervisor or the agency's DRA. If an employee makes their request through the supervisor, the supervisor may handle and approve the request, with consultation with the agency's DRA as needed. However, when the request cannot be granted, the supervisor shall forward the request to the DRA, to assure that the request is reviewed, documented, and resolved in accordance with agency policy and the governing statutes. (*See further, information above on certain types of requests that must be documented in writing.*)

2. Processing a Request for Reasonable Accommodation

Many religious accommodations require no discussion or formal approval, as noted above with regard to, for example, the wearing of religious headgear. Many other requests for

religious accommodation can be approved without a formal written accommodation request, particularly those of a minor or routine nature, such as occasional time off for religious holidays. Others may require a more extensive review and discussion, and certain requests, as noted above, should always be formally documented. The various steps to be followed in handling a formal Request for Reasonable Accommodation of Religious Observance or Practice are set forth in detail, below. We recommend that you refer to the Appendix, which contains the Sample Forms referred to below, as you review the following information.

a. Request for Reasonable Accommodation of Religious Observance or Practice

This section serves as an initial application form, and asks for basic information needed to consider and act upon the request, such as the name of the applicant/employee; title information; office or unit; work location (for current State employees); and contact information, along with a description of the reasonable accommodation being requested and the reason for the accommodation.

If the individual is unable to complete, sign and date the application, the DRA, an employee's supervisor, or whoever is assisting the individual to complete the form can provide assistance.

b. Acknowledgement of Request for Reasonable Accommodation of Religious Observance or Practice

This section, once completed, either provides confirmation to the individual that the requested accommodation has been approved, or advises the individual that the request is undergoing further review. It must be signed and dated by the agency's DRA and a copy provided to the employee, with the original retained for record keeping purposes.

The following steps should be followed:

- If the application has been submitted directly to the agency's DRA, he or she must consult with the employee's supervisor before granting an accommodation, to ensure that it is operationally feasible.
- In all cases of formal request for reasonable accommodation of religious observance or practice, the DRA *must* consult with the agency's Counsel, whether granting or denying such request.
- In all cases of formal request for reasonable accommodation of religious observance or practice, the DRA *must* consult with the agency's labor relations representative prior to granting or denying the accommodation to determine whether the request implicates an agency's collective bargaining agreements, and if so, to resolve any conflicts with collectively bargained rights of other employees. While the employer is not obliged to initiate adversarial proceedings against a union when the seniority provisions of a collective bargaining agreement limit its ability to accommodate any employee's religious observance or practice, the employer is required to take reasonable steps short of labor litigation to demonstrate that it has made a good faith attempt at accommodating the employee. For example, the employer may satisfy its duty by seeking volunteers willing to waive their seniority rights in order to

accommodate their colleague's religious observance or practice. This waiver must be sought from the union that represents the employees covered by such agreement and not from the individual employees. An employer cannot simply rely upon the seniority provisions of a collective bargaining agreement to deny an accommodation request. The union must be engaged.

- If the reasonable accommodation proposed to be provided may require more than a *de minimis* expenditure or utilization of agency resources, the DRA must confer with the agency's administration and/or fiscal office(s)

c. Status Update/Notification of Need for Additional Information

This section is used to provide an update to the applicant/employee or to request additional information/supporting documentation, which is necessary before a decision regarding a reasonable accommodation can be made. No later than two weeks after providing a completed Section B to the employee, the DRA must provide this form to the individual who has requested the reasonable accommodation of Religious Observance or Practice, specifying the additional information or documentation that is required to continue with the review and assessment process. Such additional information must truly be necessary to complete the process, and includes, but is not limited to, the exact nature and extent of the religious requirement, and/or information regarding specific type or types of accommodations that might be effective in meeting the religious requirements.

The agency's DRA signs and dates the form, and the employee is provided with a copy of Section C, with the original filed for recordkeeping purposes.

d. Notification of Agency Determination

A final review process takes place once adequate information/documentation has been provided. During the final review, the agency's DRA, in consultation with agency Counsel, must determine whether or not the accommodation should be granted, denied, or if there is an alternate accommodation that should be offered. Accommodation of a sincerely held practice of the individual's religion must be granted unless the accommodation would constitute an undue hardship, as explained above in section A.

If the agency will provide the employee with the reasonable accommodation that the employee requested, the DRA will so note in Section D. Before the employee is notified of the approval of the accommodation, the DRA should first notify the employee's supervisor.

If the agency determines that it will offer an accommodation different from the one requested, then the supervisor should be consulted about the proposed accommodation before the employee is advised of the offer. Section D of the Application shall be completed and sent to the employee, to inform the employee of the agency's determination. If the employee does not accept the offered accommodation, Section D of the Application should be returned to the DRA, with the employee's signature, denoting that s/he rejects the accommodation that has been offered.

If the agency denies the request for reasonable accommodation, the DRA will so note in the latter portion of Section D. A reason for the denial must be given to the employee. The

employee is also given information on additional alternatives which include the filing of a discrimination complaint if the employee feels that the agency's denial of the accommodation was unlawful. At this point, the employee may elect to accept the agency's decision and end the process; to file an internal discrimination complaint under the State's Equal Employment Opportunity Policy, as set forth in the Handbook of Rights and Responsibilities for New York State agency employees; or to pursue various other remedies, as set forth in Section D. If pursuing an outside complaint, the employee should consult with the appropriate antidiscrimination agency regarding the time limitations for initiating an action. Although these time limitations vary, the time for filing a complaint pursuant to all the alternatives begins to run at the time of the agency's first denial of the accommodation request.

C. Maintenance of Records and Data Collection

To the extent that any applicable laws, Executive Orders or Memoranda, rules, regulations, or policies require the maintenance of records regarding requests for reasonable accommodation of religious observance or practice, it shall be the DRA's responsibility to maintain such records.

**Appendix: Sample Forms, Sections A through D
Sections A through D**

**Application to Request
Reasonable Accommodation of Religious Observance or Practice**

Application for reasonable accommodation may be made to the supervisor or the Agency's Designee for Reasonable Accommodation (DRA), Kelley Greene. If the request is made to the supervisor, the supervisor will forward the request to the DRA.

Section A

**(To be completed by employee and
returned to supervisor or DRA)**

Name	Civil Service Title	Job Title (if different)
Office/Unit	Work Location	Telephone Number(s)
E-mail address:	Preferred method of communication:	
I am requesting the following reasonable accommodation(s) of my religious observance or practice:		
It is necessary for me to have this accommodation for the following reason(s):		

Employee Signature	Date
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The employee should retain a copy of this form. The original is filed by the DRA.

Application to Request Reasonable Accommodation of Religious Observance or Practice

Section B

**Initial Response to Request for an Accommodation of Religious Observance or Practice
(To be completed by DRA)**

Name of Employee:

We have reviewed your application for an accommodation.

Your request has been approved

Comments:

No decision has been made now. We will continue to assess your request.
The Designee for Reasonable Accommodation (DRA), will contact you within the next two weeks.

Comments:	
HCR's DRA's Signature	Date
DRA's name:	

The employee should retain a copy of this form. The original is filed by the *DRA*.

Application to Request Reasonable Accommodation of Religious Observance or Practice

Section C

**Notification of Need for Additional Information
(To be completed by the *DRA* and returned to the employee)**

Name of Employees:

We are continuing to assess your request for accommodation of religious observance or practice. To make a determination, we need the following information:

Explain:

The Agency's review process will include an evaluation of all relevant information. This may include an interview with you and/or your supervisor. After completion of the review, you will be informed in writing by HCR's DRA regarding the Agency's decision.

We anticipate that the decision will be made by: _____ .

If you have any questions, please call Kelley Greene at (212) 872-0595.

Signature of <i>DRA</i>	Date
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The employee should retain a copy of this form. The original is filed by HCR's DRA.

We are denying your request for accommodation of religious observance or practice for the following reason(s):

Signature of <i>[DRA]</i>	Date
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If you have any questions, please call HCR's DRA, Kelley Greene at (212) 872-0595. The employee should retain a copy of this form. The original will be filed by HCR's DRA.

Remedies relating to Dissatisfaction with Agency's Reasonable Accommodation Determination

A letter from HCR's DRA, Kelley Greene, confirming the decision will be sent to you within the next week after you receive the Notification of Agency Determination. If you are dissatisfied with the determination, you now have several options:

1. You may choose to accept this decision and end the process; or
2. You may choose to file an internal discrimination complaint now if you feel that the NYSHCR's determination is unlawful.
3. In addition to the options stated above, other alternatives may also be available. These include, but are not limited to:
 - filing a complaint with the New York State Division of Human Rights;
 - filing a complaint with the Equal Employment Opportunity Commission or any appropriate federal oversight agency under the Civil Rights Act of 1964, Title VII; and
 - filing a private right of action to challenge the alleged discriminatory act, under the New York State Human Rights Law, or any applicable statute.

You may initiate these alternatives after the first denial by the NYSHCR of your request for an accommodation. Although these time limitations vary, the time for filing a complaint pursuant to all the alternatives begins to run when the NYSHCR first denies your request for an accommodation. However, you should consult with the appropriate anti-discrimination agency as to the time limitations for initiating such an action.