
 <b>Corrections and Community Supervision</b>  <b>DIRECTIVE</b>	TITLE		NO. 2609
	<b>Reasonable Accommodation of Religious Observance or Practices for Employees and Applicants</b>		DATE 10/10/19
SUPERSEDES	DISTRIBUTION A	PAGES PAGE 1 OF 6	DATE LAST REVISED
REFERENCES (Include but are not limited to) NYS Human Rights Law §296.10, as amended; Civil Service Law; Federal Civil Rights Act of 1964, Title VII; Directives #2602, #3083	APPROVING AUTHORITY 		

- I. **POLICY STATEMENT:** 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 Department's policy to provide reasonable accommodation of religious observances or practices. This policy is based on the New York State Human Rights Law, as amended, 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, conditions, or privileges of employment.
- II. **NEW YORK STATE HUMAN RIGHTS LAW PROVISIONS:** Section 296.10 of the New York State Human Rights Law, as amended, contains the following provisions regarding the accommodation of religious observances and practices:
- 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 his or her 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 his or her 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 his or her sincerely held religious requirements.
  - B. Except where it would cause an employer to incur an undue hardship, no person shall be required to remain at his or her place of employment during any day or days or portion thereof that, as a requirement of his or her religion, he or she observes as his or her Sabbath or other holy day, including a reasonable time prior and subsequent thereto for travel between his or her place of employment and his or her 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, solely because the leave will be used for absence from work to accommodate the employee's sincerely held religious observance or practice.
- D. It shall be an unlawful discriminatory practice for an employer to refuse to accommodate the employee's sincerely held religious practice or the wearing of any attire, clothing, or facial hair in accordance with the requirements of his or her 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 practice, wearing of any attire, clothing, or facial hair, without undue hardship on the conduct of the employer's business.
- E. Information on religious accommodation is included in New York State's Employee Handbook titled "Equal Employment Opportunity in New York State, Rights and Responsibilities." 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, is also included in the Employee Handbook and in Directive #2602, "Employee Discrimination Complaints."

### III. DEFINITIONS

- A. 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.
- B. Religion: Means an individual's self-identification with a particular creed or religious tradition.
- C. 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.
- D. 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))
- E. 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 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.
- F. Religious Observance or Practice: Includes Sabbath or holy day observance, and the observance of a particular manner of dress, hairstyle, facial hair, or other religious practice, which is a sincerely held practice of the individual's religion.

An employee who, in accordance with his or her religious beliefs, observes a particular manner of dress, hairstyle, beard, or other religious practice, should not be unreasonably required to compromise his or her 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, unless the request presents an undue hardship on the conduct of the employer's business.

- G. Reasonable Accommodation of Religious Observance or Practices: 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 his or her 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.
- H. 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:

1. 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;
2. The number of individuals who will need the particular accommodation to a sincerely held religious observance or practice; and
3. 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.

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 particular 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.

#### **IV. UNIFORM PROCEDURES FOR PROCESSING REQUESTS FOR REASONABLE ACCOMMODATION OF RELIGIOUS OBSERVANCE OR PRACTICES**

- A. Before granting a religious accommodation, the Department will consider whether the accommodation may have a direct impact on the terms and conditions of employment. The Department will seek guidance from the Bureau of Labor Relations, the agency's Human Resources Director, and/or Office of the Counsel, as appropriate. These individuals may consult with the Governor's Office of Employee Relations (GOER) as needed.
- B. 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.

- C. Whenever a difficulty arises regarding an accommodation, the employee should clearly state the religious nature of the request. Before denying a request for reasonable accommodation of religious observance or practices, the supervisor should always consult with the facility Designee for Reasonable Accommodation (DRA). The facility DRA will consult with the Office of Diversity and Inclusion (ODI); the ODI will make a final determination on the request, after following established procedures.
- D. Where a religious accommodation request cannot be resolved informally between the employee, the supervisor, and the Facility 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 facility DRA. The facility DRA will process the request for reasonable accommodation of religious observance or practices, and consult with the ODI, to assure that the issue is reviewed, documented, and resolved in accordance with agency's policy and the governing statutes.
- E. Written requests for accommodation should be made using the "Request for Reasonable Accommodation of Religious Observance or Practice" Forms: [Form #2609A](#), "Section A;" [Form #2609B](#), "Section B;" [Form #2609C](#), "Section C;" and [Form #2609D](#), "Section D." These forms are provided by the Department and will also be available from ODI. Applicants, employees, and other personnel are encouraged to make copies of the completed forms for their records. At the end of the process, the original form is filed by the DRA.
- F. When applying for Reasonable Accommodation of Religious Observance or Practices, the below steps should be followed:
  - 1. If the application has been submitted directly to ODI, ODI must consult with the employee's supervisor and facility DRA before granting an accommodation to ensure that it is operationally feasible.
  - 2. In all cases of formal request for reasonable accommodation of religious observance or practices, the facility or program management and DRA are responsible for providing ODI with necessary information and/or documentation required for ODI review. ODI final review process takes place once adequate information/documentation has been provided. As appropriate, prior to determining whether the accommodation should be granted, denied, or if there is an alternate accommodation that should be offered, ODI must contact the agency's Office of the Counsel and/or the Bureau of Labor Relations to verify whether the request implicates any collective bargaining agreements, and if so, to resolve any conflicts with collectively bargained rights of other employees. ODI may also consult with the agency's Human Resources, as needed. If the proposed reasonable accommodation to be provided may require more than a *de minimis* expenditure or utilization of agency resources, ODI must confer with the agency's Administration and/or Fiscal Office(s).

Accommodation of sincerely held practices of the individual's religion, or wearing of any attire, clothing, or facial hair in accordance with the requirements of his or her religion, must be granted unless the accommodation would create a specific concern, such as a safety concern or an undue hardship, as defined in Section III-H above.
  - 3. If ODI determines the request should be denied, they must consult with the agency's Deputy Commissioner and Counsel (DCC). If the DCC agrees with ODI that the request should be denied, ODI must send the request and reason(s) for denial to the Executive Deputy Commissioner for final determination.

## V. REQUESTS

- A. Who May Request a Reasonable Accommodation of Religious Observance or Practices: 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 non-observance.
- B. 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 Department know that she or he needs a change or adjustment related to a religious observance or practice.

### **The accommodation process should not be adversarial in nature.**

1. Applicants: The Department must provide a reasonable accommodation of religious observance or practices 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 ODI.
2. Current Employees: Current employees may request a religious accommodation of religious observance, practice, or wearing of any attire, clothing, or facial hair in accordance with the requirements of his or her religion through either their first-line supervisor, facility DRA, or ODI. If an employee makes his or her request through their supervisor, the supervisor, in coordination with the facility DRA, may handle and approve the request, with consultation with ODI as needed. However, when the request cannot be granted, the facility DRA shall forward the request to ODI, to assure that the request is reviewed, documented, and resolved in accordance with agency policy and the governing statutes. (See Section IV for certain types of requests that must be documented in writing.)

## VI. DOCUMENTATION: Certain types of requests for reasonable accommodation of religious observance or practices should always be formally documented using forms: [Form #2609A](#), "Section A;" [Form #2609B](#), "Section B;" [Form #2609C](#), "Section C;" and [Form #2609D](#), "Section D."

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;
- Requests for exemptions to Personal Grooming Standards (Directive #3083, "Uniform/Equipment Issue and Appearance"); or
- *Any* informal request that has been denied should be documented by ODI.

The facility DRA is responsible for submitting to ODI monthly reports of approvals and denials of Religious Accommodation requests using [Form #2609E](#), "Requests for Reasonable Accommodation of Religious Observance or Practices - Monthly Report."

ODI is responsible for maintaining agency aggregate records regarding the number of accommodations that involved a written request, and the outcome of those requests.

**VII. 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 ODI's responsibility to maintain such records.

ODI shall maintain the relevant records for the duration of the employee's employment plus three years.