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New California Law Clarifies and Expands Religious Accommodation Requirements

Governor Brown has signed A.B. 1964 -- the Workplace Religious Freedom Act of 2012 -- clarifying that an employer's existing duty under the California Fair Employment and Housing Act ("FEHA") to reasonably accommodate workers' religious beliefs and observances includes accommodations for religious dress and grooming practices. Here's an overview of the new law, which takes effect January 1, 2013.

First, A.B. 1964 makes clear that protections against religious discrimination include an applicant or employee's "religious dress" and "religious grooming practices," and that those terms are to be construed broadly. Religious dress includes wearing or carrying religious clothing, head or face coverings, jewelry, artifacts, and any other item that is part of an individual's religious observance. Religious grooming practices includes all forms of head, facial, and body hair that are part of the observance by an individual of his or her religious creed.

Second, the law clarifies that an employer's existing duty to reasonably accommodate an individual's religious beliefs and observances includes the duty to accommodate religious dress and grooming practices, unless doing so would be an undue hardship for the employer. The law specifies that "undue hardship" is to be construed the same way as with respect to the accommodation of disabilities, *i.e.*, the employer must show that the action would require significant difficulty or expense in light of several factors. Note that to demonstrate undue hardship under federal law, an employer need only show that the religious accommodation would result in more than a "de minimis" cost.

Finally, A.B. 1964 states that it is *not* a reasonable accommodation of a person's religious dress or grooming practice to segregate that individual from other employees or the public. This provision is in response to court decisions holding that an employer can accommodate an employee's religious dress which conflicts with a company dress code by banning the employee from having face-to-face contact with the public.

111 SUTTER STREET
SUITE 700
SAN FRANCISCO
CA 94104
415 464 4300 T
415 464 4336 F

12121 WILSHIRE BLVD.
SUITE 1300
LOS ANGELES
CA 90025
310 943 8500 T
310 943 8501 F



With the law taking effect at the start of the new year, now is a good time for employers to review their handbooks and other policies and practices to make sure they are in compliance.

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