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SMITH MOORE LLP
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Religion In The Workplace

Dress codes, personal appearance rules, work on Saturdays and Sundays. Are these matters that employers can regulate?

Perhaps. Under existing law, accommodations for religious beliefs and practices are not required when they would impose an “undue hardship” on the employer. Courts have interpreted this provision very favorably for employers and have not typically required employers to grant accommodations that would impose even a *de minimis* expense or burden.

This degree of deference to employers, however, is on the verge of change. Congress is currently considering the Workplace Religious Freedom Act (“WRFA”) as an amendment to Title VII of the Civil Rights Act of 1964. The WRFA’s religious aims have drawn the support of some groups who typically oppose expanding employment discrimination laws, causing many observers to predict the WRFA’s passage.

The WRFA would accomplish the following:

- Limit “essential functions” of the job. Specifically, an employer would not be allowed to establish as essential job functions (1) a standard dress code requirement that interferes with an employee’s right to wear religious clothing, or (2) an attendance requirement that prohibits time off work to attend religious services.
- Require more workplace accommodations. To prove an “undue hardship”—and thereby refuse an accommodation—an employer would need to show that the request would impose a “significant difficulty or expense.” A mere *de minimis* expense would no longer be enough to justify a refusal or failure to accommodate a religious belief.
- Create more flexible scheduling. An employer would be required to make schedule changes or provide leave opportunities for employees to take time off for holy days or religious ceremonies.

The true scope of an employee’s rights under the Workplace Religious Freedom Act would be not be clear until the EEOC has issued its regulations and courts have begun to apply the new law. At a minimum, the Act’s passage would signal increased protection for employees whose religion conflicts with work duties.

TIP

If the Workplace Religious Freedom Act passes—as many believe it will—employers would face an increased risk of EEOC charges and litigation in responding to employees’ requests to vary work rules due to religious beliefs.



TIP Author — Patti Ramseur
Smith Moore LLP
Labor and Employment Team
Greensboro Office

Labor and Employment Team Members

Allen Buckley	(404) 962.1042	Alex Maultsby	(336) 378.5331
Laura Deddish Burton	(336) 378.5566	Jerry Oliver	(919) 755.8710
Will Burton	(336) 378.5421	Patti Ramseur	(336) 378.5304
Denise Smith Cline	(919) 755.8734	Barbara Ruby	(336) 378.5294
Martin Erwin	(336) 378.5327	Beth Brooks Scherer	(919) 755.8790
Mike Kelly	(336) 378.5336	Ed Sharp	(336) 378.5259
Caroline Lock	(336) 378.5341	Julie Theall	(336) 378.5256
Kenan Loomis	(404) 962.1036	Jeri Whitfield	(336) 378.5270
Travis Martin	(336) 378.5277		

To send individual email: firstname.lastname@smithmoorelaw.com

For additional information on this or any other labor and employment topic, please contact any member of the Labor and Employment Team.

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www.smithmoorelaw.com

ATLANTA

One Atlantic Center
Suite 3700
1201 West Peachtree Street
Atlanta GA 30309
404.962.1000
404.962.1200 {FAX}

GREENSBORO

300 N. Greene Street
Suite 1400
Greensboro NC 27401
336.378.5200
336.378.5400 {FAX}

RALEIGH

2800 Two Hannover
Square
Raleigh NC 27601
919.755.8700
919.755.8800 {FAX}

WILMINGTON

300 N. 3rd Street
Suite 301
Wilmington NC 28401
910.251.7001
910.251.7007 {FAX}

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