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## Alert

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## Holy Cow! The NJ Law Against Discrimination Amended Yet Again

By Kathleen M. Connelly, Esq.  
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### *Employers Now Required to Provide Reasonable Accommodations for Employees' Religious Practices*

For the third time in a 12-month period, the New Jersey Legislature has expanded the protections accorded to employees under the New Jersey Law Against Discrimination ("NJLAD"). In January of 2007 the law was amended to prohibit discrimination on the basis of civil union/partnership status, and again in June 2007 to prohibit discrimination on the basis of gender identity or expression. Effective January 13, 2008, the NJLAD was amended yet again to prohibit employers from imposing terms or conditions of employment that would compel an employee to violate a "sincerely held religious practice or religious observance."

Under the amendments, the employer must provide reasonable accommodations to employees wishing to engage in religious practices, such as time off to observe the Sabbath or a holy day. However, the employer's obligation to provide reasonable accommodation is not absolute; if the employer engages in a "bona fide" effort but is nonetheless unable to accommodate the employee's religious practice without "undue hardship," the employer is not required to accommodate. The law defines "undue hardship" as an unreasonable expense or difficulty; unreasonable interference with the safe or efficient operation of the workplace; or a violation of a bona fide seniority system or collective bargaining agreement.

An accommodation will be considered an undue hardship if it results in the inability of the employee to perform his or her essential job functions. For example, if the requirement that employees report to duty on time is essential for the position in question (e.g., a key employee is responsible for opening the office and answering the phones), the employer might be justified in denying the employee's request to arrive late to work to attend religious services.

Employers who make accommodations can also take measures to limit the impact of the accommodations. For example, employers can require employees who take time off for religious reasons to make up the time at a mutually convenient date. Employers also do not need (cont'd ▶)

to pay overtime or other premium pay for make-up time. Alternatively, the employer may charge the time taken against the employee's paid time off benefits, other than sick leave, or treat religious absences as leave without pay.

Unfortunately, the religious accommodation amendments leave two gaping holes that may leave employers in the dark about when the duty to accommodate is triggered. First, the law provides no guidance to employers on what constitutes a "sincerely held religious practice," a question that has vexed the legal system for decades. Second, the law provides no explanation of what constitutes an employer's "bona fide effort" to make an accommodation. Until such time that the Division on Civil Rights issues regulations providing additional guidance in these areas, employers must proceed with caution and

assess every request for religious accommodation on a case-by-case basis with the aid of its human resources professional or employment counsel.

In the wake of this trio of amendments to the NJLAD, employers should review their EEO policies and practices to ensure that these additional legal protections are accorded to qualifying employees.



*The information provided here is necessarily general and is not intended as legal advice or a substitute for legal advice. If you have any questions regarding this Alert, please contact Kathleen M. Connelly, Esq. of the Labor & Employment Law Group. She provides advice and counsel to company management in employment law matters and can be reached at [kconnelly@lindabury.com](mailto:kconnelly@lindabury.com).*



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