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TITLE VII AND FLEXIBLE WORK ARRANGEMENTS TO ACCOMMODATE RELIGIOUS PRACTICE & BELIEF

This timeline tracks the development of the religious accommodation requirement of Title VII of the Civil Rights Act of 1964. The timeline covers the development of statutory text, relevant EEOC regulations, and Supreme Court precedent.

1964: Congress Enacts Title VII of the Civil Rights Act

Congress enacted Title VII of the Civil Rights Act of 1964 to prohibit employers with 25 or more employees from discriminating against applicants or employees on the basis of race, color, religion, sex, or national origin.ⁱ While generally forbidding religious discrimination, Congress allowed employers to consider religion when making employment decisions where (1) religion is a bona fide occupational qualification (BFOQ) reasonably necessary to the normal operation of the employer's businessⁱⁱ or (2) the employer is a church, church-owned school, or a school whose curriculum propagates a particular religion.ⁱⁱⁱ

As enacted in 1964, Title VII did not expressly require that an employer accommodate an employee's religious needs, leaving employers and employees to battle over whether, and to what extent, the law required employers to alter work schedules or other conditions of employment for religious employees who might need such changes. This lack of statutory guidance resulted in several complaints to the Equal Opportunity Opportunity Commission (EEOC) questioning whether Title VII's non-discrimination mandate prohibited employers from firing employees who for religious reasons refused to work during regularly scheduled workweeks or hours.

1966: The EEOC Publishes Guidelines on Religious Accommodation in the Workplace

On June 15, 1966, the EEOC responded to complaints regarding conflicts between work schedules and religious observance by publishing an interpretive rule with two guiding principles:

1. Title VII's non-discrimination requirement includes a duty on employers to accommodate the reasonable religious needs of their employees where such accommodation is possible without **serious inconvenience** to the conduct of the business; and
2. Employers remain free to establish normal workweek schedules, and to require adherence by all employees to such schedules, despite the disparate impact that such schedules might have on the religious observances of certain employees.^{iv}

Noting that the question of what constitutes a reasonable accommodation will depend on the particular facts of each case, the EEOC further explained that employers:

- could permit absences from work for religious holidays (with or without pay), but would have to ensure that all religious holidays were treated equally in this regard^v;

- should reasonably accommodate religious holiday observances of employees and applicants, as long as doing so would not cause “serious inconvenience to the conduct of the business”,^{vi}
- could set normal workweek and overtime requirements and need not alter schedules where (1) an employee accepted the job knowing of the conflict between the work and the religious observance, or (2) where the schedule change would be a serious inconvenience to the business or would require an unfair allocation of unfavorable assignments to other employees.^{vii}

1967: The EEOC Amends its Guidelines and Changes the Accommodation Standard

One year later, on July 13, 1967, the EEOC raised the standard for non-accommodation from “serious inconvenience” to “undue hardship:”

*The duty not to discriminate on religious grounds, required by §703(a)(1) of the Civil Rights Act of 1964, includes an obligation on the part of the employer to make reasonable accommodations to the religious needs of employees and prospective employees where such accommodations can be made without **undue hardship** on the conduct of the employer’s business.^{viii}*

The EEOC removed the portion of the previous guidelines stating that employers could establish normal workweeks and require employees to adhere to regular work schedules but made no comment on this change. The EEOC further clarified that the employer bears the burden of proving undue hardship, giving a single example of undue hardship as “where the employee’s needed work cannot be performed by another employee of substantially similar qualifications during the period of absence [due to religious observance].”^{ix}

1971: The Supreme Court Leaves the Accommodation Issue Open in *Dewey v. Reynolds Metals*

In January 1971, the Supreme Court granted certiorari in *Dewey v. Reynolds Metals Co.*, 402 U.S. 689 (1971). Dewey, a member of the Faith Reformed Church, worked in a manufacturing plant that occasionally required overtime work on Sundays. Dewey’s religion prohibited him from working on Sundays. Under the collective bargaining agreement (CBA) between the employer (Reynolds) and the employees’ union (UAW), Reynolds had the right to assign overtime by reverse seniority. Reynolds had interpreted this rule to allow an employee to be relieved from an overtime assignment if that employee had arranged for a substitute. During a six-month period, Dewey was assigned Sunday overtime 5 times but obtained replacements each time and did not work the overtime. When scheduled for Sunday overtime again, Dewey refused to arrange for a substitute worker, stating that it was a sin to encourage others to work on the Sabbath. Reynolds discharged Dewey after he missed three Sunday overtime assignments without arranging for a substitute.

Reversing the district court's judgment for Dewey, the Sixth Circuit found "[t]he legislative history of the statute is clear that it was aimed only at discriminating practices."^x Because the compulsory overtime provisions of the CBA applied equally to all employees, the appellate court concluded that Reynolds had not discriminated against Dewey. The Sixth Circuit disagreed with the district court's conclusion that the CBA had a discriminatory impact on religion that was prohibited by Title VII, and questioned the extent to which Title VII obligated employers to accommodate employees' religious needs.^{xi} In denying Dewey's petition for rehearing, the Sixth Circuit clarified its opinion that Title VII did not require any accommodation of religion:

"Nowhere in the legislative history of the Act do we find any Congressional intent to coerce or compel one person to accede to or accommodate the religious beliefs of another. The requirement of accommodation to religious beliefs is contained only in the EEOC Regulations, which in our judgment are not consistent with the Act."^{xii}

After granting certiorari, an equally divided Supreme Court affirmed the Sixth Circuit's decision.^{xiii} While conclusive as to the rights of the parties in that case, the Court's ruling left the broader legal question of whether Title VII's non-discrimination mandate requires a reasonable accommodation of employees' religious practices unresolved.^{xiv}

1972: Congress Amends Title VII to Require Employers to Provide Accommodations to Religious Practices & Beliefs

Citing the Sixth Circuit's *Dewey* decision,^{xv} Congress amended Title VII^{xvi} on March 24, 1972 by adding a definition of "religion" to incorporate the accommodation principle expressed in the EEOC's 1967 guidelines:

[Sec. 701. Definitions]

For the purposes of this title --

(j) The term "religion" includes all aspects of religious observance and practice, as well as a belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.^{xvii}

1977: The Supreme Court in *Hardison* Interprets "Undue Hardship" as Establishing a "De Minimis" Standard

The Supreme Court first interpreted "undue hardship" in *Trans World Airlines v. Hardison*, 432 U.S. 63 (1977). *Hardison* was hired to work in a unionized, 24-hour facility and later joined a church that observed Saturday Sabbath. *Hardison* was able to avoid Saturday work through shift-swaps arranged by seniority until he moved to a department where he did not have sufficient seniority under the collective bargaining agreement (CBA) to arrange for such swaps. *Hardison* sued under Title VII after he was terminated for failure to work on Saturdays as assigned.

The district court found in the defendants' favor, rejecting the plaintiff's assertion that TWA should have provided one of the following possible accommodations: assign Hardison to a four-day workweek, substitute another employee for Hardison on Saturdays, or arrange for a shift swap. The court reasoned that (1) simply giving Hardison the day off would leave TWA shorthanded and "[impair] the supplying of parts for essential airline operations;" (2) forcing another employee to substitute for Hardison would violate the seniority provisions of the CBA, potentially causing grievances and personnel problems; and (3) a shift swap with another Saturday-worker would just leave a different area shorthanded, while a shift swap with a non-Saturday worker would force TWA to pay overtime wages for that worker.^{xviii} The appellate court reversed, stating that although each accommodation had some adverse consequences for the employer, none of them rose to the level of an undue hardship.^{xix}

The Supreme Court disagreed. In the Court's view, "the paramount concern of Congress" in Title VII was to eliminate discrimination; therefore, it would "not readily construe" the statute to require an employer to give "unequal treatment" to non-religious and non-complaining employees in order to enable others to observe their Sabbath.^{xx} The Court concluded that:

- TWA's adoption of a neutral, seniority-based scheduling system, negotiated with its union, was a reasonable way to deal with TWA's needs for scheduling and its employees' varying desires of when to work.^{xxi} Absent a clear indication from Congress that it wished such a result, it was unreasonable to interpret Title VII as requiring that TWA violate its neutral seniority system.^{xxii} Indeed, the Court concluded, that the seniority system "itself represented a significant accommodation to the needs, both religious and secular, of all of TWA's employees."^{xxiii}
 - The accommodation alternatives proposed by Hardison would have imposed an undue hardship on TWA and, therefore, were not required under the law. The accommodations would have caused TWA a loss in wages and efficiency that was more than "de minimis" given, in part, the "likelihood that a company as large as TWA may have many employees whose religious observances ... prohibit them from working on Saturdays or Sundays."^{xxiv} The Court ruled that a hardship any greater than de minimis should be considered as "undue" for purposes of the statute.^{xxv}
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1978: The EEOC Holds Hearings in Response to the *Hardison* Ruling

In April and May of 1978, the EEOC held hearings on religious accommodation in response to the *Hardison* decision. Apparently, some employers believed that the decision relieved them of any affirmative duty to accommodate employees' religious needs.^{xxvi} The hearings solicited input from business, labor, and faith-based groups on how the EEOC could clarify the accommodation requirement. Based on these hearings, the Commission concluded that widespread confusion over the extent of accommodation under the *Hardison* decision led to fewer accommodations of religious practices, including:

- The observance of a Sabbath or religious holidays;
- The need for a prayer break during working hours; and
- The practice of not working during a mourning period for a deceased relative.^{xxvii}

1980: The EEOC Revises its Rules on Religious Accommodation

Following the hearings, the EEOC published proposed guidelines on September 14, 1979 and final rules on October 31, 1980. The most significant changes are appear in bold below:

§1605.2(b) Duty to Accommodate

Section 701(j) makes it an unlawful employment practice under §703(a)(1) for an employer to fail to reasonably accommodate the religious practices of an employee or prospective employee, unless the employer demonstrates that accommodation would result in undue hardship on the conduct of the business.^{xxviii}

1605.2(c) Reasonable Accommodation

*(1) After an employee or prospective employee notifies the employer ... of his or her need for a religious accommodation, the employer ... has an obligation to reasonably accommodate the individual's religious practices. A refusal to accommodate is justified only when an employer ... can demonstrate that an undue hardship would in fact result from each available alternative method of accommodation. **A mere assumption that many more people, with the same religious practices as the person being accommodated, may also need accommodation is not evidence of undue hardship.***

(2) When there is more than one method of accommodation available which would not cause undue hardship, the Commission will determine whether the accommodation offered is reasonable by examining:

- (i) The alternatives for accommodation considered by the employer ...; and*
- (ii) The alternatives for accommodation, if any, actually offered to the individual requiring accommodation. Some alternatives for accommodating religious practices might disadvantage the individual with respect to his or her employment opportunities, such as compensation, terms, conditions, or privileges of employment. ...**[When] there is more than one means of accommodation which would not cause undue hardship, the employer ... must offer the alternative which least disadvantages the individual with respect to his or her employment opportunities.**^{xxix}*

§1605.2(d) Alternatives for Accommodating Religious Practices

(1) Employees and prospective employees most frequently request an accommodation because their religious practices conflict with their work schedules. The following subsections are some means of accommodating the conflict between work schedules and the religious practices which the Commission (is this right to capitalize? You did so before) believes that employers and labor organizations should consider ...

- (i) Voluntary Substitutes and "Swaps." ...**[T]he obligation to accommodate requires that employers ... facilitate the securing of a voluntary substitute with substantially similar qualifications.***

- (ii) *Flexible Scheduling.* One means of providing reasonable accommodation for the religious practices of employees or prospective employees which employers and labor organizations should consider is the creation of a flexible work schedule for individuals requesting an accommodation. ... Areas in which flexibility might be introduced [are]: flexible arrival and departure times; floating or optional holidays; flexible work breaks; use of lunch time in exchange for early departure; staggered work hours; and permitting an employee to make up time lost due to the observance of religious practices.
- (iii) *Lateral Transfer and Change of Job Assignments.* When an employee cannot be accommodated either as to his or her entire job or an assignment within the job, employers ... should consider whether or not it is possible to change the job assignment or give the employee a lateral transfer.^{xxx}

§1605.2(e) Undue Hardship

- (1) *Cost.* An employer may assert undue hardship to justify a refusal to accommodate an employee's need to be absent from his or her scheduled duty hours if the employer can demonstrate that the accommodation would require "more than a de minimis cost." The Commission will determine what constitutes "more than a de minimis cost" with due regard given to **the identifiable cost in relation to the size and operating cost of the employer, and the number of individuals who will in fact need a particular accommodation.**
- (2) *Seniority Rights.* Undue hardship would also be shown where a variance from a bona fide seniority system is necessary in order to accommodate an employee's religious practices when doing so would deny another employee his or her job or shift preference guaranteed by that system. **Arrangements for voluntary substitutes and swaps ... do not constitute an undue hardship** to the extent the arrangements do not violate a bona fide seniority system.^{xxxii}

1986: The Supreme Court, in *Ansonia v Philbrook*, Allows Employers to Choose Among Reasonable Accommodations

In *Ansonia Bd. of Educ. V. Philbrook*, 479 U.S. 60 (1986), the Court addressed a narrow issue regarding §701(j)'s reasonable accommodation requirement. The case concerned a teacher whose beliefs required that he miss several workdays per year for religious observances. The teachers' collective bargaining agreement (CBA) allowed teachers three paid days off for religious holidays. While presumably this amount was sufficient for most teachers, Philbrook had more than three religious days that he wished to observe.

The CBA also gave teachers 15 days of sick leave per year, which could be accumulated up to 150 days. These paid days could be used for purposes other than illness, as specified in the CBA. For example, a teacher could use five days' leave for a death in the immediate family and one day for attendance at a wedding. In addition, teachers were also provided with three days of paid personal leave. However, both the accumulated sick days and the personal days could not be used for any reason already provided for in the contract. Thus, for example, one could not use a paid personal day to take two days off for a wedding, rather than one. As a result, Philbrook could not use his three paid personal days for his additional religious holidays. Instead, he was required to take unpaid leave for those days. (The school permitted Philbrook to take unpaid leave for his religious holidays.)

Philbrook sought the accommodation of using his three paid personal days for his religious holidays, despite the fact that the CBA already allowed three days to be taken for religious holidays. The school rejected this accommodation. Philbrook brought suit under Title VII, claiming that requiring him to take unpaid leave (and lose pay) for his religious observance was discriminatory.

The district court found that the defendant's leave policy accommodated Philbrook's religious needs. The fact that it was unpaid leave did not make the accommodation unreasonable because Philbrook was not forced to choose between his job and his religion.^{xxxii} The appellate court disagreed, holding that: "[where] an employer and the employee each propose a reasonable accommodation, Title VII requires the employer to accept the proposal the employee prefers unless that accommodation causes undue hardship."^{xxxiii} In reaching its decision, the court considered the EEOC guidelines which stated, "...when there is more than one means of accommodation which would not cause undue hardship, the employer or labor organization must offer the alternative which least disadvantages the individual with respect to his or her employment opportunities."^{xxxiv}

The Supreme Court disagreed. The Court noted that the Court of Appeals had assumed that the school had offered a reasonable accommodation of Philbrook's religious beliefs, but that the school needed to determine if there was another reasonable accommodation that would have better addressed the employee's religious needs and still not have imposed an undue hardship.^{xxxv} The Court held this was an erroneous view of the law. Once an employer offers one reasonable accommodation, it is not required to do any more.^{xxxvi} Specifically, the Court ruled, where competing reasonable accommodations exist, the employer may choose the accommodation it desires, regardless of the employee's preference.^{xxxvii}

The final question for the Court was whether the school's accommodation (permitting Philbrook to take unpaid leave) was a reasonable accommodation, as the appellate court had assumed. The Court did not rule on this question directly, because it remanded the case in light of the "erroneous view" of the law adopted by the lower courts.^{xxxviii} Nevertheless, in dicta, the Court observed that the leave policy at issue—requiring the employee to take unpaid leave (after exhausting paid leave) for religious observance—"would generally be a reasonable one" since it resolved the conflict between the work schedule and the religious practice.^{xxxix} However, if on remand, it became apparent that the employer allowed paid leave for all purposes except religious ones, "such an arrangement would display a discrimination against religious practices that is the antithesis of reasonableness."^{xl}

1989: The Religious Accommodation Amendment of 1989 is Introduced in the House

On July 19, 1989, Representative Stephen Solarz (D-NY) introduced the Religious Accommodation Amendment of 1989. The bill sought to overturn the Supreme Court's decision in *Ansonia v. Philbrook* by adding the following text (in italics) to §701(j):

The term "religion" includes all aspects of religious observance and practice, as well as a belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business. *If there are several reasonable accommodations that may be made without causing such undue hardship, then the employer shall make any of such accommodations that will, in the opinion of the employee, be the least onerous to the employee.*^{xli}

The bill was referred to the House Committee on Education and Labor (7/19/1989) and then to the Subcommittee on Employment Opportunities (8/24/1989). No further action was taken on the bill.

1994: The Workplace Religious Freedom Act (“WRFA”) is Introduced in the House

On October 6, 1994, Representative Jerrold Nadler (D-NY) introduced H.R. 5233, the Workplace Religious Freedom Act (WRFA).^{xlii} This bill sought to overturn the Supreme Court’s decisions in both *Hardison* and *Philbrook* by making the following (italicized) changes to existing law:

Section 701 of the Civil Rights Act of 1964 [42 U.S.C. § 2000e]. Definitions

For the purposes of this title —

(j) (1) The term “religion” includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable, *after initiating and engaging in an affirmative and bona fide effort*, to reasonably accommodate to an employee’s or prospective employee’s religious observance or practice without undue hardship on the conduct of the employer’s business.

(2) *For purposes of paragraph (1) an accommodation by the employer shall not be deemed to be reasonable if —*

(A) *such accommodation does not remove the conflict between employment requirements and the employee’s religious observance or practice; or*

(B) (i) *the employee or prospective employee demonstrates to the employer the availability of an alternative accommodation less onerous to the employee that may be made by the employer without undue hardship on the conduct of the employer’s business; and*

(ii) *the employer refuses to make such accommodation.*

(3) *It shall not be a defense to a claim of unlawful employment practice for failure to provide a reasonable accommodation that such accommodation would be in violation of a bona fide seniority system if, in order for the employer to reasonably accommodate to such observance or practice —*

(A) *an adjustment is made in the employee’s work hours (including an adjustment that requires the employee to work overtime in order to avoid working at a time that abstention from work is necessary to satisfy religious requirements), shift, or job assignment, that would not be available to any employee but for such accommodation; or*

(B) *the employee and any other employee voluntarily exchange shifts or job assignments, or voluntarily make some other arrangement between or among them.*

(4) As used in this subsection, the term “undue hardship” means an action requiring significant difficulty or expense. For purposes of determining whether an action requires significant difficulty or expense –

(A) the identifiable cost of the accommodation in relation to the size and operating cost of the employer; and
(B) the number of individuals who will need a particular accommodation to a religious observance or practice;
shall be included in the consideration of other factors.

(5) An employer shall not be required to pay premium wages for work performed during hours to which such premium wages would ordinarily be applicable, if work is performed during such hours only to accommodate religious requirements of an employee.

1996: WRFA is Introduced in the Senate and Again in the House

On September 12, 1996 Senator John Kerry (D-MA) introduced S. 2071, the Workplace Religious Freedom Act of 1996, in the Senate.^{xliii} Seven days later, Representative Jerrold Nadler introduced H.R. 4117, an identical bill in the House.^{xliiv} The text of this bill was identical to Representative Nadler’s WRFA of 1994. However, instead of making all of the changes to the definition section (§701(j)), the 1996 bills made some changes to the definition section and moved other changes to the unlawful employment practices section:

Section 701 of the Civil Rights Act of 1964 [42 U.S.C. § 2000e]. Definitions

For the purposes of this title —

(j) (1) The term “religion” includes all aspects of religious observance and practice, as well as a belief, unless an employer demonstrates that he is unable, *after initiating and engaging in an affirmative and bona fide effort*, to reasonably accommodate to an employee’s or prospective employee’s religious observance or practice without undue hardship on the conduct of the employer’s business.

(2) As used in this subsection, the term “undue hardship” means an accommodation requiring significant difficulty or expense. For purposes of determining whether an accommodation requires significant difficulty or expense, the factors to be considered shall include –

(A) the identifiable cost of the accommodation in relation to the size and operating cost of the employer; and

(B) the number of individuals who will need a particular accommodation to a religious observance or practice.

Section 703 of the Civil Rights Act of 1964 (42 U.S.C. § 2000e-2). Unlawful employment practices

(o) (1) *For purposes of determining whether an employer has committed an unlawful employment practice under this title by failing to provide a reasonable accommodation to the religious observance or practice of an employee or prospective employee, an accommodation by the employer shall not be deemed to be reasonable if –*

(A) *such accommodation does not remove the conflict between employment requirements and the religious observance or practice of the employee or prospective employee; or*

(B) (i) *the employee or prospective employee demonstrates to the employer the availability of an alternative accommodation less onerous to the employee or prospective employee that may be made by the employer without undue hardship on the conduct of the employer's business; and*

(ii) *the employer refuses to make such accommodation.*

(2) *It shall not be a defense to a claim of unlawful employment practice for failure to provide a reasonable accommodation that such accommodation would be in violation of a bona fide seniority system if, in order for the employer to reasonably accommodate to such observance or practice –*

(A) *an adjustment is made in the employee's work hours (including an adjustment that requires the employee to work overtime in order to avoid working at a time that abstention from work is necessary to satisfy religious requirements), shift, or job assignment, that would not be available to any employee but for such accommodation; or*

(B) *the employee and any other employee would voluntarily exchange shifts or job assignments, or voluntarily make some other arrangement between the employees.*

(3) (A) *An employer shall not be required to pay premium wages for work performed during hours to which such premium wages would ordinarily be applicable, if work is performed during such hours only to accommodate religious requirements of an employee.*

(B) *As used in this paragraph, the term "premium wages" includes premium overtime pay, pay for night, weekend, or holiday work, and pay for standby or irregular duty.*

1997: WRFA is Introduced Again in the Senate

In January 1997, Senator John Kerry (D-MA) introduced S. 92, the WRFA of 1997 in the Senate.^{xiv} The bill retained the proposed changes to §701(j) and § 703(o) from the 1996 bill, and added the following text to §703(o):

Section 703 of the Civil Rights Act of 1964 (42 U.S.C. § 2000e-2). Unlawful employment practices

(o)(1) *As used in this subsection:*

(A) *The term “employee” includes a prospective employee.*

(B) *The term “undue hardship” has the meaning given in the term in section 701(j)(2).*

(2)-(4) [same as proposed § 703(o)(1)-(3) from the 1996 bill, S. 2071]

1997: WRFA is Re-Introduced in the Senate and Introduced Again in the House

In July 1997, Senator John Kerry (D-MA) introduced S. 1124, a modified WRFA in the Senate.^{xlvi} On November 8, 1997, Representative William Goodling (R-PA) introduced H.R. 2948, an identical bill in the House.^{xlvii} S. 1124 made the following changes to S. 92, the version introduced earlier in the same session by Senator Kerry:

- §701(j)(2) [new definition of employee];
- §701(j)(3)(A) [new provision including inability to perform the “essential functions” of a job as an example of “undue hardship”];
- §701(j)(3)(B)(iii) [new provision for employers with multiple facilities];
- §703(o)(1)(B)(i),(ii) [new term -- “leave of general usage” – defined];
- §703(o)(3) [new provision requiring employer to allow employee to use “leave of general usage”; proposed §703(o)(2)(B)(i)&(ii) of S.92, requiring employer to choose accommodation least onerous to employee, was removed]; and
- §703(o)(5)(A) & (B)(i) [new term “premium benefit” added and defined].

The text of S.1124 and H.R. 2948 follows:

Section 701 of the Civil Rights Act of 1964 [42 U.S.C. § 2000e]. Definitions

(j) (1) The term “religion” includes all aspects of religious observance and practice, as well as a belief, unless an employer demonstrates that he is unable, *after initiating and engaging in an affirmative and bona fide effort*, to reasonably accommodate to ~~an employee’s or prospective employee’s religious~~ *an employee’s religious* observance or practice without undue hardship on the conduct of the employer’s business.

(2) *As used in this subsection, the term “employee” includes a prospective employee.*

(3) *As used in this subsection, the term “undue hardship: means an accommodation requiring significant difficulty or expense.*

For purposes of determining whether an accommodation requires significant difficulty or expense –

(A) *An accommodation shall be considered to require significant difficulty or expense if the accommodation will result in the inability of the employee to perform the essential functions of the employment position of the employee; and*

(B) *Other factors to be considered in making the determination shall include—*

(i) *the identifiable cost of the accommodation, including the costs of loss of productivity and of retraining 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 particular accommodation to a 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.*

Section 703 of the Civil Rights Act of 1964 (42 U.S.C. § 2000e-2). Unlawful employment practices

(o)(1) *As used in this subsection:*

(A) *The term “employee” includes a prospective employee.*

(B) *The term “leave of general usage” means leave provided under the policy or program of an employer, under which—*

(i) *an employee may take leave by adjusting or altering the work schedule or assignment of the employee according to criteria determined by the employer; and*

(ii) *the employee may determine the purpose for which the leave is to be utilized.*

(C) *The term “undue hardship” has the meaning given in the term in section 701(j)(3).*

(2) *For purposes of determining whether an employer has committed an unlawful employment practice under this title by failing to provide a reasonable accommodation to the religious observance or practice of an employee, an accommodation by the employer shall not be deemed to be reasonable if such accommodation does not remove the conflict between employment requirements and the religious observance or practice of the employee.*

(3) *An employer shall be considered to commit such a practice by failing to provide such a reasonable accommodation for an employee if the employer refuses to permit the employee to utilize leave of general usage to remove such a conflict solely because the leave will be used to accommodate the religious observance or practice of the employee.*

(4) *It shall not be a defense to a claim of unlawful employment practice for failure to provide a reasonable accommodation that such accommodation would be in violation of a bona fide seniority system if, in order for the employer to reasonably accommodate to such observance or practice –*

(A) *an adjustment is made in the employee's work hours (including an adjustment that requires the employee to work overtime in order to avoid working at a time that abstention from work is necessary to satisfy religious requirements), shift, or job assignment, that would not be available to any employee but for such accommodation; or*

(B) *the employee and any other employee would voluntarily exchange shifts or job assignments, or voluntarily make some other arrangement between the employees.*

(5) (A) An employer shall not be required to pay premium wages or confer premium benefits for work performed during hours to which such premium wages or premium benefits would ordinarily be applicable, if work is performed during such hours only to accommodate religious requirements of an employee.

(B) As used in this paragraph—

(i) *the term “premium benefit” means an employment benefit, such as seniority, group life insurance, health insurance, disability insurance, sick leave, annual leave, an educational benefit, or a pension, 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; and*

(ii) *the term “premium wages” includes overtime pay and compensatory time off, premium pay for night, weekend, or holiday work, and premium pay for standby or irregular duty.*

October 1997: The Senate Labor and Human Resources Committee Holds a Hearing on WRFA

In October 1997, the Senate Labor and Human Resources Committee held a hearing on WRFA. The Committee was chaired by Senator James Jeffords (R-VT); the Ranking Minority Member was Ted Kennedy (D-MA). Senator Jeffords stated that accommodation claims filed against federal and private employers had increased as a result of courts' misinterpretation of the 1972 amendment to the Civil Rights Act of 1964. WRFA was therefore necessary to restore the accommodation standard to what Congress had originally intended, which was to make the “...the refusal of an employer, absent undue hardship, to provide reasonable accommodation of religious practice, ... a form of religious discrimination...”^{xlviii} Testimony (some of which is excerpted below) was provided by the Richard Foltin from the American Jewish Committee, Lawrence Lorber from Verner, Lilpfert, Bernhard, McPherson & Hand, Roberto Corrada from University of Denver College of Law, and six employees who had been denied their requested accommodations.

Richard Foltin's main points were:

1. The Supreme Court's restrictive interpretation of §701(j) made enforcement of the obligation to accommodate so difficult that it was effectively nullified.
2. Lower courts had suggested that a neutral scheduling system in and of itself was a reasonable accommodation, "even when those arrangements [made] absolutely no provision for employee religious practices that may come into conflict with the requirements of the workplace."

Lawrence Lorber's main points were:

1. According to WRFA, undue hardship is present if an accommodation will result in the inability of an employee to perform the essential functions of his/her job. Most accommodation requests are for a leave of absence, which would render the employee unable to perform any functions of his/her position, thereby making all leaves of absence an "undue hardship." (Addressed by the addition of §701(j)(2)(B) in S. 2572, introduced in 2002, which specified that "performing essential functions" does not include practices related to taking time off.)
2. One of the factors considered in deciding whether an accommodation constitutes undue hardship is the number of individuals requiring the accommodation. Employment law has never made a right contingent on the number of people who wish to exercise it. (This provision was eliminated in S. 2572.)
3. WRFA states that an employer may not use the violation of a bona fide seniority system to justify an inability to accommodate an employee. However, Title VII expressly provides that compliance with a bona fide seniority system may not be used as the basis for a discrimination charge filed under Title VII. This creates an absolute conflict within the statute. (Seniority system provision eliminated in S. 2572.)

Aston Beadle, a Seventh Day Adventist, testified to the need for WRFA by recounting accommodation denials he had experienced in the workplace:

1. Beadle was first employed at a 24-hour detention facility that used a neutral rotating shift system for its employees. Beadle's initial assignment required that he work Fridays and Saturdays. When Beadle protested, his employer allowed him to use vacation, sick and comp time for his Sabbath, or to advertise for and arrange shift swaps with other employees. The employer refused Beadle's request for a transfer to a weekday position, because Beadle was still in a probationary period and an accommodation had already been provided. On the two occasions when Beadle was unable to arrange a swap or day off, he failed to come to work or walked off the job before sundown. Beadle was terminated following the second infraction.
2. Beadle subsequently joined the City of Tampa police department. He notified the department of his Sabbath requirements and was hired with the caveat that he was expected to work his assigned shifts. Trainees worked four ten-hour days, with three consecutive days off that rotated forward one day every 56 days. They were not allowed to use vacation or leave time during the first six months of employment and could not trade days off. Beadle was randomly assigned to a squad that had

Tuesday through Thursday off. He was given his Sabbath off the first week, but his second request was denied. Beadle subsequently resigned.^{xlix}

1999 & 2000: WRFA Introduced Again in the Senate and the House

In 1999, Senator John Kerry (D-MA) introduced S. 1668, WRFA of 1999. The text of the bill was identical to S. 1124 (WRFA of 1997) and H.R. 2948 (WRFA of 1997).ⁱ In 2000, Representative Jerrold Nadler (D-NY) introduced an identical bill, H.R. 4237, in the House.ⁱⁱ

2002: WRFA Introduced Again in the Senate

In 2002, Senator John Kerry (D-MA) introduced S. 2572, which made several textual changes to §§ 701(j) and 703 of WRFA, the language of which had last been changed by S.1124 (WRFA of 1997), namely:ⁱⁱⁱ:

- §701(j)(2) [definition of “employee” changed to encompass performance of essential functions of a job, with or without reasonable accommodation; term “perform the essential functions” defined not to include practices related to taking time off];
- §70(3) [“undue hardship” definition provision changed by removing the inability to perform essential functions as an example of undue hardship, and by replacing consideration of number of employees requesting a particular accommodation with consideration of financial resources, size, and overall number of employees];
- §703(o)(4) [removing provision prohibiting employers from using violation of a bona fide seniority system to defend a refusal to accommodate];
- §703(o)(5) [removing provisions that did not require employers to pay premium wages or benefits for work performed during premium hours only to accommodate employees’ religious needs.]

The text of S. 2572 follows:

Section 701 of the Civil Rights Act of 1964 [42 U.S.C. § 2000e]. Definitions

(j) (2) (A) ~~As used~~ In this subsection, the term “employee” includes *an employee (as defined in subsection (f)), or a prospective employee, who with or without reasonable accommodation, is qualified to perform the essential functions of the employment position that such individual holds or desires.*

(B) *In this paragraph, the term “perform the essential functions” includes carrying out the core requirements of an employment position and does not include carrying out practices relating to clothing, practices relating to taking time off, or other practices that may have a temporary or tangential impact on the ability to perform job functions, if any of the practices described in this subparagraph restrict the ability to wear religious clothing, to take time off for a holy day, or to*

participate in a religious observance or practice.

~~(3) As used~~ In this subsection, the term “undue hardship” means an accommodation requiring significant difficulty or expense. For purposes of determining whether an accommodation requires significant difficulty or expense, ~~(A) an accommodation shall be considered to require significant difficulty or expense if the accommodation will result in the inability of an employee to perform the essential functions of the employment position of the employee; and (B) other factors to be considered in making the determination shall include—~~

~~(A) the identifiable cost of the accommodation, including the costs of loss of productivity and of retraining or hiring employees or transferring employees from 1 facility to another, in relation to the size and operating cost of the employer;~~

~~(B) the number of individuals who will need the particular accommodation to a religious observance or practice the overall financial resources and size of the employer involved, relative to the number of its employees; and~~

~~(C) 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.~~

Section 703 of the Civil Rights Act of 1964 (42 U.S.C. § 2000e-2). Unlawful employment practices

~~(o) (2)~~ For purposes of determining whether an employer has committed an unlawful employment practice under this title by failing to provide a reasonable accommodation to the religious observance or practice of an employee, *for an accommodation to be considered by the employers shall not be deemed reasonable if such the accommodation does not shall* remove the conflict between employment requirements and the religious observance or practice of the employee.

~~(3)~~ An employer shall be considered to commit such a practice by failing to provide such a reasonable accommodation for an employee if the employer refuses to permit the employee to utilize leave of general usage to remove such a conflict solely because the leave will be used to accommodate the religious observance or practice of the employee.

~~(4) It shall not be a defense to a claim of unlawful employment practice for failure to provide a reasonable accommodation that such accommodation would be in violation of a bona fide seniority system if, in order for the employer to reasonably accommodate to such observance or practice—~~

~~(A) an adjustment is made in the employee’s work hours (including an adjustment that requires the employee to work overtime in order to avoid working at a time that abstention from work is necessary to satisfy religious requirements); shift, or job assignment, that would not be available to any employee but for such accommodation; or~~

~~(B) the employee and any other employee voluntarily exchange shifts or job assignments, or voluntarily make some other arrangement between or among them.~~

~~(5) (A) An employer shall not be required to pay premium wages or confer premium benefits for work performed during hours to which such premium wages or premium benefits would ordinarily be applicable, if work is performed during such hours only to accommodate religious requirements of an employee.~~

~~(B) As used in this paragraph—~~

~~(i) the term “premium benefit” means an employment benefit, such as seniority, group life insurance, health insurance, disability insurance, sick leave, annual leave, an educational benefit, or a pension, 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; and~~
~~(ii) the term “premium wages” includes overtime pay and compensatory time off, premium pay for night, weekend, or holiday work, and premium pay for standby or irregular duty~~

2003-2005: WRFA Is Introduced Again in the Senate and the House; House Subcommittee Holds Hearings in 2005

In 2003, Senator Rick Santorum (R-PA) introduced S. 893, WRFA of 2003.^{liii} The bill was identical S. 2572, WRFA of 2002. There was no bill introduced in the House in 2003.

In 2005, Senator Santorum introduced S. 677, with text identical to S. 893.^{liv} Representative Mark Souder (R-IN) introduced H.R. 1445, with text identical to S. 677.^{lv} The House bill was referred to the House Committee on Education and the Workforce (3/17/05), and to the Subcommittee on Employer-Employee Relations (11/7/05).

November 2005: The Employer-Employee Relations Subcommittee Holds a Hearing on WRFA

In November 2005, the Employer-Employee Relations Subcommittee of the Senate Labor and Human Resources Committee held hearings on WRFA. The Subcommittee Chair was Sam Johnson (R-TX); the Ranking Minority Member was Robert Andrews (D-NJ). Representatives of the Southern Baptist Convention, the American Jewish Committee and the United States Chamber of Commerce testified, as did Professor Samuel Marcossou from the University of Louisville Law School.

Congressman Souder argued that the Supreme Court had misconstrued §701(j) in Hardison and Philbrook, creating results opposite of what Congress had intended. According to Souder, the Supreme Court had set the threshold for accommodation so low that employers no longer had any incentive to accommodate their employees at all.^{lvi} Enactment of WRFA would better articulate the standard, more clearly approximate Congress’ intent, allow employees greater freedom to meet their religious obligations and could potentially reduce litigation.^{lvii}

Richard Foltin, from AJC, argued that the 24-hours-a-day/7-days-a-week economy in the United States had had an increasingly negative effect on religious accommodation by expanding the hours in which employees were expected to work.^{lviii} With the growing need for employee availability, the “de minimis” standard made it too easy for employers to refuse employee accommodation requests.^{lix}

Professor Samuel Marcossou observed that charges of religious discrimination made up no more than 3.1% of the total complaints received by the EEOC, and that charges related to refusal to accommodate make up only a fraction of that number.^{ix} In addition, he noted that the determination of “undue hardship” under the law was based solely on financial costs to the employer, without taking into account costs related to issues like employee morale, which may suffer if there is an employee perception of unfair or preferential treatment.^{lxi}

Camille Olsen (representing the Chamber of Commerce) offered several reasons against enactment of WRFA:

1. The WRFA will require employers to accommodate more requests than they do today. According to the Chamber of Commerce, the current system was working well, and there was no need to add to the substantial burden employers already carry.^{lxii}
2. The exclusion of scheduling from “essential job functions” was problematic. The Chamber of Commerce argued that for retail organizations, weekend work or extended hours may be an essential job function during the holiday season.^{lxiii}
3. The broad definition of “religion,” combined with the Supreme Court’s stipulation that the courts would not determine the legitimacy of a religion or practice, denied employers the ability to question the legitimacy of employee accommodation claims.^{lxiv}
4. The Act raised issues of fairness by giving employees of particular religions preference over those of other religions or no religion at all. A company constrained by a labor union seniority system would face even greater difficulties.^{lxv}

There has been no further movement on WRFA in the House or Senate.

ⁱ Sec. 701(b) of P.L. 88-352 (July 2, 1964) (codified at 42 U.S.C. § 2000e(b)). Though Congress set the number at 25, it provided a grace period so that for the first year following enactment, the act covered only employers with 100 or more employees. The number decreased by 25 employees each year thereafter (e.g., in year two, it covered employers with 75 or more employees) until the 25-employee limit was reached. Then, in 1972, Congress amended the definition of “employer” to include employers with 15 or more employees. See Sec. 2 of P.L. 92-261 (March 24, 1972).

ⁱⁱ Sec. 703(e)(1) of P.L. 88-352 (codified at 42 U.S.C.A. § 2000e-2(e)(1)).

ⁱⁱⁱ Sec. 703(e)(2) of P.L. 88-352 (codified at 42 U.S.C.A. § 2000e-2(e)(2)).

^{iv} Guidelines on Discrimination because of Religion, 31 Fed. Reg. 8370 (June 15, 1966) (codified at 29 C.F.R. pt. 1605.1(a)(1), 1966).

^v *Id.* However, in practice, employers can treat some religions better than others in that “the closing of a business on one religious holiday creates no obligation to permit time off from work on another.” *Id.*

^{vi} *Id.* (codified at 29 C.F.R. pt. 1605.1(b)(2)).

^{vii} *Id.* (codified at 29 C.F.R. pts. 1605.1(b)(3) and (4)).

^{viii} Guidelines on Discrimination because of Religion: Observance of the Sabbath and Other Religious Holiday, 32 Fed. Reg. 10298 (July 13, 1967) (codified at 29 C.F.R. pt. 1605 (1)(b)).

^{ix} *Id.*

^x *Dewey v. Reynolds Metals Co.*, 429 F.2d 324, 328 (6th Cir. 1970), rehearing denied, 1970 WL 5390 (6th Cir., Aug. 11, 1970).

^{xi} *Id.* at 329-331. In rejecting the district court’s disparate impact conclusion, the Sixth Circuit criticized the lower court’s retroactive application of the EEOC’s 1967 regulations. Noting that the 1966 regulations (allowing employers to establish work hours despite potential disparate impact) were in force during the relevant time period and that Reynolds clearly complied with the 1966 regulations, the Sixth Circuit also opined that –

even applying the 1967 regulations – Reynolds had provided a reasonable accommodation by allowing Dewey to arrange for a substitute and thereby avoid working on his Sabbath.

^{xii} *Id.* at 334. (responding to the petition for rehearing and concluding that “[t]he fundamental error of Dewey and the Amici Curiae is that they equate religious discrimination with failure to accommodate. We submit these two concepts are entirely different. The employer ought not to be forced to accommodate each of the varying religious beliefs and practices of his employees.”)

^{xiii} *Dewey v. Reynolds Metals Co.*, 402 U.S. 689 (1971) (noting affirmance by an equally divided Court).

^{xiv} See 21 C.J.S. Courts § 141 (2005) (“Affirmance by an equally divided United States Supreme Court settles no issue of law; in fact it leaves unsettled the principle of law presented by the case and is not entitled to precedential weight or value. However, it is conclusive and binding upon the parties as respects the controversy in that action”) (citations omitted).

^{xv} The text of this footnote doesn’t seem to fit the text it’s attached to. See *Riley v. Bendix Corp.*, 330 F.Supp. 583, 590 (D.C.Fla. 1971). The court found its case (Riley) indistinguishable from Dewey and also cited another case rejecting any accommodation obligation.

^{xvi} Congress amended Title VII through passage of the Equal Employment Opportunity Act of 1972, Pub. L. No. 92-261 (codified as amended at 42 U.S.C. §2000e)

^{xvii} Sec 2(7) of P.L. 92-261 (March 24, 1972) (codified at 42 U.S.C.S. § 2000e(j)).

^{xviii} *Hardison v. Trans World Airlines*, 375 F.Supp. 877, 888 (1974).

^{xix} *Hardison v. Trans World Airlines, Inc.*, 527 F.2d 33, 39-41 (1975).

^{xx} *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63, 85 (1977).

^{xxi} *Id.*, at 78 -79.

^{xxii} *Id.*, at 79. (“We agree that neither a collective-bargaining contract nor a seniority system may be employed to violate the statute, but we do not believe that the duty to accommodate requires TWA to take steps inconsistent with the otherwise valid agreement. . . . Without a clear and express indication from Congress, we cannot agree with Hardison and the EEOC that an agreed-upon seniority system must give way when necessary to accommodate religious observances.”)

^{xxiii} *Id.* at 78.

^{xxiv} *Id.*, at 84 n.15.

^{xxv} *Id.*, at 84.

^{xxvi} Hearings before the United States Equal Employment Opportunity Commission on Religious Accommodation: Hearings Held in New York, NY, Los Angeles, CA & Milwaukee, WI, April-May 1978. Washington, D.C.: United States Equal Employment Opportunity Commission, 1979, p. 2. (statement of Commissioner Eleanor Holmes Norton, Chair).

^{xxvii} See Proposed Guidelines on Discrimination because of Religion, 44 Fed. Reg. 53706, (September 14, 1979) Appendix A.

^{xxviii} Guidelines on Discrimination because of Religion, 45 Fed. Reg. 72610, (October 31, 1980) (to be codified at 29 C.F.R. pt. 1605.2(b)).

^{xxix} *Id.*, (to be codified at 29 C.F.R. pt. 1605.2(c)).

^{xxx} *Id.*, (to be codified at 29 C.F.R. pt. 1605.2(d)).

^{xxxi} *Id.*, (to be codified at 29 C.F.R. pt. 1605.2(e)).

^{xxxii} *Philbrook v. Ansonia Bd. of Educ.*, 1984 U.S. Dist. LEXIS 16556, 16-22.

^{xxxiii} *Ansonia Bd. of Educ. v. Philbrook*, 479 U.S. 60, 66 (1986).

^{xxxiv} Guidelines on Discrimination because of Religion, 45 Fed. Reg. 72610, (October 31, 1980) (to be codified at 29 C.F.R. pt. 1605.2(c)(2)(ii)).

^{xxxv} *Philbrook*, 479 U.S. at 68.

^{xxxvi} *Id.* at 68-69 (“[W]here the employer has already reasonably accommodated the employee's religious needs, the statutory inquiry is at an end. The employer need not further show that each of the employee's alternative accommodations would result in undue hardship. As *Hardison* illustrates, the extent of undue hardship on the employer's business is at issue only where the employer claims that it is unable to offer any reasonable accommodation without such hardship.”)

^{xxxvii} *Id.*

^{xxxviii} *Id.* at 70. (“The remaining issue in the case is whether the school board's leave policy constitutes a reasonable accommodation of Philbrook's religious beliefs. Because both the District Court and the Court of Appeals applied what we hold to be an erroneous view of the law, neither explicitly considered this question. We think that there are insufficient factual findings as to the manner in which the collective-bargaining agreements have been interpreted in order for us to make that judgment initially.”)

^{xxxix} *Id.*, at 70.

^{xl} *Id.*, at 71.

^{xli} See Religious Accommodation Amendment, H.R. 2935, 101st Cong. (1989). (Sponsored by Representative Stephen Solarz (D-NY). No co-sponsors.)

^{xlii} See Workplace Religious Freedom Act, H.R. 5233, 103rd Cong. (1994). Sponsored by Representative Jerrold Nadler (D-NY); co-sponsored by Representatives Benjamin Cardin (D-MD), Eliot Engel (D-NY), Alcee Hastings (D-FL), William Lipinski (D-IL), Carolyn Maloney (D-NY), Major Owens (D-NY), Jim Saxton (R-NJ), Charles Schumer (D-NY). H.R. 5233 was referred to the House Committee on Education and Labor and then to the Subcommittee on Select Education and Civil Rights. No further action was taken on the bill.

^{xliii} See Workplace Religious Freedom Act, S. 2071, 104th Cong. (1996). Sponsored by Senator John Kerry (D-MA); no co-sponsors. S. 2071 was referred to the Committee on Labor and Human Resources. No further action was taken on the bill.

^{xliiii} See Workplace Religious Freedom Act, H.R. 4117, 104th Cong. (1996) Sponsored by Representative Jerrold Nadler (D-NY); co-Sponsored by Representatives Eliot Engel (D-NY), Martin Frost (D-TX), Earl Hilliard (D-AL), Zoe Lofgren (D-CA), Carolyn Maloney (D-NY), Sue Myrick (R-NC), Charles Schumer (D-NY), Fortney Pete Stark (D-CA), Edolphus Town (D-NY)). Referred to the House Committee on Economic and Educational Opportunities and then to the Subcommittee on Employer-Employee Relations. No further action was taken on the bill.

^{xliiii} See Workplace Religious Freedom Act, S. 92, 105th Cong. (1997). Sponsored by Senator John Kerry (D-MA); co-sponsored by Senator Patty Murray (D-WA). S. 92 was referred to the Committee on Labor and Human Resources. No further action was taken on the bill.

^{xliiii} See Workplace Religious Freedom Act, S. 1124, 105th Cong. (1997). Sponsored by Senator John Kerry (D-MA); co-sponsored by Senators Sam Brownback (R-KS), Daniel Coats (R-IN), Mike DeWine (R-OH), Daniel Inouye (D-HI), Joseph Lieberman (D-CT), Barbara Mikulski (D-MD), Daniel Patrick Moynihan (D-NY), and Patty Murray (D-WA). S. 1124 was referred to the Committee on Judiciary and discharged to the Committee on Labor and Human Resources with hearings held in October 1997.

^{xliiii} See Workplace Religious Freedom Act, H.R. 2948, 105th Cong. (1997). Sponsored by Representative William Goodling (R-PA); co-sponsored by Representatives James Clyburn (D-Supreme Court), Constance Morella (R-MD), Jerrold Nadler (D-NY), Frank Pallone (D-NJ), Jim Saxton (R-NJ), Vince Snowbarger (R-KS)) Referred to committee Committee on Education and the Workforce, where no further action was taken.

^{xliiii} Hearing before the Senate Labor and Human Resources Committee, 105th Cong. (1997), (statement of Sen. John Kerry). (Citation form should be different.)

^{xliiii} Beadle twice unsuccessfully attempted to gain relief from the courts under Title VII, first after his termination at the detention center and again after his resignation from the police force. Both cases ended up before the Eleventh Circuit.

In the detention center case, Beadle v Hillsborough County Sheriff's Dep't, 29 F.3d 589 (11th Cir. 1994), the court held that the department, which employed a neutral rotating shift system, authorized employee swaps, provided the employee with an employer roster sheet listing his co-workers' schedules and allowed him to advertise his need for swaps during daily roll calls and on the department's bulletin board, had made a reasonable accommodation of Beadle's beliefs and practices and was justified in terminating him when he failed to come to work on a Saturday. Hardison was not distinguishable on the grounds that it had approved use of a seniority system to allocate work schedules while the department used a rotating shift system: the Supreme Court was concerned primarily with the neutrality of the system used, and furthermore, the department did not simply rely on the system. Instead, it allowed employee swaps, provided the employee with a roster sheet and allowed him to advertise his need for swaps. In addition, Beadle failed to take full advantage of the accommodations offered by the department since there is a duty on employees to make a good-faith attempt to accommodate their religious needs through means offered by the employers.

Beadle lost again in Beadle v City of Tampa, 42 F.3d 633 (11th Cir. 1995), where the court, choosing not to reach whether the City's rotating training schedule was a reasonable accommodation, held that the City was justified in discharging Beadle on the grounds that accommodation

would have caused an undue hardship. Although the court did not identify nonreligious employees who wanted time off, it expressed concern about discriminating against nonreligious employees. The court agreed with the magistrate's refusal to interfere with the employer's scheduling and training programs since when the employer's business involves the protection of lives and property, courts should go slow in restructuring its employment practices and be quicker to find a cost greater than de minimis. Thus, requiring the department to grant shift exceptions would have resulted in a greater than de minimis cost, and the department had met its obligation under Title VII by using a neutral rotating shift system.

ⁱ See Workplace Religious Freedom Act, S. 1668, 106th Cong. (1999). (Sponsored by Senator John Kerry (D-MA), Co-sponsored by Senators Sam Brownback (R-KS), Tim Hutchinson (R-AR), Daniel Inouye (D-HI), Joseph Lieberman (D-CT), Barbara Mikulski (D-MD), Daniel Patrick Moynihan (D-NY),. Patty Murray (D-WA), Gordon Smith (R-OR). The bill was referred to the Senate Committee on Health, Education, Labor and Pensions (9/29/1999) with no further action taken.

ⁱⁱ See Workplace Religious Freedom Act, H.R. 4237, 106th Cong. (2000). Sponsored by Representative Jerrold Nadler (D-NY); co-sponsored by Representatives Charles Canady (R-FL), Bob Clement (D-TN), Joseph Crowley (D-NY), Eliot Engel (D-NY), Martin Frost (D-TX), William Goodling (R-PA), Bart Gordon (D-TN), Asa Hutchinson (R-AR), Nita Lowey (D-NY), Carolyn McCarthy (D-NY), Constance Morella (R-MD), Major Owens (D-NY), Janice Schakowsky (D-IL), Mark Souder (R-IN), Edolphus Towns (D-NY), Anthony Weiner (D-NY), and Robert Wexler (D-FL). The bill was referred to the House Committee on Education and the Workforce (4/11/00) and then to the Subcommittee on Employer-Employee Relations (5/23/00). No further action was taken on the bill.

ⁱⁱⁱ See Workplace Religious Freedom Act, S. 2572, 107th Cong. (2002). Sponsored by Senator John Kerry (D-MA); co-sponsored by Senators Sam Brownback (R-KS), Hillary Rodham Clinton (D-NY), Jon Corzine (D-NJ), Larry Craig (R-ID), John Edwards (D-NC), John Ensign (R-NV), Tim Hutchinson (R-AR), Joseph Lieberman (D-CT), Barbara Mikulski (D-MD), Patty Murray (D-WA), Rick Santorum (R-PA), Charles Schumer (D-NY), Gordon Smith (R-OR), Debbie Stabenow (D-MI), Paul Wellstone (D-MN). The bill was referred to the Committee on Health, Education, Labor and Pensions (5/23/02). No further action was taken on the bill.

ⁱⁱⁱⁱ See Workplace Religious Freedom Act, S. 893, 108th Cong. (2003). Sponsored by Senator Rich Santorum (R-PA); co-sponsored by Senators Evan Bayh (D-IN), Sam Brownback (R-KS), Hillary Rodham Clinton (D-NY), Norm Coleman (R-MN), John Cornyn (R-TX), Jon Corzine (D-NJ), Larry Craig (R-ID), Mike Crapo (R-ID), Elizabeth Dole (R-NC), Richard Durbin (D-IL), John Ensign (R-NV), Orrin Hatch (R-UT), John Kerry (D-MA), Joseph Lieberman (D-CT), Barbara Mikulski (D-MD), Zell Miller (D-GA), Patty Murray (D-WA), Charles Schumer (D-NY), Gordon Smith (R-OR), Arlen Specter (R-PA), Debbie Stabenow (D-MI), Jim Talent (R-MO), and Ron Wyden (D-OR). The bill was referred to the Committee on Health, Education, Labor and Pensions (4/11/03). No further action was taken on the bill.

^{iv} See Workplace Religious Freedom Act, S. 677, 109th Cong. (2005). Sponsored by Senator Rick Santorum (R-PA), Co-sponsored by Senators Sam Brownback (R-KS), Hillary Rodham Clinton (D-NY), Tom Coburn (R-OK), Thad Cochran (R-MS), Norm Coleman (R-MN), John Cornyn (R-TX), Jon Corzine (D-NJ), Elizabeth Dole (R-NC), John Ensign (R-NV), Orrin Hatch (R-UT), John Kerry (D-MA), Joseph Lieberman (D-CT), \ Charles Schumer (D-NY), Gordon Smith (R-OR), Jim Talent (R-MO). The bill was referred to the Committee on Health, Education, Labor and Pensions (3/17/05). No further action was taken on the bill.

^v See Workplace Religious Freedom Act, H.R. 1445, (2005). Sponsored by Representative Mark Souder (R-IN); co-sponsored by Representatives Todd Akin (R-MO), Rodney Alexander (D-LA), Roscoe Bartlett (R-MD), Howard Berman (D-CA), Marsha Blackburn (R-TN), Eric Cantor (R-VA), William Lacy Clay (D-MO), Chet Edwards (D-TX), Bobby Jindal (R-LA), Donald Manzullo (R-IL), Carolyn McCarthy (D-NY), Michael McCaul (R-TX), Thaddeus McCotter (R-MI), Major Owens (D-NY), Joseph Pitts (R-PA), David Price (D-NC), Chris Van Hollen (D-MD), Anthony Weiner (D-NY), and Robert Wexler(D-FL)

^{vi} Hearing before the House Comm. on Educ. and the Workforce, 109th Cong. (2005), (statement of Rep. Souder, Representative, United States, p. 2).

^{vii} Id., p. 3.

^{viii} Id., (statement of Richard Foltin, Legislative Director and Counsel, American Jewish Committee, p. 3).

^{ix} Id., p. 2.

^x Id., (statement of Samuel Marcossan, Associate Dean and Professor of Law, University of Louisville, p.3).

^{lxi} Id., p. 2.

^{lxii} Id., (statement of Camille Olson, Partner, Seyfarth Shaw, p. 2).

^{lxiii} Id., p. 4.

^{lxiv} Id., p.3.

^{lxv} Id., p. 4.