**File #:** Int 0632-2011, **Version:** A

Int. No. 632-A

By Council Members Weprin, Chin, Fidler, James, Koslowitz, Van Bramer, Rose, Levin, Jackson, Dromm, Gennaro, Nelson, Crowley, Lander, Williams and Ulrich

A Local Law to amend the administrative code of the city of New York, in relation to unlawful discriminatory practices.

Be it enacted by the Council as follows:

Section 1.   Subdivision 18 of section 8-102 of the administrative code of the city of New York, as amended by local law number 75 for the year 2003, is amended to read as follows:

18. The term "reasonable accommodation" means such accommodation that can be made that shall not cause undue hardship in the conduct of the covered entity's business.  The covered entity shall have the burden of proving undue hardship.  In making a determination of undue hardship with respect to claims filed under subdivisions one or two of section 8-107 or section 8-107.1 of this chapter, the factors which may be considered include but shall not be limited to:

(a) the nature and cost of the accommodation;

(b)   the overall financial resources of the facility or the facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;

(c) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees, the number, type, and location of its facilities; and

(d) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of

the facility or facilities in question to the covered entity.

In making a determination of undue hardship with respect to claims for reasonable accommodation to an employee's or prospective employee's religious observance filed under subdivision three of section 8-107 of this chapter, the definition of "undue hardship" set forth in paragraph b of such subdivision shall apply.

§2. Paragraph b of subdivision 3 of section 8-107 of the administrative code of the city of New York, as amended by local law number 39 for the year 1991, is amended to read as follows:

(b) "Reasonable accommodation", as used in this subdivision, shall mean such accommodation to an employee's or prospective employee's religious observance or practice as shall not cause undue hardship in the conduct of the employer's business.  The employer shall have the burden of proof to show such hardship. "Undue hardship" as used in this subdivision shall mean an accommodation requiring significant expense or difficulty (including a 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:
(i) 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;
(ii) the number of individuals who will need the particular accommodation to a sincerely held 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.
Provided, however, an accommodation shall be considered to constitute an undue hardship, for purposes of this subdivision, if it will result in the inability of an employee who is seeking a religious accommodation to perform the essential functions of the position in which he or she is employed.

§3.     This local law shall take effect immediately.

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