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H.B. 1608

OPPOSITION

House Industry Business and Labor Committee

Rep. Jonathan Warrey, Chairman
Rep. Mitch Ostlie, Vice Chairman
Rep. Jorin Johnson, Vice Chairman

Testimony of Zachary Greenberg

Interim Commissioner of Labor
N.D. Department of Labor and Human Rights

February 5, 2025

Chair Warrey & Members of the committee,

Thank you for the opportunity to testify on House Bill 1608. My name is Zachary Greenberg, and I serve as the Interim Commissioner of the North Dakota Department of Labor and Human Rights. I am here today to provide opposition testimony on this bill as written, with a focus on how its language differs from recent federal legal precedent and the potential implementation challenges it may create.

Key Concern: Emergency Standard vs. Undue Hardship Standard

HB 1608 seeks to ensure that employees are not denied leave for religious observances, a goal that aligns with the principles outlined in the Supreme Court's 2023 decision in *Groff v. DeJoy*. However, the bill replaces the newly established "undue hardship" standard with an "emergency" standard, which raises several concerns.

- Under *Groff v. DeJoy*, an employer may deny a religious accommodation only if it imposes a "substantial increased cost" on the business. This standard balances religious accommodations with the operational needs of an employer and requires case-by-case consideration, including efforts to find alternative solutions.
- HB 1608, instead, permits denial of leave only in the case of an "emergency the employer could not have reasonably avoided." This language appears to be significantly more restrictive than the *Groff* standard, as it does not allow an employer to consider operational burdens, staffing needs, or financial impacts—only emergencies.
- The bill does not define what constitutes an "emergency." This could create ambiguity for both employers and employees, as it is unclear whether emergencies include staffing shortages, peak business operations, or only unforeseen crises such as natural disasters or security threats.
- By departing from the federal undue hardship standard, HB 1608 could impose a stricter obligation on North Dakota employers than what is required under federal law. This may create compliance challenges, particularly for businesses that operate across multiple states.

Additional Implementation Concerns

In addition to the broader standard shift, HB 1608 presents other areas where additional clarification may be necessary:

1. Notice & Frequency of Leave Requests

- The bill does not specify how far in advance employees must submit leave requests. Without a notice requirement, employers may struggle to plan for staffing needs.

- It is also unclear whether employees may request leave multiple times per month or if there are any limitations on frequency.
- Allowing partial leave or alternative accommodations (such as shift swaps) would provide flexibility without undermining the bill's intent.

2. Enforcement & Penalty Structure

- The bill establishes a flat \$500 fine per violation but does not outline whether there is a due process mechanism for employers before fines are imposed.
- It does not differentiate between good-faith errors and intentional violations. A tiered penalty structure may help address varying levels of noncompliance.
- The bill allows the Labor Commissioner to refer cases to a state's attorney for enforcement. Clarifying the role of legal authorities and potential employer defenses would help ensure fair and consistent application of the law.

Conclusion

In summary, while HB 1608 seeks to protect religious freedom in the workplace, its "emergency" standard deviates significantly from the federal "undue hardship" test, which could lead to practical and legal challenges for employers. Additionally, clarifying notice requirements, frequency of leave requests, and the penalty structure would help improve implementation.

I welcome the opportunity to work with the committee to refine this language in a way that balances religious accommodations with practical business considerations.

Thank you for your time, and I am happy to answer any questions.