

**2025 HOUSE INDUSTRY, BUSINESS AND LABOR**

**HB 1608**

# 2025 HOUSE STANDING COMMITTEE MINUTES

## Industry, Business and Labor Committee Room JW327C, State Capitol

HB 1608  
02/05/2025

A BILL for an Act to create and enact a new section to chapter 34-01 of the North Dakota Century Code, relating to employee leave for rest and worship; and to provide a penalty.

2:30 p.m. Chairman Warrey opened the meeting.

Members Present: Chairman Warrey, Vice Chairman Ostlie, Vice Chairman Johnson, Representatives Bahl, Brown, Finley-DeVille, Grindberg, Kasper, Koppelman, D. Ruby, Schatz, Schauer, Vollmer

Member Absent: Representative Christy

### Discussion Topics:

- Undue hardship
- Onus on the employee
- Conflict between State and Federal law
- Notice requirement

2:30 p.m. Representative Matthew Heilman, District 7, Bismarck, ND, introduced, testified and submitted testimony #35155.

2:54 p.m. Zachary N. Greenberg, Interim Commissioner, ND Department of Labor and Human Rights, testified in opposition and submitted testimony #35412.

2:57 p.m. Arik Spencer, President & CEO, Greater North Dakota Chamber, testified in opposition and submitted testimony #35377.

2:59 p.m. Mike Rud, President of the ND Retailers Association, testified in opposition.

3:02 p.m. Representative Bahl moved a Do Not Pass.

3:02 p.m. Representative Shauer seconded the motion.

Representatives	Vote
Representative Jonathan Warrey	Y
Representative Mitch Ostlie	Y
Representative Landon Bahl	Y
Representative Collette Brown	AB
Representative Josh Christy	AB
Representative Lisa Finley-DeVille	Y
Representative Karen Grindberg	Y
Representative Jorin Johnson	N

Representative Jim Kasper	AB
Representative Ben Koppelman	AB
Representative Dan Ruby	Y
Representative Mike Schatz	N
Representative Austin Schauer	Y
Representative Daniel R. Vollmer	Y

Motion passed 8-2-4.

3:13 p.m. Representative Bahl will carry the bill.

**Additional written testimony:**

Jacob Thomsen, Policy Analyst, ND Family Alliance Legislative Action, submitted testimony in favor #35014

Cale Dunwoody, Vice President of Public Policy, Fargo Moorhead West Fargo Chamber of Commerce, submitted testimony in opposition #35137.

Don Larson, NFIB, testified in opposition and submitted testimony #33355.

Brady Pelton, Council, ND Petroleum Council, submitted testimony in opposition #36060.

3:03 p.m. Chairman Warrey closed the meeting

*Diane Lillis, Committee Clerk*

**REPORT OF STANDING COMMITTEE**  
**HB 1608 ([25.1319.01000](#))**

**Industry, Business and Labor Committee (Rep. Warrey, Chairman)** recommends **DO NOT PASS** (8 YEAS, 2 NAYS, 4 ABSENT AND NOT VOTING). HB 1608 was placed on the Eleventh order on the calendar.



**House Industry Business and Labor Committee**

**02/05/25**

**Testimony in Opposition to House Bill 1608**

**Presented by Don Larson on behalf of the National Federation of Independent Business (NFIB)**

Chairperson Warrey and Members of the Committee,

Thank you for the opportunity to testify today. My name is Don Larson, and I am here on behalf of the National Federation of Independent Business to express our strong opposition to House Bill No. 1608.

NFIB represents more than two-thousand small and independent businesses across North Dakota. Our average member has three employees. One of the most significant challenges our members face is finding workers to fill open positions.

While we respect the intent behind this bill, we believe it will impose significant burdens on small businesses, particularly those with few employees. Small businesses have limited options at times to accommodate leave requests. Compliance with this bill will likely result in increased labor costs for small businesses. Employers may need to hire additional staff or pay overtime to cover

shifts, which can be financially burdensome for businesses already operating on thin margins.

While we understand the importance of accommodating employees' religious practices, House Bill No. 1608 places an undue burden on small businesses. We urge the committee to consider the unique challenges faced by small business owners and seek alternative solutions that balance the needs of employees with the operational realities of small businesses.

Thank you for your consideration.

Don Larson  
State Director  
NFIB



# NORTH DAKOTA

## *Family Alliance* LEGISLATIVE ACTION

### Testimony in Support of House Bill 1608

Jacob Thomsen, Policy Analyst  
North Dakota Family Alliance Legislative Action  
February 5, 2025

Chairman Warrey and honorable members of the House Industry, Business and Labor Committee,

North Dakota Family Alliance Legislative Action would like to testify in support of House Bill 1608 and respectfully request that you render a “DO PASS” on this bill

Our organization believes that people have the freedom to attend religious services and be excused from work to observe religious holidays. This bill is in line with a recent ruling from the Supreme Court in *Groff v. DeJoy*.<sup>1</sup> This case was from a United States Postal Service worker who is an Evangelical Christian and refused to work on Sundays. The USPS accommodated his request for the most part but were unable to accommodate his request multiple times.

Long story short, the Court ruled unanimously that businesses must provide reasonable accommodations to allow employees to be absent for religious practices. If they cannot, or believe they cannot, per section (j.) of Title VII of the Civil Rights Act of 1964<sup>2</sup>, it must be because the business would have disruptions to operations or significant costs. This ruling found that having coworkers replace a worker who would be absent for religious purposes is *not* an undue hardship. While we certainly appreciate all that businesses do for our state and its communities, employers affected by this are unlikely to experience the “due hardship” as the Supreme Court has laid out.

It is important to our organization that employees have the freedom to exercise their religious beliefs in this state. For this reason, North Dakota Family Alliance Legislative Action respectfully requests that you please vote House Bill 1608 out of committee with a “DO PASS” recommendation.

Thank you for the opportunity to provide this testimony, and feel free to contact us if you have any questions.

Sincerely,  
Jacob Thomsen  
Policy Analyst  
North Dakota Family Alliance Legislative Action

<sup>1</sup> *Groff v. DeJoy*, 600 U.S. 447 (2023).

<sup>2</sup> Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(j) (amended 1991).



### Letter of Opposition – HB 1608

Wednesday, February 5, 2025

Chairman Warrey and Members of the House Industry, Business, and Labor Committee,

For the record, my name is Cale Dunwoody, and I have the distinct pleasure of serving as the Vice President of Public Policy for the Fargo Moorhead West Fargo Chamber of Commerce (FMWF Chamber). On behalf of our over 1,700 members, I respectfully offer testimony in opposition to House Bill 1608.

At the FMWF Chamber, our mission is to protect and promote business, inspire individuals, cultivate communities, and influence action. While we recognize the intentions of this bill and deeply respect the ability to observe religious practices, we also recognize the unintended consequences this bill would create – hindering the ability of businesses to effectively meet the unique needs of workforce.

In today's fast-paced and evolving business landscape, decisions regarding a business's operations are best made by the businesses themselves. Localized and autonomous decision-making ensures that businesses can meet the ever-changing needs of their customers and employees. To compete effectively in a global marketplace, we must avoid creating unnecessary barriers that infringe upon a business's freedom to operate. Regulations negatively impact the vibrancy and vitality of the business community and local economies.

As this committee considers this bill, we urge you to recognize the impacts it would have on businesses, consumers, and communities alike. We respectfully urge this committee to give House Bill 1608 a DO NOT PASS recommendation.

Thank you for your consideration on this critical matter and your support for North Dakota's business community.

Sincerely,

Cale Dunwoody  
Vice President of Public Policy  
Fargo Moorhead West Fargo Chamber of Commerce





North Dakota  
House of Representatives  
STATE CAPITOL  
600 EAST BOULEVARD  
BISMARCK, ND 58505-0360



**Representative Matthew Heilman**

District 7  
5501 Flatrock Drive  
Bismarck, ND 58503-8929  
[mheilman@ndlegis.gov](mailto:mheilman@ndlegis.gov)

**COMMITTEES:**

Education  
Political Subdivisions

February 2<sup>nd</sup>, 2025

Mr. Chairman and members of the committee,

My name is Matt Heilman, and I am here to testify in favor of HB 1608. I am a state representative from North Dakota's seventh legislative district.

This bill states that an employer may not deny an employee leave of rest or worship on a Sunday or a day the employee recognizes as a religious holiday. The last section of the bill does provide protection for the employer, giving balance to both the employee and the employer.

This has been a real problem I've experienced firsthand, and I know others have as well. Sometimes employees are just pressured into working on days they don't want to. To help fill the workforce shortage, we need policies that are worker friendly.

This bill is aligned with the unanimous Supreme Court ruling, *Groff v. DeJoy*, from June of 2023. The ruling clarified the standard for "undue hardship." Gerald Groff was a postal worker who refused to work on Sundays due to his religion. This led to disciplinary action and his eventual resignation from the U.S. Postal Service.

Prior to this ruling, lower courts interpreted "undue hardship" based on the 1977 *Trans World Airlines Inc. v. Hardison* case, which set a "more than de minimis cost" standard. Meaning, employers could deny religious accommodation if they posed any more than a minimal burden. In the recent unanimous decision, Justice Alito clarified that "undue hardship" must mean a "substantial increased cost" in relation to the conduct of the employer's business.

Mr. Chairman and members of the committee, I will stand for any questions.

**GREATER NORTH DAKOTA CHAMBER**  
**HB 1608**  
**House Industry Business & Labor Committee**  
**Chair Jonathan Warrey**  
**Feb. 5, 2025**

Mr. Chairman and members of the Committee, my name is Arik Spencer, the President and CEO of the Greater North Dakota Chamber. GNDC is North Dakota's largest statewide business advocacy organization, with membership represented by small and large businesses, local chambers, and trade and industry associations across the state. We stand in **opposition** to House Bill 1608.

GNDC believes the Legislature should defend against regulations and policies that are detrimental to the advancement of North Dakota's economy by opposing regulatory and legislative changes and mandates that would increase business burdens and costs. HB 1608 will increase employer burdens and costs by mandating an employee leave for rest or worship on Sunday or the day of their choosing for a 24-hour period, almost without exception.

#### **Current Employee Protections**

- ND Human Rights Act (14-02.4): Employers are required to provide reasonable accommodation for an employee's religious beliefs as long as the accommodation does not:
  - A. Unduly disrupt or interfere with the employer's normal operations;
  - B. Threaten the health or safety of the individual with a disability or others;
  - C. Contradict a business necessity of the employer; or
  - D. Impose undue hardship on the employer, based on the size of the employer's business, the type of business, the financial resources of the employer, and the estimated cost and extent of the accommodation.
- Fair Labor Standards Act: Limits an employees weekly hours to 40, with hours over that threshold subject to overtime pay, unless the employee has exempt status.
- NDCC 34-06-05.1: States that an employer may not require a retail employee to work seven consecutive days or deny a retail employee at least one period of twenty-four consecutive hours of time off for rest or worship in each seven-day period.

Employers do have an exemption under this section if the employer can demonstrate that providing an employee a day off for worship would constitute an undue hardship on the conduct of the employer's business. However, if the employee requests time off to attend one regular worship service a week, an employer may not require the employee to work during that period unless:

- A. Honoring the employee's request would cause the employer substantial economic burdens or would require the imposition of significant burdens on other employees needed to work in place of the Sabbath observer or
- B. The employer has made a reasonable effort to accommodate the employee's request.

- **Groff v DeJoy:** In 2023 the US Supreme Court issued a decision that made an employer's ability to deny religious accommodations much harder. Per that decision, employers can only deny religious accommodation requests if they can show substantial additional costs or expenditures. That creates a very hard threshold already for employers to deny a religious accommodation request of an employee.

### **Issues with HB 1608**

HB 1608 greatly expands existing employee protections by requiring one day of rest for all workers regardless of industry or business need, unless in an emergency.

- There is no limit on the number of days a person takes for rest or worship each week, and there is no prohibition on taking multiple days.
- There is no mention of how this required time off would affect collective bargaining agreements already in place.
- It does not include a requirement for notice time or reference the FMLA notice provision of ordinary and customary notice.
- The bill does not define what constitutes an “emergency” or what “reasonably avoided” means.
- HB 1608 ignores the need for 24/7 operations in critical industries such as healthcare, oil and gas, and mining, which must always meet minimum staffing numbers. Many 24/7 operations already employ fatigue and rest management systems for safe operations or use seven-day on – seven-day off schedules, which would be prohibited.
- Further HB 1608 does not consider the needs of small employers, who may not have enough employees available to operate on a regular schedule to comply with the requirements of HB 1608.

GNDC urges a Do Not Pass recommendation on HB 1608

69<sup>th</sup> Legislative Assembly  
Regular Session (2025)

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H.B. 1608

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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**

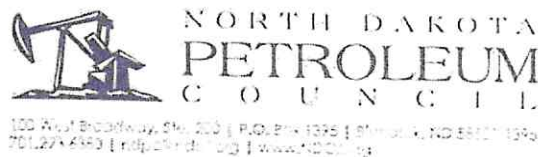
- The bill establishes a flat \$500 fine per violation but does not outline whether there is a due process mechanism for employers before fines are imposed.
- It does not differentiate between good-faith errors and intentional violations. A tiered penalty structure may help address varying levels of 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.

**House Bill 1608****Testimony of Brady Pelton****House Industry, Business, and Labor Committee****February 5, 2025**

Chairman Warrey and members of the Committee, my name is Brady Pelton, vice president of the North Dakota Petroleum Council ("NDPC"). The North Dakota Petroleum Council represents more than 550 companies involved in all aspects of the oil and gas industry, including oil and gas production, refining, pipeline development, transportation, mineral leasing, consulting, legal work, and oilfield service activities in North Dakota, South Dakota, and the Rocky Mountain region. I appear before you today in opposition to House Bill 1608.

While we respect and support religious freedom, this bill imposes significant burdens on employers and will undoubtedly have unintended economic and operational consequences that outweigh its intended benefits. House Bill 1608, as currently written, creates undue hardship for businesses, particularly in industries where continuous operation is essential. Mandating that employers accommodate religious leave without considering the impact on operations could result in significant financial burdens. Businesses, particularly small ones, may be forced to hire additional staff or pay overtime to cover shifts, increasing labor costs. This could put undue strain on employers already facing workforce shortages and economic uncertainties.

Certain industries, such as oil and gas, rely on round-the-clock staffing. Guaranteeing leave without exception will likely create serious gaps in service, jeopardizing efficiency, safety, and production. Employers need flexibility to balance operational needs with employee accommodations.

Title VII of the Civil Rights Act already requires employers to provide reasonable religious accommodations unless they create an undue hardship. This existing framework strikes a balance between protecting religious rights and maintaining business operations. This piece of legislation goes beyond these established protections and removes critical flexibility for employers.

The bill's broad language does not account for the diversity of religious practices. Instead of a one-size-fits-all mandate, businesses should be allowed to work with employees to identify reasonable accommodations, such as shift-swapping, alternative scheduling, or personal leave policies that align with operational needs.

Granting mandatory leave for religious observances could lead to perceived inequities among employees. Non-religious employees may feel disadvantaged if they are required to work less desirable shifts or take on additional responsibilities. Without clear definitions or guidelines, some employees may claim religious exemptions for personal convenience rather than sincere belief. This could lead to workplace morale issues, scheduling conflicts, and decreased productivity.

Finally, the bill does not clearly define what constitutes a "recognized religious holiday," making it difficult for employers to determine compliance. Given the wide range of religious beliefs and observances, employers may face legal uncertainty and increased administrative burdens. House Bill 1608 could open the door to costly legal disputes as employers navigate compliance while maintaining fair and consistent workplace policies.

While we respect the intent of House Bill 1608 in seeking to accommodate religious observance, the bill as drafted places substantial burdens on employers, disrupts workplace operations, and creates significant legal and practical challenges. A more balanced approach – one that considers both employer and employee needs – would be preferable. We urge the committee to reject House Bill 1608 with a **Do Not Pass recommendation** and instead explore solutions that maintain existing legal protections while preserving workplace flexibility.

Thank you, and I would be happy to answer any questions.