

Exemption Requests Based on Religious Observances Pursuant to N.Y.C. Admin. Code § 8-107(4)(b)

Pursuant to N.Y.C. Admin. Code § 8-107(4)(b), the New York City Human Rights Law (“NYCHRL”) vests the Commission on Human Rights with the authority to grant exemptions from the anti-discrimination provisions of Section 8-107(4) based on “bona fide considerations of public policy” with respect to age or gender. Exemptions will only be granted in narrow circumstances where “bona fide considerations of public policy” are clearly identified; requests rooted in discomfort, intolerance, or perpetuating prejudice or division will not qualify for the exemption. The NYCHRL does not allow for similar exemptions impacting other protected categories (e.g., race, national origin, sexual orientation, etc.).

Such bona fide considerations of public policy may include accommodations based on religious observances. A place or provider of public accommodation may request an exemption under the NYCHRL based on age or gender in order to accommodate the religious observances of a community the place or provider of public accommodation serves. Exemptions will not be granted, however, when requested to accommodate the religious observances of the place or provider of a public accommodation itself.

Such considerations are consistent with the principle that all New Yorkers should have the ability to enjoy public accommodations in New York City and the Commission’s statutory mandate “to foster mutual understanding and respect among all persons in the City of New York.” N.Y.C. Admin. Code § 8-104(a). In assessing such a request, the Commission will consider: 1) whether and how the accommodation infringes on the rights enjoyed by other members of the public; and 2) to what extent the rights of other members of the public are affected. Where providing the religious accommodation results in little to no impact on other members of the affected communities or the City, the Commission will strongly consider granting the exemption. Where providing the religious accommodation impacts other members of the public in any way, the Commission will consider the following, including, but not limited to:

- The temporal nature of the accommodation being requested;
- How the accommodation impacts the rights of other community members;
- What communities are impacted by the accommodation (e.g., if providing the religious accommodation infringes on the rights of communities that are marginalized or the rights of vulnerable populations, it will generally militate against granting the exemption);
- Whether an alternative accommodation is available, or whether it is possible to tailor or narrow the requested accommodation so that it will impose less of a burden on the affected communities or the City; and/or
- Any other relevant considerations.

In considering requests for exemptions, the Commission will always seek to balance the interests of the communities and individuals in the City that will benefit from the exemption while minimizing any impact on other members of the City. No exemption granted by the Commission is permanent; the Commission will consider changed circumstances and countervailing public policy considerations in revisiting an exemption previously granted.