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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA,

Plaintiff,

v.

ESSEX COUNTY, NEW JERSEY,

Defendant.

Cause No. 2:09-cv-02772 KSH/MS

**APPLICATION FOR ENTRY OF
SETTLEMENT AGREEMENT**

APPLICATION FOR ENTRY OF SETTLEMENT AGREEMENT

Plaintiff United States, with the consent of Defendant Essex County, New Jersey, moves the Court to enter the Settlement Agreement attached hereto as "Exhibit A." As grounds for this motion, the parties state that the Settlement Agreement would resolve all outstanding claims in the above-captioned action among them and would be in the interest of justice.

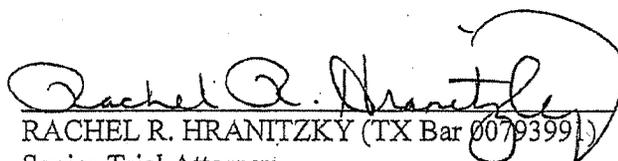
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Dated: November 10, 2010

Respectfully submitted,

THOMAS E. PEREZ
Assistant Attorney General
Civil Rights Division

LORETTA KING
Acting Chief
LOUIS LOPEZ (DC 461662)
Deputy Chief

By:



RACHEL R. HRANITZKY (TX Bar 00793991)
Senior Trial Attorney
JENNIFER M. SWEDISH (DC Bar 977746)
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Attorneys for Plaintiff United States

CERTIFICATE OF SERVICE

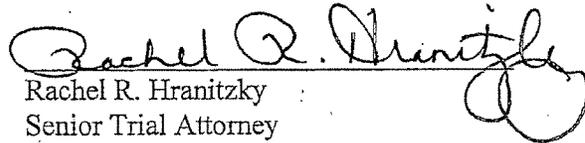
12th

I hereby certify that on the 10th day of November, 2010, I served the foregoing

Application for Entry of Settlement Agreement via the court's electronic filing system on the

following parties and/or their attorneys of record:

Courtney M. Gaccione
Chief, Labor and Employment Section
Alan Ruddy
Assistant County Counsel
Essex County Counsel
Essex, Hall of Records, Room 535
Newark, New Jersey 07102.



Rachel R. Hranitzky
Senior Trial Attorney
United States Department of Justice
Civil Rights Division
Employment Litigation Section

So Ordered.

Katherine S. Hayden, USDJ
November 16, 2010

EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,
United States Department of Justice
Civil Rights Division,
Employment Litigation Section
950 Pennsylvania Avenue, NW, PHB Room 4030
Washington, DC 20530

Plaintiff,

Case No. 2:09-cv-02772-KSH-MAS

v.

ESSEX COUNTY, NEW JERSEY,
Office of the County Counsel
Hall of Records, Room 535
465 Martin Luther King Boulevard
Newark, NJ 07102

Defendant.

SETTLEMENT AGREEMENT

I. INTRODUCTION AND BACKGROUND

1. This action was brought by the United States of America (the "United States") against Essex County, New Jersey ("Essex County") to enforce the provisions of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.* ("Title VII"). In its Complaint, the United States alleges that Essex County discriminated against Yvette Beshier ("Beshier") on the basis of her religion, in violation of Section 703(a) of Title VII by: (1) failing or refusing to reasonably accommodate Beshier's religious observance, practice and/or belief that precluded her from complying with a portion of the uniform policy for corrections officers at the Essex County Department of Corrections (the "Essex County DOC"); (2) suspending Beshier because she could not comply with a portion of the Essex County DOC's uniform policy for corrections officers due to

her religious observance, practice and/or belief; (3) terminating Beshier because she could not comply with a portion of the Essex County DOC's uniform policy for corrections officers due to her religious observance, practice and/or belief and (4) failing or refusing to take appropriate action to remedy the discriminatory treatment against Beshier. Essex County has denied all claims against it.

2. The United States and Essex County, desiring that this action be settled by an appropriate Settlement Agreement (the "Agreement") and without the burden and expense of litigation, agree to the entry of this Agreement.

II. STIPULATED FACTS

3. The United States and Essex County agree to the jurisdiction of the Court over the parties and subject matter of this action.

4. For purposes of this Agreement, and subject to its approval by the Court, the parties waive a hearing and findings of fact and conclusions of law on all issues, and further agree to the entry of this Agreement as final and binding between themselves as to the issues raised in the Complaint filed by the United States in this case and the matters resolved by this Agreement.

5. This Agreement, being entered with the consent of the parties, shall not constitute an admission, adjudication or finding on the merits of the allegations made in the Complaint.

Accordingly, it is hereby ORDERED, ADJUDGED and DECREED as follows:

III. PARTIES

6. The parties to this Agreement are the United States and Essex County, its current, former and future agents, employees, officials, designees and successors in interests.

IV. GENERAL INJUNCTIVE RELIEF

7. Essex County, its employees, supervisors and agents, jointly and severally, shall

not engage in any act or practice that has the purpose or effect of unlawfully discriminating against any employee or prospective employee of Essex County DOC because of his or her religious observance, practice and/or belief in violation of Title VII.

8. Essex County shall not retaliate against or adversely affect any employee or prospective employee of the Essex County DOC because that person has complained about religious discrimination, requested a religious accommodation, or because of that person's participation in or cooperation with the initiation, investigation, litigation or administration of this action or this Agreement.

V. INDIVIDUAL RELIEF FOR BESHIER

9. Without admitting the allegations as set forth in the Complaint, and in settlement of the claims of the United States, Essex County, within fourteen (14) days of entry of this Agreement by the Court, shall offer Beshier the following relief:

- a. Essex County shall offer Beshier a total monetary award in the amount of \$25,000.00.
- b. The total monetary award is comprised of a back pay award in the amount of \$22,000.00, which amount shall be subject to any applicable federal, state, and local taxes, in addition to payroll tax withholding deductions, and shall be reported to the Internal Revenue Service on Form W-2. Essex County shall separately pay all employer's contributions to the Social Security fund due on the back pay award; the employer's contribution shall not be deducted from the monetary award to Beshier.
- c. The total monetary award is comprised of an award in the amount of \$3,000.00, which is designated as accumulated interest on the back pay. This

amount shall not be subject to withholding deductions and Essex County shall report this amount to the IRS on Form 1099-INT.

10. Essex County shall remove any disciplinary history contained in Beshier's personnel file as of the date of entry of this Agreement, and will replace any reference of Beshier's employment status as "terminated" to reflect a hire date of May 29, 2007 and a resignation date of June 7, 2007. Beshier agrees that she will not seek future employment as a Corrections Officer or Juvenile Detention Officer within Essex County. Should Beshier seek additional employment with Essex County in the future, Essex County agrees that Beshier's application will be given fair, objective and non-discriminatory consideration. Additionally, Essex County shall in all communications with prospective employers, only confirm the length of employment, date of hire and date of resignation, position, ending rate of pay, and that her work performance was satisfactory as to Beshier's employment with Essex County. Essex County also shall not refer in any way to complaints or charges of religious discrimination or to this lawsuit when communicating with prospective employers seeking a reference for Beshier.

11. Essex County shall notify Beshier of the individual relief being afforded her under the terms of this Agreement within fourteen (14) days of its entry by mailing to her, by certified mail, return receipt requested, a copy of the Notice Letter set forth in Appendix A ("Notice Letter"), a copy of the Release of Claims Form set forth in Appendix B, and a copy of this Agreement. The Notice Letter will advise Beshier that, in order to accept the individual relief offered her, she must execute the Release of Claims Form and return it to Essex County, by hand or certified mail, within thirty (30) days of her receipt of the Notice Letter, unless she can demonstrate good cause, to be determined by the United States, for her failure to do so.

12. Essex County shall pay to Beshier the monetary awards specified in Paragraph 9, *supra*, within thirty (30) days of its receipt of the executed Release of Claims Form. Essex County shall pay the monetary awards by mailing to Beshier either a certified or bank check addressed as follows:

Yvette Beshier
358 Park Avenue
Apartment 15A
East Orange, New Jersey 07017

Essex County shall provide documentary evidence of payment, within five (5) days of payment to Beshier, by sending a photocopy of the check sent to Beshier to the following address:

Rachel R. Hranitzky
Senior Trial Attorney
Civil Rights Division, Employment Litigation Section
United States Department of Justice
950 Pennsylvania Avenue, NW, PHB Room 4030
Washington, DC 20530

VI. ESSEX COUNTY'S POLICIES AND PROCEDURES

13. Essex County has adopted a religious accommodation policy and procedure that the United States agrees is in furtherance of Title VII's requirement to reasonably accommodate the religious observances, practices and/or beliefs of all employees and prospective employees in the absence of undue hardship and which is set forth in Appendix C.

14. Within thirty (30) days from the date on which the Court enters this Agreement, Essex County shall:

- a. Distribute the religious accommodation policy and procedure to all current employees subject to the uniform policy for corrections officers and shall post it in all Essex County locations, both physical and electronic, where other

Essex County non-discrimination policies are posted, including, without limitation, on the Essex County internet and intranet website; and

- b. Distribute the religious accommodation policy and procedure to all attendees of any Essex County orientation or training program.

15. Within thirty (30) days of the posting and distribution of the religious accommodation policy and procedure described in Paragraph 13 *supra*, Essex County shall provide the United States with written verification that the posting and distribution has been completed in the manner prescribed in Paragraph 14, *supra*.

VII. TRAINING

16. Within sixty (60) days from the date of the entry of this Agreement, Essex County shall provide to the United States proposed training materials regarding religious discrimination and accommodation for all current Essex County supervisors and human resources officials and all newly-hired or promoted supervisors and human resources officials responsible for enforcing the Essex County religious accommodation policy, making determinations regarding requests for religious accommodation, and/or reviewing complaints of religious discrimination by Essex County employees. The United States shall review and approve the proposed training materials within thirty (30) days thereafter. If the Parties cannot agree on the content of the proposed training materials, the matter shall be submitted to the Court for resolution. The parties agree that in the event this issue is submitted to the Court for resolution, it will not adversely affect any other portions of this Agreement and all other terms and conditions will remain in full force and affect. Within ninety (90) days of the United States' approval of the proposed training materials (or resolution by the Court), Essex County shall provide mandatory training regarding religious discrimination and accommodation to all Essex County DOC supervisors. Continuing thereafter, Essex County shall

provide mandatory training regarding religious discrimination and accommodation for all newly-hired or promoted supervisors and human resources officials and all newly-hired employees in a timely manner.

17. All persons who undergo the training described in Paragraph 16, *supra*, shall sign an acknowledgment of attendance at the training. Essex County shall keep on file all signed acknowledgments for the duration of the Agreement.

VIII. RECORD RETENTION AND REPORTING

18. For the duration of this Agreement, Essex County shall retain the following records:

- (a) the provisions and effective date of all written policies and procedures implemented pursuant to Paragraph 13, *supra*;
- (b) all posted notices and posters displayed in its work areas intended to convey information regarding the prohibition of religious discrimination in the workplace, as set forth in Paragraph 14, *supra*, and the dates when such policies and procedures are posted on Essex County's internet and intranet website; and
- (c) all documents that come into Essex County's possession relating to written or oral complaints of discrimination against Essex County on the basis of religious observance, practice and/or belief or retaliation, from any individual, including documents relating to Essex County's investigation and resolution of any such complaints.

19. The United States shall have the right to inspect and copy any documents described in Paragraph 17 and 18, *supra*, upon thirty (30) days written notice to Essex County, without further order of this Court for the term of this Agreement.

IX. MISCELLANEOUS

20. After one (1) year from the date of the entry of this Agreement, this Agreement shall expire and this action shall be dismissed, without further order of this Court. With respect to the time frames set forth for completion of acts set forth in this Agreement, those time frames may be modified upon mutual written consent of the parties. The parties may jointly agree to other modifications of this Agreement with the approval of the Court.

21. During the life of this Agreement, the Court shall retain jurisdiction over this Agreement for the purposes of enforcing its provisions, resolving any disputes that may arise between the parties under it and entering such orders as may be appropriate.

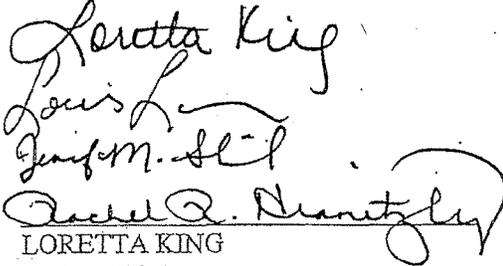
22. The parties shall bear their own costs, expenses and attorneys' fees in this action, including the costs of compliance or monitoring, except that the parties shall retain the right to seek costs for any matter which, in the future, may arise from this Agreement and require resolution by this Court.

APPROVED AND ORDERED, this ____ day of _____, 2010.

Katharine S. Hayden
UNITED STATES DISTRICT JUDGE
District of New Jersey

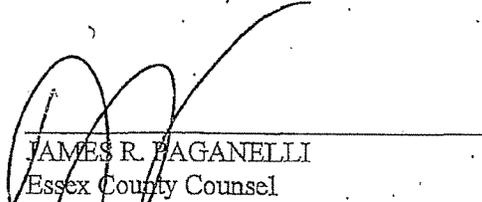
AGREED AND CONSENTED TO:

For Plaintiff United States of America:



LORETTA KING
Acting Chief
LOUIS LOPEZ (DC Bar 461662)
Deputy Chief
RACHEL R. HRANITZKY (TX Bar 00793991)
Senior Trial Attorney
JENNIFER SWEDISH (DC Bar 977746)
Trial Attorney
United States Department of Justice
Civil Rights Division
Employment Litigation Section
950 Pennsylvania Avenue, NW, PHB 4030
Washington, DC 20530
Telephone: 202.305.1642
rachel.hranitzky@usdoj.gov

For Defendant Essex County, New Jersey:



JAMES R. PAGANELLI
Essex County Counsel
COURTNEY M. GACCIONE
ALAN RUDDY
Assistant County Counsel
Essex County, Office of the County Counsel
Hall of Records, Room 535
465 Martin Luther King Boulevard
Newark, New Jersey 07102
Telephone: 973.621.2703
cgaccione@counsel.essexcountynj.org

APPENDIX A NOTICE LETTER

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

[Date]

Yvette Beshier
358 Park Avenue
Apartment 15A
East Orange, New Jersey 07017

Re: *United States v. Essex County*, Case No. 2:09-cv-02772-KSH-MAS (D.N.J. 2009)

Dear Ms. Beshier:

The United States of America ("United States") and Essex County, New Jersey ("Essex County") have entered into a Settlement Agreement settling the case of *United States v. Essex County*, Case No. 2:09-cv-02772-KSH-MAS (D.N.J. 2009). A copy of the Settlement Agreement, which was approved and entered by the Court on _____ [date], is enclosed.

Pursuant to the Settlement Agreement, Essex County offers you the following:

1. A back pay award in the amount of \$22,000.00.
2. An award of \$3,000.00 as accumulated interest on the back pay award.
3. Removal of any disciplinary history contained in your personnel file and substitution of your employment status indicating "termination" with a hire date of May 29, 2007 and a resignation date of June 7, 2007.

In exchange for the offered relief, you agree you will not seek future employment as a Corrections Officer or Juvenile Detention Officer within Essex County, although you may seek employment from Essex County for any other position for which you are qualified in the future.

The above monetary relief will be paid to you via certified or bank check, within thirty (30) days of Essex County's receipt of your executed Release of Claims Form identified as Appendix B, and enclosed with this letter.

In order to obtain the offered relief, or any part of it, you must complete and return the enclosed Release of Claims Form. The Release of Claims Form must be signed in the presence of a notary public and thereafter notarized before you return it. The Release of Claims Form must be returned within **thirty (30) days** of your receipt of this letter, to Essex County's counsel at:

Courtney Gaccione, Assistant County Counsel
Office of the County Counsel for Essex County
Hall of Records, Room 535
Newark, NJ 07102

If you decline the relief offered by Essex County, Essex County nevertheless will have satisfied its obligation to the United States pursuant to the Settlement Agreement, and the United States will not seek additional relief on your behalf.

If you have any questions concerning the Settlement Agreement or Essex County's offer to you, you may contact the following Department of Justice attorney:

Rachel R. Hranitzky
Senior Trial Attorney
United States Department of Justice
Civil Rights Division, Employment Litigation Section
950 Pennsylvania Avenue, NW
Washington, DC 20530
Telephone: (202) 305-1642

Sincerely,

Courtney Gaccione
Office of the County Counsel
Hall of Records, Room 535
Newark, NJ 07102

Enclosure

APPENDIX B RELEASE OF CLAIMS FORM

IF YOU ARE ACCEPTING THE RELIEF, OR ANY PART OF THE RELIEF, OFFERED TO YOU, YOU MUST COMPLETE THE REST OF THIS FORM, HAVE IT NOTARIZED AND POST-MARKED BY _____ [DATE]. A pre-addressed envelope is enclosed which you may use to return this form. You must return this form to the address on the envelope within thirty (30) days of your receipt of this letter unless you show good cause for not meeting this deadline. The envelope enclosing this form must be postmarked by _____ [date]. If you have any questions about how to complete this form, you may contact Rachel R. Hranitzky (202-305-1642) at the United States Department of Justice.

RELEASE OF CLAIMS

For and in consideration of the acceptance of all or any part of the relief offered to me by Essex County, New Jersey ("Essex County") pursuant to the provisions of the Settlement Agreement entered by the Honorable Katharine S. Hayden, United States District Judge, on _____ [date] in *United States v. Essex County*, Case No. 2:09-cv-02772-KSH-MAS (D.N.J. 2009), I, Yvette Beshier, forever release and discharge Essex County, and all current, former and future agents, employees, officials, designees, predecessors and successors in interest from all legal and equitable claims, arising out of the Complaint filed by the United States in the above-captioned civil action and EEOC Charge Number 524-2007-01067 accruing prior to the date of this release.

I understand that the relief to be given to me does not constitute an admission by Essex County of the validity of any claim raised by me or on my behalf, nor does it constitute a finding of any wrongdoing or violation of any applicable federal law or regulation.

I further agree that I will not seek future employment as a Corrections Officer or Juvenile Detention Officer within Essex County.

This release constitutes the entire agreement between Essex County and me, without exception or exclusion.

I acknowledge that a copy of the Settlement Agreement in this action has been made available to me for my review.

I HAVE READ THIS RELEASE AND UNDERSTAND THE CONTENTS THEREOF, AND I EXECUTE THIS RELEASE OF MY OWN FREE ACT AND DEED.

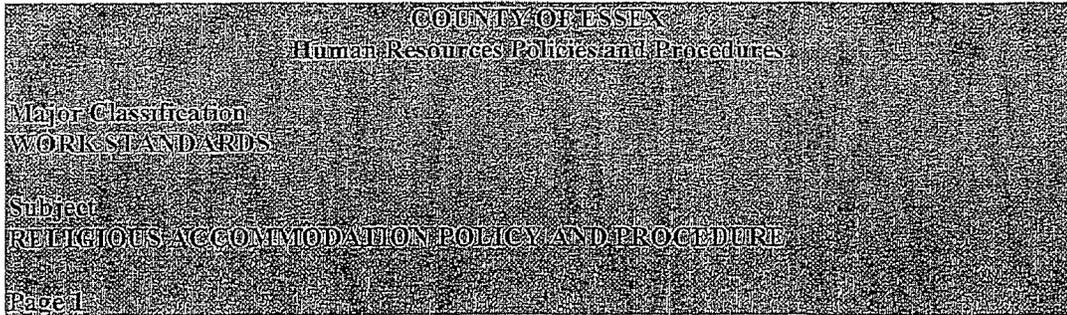
Signed this _____ day of _____, 2010.

Signature

Subscribed and sworn to before me this
____ day of _____, 2010

Notary Public
My Commission expires: _____

APPENDIX C RELIGIOUS ACCOMMODATION POLICY AND PROCEDURE



PURPOSE

To assure County compliance with state and federal policies on accommodating the religious beliefs, observances or practices of applicants and employees.

AUTHORITY

1. Title VII of the Civil Rights Act of 1964, as amended
2. Guidelines on Discrimination Because of Religion, 29 C.F.R. Part 1605.

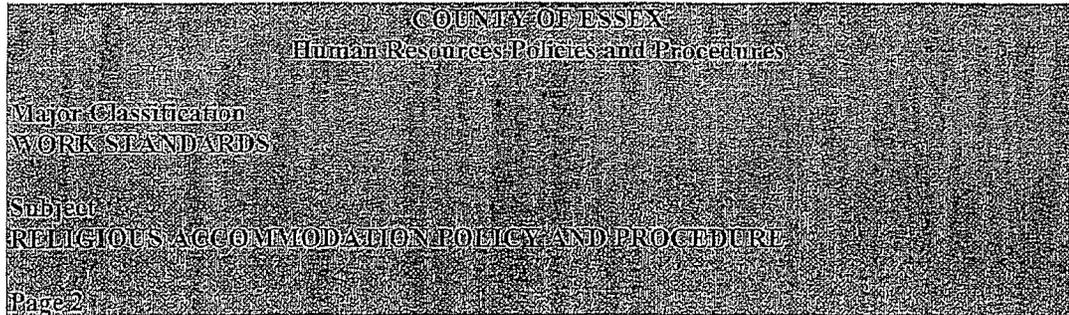
POLICY

County supervisors and managers are prohibited from discriminating against applicants and employees on the basis of religious beliefs, observances and practices, and are required to make reasonable accommodation, when requested, so long as the accommodation does not result in undue hardship.

PROCEDURE

In order to request a religious accommodation, an employee or applicant should submit a Request for Religious Accommodation form (Appendix A) to the employee's or applicant's department director or his/her designated management representative. If an oral request for religious accommodation is made by an employee or applicant, the department director or his/her designated management representative should instruct the employee or applicant to submit a written request using the appropriate form. A request should be made as far in advance as possible, but no later than ten (10) days prior to the date the requested accommodation would take effect. After an employee or applicant notifies the department director or his/her designated management representative of the need for religious accommodation, the County has an obligation to reasonably accommodate the individual's religious beliefs, observances or practices. A refusal to accommodate is justified when the County can demonstrate that an undue hardship would result from each available alternative method of accommodation.

Accommodations, upon request, should be made with respect to testing or other selection procedures within Essex County's control or purview. If an applicant or employee cannot take a test on a particular date due to religious beliefs, observances or practices, an alternative date should be selected, if no undue hardship occurs.



No inquiry should be made of applicants with regard to their need for religious accommodation. The interviewer, however, may indicate the normal hours of work and ask applicants whether they will be available. If during the interview, an applicant expresses a need for accommodation, the applicant may not be rejected based upon the need for accommodation, if accommodation can be made without undue hardship.

Applicants for and employees in uniformed positions may request a reasonable accommodation, based on their sincerely held religious beliefs, observances or practices. In determining whether a requested accommodation is reasonable or whether the requested accommodation will create an undue hardship on the County, the County will evaluate the facts and circumstances relevant to the individual situation. These facts and circumstances may include, but may not be limited to: the individual's job duties and assignments; the facility at which the individual works; the work location within the facility; the custodial obligation the individual has to inmates (if applicable); the impact the requested accommodation has on similarly-situated employees; whether the requested accommodation requires more than ordinary administrative costs, diminishes efficiency in other jobs, or infringes on other employees' rights or benefits; workplace safety; other laws or regulations; and/or whether the requested accommodation negatively impacts or jeopardizes the safety and security of the requesting individual, other employees, inmates (if applicable), and/or the public.

Some examples of acceptable methods of accommodation may include:

1. **Flexible Scheduling:**
In some instances, employees may be permitted to work flexible schedules, which may include: 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 employees to make up lost time due to the observance of religious practices. For example, members of the maintenance department may qualify for flexible scheduling. All determinations of the applicability of flexible schedules shall be at the discretion of Essex County.
2. **Lateral Transfer and Change of Job Assignments:**
In some instances, change of job assignments or lateral transfers may be permitted depending upon the individual circumstances. All determinations of the applicability of lateral transfers or change of job assignments shall be at the discretion of Essex County.

COUNTY OF ESSEX	
Human Resources Policies and Procedures	
Major Classification	WORK STANDARDS
Subject	RELIGIOUS ACCOMMODATION POLICY AND PROCEDURE
Pages	

3. **Modification of Workplace Policies, Practices, or Procedures:**

In some instances, a modification of workplace policies, practices, or procedures may be permitted depending upon the individual circumstances. All determinations of the applicability of modification of workplace policies, practices, or procedures shall be at the discretion of Essex County.

Other methods of accommodation may be more appropriate. This must be determined on an individual basis.

The County is required to determine the reasonableness of the accommodation requested by an individual on a case-by-case basis. **The department director and his/her designated management representative are encouraged to confer with the Human Resources Director or Affirmative Action Officer prior to granting or denying a request for religious accommodation.**

The department director or his/her designated management representative will review each Request for Religious Accommodation form submitted by an employee or applicant for completeness. If the form is missing critical information, the department director or his/her designated management representative will return the form to the employee or applicant, noting on the form the reason, date and time the form was returned to the employee or applicant.

If the form is complete, the department director or his/her designated management representative determines whether the religious accommodation request can be granted. Once a decision has been made to grant or deny a request for religious accommodation, the department director or his/her designated management representative should provide the employee or applicant with the Response to Request for Religious Accommodation form (Appendix B). A decision should be made no later than ten (10) business days after the submission of the Request for Religious Accommodation by the employee or applicant.

Appendix A

Request for Religious Accommodation
(To be completed by employee or applicant)

Applicant Information (This section to be completed by applicants only)			
Applicant name:		Department to which you are seeking employment:	
Home address:		Telephone (home):	
		Telephone (cell):	
		Email address:	

Employee Information (This section to be completed by employees only)			
Employee name:		Employee ID number:	
Position title:		If member of union, indicate which union:	
Department:		Work location:	
Work hours/days:		Days off:	
Home address:		Telephone (work):	
		Telephone (home):	
		Telephone (cell):	

Accommodation Information (This section to be completed by applicants and employees)	
Accommodation description and reason therefore (include the date the requested accommodation is to begin):	(Attach additional sheets if necessary.)
Accommodation requested is (circle one):	Permanent Temporary
If accommodation is temporary, please provide a start and end date.	
**Attach any documents which support your accommodation request.	

Appendix A

If the accommodation was requested previously, you must complete the following section:	
Date of previous request:	
Name/title of person who received request:	
Outcome (circle one):	Granted Denied
Date granted or denied:	
Status of accommodation (circle one):	Permanent Temporary

Applicant/Employee signature/date:	
Responding Official's signature:	
Request received on:	

Appendix B

Response to Request for Religious Accommodation
(To be completed by the department director or his/her designated management representative)

Complete this section ONLY if the accommodation is granted.	
Is the accommodation permanent or temporary (circle one)	Permanent Temporary
If accommodation is temporary, please provide a start and end date.	
Provide a synopsis of the accommodation, including effective date, duration, and changes to the requested accommodation, if any.	

Complete this section ONLY if the accommodation is denied.	
Provide the reason(s) for denial including why granting this request may cause undue hardship to the department/County.	(Attach additional sheets if necessary)

Responding Official's signature/date:

Once a decision has been made to grant or deny a request for religious accommodation, the responding official should provide the employee or applicant with a copy of this Response to Religious Accommodation Request form. A decision should be made no later than ten (10) business days after the submission of the Request for Religious Accommodation form by the employee or applicant.