



COUNCIL FOR SIKH AFFAIRS

October 14, 2016

Special Advisors
Changing Workplace Review, ELCPB
400 University Avenue, 12th floor
Toronto, Ontario
M7A 1T7

Re: Addressing Greater Workplace Diversity - Recognition of the wearing of Sikh articles of faith and the turban at workplaces in Ontario

This submission aims to address “greater workforce diversity” at workplaces in Ontario from the Sikh community’s perspective, as outlined in the Terms of Reference of the Review.

There are many workplaces in Ontario where there is difficulty for Sikhs to wear their articles of faith including the turban. We ask you to address this inequity in your final report so that Sikh people are able to wear their articles of faith throughout workplaces in Ontario.

In support of our position, we will share with you information regarding the significance of the turban to people of the Sikh faith, the provision of accommodation in law, previous case history, as well as examples from other jurisdictions that have been able to provide suitable accommodation. A possible path forward and framework for future work could include further study of the issue, consultation with all stakeholders, and enacting suitable legislation to allow the wearing of the Sikh articles of faith and the turban at workplaces across Ontario.

Ontario is our home:

Ontario is home to a large Sikh population. Early Sikh settlers in the 1960s faced racism and were victims of discrimination at their respective workplace. Since the adoption of the Charter and the Ontario Human Rights Code, Sikhs have fought for equity, equality and respect in society including the workplace. However, full and complete recognition is still elusive. We, the Sikhs, want full, complete and comprehensive recognition of our Sikh articles of faith in law.

The significance of the turban:

The keeping of uncut hair and the wearing of a turban are an integral and mandatory part of the Sikh faith. The Turban is an integral part of the body to devout Sikhs who will not wear anything in place of, under or over it such as a hat or cap.

The compulsory wearing of the turban for Sikhs is a unique aspect of not only their faith, but also of their racial and cultural identity.

The Ontario Human Rights Code:

The *Ontario Human Rights Code* applies to most employers in Ontario. It specifically prohibits discrimination in employment based on “creed”:

Employment - Every person has the right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability.

Freedom of religion is the basic principle that informs the right to equal treatment under the *Code* on the ground of creed. Under the *Code*, “creed” is a prohibited ground of discrimination. The Ontario Human Rights Commission has adopted the following formulation of “creed,” which is not defined in the *Code*:

Creed is interpreted to mean “religious creed” or “religion.” It is defined as a professed system and confession of faith, including both beliefs and observances or worship. A belief in a God of gods, or a single supreme being or deity is not a requisite.

Despite, these protections and provisions, Sikhs continue to face hardship in practicing their faith at the workplace.

Duty to accommodate:

Under the *Code*, employers, unions, housing providers and service providers have a legal duty to accommodate people’s sincerely held creed beliefs and practices to the point of undue hardship, where these have been adversely affected by a requirement, rule or standard.

The goal of accommodation is to help everyone have equal opportunities, access and benefits. Creed accommodations enable people affiliated by a creed to fully and equally take part and contribute in areas like the workplace, services or in housing, unions or professional associations, when they would otherwise face barriers because of their creed. They help to make sure that

people do not have to choose between observing their religion or creed, and being gainfully employed, or equally accessing or benefitting from housing, employment and services.

The duty to accommodate stems, in part, from a recognition that the “normal ways of doing things” in organizations and society are often not “neutral” but rather may inadvertently disadvantage, privilege or better meet the needs of some groups relative to others. Instead of giving special privileges or advantages, accommodations help to “level the playing field” by ensuring that all Ontarians are equally included and accommodated.

The *Ontario Human Rights Code* is meant to foster a society which will allow diversity to flourish. It is designed to protect and accommodate the needs and interests of those who differ from the dominant majority group. Although the *Code* does not require that any individual or group accommodate others to the point [where it creates] undue hardship, severe suffering, or disproportionate privation, it does conceive of inconvenience, and some degree of disruption and expense. Insofar as we want to make space within our communities for the comfortable coexistence of those who differ by religion, sex, sexual orientation, race, disability, and family grouping, there will be commensurate costs to be borne by all of us.

Most accommodations are not difficult or expensive, and do not cause a major burden for the people responsible. Inclusive design up front can often eliminate the need for accommodation, by building diversity and equality considerations into the normal way of doing things.

Where a person has been negatively affected by a requirement, factor or rule based on creed, failure to accommodate may lead to a finding of a breach of the *Code*.

Example cases of workplace discrimination in Ontario:

1. Over the last forty-one years, the Sikhs in Ontario have faced hardships in practising their faith at their workplace. In 1975, a Sikh gentleman was refused employment, because he was wearing turban. The matter was referred to Ontario Human Rights Commission and the inquiry was headed by Professor Peter A. Cumming.

Singh v. Security and Investigation Services Limited, Board of Inquiry, May 1977 BOI 79

On 31st of May 1977, Professor rendered his decision and order:

Mr. Singh was denied employment because of his religious beliefs and practices. Accordingly, I order that Security is now obliged to offer Mr. Singh employment immediately, or as soon as it has an opening for the employment of a security guard, since at the time of his application it is clear there was an employment opportunity which would have been offered to him had he shaved his beard and removed his turban. No present employee of Security will be jeopardized because of this decision.

I further order that for the future Security is to make an exception, for Mr. Singh and for any other sincere, practising member of the Sikh faith who is a prospective employee of Security, in respect to Security's employment regulations of requiring all their guards to wear caps while on

duty and to be clean-shaven. Security must accommodate prospective Sikh employees in respect to their religious practices by not requiring them to dispense with their turbans and beards as a prerequisite to employment as security guards with Security.

2. In 1978, an employee of the Canadian National Railway, Mr. K.S. Bhinder launched a complaint with Canadian Human Rights Commission.

Bhinder v. Canadian National Railway, 1981 4 (CHRT)

The Complainant before this Human Rights Tribunal, Mr. K.S. Bhinder, alleged in his complaint that the Respondent, the Canadian National Railways, had engaged in a discriminatory practice by requiring that the Complainant comply with its corporate policy that all persons in its Toronto coach yard wear hard hats, thereby discriminating against him. Mr. Bhinder, being a Sikh, for religious reasons cannot wear anything on his head other than a turban. Specifically, the Complainant alleged a breach of sections 7 and 10 of the Canadian Human Rights Act.

Peter Cumming, Chairperson, Human Rights Tribunal, released his decision on 31st of August 1981.

ORDER

- The Respondent, the Canadian National Railways, is ordered to give the Complainant, Mr. K.S. Bhinder, the opportunity of continuing his employment as a maintenance electrician with the Respondent, and provided Mr. Bhinder delivers to the Respondent in writing, within thirty (30) days of the date of this Order, notice that he wishes to be reinstated and continue his employment with the Respondent, he shall be so reinstated within seven (7) days of delivery of such notice.
- The Respondent is ordered to exempt the Complainant, Mr. K.S. Bhinder, from the application of its hard hat policy and regulation in its Toronto coach yard.
- Upon Mr. Bhinder being reinstated to his employment, the Respondent shall extend to Mr. Bhinder the same seniority for all purposes, including with respect to tenure of position and rate of pay, as if he had not been absent since December 5, 1978, but rather had continued to work as a maintenance electrician to the present.
- The Respondent shall pay to the Complainant fourteen thousand five hundred (\$14,500.) dollars within thirty (30) days of the date of this Order, as special damages in compensation for his loss of salary.

3. The complainant, Deepinder Loomba, filed a complaint on January 25, 2006, under the Ontario Human Rights Code, R.S.O. 1990, c. H.19, as amended (“Code”), alleging Home Depot Canada Inc. (the “corporate respondent”) and Brian Busch (the “personal respondent”) discriminated against him in the areas of employment and contracts on the basis of race, colour, ethnic origin, and creed. The complainant is Sikh and, in observance of his faith, wears a turban. On December 6, 2005, the complainant was assigned by his employer, Reilly’s Security

Services, to work as a security guard at a new Home Depot store which was under construction in Milton, Ontario. The complaint alleges that the personal respondent, an assistant store manager, refused to allow the complainant to work at the site because the complainant would not wear a hard hat. The complainant contends that the respondents selectively enforced the hard hat rule and further alleges that the personal respondent subjected him to rude and offensive behaviour because of his turban.

Loomba v. Home Depot Canada, 2010 HRTO 1434

Ena Chadha, the Adjudicator and Vice Chair of the Ontario Human Rights Tribunal released her decision and conclusion on 29th of June 2010.

DECISION

The complainant's refusal to remove his turban pursuant to his personal religious beliefs engages the *Code*-protected ground of "creed". The complainant's relationship and dealings with the respondents comes within the concept of "with respect to employment" as set out in section 5 of the *Code*. I find that the preponderance of evidence establishes that the respondents discriminated by selectively enforcing the hard hat rule against the complainant. I further find that the personal respondent subjected the complainant to discriminatory treatment in the form of rude and offensive comments and conduct.

CONCLUSION

Having found that the respondents discriminated against the complainant by selectively enforcing the hard hat rule and that the personal respondent subjected the complainant to discriminatory comment and conduct contrary to the *Code*, there remains the outstanding issues of whether or not the respondents have a *bona fide* and reasonable justification in their enforcement of the *OHS* hard hat requirement and whether or not they satisfied the duty to accommodate. These issues will be dealt with in the second stage of the hearing.

While the parties made submissions with respect to proposed remedial orders, I will address the matter of remedies after I have made a final decision with respect to the above-noted outstanding issues. The Registrar will contact the parties in order to schedule the second stage of the hearing.

Duty to accommodate has not worked for Sikhs – Trucking Industry:

Over the past year, we have intervened in many cases where Sikh truck drivers were forced to wear a hard hat or were ordered to remain sitting in the truck while the company either loaded or unloaded his truck.

When a truck driver goes to load or unload his truck, he is never in contact with any machinery. His job is going to the office, doing the necessary paperwork and leaving. Still, employers have been refusing to accommodate and conflict arises.

In December 2015, we wrote to Domtar Inc. – a company which designs, manufactures, markets and distributes a wide variety of fiber-based products including communication papers, specialty and packaging papers, and absorbent hygiene products. Please find the relevant correspondence attached. Appendix A

Some drivers have complained about this company's practice of demanding the wearing of a helmet for routine paper work. We proactively contacted them to inquire about their policy and addressed the issue.

Other jurisdictions (U.K.):

On 1st October 2015, changes in the employment laws were implemented which allow Sikhs to wear turbans, in place of a safety helmet, in all workplaces across the UK. All relevant information is attached. Appendix B

Other jurisdictions (U.S.A.):

Title VII of the Civil Rights Act of 1964

Title VII of the Civil Rights Act of 1964 (Pub. L. 88-352) (Title VII), as amended, as it appears in volume 42 of the United States Code, beginning at section 2000e. Title VII prohibits employment discrimination based on race, color, religion, sex and national origin. The term "religion" includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.

United States, Department of Labor: Exemption for Religious Reason from Wearing Hard Hats

In November 1993, President Clinton signed into law the Religious Freedom Restoration Act of 1993. Under the law, Occupational Safety and Health Administration issued the following guidelines:

- a. There shall be no citations or other enforcement actions against employers for violations of hardhat standards when their employees fail to wear hard hats due to personal religious convictions.
- b. Citations may be issued to employers of construction workers, with such convictions, for failure to instruct them about overhead hazards, as required by 29 CFR 1926.21(b) (2), as with employers of construction workers without such objections.
- c. Employers of non-construction workers, with or without such convictions, should also instruct their workers about such hazards.
- d. All instances of an employee's refusal to wear a hard hat, or any other personal protective equipment, due to the employee's personal religious conviction, shall be reported to the Regional Office so that such instances of refusal can be monitored.
- e. Whenever a citation is being considered because of an employee's refusal to use personal protective equipment (other than a hard hat) due to a personal religious conviction, the National Office shall be contacted prior to the issuance of the citation.

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- c. Employers of non-construction workers, with or without such convictions, should also instruct their workers about such hazards.
- d. All instances of an employee's refusal to wear a hard hat, or any other personal protective equipment, due to the employee's personal religious conviction, shall be reported to the Regional Office so that such instances of refusal can be monitored.
- e. Whenever a citation is being considered because of an employee's refusal to use personal protective equipment (other than a hard hat) due to a personal religious conviction, the National Office shall be contacted prior to the issuance of the citation.

Given the above information, It is clear that Sikhs should be able to wear their articles of faith including the turban in all workplaces across Ontario. This right is mentioned in both the *Charter* and the *Ontario Human Rights Code* with respect to the protection of people irrespective of their religion or creed. Enclosed herewith is all relevant information. Appendix C

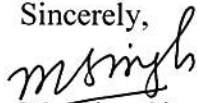
Justice delayed is justice denied. How much longer must Sikh people keep fighting for equity and equality?

A former Chief Commissioner of the Ontario Human Rights Commission, Ms. Barbara Hall once said, "Ontario has made progress in combating the scourge of racism and other forms of discrimination, but the fight is far from over." She also said, "If we have to change society...on the basis of one individual complaint after the other, it would take many lifetimes." "Most people who care about the kind of society we live in aren't prepared to wait that long."

Should Sikh people have to fight case after case, year after year, to be recognized as equal citizens? We feel that the government of Ontario is well positioned to take the necessary leadership role and legislate that Sikh articles of faith including the turban be allowed at all workplaces in Ontario.

We recommend that suitable remedies be proposed by you in your final report, which amends the *Employment Standards Act* and recognise the wearing of the Sikh articles of faith and the turban at workplaces in Ontario.

Sincerely,



Manohar Singh Bal

Secretary of Policy Development

Tel.: (416) 471-9724

Email: policy@councilforsikhaffairs.com



Corporate Office
100 Kingsley Park Drive
Fort Mill, SC 29715
www.domtar.com

April 4, 2016

Mr. Bikram Singh Bal, Legal Counsel
Council for Sikh Affairs
250 University Avenue, Suite 245
Toronto, Ontario M5H 3E5

Dear Sir:

Thank you for your recent correspondence to Domtar regarding our Company's accommodation toward wearing religious symbols and more specifically accommodating the wearing of religious symbols if such wearing may conflict with the proper use of personal protective equipment. Thank you too, for your patience as Domtar has worked internally to address this issue.

The safety of the public, Domtar workers, vendors, site visitors – anyone who has contact with one of our sites – is our greatest concern. Domtar is proud of our safety accomplishments, having received provincial, state and federal recognition for the results we have achieved in lowering our overall incidence rate. Domtar's safety record is among the best in the industry, earning our Company the distinction of being "world class" in safety matters. A strict adherence to our policy on personal protective equipment has made our employees and visitors safer and, without question, has prevented injuries.

Your correspondence helped to raise our awareness and forced us to develop a deeper understanding of how and when our policy may conflict with an individual's liberty of religious expression. Accordingly, we have modified our policy on personal protective equipment to recognize and respect the religious practices of our employees and visitors. Our policy now calls for reasonable accommodation when a person's safety can otherwise be reasonably protected, or the requirements of a task (job) can be modified so as to not require personal protective equipment. You must understand, however, that safety will always be our paramount priority, and we believe some duties within our facilities will always require personal protective equipment.

Mr. Bikram Singh Bal
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We have communicated our policy modification to operating sites. I have confidence this issue is resolved within Domtar. I make the request that the Council for Sikh Affairs notify us immediately should you become aware of further concerns. Timely reporting of such concerns will allow us to address the issue and continue our education process.

Please direct any concerns to Domtar's Senior Director of Health and Safety, Mr. Larry Warren at 803/802-8022 or me at 803/802-8041.

With best regards, I remain

Sincerely,



Thomas S. Howard
Vice President, Government Relations

Copy: Robert J. Steacy, Chairman of the Domtar Board of Directors
Domenic Pilla, Member, Domtar Board of Directors
Zygmunt Jablonski, Senior Vice President, Chief Legal and Administrative Officer
Larry Warren, Senior Director of Health and Safety



COUNCIL FOR SIKH AFFAIRS

VIA EMAIL & REGULAR MAIL

December 15, 2015

Domtar Corporation
1 Duke Street
Postal Bag 4004
Dryden, Ontario
P9N 3J7

Attention: Bonny Skene, Regional Public Affairs Manager
(Ontario and British Columbia)

Dear Ms. Skene:

RE: Wearing of Sikh Articles of Faith and the Turban at the Workplace

It has been brought to our attention that turban-wearing Sikh truck drivers have been denied entry to your facilities due to their *bona fide* religious practice of wearing a turban.

I am writing to inquire as to Domtar Corporation's policy on the wearing and accommodation of articles of faith at its facilities.

Enclosed please find a research paper titled, "Accommodation of the Sikh Turban and Articles of Faith in Employment", for your review.

I am certain that Domtar Corporation can work with us to collectively establish policies and procedures to ensure that turban-wearing Sikhs are not denied entry to its facilities.

We would appreciate the opportunity to meet and discuss this matter with you further.

We look forward to hearing from you.

Yours truly,
COUNCIL FOR SIKH AFFAIRS

Bikram Singh Bal
Legal Counsel

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Encl.

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ACCOMMODATION OF THE SIKH TURBAN AND ARTICLES OF FAITH IN EMPLOYMENT

Raj Anand
WeirFoulds LLP

Bikram Singh Bal
Feltmate Delibato Heagle LLP

Introduction

The Sikh religion was founded by Guru Nanak Dev in 1469. By 1699, the Sikh code of conduct and articles of faith were formalized and proclaimed by the tenth Guru of the Sikhs, Guru Gobind Singh.

As part of their identity, Sikhs are required to keep uncut hair and wear a turban at all times. Also, Sikhs who have been baptized are required to wear 5 articles of faith at all times, which are commonly referred to as the 5Ks. The 5Ks are: Kesh (uncut hair and beard), Kirpan (small ceremonial dagger), Kangha (small wooden comb), Kara (steel bracelet), and Kachera (piece of undergarment).

This introductory paper will examine the employer's legal obligation to accommodate the Sikh turban and articles of faith at the workplace. Some examples will also be provided of how Canadian courts and tribunals have specifically dealt with accommodating Sikhs at various types of workplaces.

Ontario Human Rights Code

The *Ontario Human Rights Code*¹ applies to most employers in Ontario. It specifically prohibits discrimination in employment based on "creed":

5.(1) **Employment.** - Every person has the right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability.

¹ RSO 1990, c H19 [Code].

However, an employer is able to defend a claim of discrimination if the discriminatory conduct or requirement is a *bona fide* occupational requirement. The *Code* specifies that:

11.(1) Constructive Discrimination. - A right of a person under Part I is infringed where a requirement, qualification or factor exists that is not discrimination on a prohibited ground but that results in the exclusion, restriction or preference of a group of persons who are identified by a prohibited ground of discrimination and of whom the person is a member, except where,

- (a) the requirement, qualification or factor is reasonable and *bona fide* in the circumstances; or
- (b) it is declared in this Act, other than in section 17, that to discriminate because of such ground is not an infringement of a right.

This defence, which is referred to as a *bona fide* occupational requirement (“BFOR”), may only be relied upon if the needs of the group or person discriminated against cannot be satisfied or accommodated without undue hardship to the employer. The *Code* provides:

11.(2) The Tribunal or a court shall not find that a requirement, qualification or factor is reasonable and *bona fide* in the circumstances unless it is satisfied that the needs of the group of which the person is a member cannot be accommodate without undue hardship on the person responsible for accommodating those needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

In *British Columbia (Public Service Employee Relations Commission) v BCGSEU* [“*Meiorin*”],² the Supreme Court of Canada set out the three-step test for determining whether a *prima facie* discriminatory standard is a *bona fide* occupational requirement:

Having considered the various alternatives, I propose the following three-step test for determining whether a *prima facie* discriminatory standard is a BFOR. An employer may justify the impugned standard by establishing on the balance of probabilities:

- (1) that the employer adopted the standard for a purpose rationally connected to the performance of the job;
- (2) that the employer adopted the particular standard in an honest and good faith belief that it was necessary to the fulfillment of that legitimate work-related purpose; an
- (3) that the standard is reasonably necessary to the accomplishment of that legitimate work-related purpose. To show that the standard is reasonably necessary, it must be demonstrated that it is impossible to accommodate individual employees sharing the characteristics of the claimant without imposing undue hardship upon the employer.

² [1999] 3 SCR 3 at para 54.

Discriminatory practices that fail to meet this statutory justification test are unlawful and will be struck down. However, the *Code* does create an exception for “special interest organizations” which primarily serve the interests of identifiable religious groups; these organizations may be permitted to prefer job applicants who are also members of that group.

Definition of Creed and Religion

Freedom of religion is the basic principle that informs the right to equal treatment under the *Code* on the ground of creed. Under the *Code*, “creed” is a prohibited ground of discrimination. The Ontario Human Rights Commission has adopted the following formulation of “creed,” which is not defined in the *Code*:

Creed is interpreted to mean “religious creed” or “religion.” It is defined as a professional system and confession of faith, including both beliefs and observances of worship. A belief in a God or gods, or a single supreme being or deity not a requisite.³

The Commission interprets religion broadly to include non-deistic bodies of faith as well as *bona fide* newer religions, which are assessed on a case-by-case basis. The definition is subjective and includes personal religious beliefs, practices and observances, provided that they are sincerely held.⁴ However, the definition does not include secular, moral, ethical, or political beliefs⁵ and does not extend to religions that incite hatred or violence.⁶

In *Amsalem et al v Syndicat Northcrest*,⁷ the Supreme Court of Canada confirmed that the individual character of religious experience is protected:

...this freedom encompasses objective as well as personal notions of religious belief, "obligation," precept, "commandment," custom or ritual. *It is the religious or spiritual essence of an action, not any mandatory or perceived-as-mandatory nature of its observance, that attracts protection. An inquiry into the mandatory nature of an alleged religious practice is not only inappropriate, it is plagued with difficulties.*⁸ [emphasis added]

Under the *Code*, the same definition of religion or creed applies. Where a religious practice is being restricted by his or her employer, there is no requirement that the claimant

³ The Ontario Human Rights Commission, *Policy on Creed and the Accommodation of Religious Observances*, ISBN No. 0-7778-6518-1. Approved by the Commission: October 20, 1996. Internet at: <http://www.ohrc.on.ca>. [*Policy on Creed*].

⁴ *Bhinder v Canadian National Railway Co* [1985] 2 SCR 561 [*Bhinder*].

⁵ *Jazairi v. York University* (1999), 175 DLR (4th) 302 (Ont CA).

⁶ *Ibid.*

⁷ [2004] 2 SCR 551 [*Amsalem*].

⁸ *Ibid* at para 47.

prove the practice is mandatory pursuant to their religion, as long as they show that the practice is based on a sincerely held belief.

Employer's Legal Obligations

While the *Code* provides the right to be free of discrimination, subsection 11(2) of the *Code* imposes a corresponding duty to accommodate based on the needs of the group or person being discriminated against. The duty to accommodate requires that the employer either look for alternatives to the rule, modify the rule or make an exception for the discriminated group or person, so long as the accommodation does not place undue hardship on the employer.

To establish undue hardship, several factors could be considered, such as whether the employer investigated alternative procedures; whether these procedures were implemented; whether it is necessary for all employees to meet the single standard for the employer to accomplish its legitimate purpose; whether there is a way to do the job that is less discriminatory, and others.

Undue hardship is a relative concept and must be considered on a case-by-case basis. Accommodation may cause hardship to one employer but not to another.

According to the *Code*, the scope of undue hardship is narrow and can only be related to cost or health and safety risks.⁹ In considering these factors, the employer must show that accommodation would threaten the essential nature or financial viability of the business. Also, the Ontario Human Rights Commission guidelines specifically prohibit “business inconvenience”, “customer preferences”, or “employee morale” as a defence to the duty to accommodate.¹⁰

Accommodation of the Sikh Turban and Articles of Faith

The Kirpan

In *Pandori v Peel Board of Education*,¹¹ the Peel Board of Education suspended a student because he wore a Kirpan. Previously, a Peel Board of Education teacher was also dismissed for

⁹ *Supra* note 1 at s 11.(2).

¹⁰ The Ontario Human Rights Commission, *Policy and Guidelines on Disability and the Duty to Accommodate*, ISBN No. 0-7794-0687-7. Approved by the Commission: November 23, 2000. Internet at: <http://www.ohrc.on.ca>.

¹¹ (1990) 12 CHRR D/364, aff'd (1991), 14 CHRR D/403 (Ont Div Ct), leave to Ont CA refused [*Pandori*].

wearing a Kirpan while teaching. Ultimately, the Peel Board of Education was required to change its policies and allow Sikh teachers and students to wear the Kirpan in classrooms.

Since that decision, the Supreme Court of Canada has also upheld the right to wear the Kirpan in schools. In *Multani v Commission Scolaire Marguerite-Bourgeoys*,¹² a student was suspended because he wore a Kirpan. The school prohibited Kirpans as part of the school board's broader prohibition on weapons. The Supreme Court of Canada held that such a complete prohibition infringed on the student's freedom of religion and that there were options available, which would have less impact on the student's freedom of religion, such as restrictions that would ensure the Kirpan was sealed under his clothing. While this case did not deal with an employer-employee relationship, it did establish the Kirpan as an article of the Sikh faith, which should be reasonably accommodated.

Indeed, the Ontario Human Rights Commission's *Policy on Creed* states that, short of undue hardship, schools and organizations in Ontario have a duty to accommodate a person's religious headcovering and Sikh Kirpans.¹³

The Turban

Uniforms

In the 1977 decision of *Singh (Ishar) v Security and Investigation Services Ltd.*,¹⁴ the Ontario Human Rights Board of Inquiry found that a security company's policy requiring all security guards to wear a hat and to be clean-shaven discriminated against Ishar Singh, a turbaned Sikh who sought to be employed as a security guard. The security company justified its policy by arguing that it was based on its perception of the most appropriate uniform policy and personal appearance code that would be acceptable to the public.

The Board of Inquiry found that the company's policy did not intend to discriminate against Mr. Singh; however, in its effect it was a discriminatory policy. The Board of Inquiry held that the security company could accommodate Mr. Singh's *bona fide* religious beliefs without inflicting undue hardship on itself. Further, the notion of perceived public discomfort with the idea of a turbaned and bearded security guard was unacceptable, as this notion was inconsistent with the idea of equality.

¹² [2006] 1 SCR 256 [*Multani*].

¹³ *Supra* note 3.

¹⁴ Ontario Human Rights Board of Inquiry, unreported decision of May 31, 1977.

In *Sehdev v Bayview Glen Junior Schools Ltd*¹⁵, the Ontario Human Rights Board of Inquiry found that prohibiting a Sikh student from wearing a turban at school was religious discrimination.

Across Ontario, police forces have enacted policies to allow Sikh officers to wear the turban while on duty as part of their uniform.

In 1990, the Canadian government amended the Royal Canadian Mounted Police (RCMP) uniform requirements, allowing Sikh officers to wear turbans as part of their uniform. In *Grant v Canada (Attorney General)*,¹⁶ a group of RCMP veterans sought to force the RCMP to stop accommodating the wearing of turbans and other religious requirements for Sikh officers. The veterans argued, among other things, that the turban would affect Sikh officers' appearance of neutrality. The Federal Court of Canada dismissed the action and upheld the RCMP policy allowing Sikh officers to wear the turban.

Hardhat Requirement

In *Bhinder*,¹⁷ Mr. Bhinder was employed by CN Rail in 1974 as a maintenance electrician in the Toronto coach yard. Four years later, CN Rail introduced a policy requiring all employees working in the coach yard to wear a hardhat for safety reasons. Mr. Bhinder, however, was a Sikh who wore a turban and refused to wear the hard hat. CN Rail refused to make an exception and Mr. Bhinder was dismissed.

The Supreme Court of Canada upheld CN Rail's workplace policy that required all employees in the coach yard to wear hardhats. The Supreme Court of Canada found that the hard hat was a *bona fide* occupational requirement and that CN Rail had not demonstrated any intention to discriminate. Further, the Supreme Court of Canada held that when a workplace policy is found to be a *bona fide* occupational requirement, the employer has no duty to accommodate the employee who is being discriminated.

However, the Supreme Court of Canada overturned this decision five years later in *Central Alberta Dairy Pool v Alberta (Human Rights Commission)*.¹⁸ In this case, the Supreme Court of Canada ruled that workplace policies that discriminate against employees are considered to be discriminatory if the employer does not accommodate the employee to the point

¹⁵ (1988), 9 CHRR D/4881 (Ont Bd of Inquiry) [*Sehdev*].

¹⁶ [1995] 1 CF 158 (AG) (1995), 1994 CanLII 3507 (FC) [*Grant*].

¹⁷ *Supra* note 4.

¹⁸ [1990] 2 SCR 489 [*Central Alberta*].

of undue hardship. This overturned the reasoning of the Supreme Court of Canada in *Bhinder* and confirmed the employer's duty to accommodate employees to the point of undue hardship under the federal Act.

In *Loomba v Home Depot Canada*,¹⁹ Mr. Loomba was a security guard, assigned to monitor a Home Depot store that was under construction. There were signs indicating hardhats were required at the site. As Mr. Loomba wore a turban, he did not wear the hardhat. Home Depot's assistant manager insisted that Mr. Loomba must wear the hardhat; however, Mr. Loomba refused. As a result, Mr. Loomba was removed from the job.

The Human Rights Tribunal of Ontario found that Mr. Loomba had been discriminated against in a negative manner due to this turban. Also, it was found that the store selectively enforced the hardhat rule, and was stricter on Mr. Loomba because of his turban. In other words, the hardhat requirement could not be necessary when the assistant manager himself did not wear it at all times while he was on the construction site.

Conclusion

The *Code* and Canadian court decisions make it clear that employers have a duty to accommodate employees based on their religious requirements. This can be challenging for employers, as it obligates them to balance the requirement of equality with other considerations, such as safety or financial restraints. However, in order to ensure that true equality is achieved in a meaningful manner, some individuals must be treated differently from the rest. Ironically, as the courts have recognized, identical treatment can be the worst form of inequality. Indeed, it is that identical treatment, and the failure to accommodate where necessary, that gives rise to the violation of the *Code*. The *Code* clarifies that the scope of undue hardship is narrow and can only be related to cost or health and safety considerations. "Business inconvenience", "customer preference" or "employee morale" can never be used as a defence to the duty to accommodate.

Policy decisions and judicial judgments with respect to the turban and Kirpan show that reasonable accommodation of Sikhs is possible in all sorts of workplaces and as such, employers must take steps to accommodate the Sikh turban and articles of faith to the point of undue hardship.

¹⁹ 2010 HRTO 1434 (CanLII) [*Loomba*].

Raj Anand is a partner at WeirFoulds LLP. He is a senior civil litigation, administrative and human rights lawyer. Raj is a former Chief Commissioner of the Ontario Human Rights Commission and currently serves as a bencher of the Law Society of Upper Canada. Raj has spoken and written extensively on issues of religious accommodation. In 2003, he received the Law Society Medal, the highest honour awarded by the governing body of the legal profession in Ontario.

Bikram Singh Bal is a lawyer at Feltmate Delibato Heagle LLP. He completed his law degree from the University of Alberta Faculty of Law and completed his Bachelor of Arts (Hons.) at Carleton University. Bikram has been actively involved in the Sikh community for many years and regularly advises on issues of human rights and accommodation.

For any further information on the accommodation of the Sikh Turban and Kirpan, please do not hesitate to contact Bikram Singh Bal at bsinghbal@weirfoulds.com



Deregulation Act 2015

2015 CHAPTER 20

Measures affecting the workplace: general

6 Requirements to wear safety helmets: exemption for Sikhs

- (1) Section 11 of the Employment Act 1989 (exemption of Sikhs from requirements as to wearing of safety helmets on construction sites) is amended in accordance with subsections (2) to (10).
- (2) In subsection (1), for “on a construction site” substitute “at a workplace”.
- (3) In subsection (2), in paragraph (a), for “on a construction site” substitute “at a workplace”.
- (4) In subsection (5), in the opening words, for “on a construction site” substitute “at a workplace”.
- (5) After subsection (6) insert—
 - “(6A) This section does not apply to a Sikh who—
 - (a) works, or is training to work, in an occupation that involves (to any extent) providing an urgent response to fire, riot or other hazardous situations, and
 - (b) is at the workplace—
 - (i) to provide such a response in circumstances where the wearing of a safety helmet is necessary to protect the Sikh from a risk of injury, or
 - (ii) to receive training in how to provide such a response in circumstances of that kind.
 - (6B) This section also does not apply to a Sikh who—
 - (a) is a member of Her Majesty’s forces or a person providing support to Her Majesty’s forces, and
 - (b) is at the workplace—

Status: This is the original version (as it was originally enacted).

- (i) to take part in a military operation in circumstances where the wearing of a safety helmet is necessary to protect the Sikh from a risk of injury, or
 - (ii) to receive training in how to take part in such an operation in circumstances of that kind.”
- (6) In subsection (7)—
 - (a) omit the definitions of “building operations”, “works of engineering construction” and “construction site”;
 - (b) before the definition of “injury”, insert—

““Her Majesty’s forces” has the same meaning as in the Armed Forces Act 2006;”;
 - (c) at the end insert—

““workplace” means any premises where work is being undertaken, including premises occupied or normally occupied as a private dwelling; and “premises” includes any place and, in particular, includes—

 - (a) any vehicle, vessel, aircraft or hovercraft,
 - (b) any installation (including a floating installation or one resting on the seabed or its subsoil or on other land covered with water or its subsoil), and
 - (c) any tent or moveable structure.”
- (7) In subsection (8), in paragraph (b), for “on a construction site” substitute “at a workplace”.
- (8) In subsection (9)—
 - (a) for “relevant construction site” substitute “relevant workplace”;
 - (b) for “construction site” (in the second place where it occurs) substitute “workplace”.
- (9) In subsection (10), for the words from ““relevant construction site” to the end of the subsection substitute ““relevant workplace” means any workplace where work is being undertaken if the premises and the activities being undertaken there are premises and activities to which the Health and Safety at Work etc. Act 1974 applies by virtue of the Health and Safety at Work etc. Act 1974 (Application outside Great Britain) Order 2013.”
- (10) In the sidenote, for “on construction sites” substitute “at workplaces”.
- (11) Section 12 of that Act (protection of Sikhs from racial discrimination in connection with requirements as to wearing of safety helmets) is amended as follows.
- (12) In subsection (1)—
 - (a) in paragraph (a), for “on a construction site” substitute “at a workplace”;
 - (b) in paragraph (b), for “on such a site” substitute “at such a workplace”.
- (13) In subsection (3), for “Subsections (7) to (10)” substitute “Subsections (6A) to (10)”.



Deregulation Act 2015

2015 CHAPTER 20

Measures affecting the workplace: general

- 7 Requirements to wear safety helmets: exemption for Sikhs: Northern Ireland**
- (1) Article 13 of the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1990 (S.I. 1990/246) is amended in accordance with subsections (2) to (8).
 - (2) In paragraph (1), for “on a construction site” substitute “at a workplace”.
 - (3) In paragraph (2), in sub-paragraph (a), for “on a construction site” substitute “at a workplace”.
 - (4) In paragraph (5), in the opening words, for “on a construction site” substitute “at a workplace”.
 - (5) After paragraph (6) insert—
 - “(6A) This Article does not apply to a Sikh who—
 - (a) works, or is training to work, in an occupation that involves (to any extent) providing an urgent response to fire, riot or other hazardous situations, and
 - (b) is at the workplace—
 - (i) to provide such a response in circumstances where the wearing of a safety helmet is necessary to protect the Sikh from a risk of injury, or
 - (ii) to receive training in how to provide such a response in circumstances of that kind.
 - (6B) This Article also does not apply to a Sikh who—
 - (a) is a member of Her Majesty’s forces or a person providing support to Her Majesty’s forces, and
 - (b) is at the workplace—

Status: This is the original version (as it was originally enacted).

- (i) to take part in a military operation in circumstances where the wearing of a safety helmet is necessary to protect the Sikh from a risk of injury, or
 - (ii) to receive training in how to take part in such an operation in circumstances of that kind.”
- (6) In paragraph (7)—
 - (a) omit the definitions of “building operations”, “works of engineering construction” and “construction site”;
 - (b) before the definition of “injury”, insert—

““Her Majesty’s forces” has the same meaning as in the Armed Forces Act 2006;”;
 - (c) at the end insert—

““workplace” means any premises where work is being undertaken, including premises occupied or normally occupied as a private dwelling; and “premises” includes any place and, in particular, includes—

 - (a) any vehicle, vessel, aircraft or hovercraft,
 - (b) any installation (including a floating installation or one resting on the seabed or its subsoil or on other land covered with water or its subsoil), and
 - (c) any tent or moveable structure.”
- (7) In paragraph (8), in sub-paragraph (b), for “on a construction site” substitute “at a workplace”.
- (8) In the heading, for “on construction sites” substitute “at workplaces”.
- (9) Article 13A of that Order (protection of Sikhs from racial discrimination in connection with requirements as to wearing of safety helmets) is amended as follows.
- (10) In paragraph (1)—
 - (a) in sub-paragraph (a), for “on a construction site” substitute “at a workplace”;
 - (b) in sub-paragraph (b), for “on such a site” substitute “at such a workplace”.
- (11) In paragraph (3), for “Paragraphs (7) and (8)” substitute “Paragraphs (6A) to (8)”.

Press release

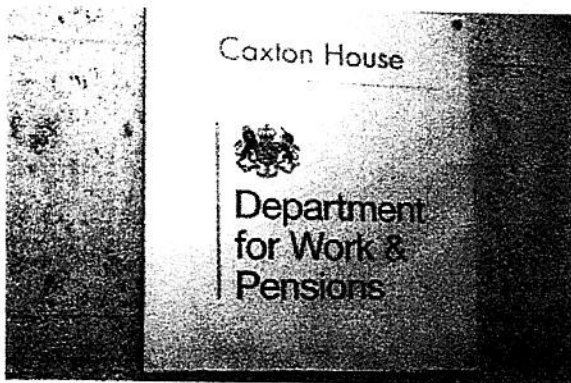
Government overturns turban workplace rule

From: Department for Work and Pensions and The Rt Hon Priti Patel MP

First published: 1 October 2015

Part of: Employment

New rules mean Sikhs across the UK will no longer face the prospect of disciplinary action for wearing turbans in the workplace.



For more than 20 years, Sikhs working in the construction industry have been exempted from rules requiring head protection – but because of a legal loophole, those in less dangerous industries, such as those working in factories and warehouses, were not.

This meant that Sikhs in many jobs who chose to wear turbans rather than the required head protection could be at risk of disciplinary action or even dismissal.

Turban-wearing Sikhs will now have the right to choose not to wear head protection and will be exempt from legal requirements to wear a safety helmet in all workplaces.

Minister for Employment and Indian Diaspora Champion, Priti Patel, said:

This change demonstrates that, whoever you are, whatever your background, and whatever industry you choose – if you work hard and want to get on in life, this government will be on your side.

As the Prime Minister's Indian Diaspora Champion as well as Employment Minister, I'm delighted to be part of the government that has made this change. It makes me proud that the UK is the home of such a talented, ambitious and hardworking community.

Spokesperson for Sikh Council UK, Gurinder Singh Josan, said:

We are pleased that Parliament listened to our campaign and enabled this vital change in the law.

It will make a real difference to Sikhs in the UK by increasing the number of workplaces that turban wearing Sikhs can work in whilst maintaining their religiously mandated identity.

More information

Turban wearing Sikhs have been exempt from wearing head protection on construction sites since 1989. The existing exemption created an anomaly by applying to construction sites, but not to less hazardous environments – the government has taken action to correct this.

A new clause into the Deregulation Bill 2015 extends the existing exemption in the Employment Act to all workplaces.

Should an individual suffer injuries as a consequence of not wearing head protection, employers will be legally protected through the extension of limited liability.

There are exclusions for emergency response services and the military, which apply only in hazardous operational situations when the wearing of a safety helmet is considered necessary. This may include, for example, entering a burning building or those where protective clothing needs to enclose the whole body in situations such as bomb disposal, or dealing with hazardous materials like chemical leaks, biohazards or radiation.

This will not bar Sikhs from the Armed Forces or Police and Fire services and this clause will make no blanket ban on participation by turban-wearing Sikhs. There are already about 4,000 Sikhs in the police and 230 across the armed forces.

Contact Press Office

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Deregulation Bill

The Committee consisted of the following Members:

Chairs: Mr Jim Hood , †Mr Christopher Chope

† Barwell, Gavin (*Croydon Central*) (Con)

† Bingham, Andrew (*High Peak*) (Con)

† Brake, Tom (*Parliamentary Secretary, Office of the Leader of the House of Commons*)

† Bridgen, Andrew (*North West Leicestershire*) (Con)

† Cryer, John (*Leyton and Wanstead*) (Lab)

† Docherty, Thomas (*Dunfermline and West Fife*) (Lab)

† Duddridge, James (*Rochford and Southend East*) (Con)

† Heald, Oliver (*Solicitor-General*)

† Hemming, John (*Birmingham, Yardley*) (LD)

† Hopkins, Kelvin (*Luton North*) (Lab)

† Johnson, Gareth (*Dartford*) (Con)

† Maynard, Paul (*Blackpool North and Cleveleys*) (Con)

† Nokes, Caroline (*Romsey and Southampton North*) (Con)

† Onwurah, Chi (*Newcastle upon Tyne Central*) (Lab)

† Perkins, Toby (*Chesterfield*) (Lab)

† Rutley, David (*Macclesfield*) (Con)

† Shannon, Jim (*Strangford*) (DUP)

Turner, Karl (*Kingston upon Hull East*) (Lab)

Williamson, Chris (*Derby North*) (Lab)

Fergus Reid, David Slater, *Committee Clerks*

† attended the Committee

Column number: 551

Public Bill Committee
Tuesday 25 March 2014
(Morning)
[Mr Christopher Chope in the Chair]
Deregulation Bill

New Clause 18

Requirements to wear safety helmets: exemption for Sikhs

‘(1) Section 11 of the Employment Act 1989 (exemption of Sikhs from requirements as to wearing of safety helmets on construction sites) is amended in accordance with subsections (2) to (10).

(2) In subsection (1), for “on a construction site” substitute “at a workplace”.

Column number: 579

(3) In subsection (2), in paragraph (a), for “on a construction site” substitute “at a workplace”.

(4) In subsection (5), in the opening words, for “on a construction site” substitute “at a workplace”.

(5) After subsection (6) insert—

“(6A) This section does not apply to a Sikh who—

(a) works, or is training to work, in an occupation that involves (to any extent) providing an urgent response to fire, riot or other hazardous situations, and

(b) is at the workplace—

(i) to provide such a response in circumstances where the wearing of a safety helmet is necessary to protect the Sikh from a risk of injury, or

(ii) to receive training in how to provide such a response in circumstances of that kind.

(6B) This section also does not apply to a Sikh who—

(a) is a member of Her Majesty’s forces or a person providing support to Her Majesty’s forces, and

(b) is at the workplace—

(i) to take part in a military operation in circumstances where the wearing of a safety helmet is necessary to protect the Sikh from a risk of injury, or

(ii) to receive training in how to take part in such an operation in circumstances of that kind.”

(6) In subsection (7)—

(a) omit the definitions of “building operations”, “works of engineering construction” and “construction site”;

(b) before the definition of “injury”, insert—

““Her Majesty’s forces” has the same meaning as in the Armed Forces Act 2006;”;

(c) at the end insert—

““workplace” means any premises where work is being undertaken, including premises occupied or normally occupied as a private dwelling; and “premises” includes any place and, in particular, includes—

(a) any vehicle, vessel, aircraft or hovercraft,

(b) any installation (including a floating installation or one resting on the seabed or its subsoil or on other land covered with water or its subsoil), and

(c) any tent or moveable structure.”

(7) In subsection (8), in paragraph (b), for “on a construction site” substitute “at a workplace”.

(8) In subsection (9)—

(a) for “relevant construction site” substitute “relevant workplace”;

(b) for “construction site” (in the second place where it occurs) substitute “workplace”.

(9) In subsection (10), for the words from ““relevant construction site” to the end of the subsection substitute ““relevant workplace” means any workplace where work is being undertaken if the premises and the activities being undertaken there are premises and activities to which the Health and Safety at Work etc. Act 1974 applies by virtue of the Health and Safety at Work etc. Act 1974 (Application outside Great Britain) Order 2013.”

(10) In the sidenote, for “on construction sites” substitute “at workplaces”.

(11) Section 12 of that Act (protection of Sikhs from racial discrimination in connection with requirements as to wearing of safety helmets) is amended as follows.

(12) In subsection (1)—

(a) in paragraph (a), for “on a construction site” substitute “at a workplace”;

(b) in paragraph (b), for “on such a site” substitute “at such a workplace”.

Column number: 580

(13) In subsection (3), for “Subsections (7) to (10)” substitute “Subsections (6A) to (10).”
—(Oliver Heald.)

This new clause extends the scope of the exemption under section 11 of the Employment Act 1989, currently limited to construction sites, so that turban-wearing Sikhs will be exempt from legal requirements to wear a safety helmet in a workplace of any kind (subject to exceptions set out in section 11(6A) and (6B) as amended).

Brought up, and read the First time.

The Solicitor-General: I beg to move, That the clause be read a Second time.

The effect of the new clause is that turban-wearing Sikhs will be exempt from legal requirements to wear a safety helmet in all workplaces, subject to certain exclusions, and not only on a construction site. It also extends the limited liability provisions of the exemption to those persons, such as employers, who hold a legal requirement in respect of the wearing, provision or maintenance of safety helmets by the exempt Sikh individual.

As I previously mentioned, the new clause is the result of representations by the Sikh Council UK.

Toby Perkins: The Labour party strongly supports and welcomes the new clause. We are pleased that the Government have listened to the representations of the Sikh Council and from the Sikh community, allowing Sikhs to wear turbans instead of head protection in all workplaces.

There is an existing exemption under section 11 of the Employment Act 1989, allowing Sikhs to wear turbans in place of hard hats on building sites. As we would all recognise that building sites are among the most dangerous working environments in the country, it is an anomaly that the exemption is not already in place for other workplaces and industries. Sikh organisations say that the exception has led to problems for turban-wearing Sikhs in other areas where the risk from falling objects is likely to be lower than in construction. Likewise, rule 83, which is under the “Rules for motorcyclists” section of The Highway Code, clearly exempts

“a follower of the Sikh religion while wearing a turban”

from helmet rules.

There is a clear precedent for further deregulation and a clear incentive to act. Members of the Sikh community have faced disciplinary hearings and dismissal for refusing to wear head protection and others are unable to follow their chosen professions because of the insistence on the need to wear head protection. That is arguably discriminatory.

Before we move on, I want to reflect the representations I have had from the Sikh Council UK and members of the Sikh community on the importance of the turban within their faith and say a few words about the role that Sikhs have played in British history over the past couple of centuries. The turban is a hugely important part of a Sikh’s faith, and as a tolerant

and open country our laws should reflect and promote that. To many Sikhs, the turban is the most important identification of their faith. By having a distinct appearance, Sikhs become accountable for their actions and representations made it clear that the turban makes them think more about their conduct, its reflection on wider society and what it says about their faith. It also makes them reflect on the teachings of the Sri Guru Granth Sahib. That is why the Sikh Council UK has long campaigned for the change and broadly welcomes the new clause.

Column number: 581

Turban-wearing Sikhs have been a part of the British landscape for at least two centuries, and nowhere is that better seen than in our armed forces, which represent the ultimate dangerous occupation. In 2012, Guardsman Jatenderpal Bhullar became the first turban wearer on guard duty outside Buckingham palace. That was an incredibly important moment, with a turban-wearing Sikh at the heart of the British establishment. We all know that Sikhs have been an integral part of our services for a long time. Rattray's Sikhs was a famous regiment of the Army renowned for its martial prowess and never-say-die attitude. A young Winston Churchill nearly lost his life rescuing a wounded Sikh when he fought in the Malakand campaign of 1897. Twenty-one Sikhs from the Indian army's Sikh regiment won awards for gallantry at the battle of Saragarhi. Sikhs are very much a part of our island story and we want that contribution to be visibly demonstrated in workplaces across the country. The clause represents an opportunity to do that.

We would, however, like to ask the Minister a few questions, to clarify anomalies and ambiguities in the clause. Will he clarify the territorial extent of the clause? Many of the other new clauses clearly specify where they apply, whether that is to England, to England and Wales, to Great Britain or to the whole United Kingdom. The new clause is not clear on that. For example, will Sikhs working in Northern Ireland be covered by the new clause? Will he clarify exactly what is meant by "workplace"? Will the clause apply to workers on call or those working as contractors, either from their home or other people's homes? Will he inform us whether further amendments will require primary legislation or statutory instrument?

We recognise, as do community organisations like the Sikh Council UK, that in extreme cases—for example, our emergency services and armed forces, and in particular those serving on the front line—there might have to be some exemptions from this deregulation. It is important that we have clarity on the law. No one wants to see people in any workplace put into a position of unnecessary danger. With technological changes happening more quickly than ever before, it is important to keep the option of making such amendments as flexible and responsive as possible. I therefore hope that a Minister would always make such decisions as a last resort, on a case-by-case basis. Does the Minister agree that making future amendments by statutory instrument rather than primary legislation would be an important and worthwhile deregulatory measure?

What representations has the Minister received regarding section 12 of the Employment Act 1989, as amended by schedule 26 to the Equality Act 2010? It has been brought to our attention that that section could be interpreted as permitting an employer to use the defence of having a legitimate aim when forcing a Sikh employee to wear a safety helmet in the workplace. Since that could undermine the intention of the new clause, has such an interpretation been considered in its drafting, alongside any other representations? Do further steps need to be taken to correct the ambiguity?

As we expect to hear clarification from the Minister on those points, we look forward to supporting him on such an important piece of deregulation that will mean a lot to many people in our country.

Column number: 582

Kelvin Hopkins: I strongly support the new clause. I represent a community—Luton North—with a considerable number of Sikhs. Last Sunday, I attended a local Sikh temple for a celebration. I have been there many times, and was actually present at that temple's opening 32 years ago, which was a great pleasure.

I also have an interest in health and safety. Many years ago, I worked at the TUC, where I was responsible for establishing its construction committee, one of the main considerations of which was site safety. Some years later, I attended a meeting of that committee as a representative of the National and Local Government Officers' Association. Together with Frank Chapple, who was then the general secretary of the Electrical, Electronic, Telecommunications and Plumbing Union, I argued strongly that wearing safety helmets on site should be compulsory and a matter for the law, because many site workers would not wear a hard hat unless required to do so.

That was important, but, of course, I entirely understand and support the exception for Sikhs. Nevertheless, these days many Sikhs choose not to wear the turban—they pursue their faith in other ways. One assumes that Sikhs who do not wear the turban and who are working on sites will be covered by the same rules as all the other people on site—namely, they will be required to wear a hard hat.

Sadly, I have seen the staff of some small companies at small sites, doing work on homes or whatever, not wearing hard hats, and I worry about them. I would not be so patronising as to suggest that they put their hard hat on, but in reality a bolt from a bit of scaffolding falling 20 or 30 feet on to the skull of a human being can cause severe damage, possibly fracturing the skull. It is therefore absolute common sense to wear hard hats, and although the turban would give a bit of protection in such cases, I hope that those Sikhs who do not wear one will be required to wear hard hats.

I would like to see the law strengthened so that small groups of people working in the road or a small building firm working on houses would be required to wear hard hats on site because of the potential danger. I do not have any figures on skull fractures and the injuries caused to people by their not wearing hard hats, but I suspect that they are significant even now, although much better than in the days when wearing a hard hat was unusual.

It is particularly in the nature of males that we do not want to appear to be feeble by taking safety measures. There was a time when we did not wear seat belts in cars. It was only when they became compulsory that we accepted them, because we had to, although I was one of those who wore a seat belt before they were compulsory. Taking proper safety precautions on building sites, in factories and in other areas where there are dangers requires a degree of compulsion in law or many will not bother; many will take chances and cause injury as a result.

10.45 am

Chi Onwurah: My hon. Friend makes a good point about the contribution of culture to the encouragement or promotion of the wearing of hard hats. Does he think that the culture has changed over the time he has been involved? Have the unions played a part in promoting that change?

Column number: 583

Kelvin Hopkins: Indeed. I was working at the TUC when the Health and Safety at Work, etc. Act 1974 was introduced. It was a tremendous step in the right direction, a tremendous advance, and we must always be careful, but I have to say that even in the past week I saw some men working on a damaged drain cover outside my home, using diamond-edge stone cutters with no hard hats, no ear defenders and no goggles. I think they were in danger of injury. We have to pay careful attention to health and safety measures of that kind, for the people involved, primarily, but there are also costs to the health service and to the economy of injuries and deaths at work. Health and safety, particularly in these dangerous areas, is of primary importance and I am very happy to support new clause 18.

The Solicitor-General: We have had an interesting debate. On the point raised by the hon. Member for Chesterfield about the meaning of “workplace”, the definition is sufficiently broad to cover a situation in which a Sikh is a visitor at a workplace other than his own, or in which a Sikh is driving or travelling in a vehicle or on a motorcycle. It is a wide definition.

On the point about a statutory instrument being necessary in respect of the exclusion for emergency response services and the armed forces, those exclusions only apply in hazardous operational situations by institutions such as the emergency services. That means that all other possible means of protecting the Sikh individual must be considered and rejected in accordance with existing legislation before they can be required to wear specialist head protection. Such a requirement will therefore only be made when it is absolutely in the best interests of that Sikh individual’s health, safety and welfare.

Toby Perkins: I am grateful for that, as far as it goes, but will the Solicitor-General clarify, in the event of exemptions, which may be in situations such as the examples he has raised, or may be for new industries that we do not even know exist yet but for which, as they come forward, it would be considered helpful to have an exemption, what would be the process for enforcing that change?

The Solicitor-General: By using the word “necessary” for the exclusions to apply, this will remain appropriate whatever advances take place in technology and the like.

On the question of territorial extent, this covers the UK excluding Northern Ireland at the moment, but Northern Ireland is currently conducting a consultation on the proposal and, subject to ministerial agreement in Northern Ireland and the need to obtain a legislative consent motion, it is intended that these amendments to Northern Ireland legislation will also be tabled in the Bill in due course: we wait to hear about that. As regards section 12 of the Employment Act 1989 and any issue of ambiguity, section 12 provides that the application of a legal requirement to wear a safety helmet on a construction site which is imposed on a turban-wearing Sikh by an employer would not be a proportionate means of achieving a legitimate aim such as to avoid indirectly discriminating against the Sikh individual under the Equality Act 2010. In other words, if an employer attempts to enforce such a requirement

Column number: 584

on a turban-wearing Sikh, he runs the risk of indirect discrimination against that person.

Finally, I agree with what the hon. Member for Chesterfield said about the Sikhs. They are a fantastic group who have added so much to this country and their history is, as he outlined, a very important part of our cultural background as a country. The amendments will be widely welcomed in the Sikh community, which includes the Sikhs of Hertfordshire and the gurdwaras of Hitchin and Letchworth Garden City.

Question put and agreed to.

New clause 18 accordingly read a Second time, and added to the Bill.



Sikh Council UK Briefing
Deregulation Bill
Amendment NC18 – 18 March 2014

20 March 2014

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Sikh Council UK Briefing

Deregulation Bill – Amendment NC18 – 18 March 2014

1. Summary

- 1.1 The Sikh Council UK (SCUK) is the largest representative body of Sikhs in the UK. We are recognised as the national advocate for British Sikhs in the United Kingdom and the European Union.
- 1.2 The SCUK has campaigned to remove the anomaly which currently exists in the law which provides turban wearing Sikhs with an exemption from having to wear safety helmets on construction sites but not in other workplaces.
- 1.3 The anomaly is largely historical and exists due to the exemption given to turban wearing Sikhs on construction sites not keeping up with the growth of health and safety law in industries less hazardous than construction sites resulting in Sikhs facing dismissal and disciplinary procedures and lost employment opportunities.
- 1.4 We welcome the Government's Notice of Amendments NC18 to the Deregulation Bill which proposes to extend the exemption for Sikhs from the requirement to wear safety helmets across workplaces in Great Britain as a big step forward for Sikhs in Great Britain.
- 1.5 However we have some concerns around the definition of workplace and that the draft amendment contains exclusions for the emergency and armed forces which will become permanently established in the legislation upon enactment.
- 1.6 We recommend the following changes to the draft amendment NC18–
 - removing the word workplace so as to remove the difficulties of definition
 - removing the exclusions for the emergency services and armed forces or as a minimum to qualify such exclusions so as to make the wearing of safety helmets a last resort in those services determined on a case by case basis and to set out any exclusions by way of statutory instrument rather than in the primary legislation
 - widening if necessary the applicability of the legislation to all territories of the United Kingdom from the existing coverage of Great Britain
 - amending the legislation to address concerns in respect of previous equivalence amendments made by the Equality Act 2010
- 1.7 This briefing should be read in conjunction with our response to the Government's consultation exercise dated 7 February 2014. (See attached)

2. Background

- 2.1 We welcome the proposal to extend the exemption across workplaces in Great Britain. The keeping of uncut hair and the wearing of a turban are an integral and mandatory part of the Sikh faith. Both male and female Sikhs wear turbans. The turban is an integral part of the body to devout Sikhs who will not wear anything in place of, under or over it such as a hat or cap.
- 2.2 The compulsory wearing of turbans for Sikhs is a unique aspect of not only their faith but also of their racial and cultural identity and so the wearing of a turban by a Sikh cannot be compared with other requirements in other faiths or cultures.
- 2.3 Sikhs are currently exempt from the requirement to wear safety helmets on construction sites but not on other less hazardous places. The anomaly is largely historical and exists due to the exemption on construction sites not keeping up with the growth of health and safety law in industries less hazardous than the construction industry.
- 2.4 Currently Sikhs face dismissal and disciplinary procedures and/or being denied opportunities to work in industries where the wearing of safety helmets is otherwise required. There is anecdotal evidence to indicate Sikhs have themselves chosen to leave industries where the wearing of a turban will come into conflict with requirements to wear safety helmets. Case studies of recent cases reported to SCUK are referred to in our consultation response of 7 February 2014.
- 2.5 The extension of the exemption across workplaces will remove the anomaly that currently exists in the law, provide a right for Sikhs to wear their turbans in their places of work, offer new employment opportunities for Sikhs hitherto not available, create certainty for employers and free them from costly and time consuming assessment of risks, dismissal and disciplinary procedures and litigation risk.

3. NC18 subsection 5: services exclusions

- 3.1 We are concerned that the draft amendment to the Deregulation Bill NC18, subsection 5 proposes to enshrine particular exclusions as primary legislation for Sikhs working or training to work in the police, fire and analogous emergency response services as well as the armed forces.
- 3.2 The exclusion from the exemption within these services will have a negative impact for Sikhs working in such jobs or roles as it will likely lead to blanket requirements for Sikhs to remove their turbans to obtain or retain employment in such fields. The exclusion will have a detrimental effect on Sikhs who have a proud tradition in the services in particular in the armed forces and it will be a retrograde step at a time when the Government seeks to widen the ethnic diversity across the services.

- 3.3 Technology advances over time and what is not technologically possible at present may change in the future. It would therefore be prudent and would future-proof the legislation to not permanently set out exclusions in the body of the legislation.
- 3.4 All exclusions from the exemption for Sikhs from having to wear safety helmets should be approached on a case by case basis and as a last resort when the risk to health and safety cannot be alleviated by other means instead of any blanket requirement mandating the wearing of safety helmets in all circumstances.
- 3.5 We are disappointed that the draft amendment NC18 has been tabled without consultation regarding the wording of and the reasons for the services' exclusions with us or any other Sikh community group as far as we are aware which we had previously requested. We do however appreciate that the Government's decision to table an amendment to the Deregulation Bill already before Parliament so as to enact this piece of legislation without undue delay has not provided a longer period for consultation.
- 3.6 We are not aware of the representations if any made by the police, fire or other emergency services and/or the armed forces in respect of the draft amendment and/or the reasoning behind the proposal for particular roles or jobs in these services being excluded from the provisions of the draft amendment. We are not therefore convinced of the need for the proposed exclusions and recommend their removal by way of deleting NC18 subsection 5.
- 3.7 Despite our reservations about the exclusions, if it is the Government's position that the exclusions be enacted notwithstanding our concerns, we would request as a minimum the following two changes to subsection 5 of NC18 and/or any other legislation as necessary:-
- (1) The services exclusions are specifically qualified by way of a "last resort" test analogous to that currently set out in the PPE Regulations 1992. This will provide that any requirement to wear safety helmets in the excluded services will be a last resort when the risk to health and safety cannot be alleviated by other means and as such that a requirement to wear safety helmets in those services will be subject to a health and safety assessment on a case by case basis rather than any blanket policy being established
 - (2) The services exclusions are set out in a statutory instrument made under delegated ministerial power rather than set out in the body of the legislation itself. This will prevent the exclusions from being permanently established on the statute book and permit an easier mechanism and process for amendment in light of developments in technology and health and safety over time.
- 3.8 We would wish for any enabling clause in the legislation (which would provide the relevant minister with the power to make statutory instruments) to make clear that any statutory instruments made or amended shall be subject to the relevant minister consulting with the SCUK and/or its successor or equivalent representative Sikh organisations.

3.9 We would also wish for the enabling clause within the legislation to establish a periodic mechanism of formal review under which the relevant minister would respond to any representations from the SCUK and/or its successor or equivalent representative Sikh organisations relating to jobs or roles excluded from the exemption.

4. NC18 subsection 7: defining workplace

4.1 We are concerned that that the term "workplace" may create uncertainty. Is a worker at his workplace whilst being on call, whilst travelling between jobs, whilst being on his employer's client's site, whilst being on his employer's contractor's site, whilst being a visitor, whilst being a service user and so on? There is an inherent risk of litigation on using a term such as workplace.

4.2 We recommend the removal of the words "construction site" without replacing them with any additional words throughout the draft provisions of NC18. This will remove the difficulties of definition.

5. NC18 subsection 8: Great Britain

5.1 To the extent that sections 11 and 12 of the Employment Act 1989 do not apply to Northern Ireland and/or other United Kingdom territories outside Great Britain we would recommend the draft legislation and/or other legislation made under regional delegated powers as appropriate is amended accordingly so that Sikhs in those regions can benefit from the legislation like their counterparts in Great Britain.

6. NC18 subsection 11 to 13: amendments to section 12 of the Employment Act 1989

6.1 We are concerned that section 12 of the Employment Act 1989 as amended by Schedule 26 of the Equality Act 2010 has created ambiguity regarding the meaning and effect of that section.

6.2 Prior to the amendments section 12(1) stated:

12 Protection of Sikhs from racial discrimination in connection with requirements as to wearing of safety helmets.

(1)Where -

(a)any person applies to a Sikh any requirement or condition relating to the wearing by him of a safety helmet while he is on a construction site, and

(b)at the time when he so applies the requirement or condition that person has no reasonable grounds for believing that the Sikh would not wear a turban at all times

when on such a site,

then, for the purpose of determining whether the application of the requirement or condition to the Sikh constitutes an act of discrimination falling within section 1(1)(b) of the Race Relations Act 1976 (indirect racial discrimination), the requirement or condition shall be taken to be one which cannot be shown to be justifiable as mentioned in sub-paragraph (ii) of that provision. (our underline emphasis)

6.3 Following the amendment to section 12 in 2010, section 12(1) states

12 Protection of Sikhs from racial discrimination in connection with requirements as to wearing of safety helmets.

(1)Where -

(a)any person applies to a Sikh any requirement or condition relating to the wearing by him of a safety helmet while he is on a construction site, and

(b)at the time when he so applies the requirement or condition that person has no reasonable grounds for believing that the Sikh would not wear a turban at all times when on such a site,

then, for the purpose of determining whether the application of the provision, criterion or practice to the Sikh constitutes an act of discrimination falling within section 19 of the Equality Act 2010 (indirect racial discrimination), the provision, criterion or practice shall be taken to be one which the condition in subsection 2(d) of that section (proportionate means of achieving a legitimate aim) is satisfied. (our underline emphasis)

6.4 There is nothing in the Explanatory Notes to the Equality Act to indicate that the changes to section 12 of the Employment Act 1989 were anything other than an updating exercise to remove references to the Race Relations Act and replace them with the Equality Act.

6.5 An interpretation of section 12 as it now stands, that it does in fact permit an employer to avail himself of the defense of having a legitimate aim in requiring a Sikh to wear a safety helmet, would clearly defeat the whole object of the exemption granted in section 11 and we do not envisage this was the intent of Parliament in 2010.

6.6 For the avoidance of doubt and for comfort we propose that the opportunity presented by the proposal to amend the Employment Act 1989 is used to amend section 12(1) to revert back in part to the original wording of that section by the incorporation of the following words inserted to section 12 (1) below emphasised by underline –

12 Protection of Sikhs from racial discrimination in connection with requirements as to wearing of safety helmets.

(1)Where -

(a)any person applies to a Sikh any requirement or condition relating to the wearing by him of a safety helmet while he is on a construction site, and

(b)at the time when he so applies the requirement or condition that person has no reasonable grounds for believing that the Sikh would not wear a turban at all times when on such a site,

then, for the purpose of determining whether the application of the provision, criterion or practice to the Sikh constitutes an act of discrimination falling within section 19 of the Equality Act 2010 (indirect racial discrimination), the provision, criterion or practice shall be taken to be one which cannot be shown to be a proportionate means of achieving a legitimate aim and for which the condition in subsection 2(d) of that section (proportionate means of achieving a legitimate aim) is satisfied.

7. Code of Practice

7.1 The draft amendments of the Deregulation Bill whilst very welcome are without prejudice to and compliment rather than replace the longstanding aspiration of the Sikh community in the United Kingdom for a statutory code of practice or other relevant guidance relating to Sikh articles of faith. We invite the Government to establish a comprehensive review of all legislation affecting Sikh articles of faith in which the SCUk would be willing to participate.

8. Contact

8.1 For further information please contact:
Gurinder Singh Josan
Head of Political Engagement - Sikh Council UK
07967 680635
gurinder_singh_josan@hotmail.com

...PRESS RELEASE...PRESS RELEASE...PRESS RELEASE...PRESS RELEASE...



EMBARGOED – 00.01 - 1 October 2015

Turbans Law Implemented

The Sikh Council UK welcomes the implementation from 1st October 2015 of a change in employment laws to allow Sikhs to wear turbans, in place of safety helmets, in all workplaces across the UK.

The Deregulation Act 2015 received Royal Assent on 26 March 2015 with a provision for it to come into force on a future date to be agreed by the Secretary of State. This date was agreed in a Commencement Order as 1st October 2015 allowing time for guidance to be prepared by the Health and Safety Executive.

Secretary General of Sikh Council UK, Gurmel Singh said, "I am grateful to members of the Sikh Council UK who have worked hard to achieve this milestone. I am also grateful to all the Parliamentarians who have engaged with us on this and helped bring this about."

He added, "Sikhs who arrived in the UK in the 50's, 60's and 70's often had to remove their Turbans to be accepted into employment. This change is now a massive step forward for their grandchildren and future generations. We welcome this recognition by UK Parliament of the importance of the turban to observant Sikhs and that they should be allowed to be full citizens of the UK whilst being able to freely practice their faith."

Spokesperson and Head of Political Engagement for Sikh Council UK, Gurinder Singh Josan said, "We are delighted that our long campaign has enabled this vital change in the law. This will make a real difference to Sikhs in the UK by increasing the number of workplaces that Sikhs can work in whilst maintaining their religiously mandated identity."

He added, "Following Royal Assent we have engaged with the Health and Safety Executive in the preparation of guidance and now look forward to these provisions being rolled out across all industries. The Sikh Council UK will be publicising this new law within the Sikh community and will continue to work with Government and other agencies in producing guidance and information for employers and individuals."

The new law comes into force after a tireless campaign by the Sikh Council UK to address an anomaly which meant Sikhs were exempt from wearing safety helmets in high risk industries such as construction, but were required to wear safety helmets in lower risk workplaces, such as factories and warehouses. This loophole had led to Sikhs facing discrimination and being dismissed from their employment for wearing their Turban.

...PRESS RELEASE...PRESS RELEASE...PRESS RELEASE...PRESS RELEASE...

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As well as extending the exemption, the change also provides protection for employers by extending the current limitation on liability for employers in the construction industry to any work situation where a turban-wearing Sikh chooses not to wear a safety helmet. There will still be very limited exceptions, such as for specific roles in the emergency services or armed forces.

END

Notes for Editors:

BACKGROUND

The issue of wearing safety helmets in place of Turbans has been an ongoing one for Sikhs since the passing of the Employment Act 1989. Under this legislation, turban wearing Sikhs have been exempt from wearing safety helmets on construction sites. However, over the years safety helmets have been required to be worn in further workplaces but the exemption for turban wearing Sikhs was not similarly extended to these other lower risk work environments. An amendment was introduced to the Deregulation Bill by the Government with cross-party support in March 2014 following lobbying by Sikh Council UK. The Deregulation Bill was finally granted Royal Assent on 26th March 2015 enshrining the exemption in law.

- The Sikh Council UK is an accord of Gurdwaras and Sikh institutions in the UK and Europe.
- The Sikh Council UK is recognised as the national advocate for British Sikhs and at the European Union
- The Sikh Council UK unites the Sikh community by providing a common platform for Gurdwaras and organisations, whilst supporting and promoting their religious, educational, welfare & charity, heritage and political objectives.
- The Sikh Council UK addresses Sikh issues and concerns with governments, agencies, public and private sector bodies.

For further information, please contact:

Balvinder Kaur – 07867 608417 - info@sikhcounciluk.org

Gurinder Singh Josan – 07967 680635 – gurinders.josan@sikhcounciluk.org

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[Directives - Table of Contents](#)

- **Record Type:** Instruction
- **Directive Number:** STD 01-06-005
- **Old Directive Number:** STD 1-6.5
- **Title:** Exemption for Religious Reason from Wearing Hard Hats.
- **Information Date:** 06/20/1994

OSHA Instruction STD 1-6.5 June 20, 1994 Directorate of Compliance Programs

Subject: Exemption for Religious Reasons from Wearing Hard Hats

A. **Purpose.** The purpose of this instruction is to establish Occupational Safety and Health Administration policy on the subject exemption.

B. **Scope.** This instruction applies OSHA-wide.

C. **Cancellations.** This instruction cancels the following:

1. OSHA Instruction STD 1-6.3, January 31, 1978, Exemption from Wearing Hard Hats, Old Order Amish and Sikh Dharma Brotherhood.
2. OSHA Notice CPL 2, November 5, 1990, Cancellation of an OSHA Instruction.
3. Memorandum, July 24, 1991, for All Regional Administrators regarding Exemption from Wearing Hard Hats for Religious Reasons.

D. **Action.** OSHA Regional Administrators shall ensure that field staff apply the guidelines of this instruction when employees object, due to personal religious convictions, to wearing hard hats in the workplace.

E. **Federal Agencies.** This instruction describes a change that affects Federal agencies. Executive Order 12196, Section 1-201, and 29 CFR 1960.16, maintains that Federal agencies must also follow the enforcement policy and procedures contained in this instruction.

F. **Federal Program Change.** This instruction describes a Federal Program Change which affects State Programs. Each Regional Administrator shall:

1. Ensure that this change is forwarded promptly to each State designee, using a format consistent with the Plan Change Two-way Memorandum in Appendix P, OSHA Instruction STP 2.22, CH-3.
2. Explain the content of this change to the State designee, as requested.
3. Advise the State designees that they are encouraged, but are not required, to adopt this change.
4. Ensure that State designees are asked to acknowledge receipt of this Federal program change in writing to the Regional Administrator as soon as the State's intention is known, but not later than 70 calendar days after the date of issuance (10 days for mailing and 60 days for response). This acknowledgment must include (if the State decides to adopt the change) a description either of the State's plan to follow the guidelines in paragraph H to implement the change, or alternative guidelines.
5. Review policies instructions and guidelines issued by the State to determine that this change has been communicated to State compliance personnel.

G. **Background.**

1. On October 30, 1978, OSHA Instruction STD 1-6.3, Exemption from Wearing Hard Hats, was issued. This instruction superseded Field Information Memorandum #75-11 dated February 4, 1975. The instruction provided an exemption from citations for hard hat violations for employers when their workers, who were members of the Old Order Amish or Sikh Dharma Brotherhood religious communities, failed to wear hard hats due to their personal religious convictions.

2. On November 5, 1990, OSHA Notice CPL 2, Cancellation of an OSHA Instruction, was issued to cancel OSHA Instruction STD 1-6.3. This notice was issued following the U.S. Supreme Court decision in **Employment Division, Department of Human Resources v. Smith**, 110 S.Ct. 1595 (1990) (the peyote case), which held the Free Exercise of Religion Clause of the First Amendment of the United States Constitution does not relieve any individual of the obligation to comply with a neutral, generally applicable law, notwithstanding the dictates of the individual's religious practice.

3. On July 24, 1991, a memorandum for All Regional Administrators from the Director of Compliance Programs was issued that withdrew the above November 5, 1990 notice. This memorandum reinstated OSHA's policy concerning the exemption from wearing hard hats, and broadened it to any employee who for religious reasons objected to wearing hard hats in the workplace. This broadening was due to the Establishment Clause of the First Amendment, which prohibits the Government from giving special preferences to any religious group.

4. On November 16, 1993, President Clinton signed into law the Religious Freedom Restoration Act of 1993, P.L. 103-141 (RFRA).

a. RFRA contains findings that laws "neutral" toward religion may burden religious exercise as surely as laws intended to interfere with religious exercise, and that governments should not substantially burden religious exercise without compelling justification.

b. RFRA restores the compelling interest test as set forth in **Sherbert v. Verner**, 374 U.S. 398 (1963) and **Wisconsin v. Yoder**, 406 U.S. 205 (1972); guarantees its application in all cases where free exercise of religion is substantially burdened; and provides a claim or defense to persons whose religious exercise is substantially burdened by government.

c. Under RFRA, Federal, State and local governments may not substantially burden a person's exercise of religion unless they demonstrate that application of the burden to the person is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest.

5. OSHA has decided to grant an exemption from citations to employers of employees who, for reasons of personal religious convictions, object to wearing hard hats in the workplace. There may be, however, circumstances in the future that would involve a hard hat hazard sufficiently grave to raise a compelling governmental interest for requiring the wearing of hard hats, notwithstanding employee personal religious convictions.

H. Effective Date. This instruction is effective immediately and will remain in effect until canceled or superseded.

I. Guidelines. OSHA staff shall adhere to the following guidelines.

a. There shall be no citations or other enforcement actions against employers for violations of hard hat standards when their employees fail to wear hard hats due to personal religious convictions.

b. Citations may be issued to employers of construction workers, with such convictions, for failure to instruct them about overhead hazards, as required by 29 CFR 1926.21(b)(2), as with employers of construction workers without such objections.

c. Employers of non-construction workers, with or without such convictions, should also instruct their workers about such hazards.

d. All instances of an employee's refusal to wear a hard hat, or any other personal protective equipment, due to the employee's personal religious conviction, shall be reported to the Regional Office so that such instances of refusal can be monitored.

e. Whenever a citation is being considered because of an employee's refusal to use personal protective equipment (other than a hard hat) due to a personal religious conviction, the National Office shall be contacted prior to the issuance of the citation.

Joseph A. Dear Assistant Secretary

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• **Standard Number:** 1926.100; 1926.100(a)

OSHA requirements are set by statute, standards and regulations. Our interpretation letters explain these requirements and how they apply to particular circumstances, but they cannot create additional employer obligations. This letter constitutes OSHA's interpretation of the requirements discussed. Note that our enforcement guidance may be affected by changes to OSHA rules. Also, from time to time we update our guidance in response to new information. To keep apprised of such developments, you can consult OSHA's website at <http://www.osha.gov>.

May 16, 2001

Mr. Hardip Singh
16873 Rabbit Run Drive
Strongsville, Ohio 44136

Re: STD 1-6.5; hard hats; exemption for religious reasons

Dear Mr. Singh,

This responds to your April 20, 2001, letter to the Occupational Safety and Health Administration (OSHA), regarding exception for religious reason from wearing hard hats. In your letter you ask the status of Field Information Memorandum # 75-11 dated February 4, 1975.

The 1975 memorandum stated that "the Old Order Amish and the Sikh Dharma Brotherhood are both granted an exemption from wearing hard hats. The granting of the above exemption is based on the provisions in the United States Constitution relating to the free exercise of religion" After a series of legal developments, OSHA issued Directive STD 1-6.5 - Exemption for Religious Reason from Wearing Hard Hats, dated June 20, 1994, (copy enclosed; those legal developments are explained in the "Background" section of the Directive).¹ The 1994 directive provides an exception from citations to employers of employees "who, for reasons of personal religious convictions, object to wearing hard hats in the workplace. . . ."

Therefore, in most situations, OSHA does not require employees who object to wearing hard hats for reasons of personal religious convictions to wear them.

For further assistance, please write to: Directorate of Construction-OSHA, [Office of Construction Standards and Guidance], Room N3468, 200 Constitution Avenue, N. W., Washington, D.C. 20210.

Sincerely,

Russell B. Swanson, Director
Directorate of Construction

Enclosure

¹OSHA directive STD 1-6.5 (Exemption for Religious Reason from Wearing Hard Hats), dated June 20, 1994, also cancels: OSHA Instruction STD 1-6.3, January

31, 1978, "Exemption from Wearing Hard Hats, Old Order Amish and Sikh Dharma Brotherhood"; OSHA Notice CPL, November 5, 1990, "Cancellation of OSHA Instruction"; and the memorandum dated July 24, 1991, "For All Regional Administrators Regarding Exemption from Wearing Hard Hats for Religious Reasons." The 1994 directive supersedes the 1975 memorandum. [back to text]

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