

Insights

EEOC Issues New Guidance on Religious Objections to the COVID-19 Vaccines

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Earlier this week the EEOC updated its **Technical Assistance Questions and Answers** ("Q&A") to add a section discussing religious accommodations to the COVID-19 vaccines. If your company has not yet had to determine whether an employee qualifies for an accommodation because of a religious objection to the COVID-19 vaccine, this occurrence will likely happen in the future as vaccine mandates begin to become more common. The Q&A discusses questions that many employers have and provides guidance as to what must be included in a religious accommodation to receiving the COVID-19 vaccine, what questions and inquiries employers can make regarding religious beliefs, how to show an undue hardship, and what types of accommodations could be granted.

As employers receive more requests for religious accommodations in response to requiring the COVID-19 vaccine, employers should establish a process by which they will evaluate these requests. A policy would provide both employers and employees guidance regarding this process. Further, employers should understand that each request for religious accommodations is unique and should be evaluated based on the specific circumstances. Just because an employer grants some employees a religious accommodation from a COVID-19 vaccine, may not mean it has to grant religious accommodations to all employees who seek an accommodation.

A. Requesting a Religious Accommodation

Employees may not unilaterally exempt themselves from a vaccine requirement established by the employer without requesting a religious accommodation. In the request, there are no magic words, but an employee needs to notify an employer that there is a conflict between their sincerely held religious beliefs and the employer's COVID-19 vaccination requirement. Upon implementing a COVID-19 vaccine requirement, employers should consider developing a form that can be provided to employees who may have a religious objection to the vaccine, which would include the procedures for requesting a religious accommodation and whom to contact for additional information.

B. Sincerity of Religious Belief

Under Title VII of the Civil Rights Act of 1964 ("Title VII"), an employer should generally assume that an employee's religious accommodation request is based on a sincerely held religious belief. The sincerity of one's religious belief is typically not in dispute, as the issue is primarily one of individual credibility. However, an employee's credibility may be undermined by several factors, including whether the employee has acted in a manner inconsistent to the professed belief, whether the timing of the religious accommodation request renders the sincerity of the belief suspect, and whether the accommodation requested is a desirable benefit likely to be sought for nonreligious reasons, among others.

Employers may make limited factual inquiries as to the sincerity of the belief for which an accommodation is requested and may seek supporting information if an objective basis exists for questioning the religious nature or sincerity of the belief. An employee who does not cooperate with an employer's reasonable request for additional information in this context may impact his or her ability to bring a claim that the accommodation request was improperly denied by the employer.

Title VII protects religious beliefs – both traditional and nontraditional – some of which may be unfamiliar to employers. Employers should not assume that a religious belief is insincere simply because it is unfamiliar to the employer. To better understand the belief and the accommodation request, employers may ask employees to explain the nature of the religious belief held and how that belief conflicts with the employer's vaccination requirement. Title VII does not protect social, political, or economic views, nor does it protect personal preferences. Therefore, an employer is not required to provide an employee with a religious accommodation under Title VII when the accommodation request is based upon a belief that is not religious in nature.

No one factor is determinative as to whether a religious accommodation request should be granted or denied. Employers should evaluate religious accommodation requests on an individual basis and should consider a variety of factors in making its decision to grant or deny an accommodation request. And after determining religious accommodations are warranted, an employer has the right to discontinue an accommodation if it is no longer utilized for religious purposes, or if there has been a change in circumstances and now providing such accommodation creates an undue burden on the employer.

C. Providing Reasonable Accommodations

If an employer determines that an employee is eligible for a religious accommodation (i.e., the employee's sincerely held religious belief requires an accommodation and can be reasonably accommodated without undue hardship under Title VII), the employer must provide a reasonable accommodation for the religious exemption to the employee. All possible accommodation alternatives that do not cause an undue hardship under Title VII should be considered.

If there is more than one reasonable accommodation to resolve the conflict between the employee's religious belief and the vaccination requirement, the employer may choose which accommodation to provide the employee. However, the employer should consider the employee's preference in regards to the available accommodations, and if the preferred accommodation is not provided to the employee, the employer should provide an explanation to the employee as to why the preferred accommodation was not granted.

D. Undue Hardship

Employers may believe that providing a religious accommodation causes an undue hardship on the employer and thus is not required. The Supreme Court has held that requiring anything more than a "de minimis" or minimal cost to accommodate an employee's religious belief is an undue hardship. This analysis is fact intensive and should be done in consultation with legal counsel. In this analysis, an employer may consider the type of workplace, the nature of the employee's duties, the number of employees who are fully vaccinated, how many employees and nonemployees may physically enter the workplace, and the number of employees who need an accommodation. If an employer believes granting a religious accommodation will lead to a spiral of employees requesting an accommodation, that factor alone is likely not enough to demonstrate an undue burden. However, an employer may consider the cumulative costs or burden of granting accommodations to other employees. The burden on conducting the employer's business should also be considered, which may include the risk of spread of COVID-19 to other employees or the public. All possible accommodation alternatives should be considered when an employer is determining whether an accommodation to a vaccination requirement would be an undue hardship.



When analyzing whether an accommodation is effective and whether it would create undue hardship, employers may rely on the **Centers for Disease Control recommendations** applicable to their circumstances. Overall, there are likely many instances where an undue burden can be demonstrated, but an individual analysis specific to each circumstance should be conducted each time.

Employers and other entities should consider this guidance as they develop and implement COVID-19 vaccination programs and accommodation protocols in their workplace, particularly as new guidance and additional rules continue to develop. Should your company or organization have any questions regarding vaccination programs, religious accommodations, or the recent COVID-19 guidance set forth by the Q&A, please contact **Elizabeth M. Roberson**, **Virginia A. Talley**, or any member of our **Labor and Employment Law Practice** for assistance.

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