

# EEOC Updates Guidance Regarding Religious Accommodations to Workplace Vaccination Requirements

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October 27, 2021

On October 25, 2021, the EEOC updated its Technical Guidance ***What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and other EEO Laws*** to provide more direction to employers regarding religious objections to workplace vaccine requirements. The EEOC provides additional guidance regarding:

## **Employees' request for religious accommodation**

- While no "magic words" such as "religious accommodation" or "Title VII" need to be used, the employee requesting an exception to a COVID-19 vaccination requirement must notify the employer of the conflict between their sincerely held religious beliefs and the vaccination requirements.
- As a best practice, an employer should provide employees and applicants with information about who to contact, and the procedures (if any), to request a religious accommodation.

## **How an employer can assess the religious nature or sincerity of an employee's belief**

- Title VII does not require accommodation of an employee whose objection to a COVID-19 vaccination requirement is not religious in nature or is not sincerely held. If there is an objective basis for questioning the religious nature or the sincerity of a particular belief, employers can make a limited factual inquiry and seek additional supporting information.
- An employee who fails to cooperate with an employer's reasonable request for verification of the religious nature or the sincerity of a professed belief may lose the right to claim that the employer improperly denied an accommodation.
- The definition of "religion" under Title VII may include nontraditional religious beliefs that may be unfamiliar to employers, so it should not be assumed that a request is invalid just because it is based on unfamiliar religious beliefs. However, employees may be asked to explain the religious nature of their belief and should not assume that the employer already knows or understands it. Objections to COVID-19 vaccination that are based on social, political or personal preferences, or on nonreligious concerns about the possible effects of the vaccine, do not qualify as "religious beliefs" under Title VII.
- An employee's sincerity in holding a religious belief is "largely a matter of individual credibility" and is usually not disputed. However, the following factors (alone or in combination) might undermine an employee's credibility:
  - the employee acting inconsistently with the professed belief (but employees need not be scrupulous in their observance);
  - the requested accommodation being for nonreligious reasons;
  - the timing of the employee's request rendering it suspect (e.g., following an earlier request by the employee for the same benefit for secular reasons); and
  - the employer otherwise having reason to believe the accommodation is not sought for religious reasons.

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- An employer may ask for an explanation of how the employee's religious belief conflicts with the employer's COVID-19 vaccination requirement. The sincerity assessment should be done on an individualized basis. Employers should not assume that an employee's belief is insincere simply because some of the employee's practices are newly adopted, inconsistently observed, or deviating from the commonly followed tenet of the employee's religion.

### **How does an employer show that it would be an "undue hardship" to accommodate an employee's religious accommodation request**

- Title VII does not require that an employer grant an accommodation shown to pose an "undue hardship" on its operations. For a religious accommodation request, undue hardship is more than a minimal cost. This includes not only direct monetary costs but also the burden on conducting the business, such as the risk of spreading COVID-19 to other employees or to the public. Undue hardship has been found where the religious accommodation would impair workplace safety, diminish efficiency in other jobs, or cause coworkers to carry the accommodated employee's share for potential hazardous or burdensome work.
- Undue hardship must be assessed on a case-by-case basis. The employer will need to demonstrate, based on objective information, how much cost or disruption the employee's proposed accommodation would involve. Considerations during the COVID-19 pandemic may include:
- the workplace (e.g., the number of employees who are fully vaccinated, how many employees and non-employees physically enter the workplace);
- the employee's duties and working conditions (e.g., outdoors or indoors, alone or in a group setting, and/or whether the employee comes in close contact with other employees or members of the public, especially medically vulnerable individuals), and;
- the number of employees who are seeking a similar accommodation (i.e., the cumulative cost or burden on the employer), but a mere assumption that many more employees might seek a religious accommodation to the vaccination requirement in the future is not evidence of undue hardship.
- Just because an employer grants some employees a religious accommodation from a COVID-19 vaccination requirement does not mean that all employees who seek religious accommodations must be accommodated. Whether a particular proposed accommodation imposes an undue hardship on the employer must be determined based on the specific factual context.
- All possible alternatives should be considered to determine whether exempting an employee from a vaccination requirement would impose an undue hardship.

### **How can accommodation be provided**

- An employer should thoroughly consider all possible reasonable accommodations, including telework and reassignment.
- An employer does not need to provide the religious accommodation preferred by an employee if there are other possible accommodations effective in eliminating the religious conflict without causing an undue hardship. If the employer denies the employee's proposed accommodation, the employer should explain to the employee why the preferred accommodation is not being granted.

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- The obligation to provide religious accommodation absent undue hardship is a continuing obligation that takes into account changing circumstances. Employees' evolving or changing religious beliefs and practices may result in additional or different religious accommodations.
- An employer may discontinue a previously granted accommodation if it is no longer utilized for religious purposes or if it would pose an undue hardship on the business operations due to changed circumstances. As a best practice, before revoking a previously granted religious accommodation, an employer should discuss with the employee the concerns it has about continuing such an accommodation and consider alternative accommodations that would not impose an undue hardship.

If you have any questions about this new development or how it may impact your workplace, please contact the authors of this alert or your Miller Canfield attorney.

*This information is based on the facts and guidance available at the time of publication and may change.*