

EEOC Updates Religious Accommodation and Vaccine Mandate Guidance

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The EEOC has updated its technical guidance and answers in a document entitled [*What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws*](#). The updated guidance adds six religious accommodation-based questions and answers in a new Section L (*Vaccinations – Title VII and Religious Objections to COVID-19 Vaccine Mandates*). The updated guidance does not necessarily break new ground in this area; instead, it mostly reinforces several preexisting concepts, including (i) how employers should analyze the religious nature and sincerity of an employee's belief; (ii) what might constitute "undue hardship"; and (iii) the need for employers to analyze each accommodation request on a case-by-case basis. We break down the updated guidance further below.

Employees need not use "magic words" to request an accommodation.

This is nothing new under applicable accommodation law, including as to religious and disability-based accommodations. As part of this, the guidance flags a scenario where an employee may note to the employer a religious conflict with "getting a particular vaccine" and the employee's "wish to wait until an alternative version or specific brand of COVID-19 vaccine is available." In this case, the employer should treat that as a request for an accommodation and proceed accordingly. This guidance reaffirms that employers should consider affirmatively creating an accommodation process by which employees are notified of the existence of the employer's accommodation policy and how to use the exemption request process, including to whom employees should direct requests, by when, and what information to include. Designing an accommodation process for religious (and disability) vaccine exemption requests and communicating this process to employees will help stave off potential claims that an employer did not adequately process an employee's exemption request.

Employers should analyze certain factors when considering the sincerity or religious nature of a belief.

The updated guidance, for the most part, tracks the guidance the EEOC set forth in [*Section 12 of its Compliance Manual on Religious Discrimination*](#), which it last updated in January 2021. More specifically, the EEOC confirms that:

- Employers should generally "assume" that a request is based on a sincerely held religious belief, unless it has an "objective basis" to question the "religious nature or the sincerity of a particular belief," wherein the employer may make a "limited factual inquiry and [seek] additional supporting information."
- Religion includes "nontraditional religious beliefs," but does not protect "social, political, or economic views or personal preferences," or "nonreligious concerns about the possible effects of the vaccine."
- Sincerity is "largely a matter of individual credibility," and in analyzing an employee's credibility, employers may, per the EEOC, consider – either alone or in combination (although no one factor is determinative) – factors such as:
 - whether the employee has acted in a manner inconsistent with the professed belief (although employees need not be scrupulous in their observance). However, in analyzing this factor, employers should: (i) note that an employee may sincerely hold a religious belief even if they have changed their beliefs or degree of adherence to their beliefs over time; and (ii) not *assume* a belief is insincere "simply because some of the employee's practices deviate from the commonly followed tenets of the employee's religion, or because the employee adheres to some common practices but not others."
 - whether the accommodation sought is a particularly desirable benefit that is likely to be sought for nonreligious reasons;
 - whether the timing of the request renders it suspect (e.g., it follows an earlier request by the employee for the same benefit for secular reasons); and
 - whether the employer otherwise has reason to believe the accommodation is not sought for religious reasons.

Employers may consider rejecting an accommodation request where certain safety concerns exist.

Although the EEOC encourages employers to “thoroughly consider all possible reasonable accommodations, including telework and reassignment,” it recognizes that an employer need not provide an accommodation, despite the existence of a sincerely held religious belief, where an “undue hardship” exists as to its operations. Here the EEOC confirmed the application of the Supreme Court’s “de minimis” standard – that is, undue hardship may exist where employers must bear more than a “de minimis” or minimal cost to accommodate the religious belief. The EEOC further noted that:

- “Costs to be considered [as part of the undue hardship analysis] include not only direct monetary costs but also the burden on the conduct of the employer’s business – including, in this instance, ***the risk of the spread of COVID-19 to other employees or to the public,***” and referenced cases where such accommodation “***would impair workplace safety, diminish efficiency in other jobs, or cause coworkers to carry the accommodated employee’s share of potentially hazardous or burdensome work***” (emphasis added). It again directed readers back to its [Compliance Manual](#) on this issue.
- Employers should make this undue hardship assessment “by considering the particular facts of each situation and will need to demonstrate how much cost or disruption the employee’s proposed accommodation would involve.” The EEOC also noted that in the safety context, employers could find themselves in a situation where they grant accommodations to some, but not others, despite similar sincerely held religious beliefs. Relevant pandemic-related safety factors to consider include:
 - the type of workplace and the nature of the employee’s duties, including whether the employee requesting a religious accommodation to a COVID-19 vaccination requirement works outdoors or indoors, works in a solitary or group work setting, or has close contact with other employees or members of the public (especially medically vulnerable individuals);
 - the number of employees who are seeking a similar accommodation (i.e., the cumulative cost or burden on the employer);
 - the number of employees who are fully vaccinated in the workplace; and
 - how many employees and nonemployees physically enter the workplace.
- But the EEOC also noted that 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, [though] the employer may take into account the cumulative cost or burden of granting accommodations to other employees.”

The need for, and use of, religious-based accommodations may change over time.

Just as employees’ beliefs may change over time and result in a new accommodation request, so too may an employer reverse course to revoke a previously-provided accommodation to an employee no longer utilizing the accommodation for religious purposes or where that accommodation “subsequently poses an undue hardship on the employer’s operations due to changed circumstances.” In this latter case, the EEOC encourages employers to discuss the potential accommodation revocation with the employee and explore any “alternative accommodations that would not impose an undue hardship.”

Parting Thoughts

Properly understanding the considerations relevant to COVID-19 vaccine-related accommodations is more important than ever. Employers are well-advised to contact their counsel when designing and implementing their vaccine-related accommodation policies and when analyzing specific employee accommodation requests.

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