

CLIENT ALERT:**EEOC Guidance on Religious Exemptions to Vaccination**

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With a federal contractor vaccination mandate effective as of October 15, 2021 and a forthcoming OSHA rule expected to extend vaccination mandates to large employers, President Biden has acted to make being vaccinated against COVID-19 a condition of employment for over [100 million workers](#). These federal rules, like state-level vaccination mandates and mandates imposed by employers on their own initiative, are subject to the federal protections offered by civil rights laws like Title VII of the Civil Rights Act of 1964 (“Title VII”), which protects employees’ sincerely held religious beliefs. Recognizing the complexities posed by complying with these competing federal policies, the Equal Employment Opportunity Commission (“EEOC”) has updated its guidance on religious accommodations to help employers respond to employee requests for religious exemptions from the mandates.

More information on the federal contractor vaccine mandate is available [here](#). An analysis of President Biden’s multi-pronged plan to fight COVID-19 is available [here](#).

Overview:

Title VII, which covers any employer with fifteen or more employees for at least twenty

weeks of the current or previous calendar year, takes a broad view of protected religious beliefs. When an employee’s sincerely held religious beliefs are in conflict with a condition of employment, such as a vaccine mandate, they may request a reasonable accommodation from their employer. If the employer can eliminate the conflict between the employee’s belief and the condition of employment by granting the employee’s request without undue hardship on the employer’s business operations, the employer is obligated to grant the request.

Protected beliefs:

Religion is defined broadly in Title VII to include “all aspects of religious observance and practice, as well as belief,” whether the belief is traditional, non-traditional, or even idiosyncratically unique to the individual employee.¹ The Supreme Court has stated that a religious belief “need not be acceptable, logical, consistent, or comprehensible to others to merit protection.”² Accordingly, when an employee claims that their religious beliefs are in conflict with a condition of employment, employers are not permitted to assess the reasonableness or rationality of the

¹ 42 U.S.C. § 2000e(j)

² *Thomas v. Rev. Bd.*, 450 U.S. 707, 714 (1981)

employee's belief. **The only questions an employer may ask regarding a religious belief are:**

(1) whether the belief is in fact *religious* (as opposed to social, or political, for example); and

(2) whether the belief is sincerely held.

An employer who has an objective basis for questioning whether an employee is expressing a sincerely held religious belief can engage in limited fact-finding for supporting information about the nature of the belief.

Religious Beliefs: Courts have generally held that a belief system can be considered a religion when it “addresses fundamental and ultimate questions.”³ An isolated belief is less likely to be considered religious in nature, though the EEOC cautions that a belief may be religious even though it overlaps with social or political beliefs. Whether a belief is religious in nature ultimately requires a case-by-case inquiry that focuses on the underlying motivation of the employee's request rather than the request itself.

Employers should therefore be cautious about rejecting a request for a religious accommodation because they do not think the employee's beliefs qualify as religious beliefs; such an assessment requires sensitive individualized fact-finding to distinguish between religious beliefs and other unprotected categories of belief.

Sincerely Held Beliefs: Whether a religious belief is sincerely held is also an individualized, fact-sensitive question which turns on the credibility of the individual employee. The EEOC has provided guidance on factors to consider when determining an employee's sincerity regarding a requested accommodation. An employer may consider whether:

- (1) the employee has previously acted inconsistently with the professed belief;
- (2) the employee has asked for a similar accommodation for secular reasons;
- (3) the accommodation has a benefit that is likely to be sought for secular reasons; and
- (4) any other factor that could suggest the accommodation is not being sought for religious reasons.

Employers should recognize that beliefs can change over time, and the EEOC has clarified that an employee does not need to scrupulously observe any particular tenet of their professed belief for a belief to be sincerely held. An employer who determines that an employee has a sincerely held religious belief may ask for an explanation of how the employee's belief conflicts with the vaccination requirement if it is unclear. A conflict between a sincerely held religious belief and vaccination is a necessary predicate for religious exemptions from a vaccination mandate.

³ E.g. Fallon v. Mercy Catholic Med. Ctr. of Se. Pa., 877 F.3d 487, 491 (3d Cir. 2017)

Religious Accommodations:

Making the Request: The EEOC does not require employers to proactively determine whether an employee will seek a religious accommodation, but it does recommend that employers provide applicants and employees with information about how they can request an accommodation. **Employees do not need to use “magic words” to request an accommodation to which they are legally entitled.** Employers must therefore be prepared to recognize statements expressing that there is a conflict between an employee’s sincerely held religious belief and a vaccine mandate as requests for religious exemptions. Such objections can be as broad as a general objection to vaccination or as limited as an objection to a particular producer’s vaccine. Conversely, social, political, and personal beliefs are not protected under Title VII and cannot be the basis of a valid religious exemption. Though employers are obligated to recognize valid requests for religious accommodations, they should not treat each objection as a request for a religious accommodation. Employers should instead engage in individualized fact-finding to assess the basis for the objection.

Accommodations: Once an employee makes a request for a religious accommodation, the employer must assess whether it can grant the request without incurring an undue burden on its operations. In making the assessment, the employer should consider all reasonable possibilities that would resolve the conflict between the belief and the condition of

employment. Whether an accommodation is possible will depend on the employee’s belief and the kind of work they perform. **Employers are not required to engage in an interactive process with the employee before deciding on an accommodation request, but it is recommended that they do so as a practical matter.** Collecting information to determine whether an accommodation is possible can be critical in defending a Title VII discrimination claim.

A reasonable accommodation should eliminate the conflict between the employee’s beliefs and the disputed terms and conditions of employment to the maximum extent possible without burdening the employer’s operations with an undue hardship. Employers are not required to grant any specific requested accommodation when there are multiple accommodations available. However, if a proposed accommodation is denied, it is best practice for employers to explain why the accommodation is not being granted. Reasonable accommodations cannot unnecessarily disadvantage the terms, conditions, or privileges of an employee’s employment, which should remain the same as much as is possible after the accommodation is granted.

Undue Hardship:

The prevailing test for whether an accommodation is reasonable is whether the accommodation would impose an undue hardship on the employer’s operations. An undue hardship is any accommodation that imposes more than a de minimis cost.⁴ This

⁴ Trans World Airlines, Inc. v. Hardison, 432 U.S. 63, 84 (1977)

is in notable contrast to the undue hardship test in the Americans with Disabilities Act (“ADA”). Under Title I of the ADA, which requires employers to provide reasonable accommodations for disabled employees, an employer must show that an accommodation would require “significant” difficulty or expense before it is considered an undue hardship.⁵

The undue hardship test considers any cost that can burden the employer’s operations, from direct monetary costs to diminished efficiency to impaired workplace safety. Typical administrative costs such as the cost of rearranging schedules or occasionally paying an overtime premium are not considered to be undue hardships. However, an accommodation that requires an employer to regularly pay an overtime premium or hire additional employees is generally held to be more than a de minimis cost, making such actions undue hardships for the employer.

The risk of spreading COVID-19 to employees or to the public can constitute an undue hardship that may render an accommodation unreasonable, taking it outside the scope of Title VII’s protections.

When assessing accommodations requests for COVID-19 vaccination mandates, employers should consider factors such as whether the employee works outdoors, whether they work near other employees, whether they have close contact with members of the public, and the likelihood that they will encounter high-risk individuals during the course of employment. Employers may also consider the cumulative burden

created by accommodating multiple employees; an accommodation can rise to the level of undue hardship when it is extended to multiple employees. Accordingly, granting an accommodation to one employee does not mean that the employer is obligated to grant the same accommodation to any other employee, even if they share an identical religious belief. Each request must be assessed in its particular factual context, which includes the cumulative costs of other accommodations.

Providing religious accommodations is a continuing obligation, not a one-time assessment – just as an employee’s beliefs might change, so too might the specific context for a reasonable accommodation. An employee may validly request a new accommodation that is inconsistent with their past conduct, and an employer may discontinue an accommodation if it begins to impose undue hardship on the employer. In that case, the EEOC recommends that employers always discuss their concerns with employees before revoking a previously granted religious accommodation.

Looking Ahead: As more workers are required to be vaccinated as a condition of employment, employers will likely see a corresponding rise in the number of religious exemptions being requested. While it may be tempting to create a single rule for dealing with such cases, it is critical that each request be given an individualized assessment weighing whether the employee has a sincere religious belief and the viability of a proposed accommodation.

⁵ 42 U.S.C. § 12111(10)

Employers should be prepared to recognize requests even when the employee does not use magic words like “Title VII” or “reasonable accommodation.” Employers should also determine whether accommodating the employee with measures like remote work or reassignment to an outdoor or isolated workspace would be a reasonable accommodation. Lastly, employers should track the impact of each accommodation on their business and assess whether multiple requests cumulatively add up to an undue burden. It is not yet clear how aggressively the government will police the use of religious exemptions by employers covered by a vaccine mandate; as such, employers should proceed cautiously and ensure they engage in an open dialogue with their employees to ensure that they have a good-faith basis for granting a reasonable accommodation and exempting the employee from a vaccine mandate.

For more information, the EEOC’s updated guidance on COVID-19’s impact on EEO laws, including Title VII, is available [here](#). More comprehensive EEOC guidance on religious protections is available [here](#).

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