

EEOC Updated Guidance on Religious Exemptions from Vaccine Mandates

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The EEOC recently updated its guidance on how employers who mandate employee vaccinations should address employee claims of religious exemption. It did so in response to numerous questions about an employer's obligation to provide a religious exemption from a COVID-19 vaccine mandate.

As the EEOC has repeatedly made clear, employers may require their employees to be vaccinated and that requirement does not violate the ADA. Title VII of the Federal Civil Right Act of 1964, however, protects against religion-based discrimination in employment and, in certain circumstances, requires an employer to accommodate an employee's sincerely held religious beliefs, practices or observances that conflict with a workplace rule. If an employer cannot reasonably accommodate the employee's religious belief, though, the employer is not required to grant the accommodation.

Employees must ask their employer for a religious accommodation. If an employee asks for a religious accommodation from a vaccine mandate, the employer must have an "objective basis" for questioning the employee's claim that they have a sincerely held religious belief against vaccination. In those circumstances, the employer may conduct a "limited factual inquiry" related to the claimed religious belief. Campbell Durrant attorneys can assist you in developing appropriate questions for the employee consistent with the EEOC guidance. Absent that "objective basis" for questioning the employee's claim, the employer generally must accept the employee's claim as to their sincerely held religious beliefs. If an employee fails to cooperate in the employer's investigation of their claim to a sincerely held religious belief, that employee may lose the right to claim a religious exemption.

Sincerely-held religious beliefs can be "nontraditional religious beliefs that may be unfamiliar to employers," as the EEOC notes; however, "social, political, or personal preferences" or "nonreligious concerns about the possible effects of the vaccine," do not qualify as "religious beliefs" under Title VII. The sincerity of an employee's claimed religious belief is "largely a matter of individual credibility" that is assessed based on factors such as: whether the employee has acted in a manner consistent with the professed belief (although perfect observance is not mandatory); whether the accommodation sought is for a benefit that is particularly desirable for nonreligious reasons; whether the timing of the request is suspect; and whether the employer "otherwise has reason" to doubt the religious nature of the employee's claim. In general, the EEOC guidance cautions employers that even recently held religious beliefs or particular beliefs that may be inconsistent with a person's professed religious affiliation are protected if they are sincerely held. Employers who deny an employee's request for a religious exemption on the grounds that they do not qualify must do so based on an individualized assessment that the employee's claim is either: (i) not religious in nature or, (ii) not sincerely held.

If the employee has a sincerely held religious belief that they cannot be vaccinated, does this mean that the employer must let them return to the workplace? Not necessarily. Employers are allowed to explore a range of options for accommodation that could include allowing an employee to

telework or putting the employee on unpaid leave (although it is not clear whether that would make the person eligible for unemployment compensation benefits). Employers are not required to honor the employee's preferred accommodation if there are other effective alternatives available.

Moreover, if the employer can show that the requested accommodation presents an "undue hardship," then it can deny the request even though it is based on a sincerely held religious belief. But proving that granting an employee an exemption from a COVID-19 vaccine mandate would cause the employer an undue hardship requires a demonstration of "how much cost or disruption the employee's proposed accommodation would involve." Relevant factors for showing an undue hardship in a mandatory COVID-19 vaccine context include: Does the employee work indoors or outdoors? Does the employee work alone or in a group setting? Does the employee interact closely with the public (particularly with medically vulnerable individuals)? And how many employees have sought exemptions (so what are the cumulative costs or burden of the exemption requests)? Not all employee claims of religious accommodation from a COVID-19 vaccine mandate need to be treated the same – an employer can differentiate among its employees when assessing whether to grant an accommodation or whether the request presents an undue hardship based on the specific work circumstances of that employee. The EEOC guidance states that employers may rely on CDC recommendations when assessing a religious accommodation and/or undue hardship.

Finally, the EEOC guidance recognizes that circumstances can change over time with respect to religious accommodations previously granted, and what was initially not an undue hardship may become one. As a best practice, however, the EEOC recommends that employers discuss possible changes to a religious accommodation/exemption with the affected employee before deciding to alter or end the accommodation.