

EEOC ISSUES UPDATED COVID-19 GUIDANCE ON TITLE VII RELIGIOUS ACCOMMODATIONS

November 4, 2021

On Monday, October 25, 2021, the Equal Employment Opportunity Commission (“EEOC”) published [updated technical assistance](#) for employers navigating the COVID-19 pandemic and employees’ requests for reasonable accommodation based upon their religious belief. A wave of such requests has followed many employers’ decision to implement mandatory COVID-19 and influenza vaccination requirements.

This updated assistance provides helpful guidance for employers seeking to comply both with anti-discrimination laws and public health guidelines issued by the Center for Disease Control and Prevention (“CDC”) and state and local authorities.

Under Title VII of the Civil Rights Act of 1964, employers who are on notice must provide [reasonable accommodations](#) (also known as “religious accommodations”) to employees whose sincerely held religious beliefs, practices, or observations (hereafter “religious beliefs”) conflict with a workplace requirement, unless providing such an accommodation would create an undue hardship for the employer. The EEOC’s updated technical assistance provides additional information to employers regarding how to accommodate vaccine-related religious accommodation requests during COVID-19. Specifically, the EEOC answered the following questions:

- Do employees who have a religious objection to receiving a COVID-19 vaccination need to tell their employer? If so, is there specific language that must be used under Title VII?
- Does an employer have to accept an employee’s assertion of a religious objection to a COVID-19 vaccination at face value? May the employer ask for additional information?
- How does an employer show that it would be an “undue hardship” to accommodate an employee’s request for religious accommodation?
- If an employer grants some employees a religious accommodation from a COVID-19 vaccination requirement because of sincerely held religious beliefs, does it have to grant the requests of all employees who seek an accommodation because of sincerely held religious beliefs?

- Must an employer provide the religious accommodation preferred by an employee if there are other possible accommodations that also are effective in eliminating the religious conflict and do not cause an undue hardship under Title VII?
- If an employer grants a religious accommodation to an employee, can the employer later reconsider it?

The EEOC's guidance on these frequently raised questions is summarized below:

EMPLOYEE REQUESTS

To obtain an exception to a COVID-19 vaccination requirement, employees must inform their employers that they are requesting an exception to the requirement because it conflicts with their sincerely held religious beliefs. Employees are not required to use any "magic words," such as "religious accommodation" or "Title VII."

The EEOC recommends employers provide employees and applicants with information on whom to contact and any procedures used to request a reasonable accommodation. The EEOC has also made public its own internal Religious Accommodation Request Form for guidance, which can be found [here](#).

MAY AN EMPLOYER ASK FOR ADDITIONAL INFORMATION?

The EEOC instructs that employers should generally assume an employee's request for a reasonable accommodation is based on a sincerely held religious belief. Employers also should not as a regular practice question the sincerity of an employee's religious belief. However, if employers have "an objective basis for questioning either the religious nature or the sincerity of a particular belief, an employer is justified in making a *limited factual inquiry* and seeking additional supporting information." Employees who do not cooperate with an employer's reasonable request for verification risk losing any claim that the employer improperly denied their religious request.

The EEOC cautions employers against assuming that a request is invalid because they are not familiar with a religious belief. Conversely, the EEOC notes that "Title VII does not protect social, political, or economic views, or personal preferences." Concerns about vaccination side effects do not qualify as protected religious beliefs under Title VII.

While the sincerity of an employee's religious belief is "largely a matter of individual credibility," employees can consider the following factors:

- Whether the employee has acted inconsistently with the professed belief (while recognizing that employees do not have to be "scrupulous" in their observance, that an individual's beliefs may change over time, and that individual's practices may deviate from commonly followed tenants of a religion).
- Whether the accommodation sought is "particularly desirable" and likely to be sought for non-religious reasons.
- Whether the timing of the employee's request is suspect (e.g., the employee previously made the same request for secular reasons).

- Whether the employer has other reasons to believe the accommodation is not being sought for religious reasons.

The EEOC notes that no one factor is dispositive and that employers should evaluate religious objections on an individual basis. If an employee's request for an exemption from the COVID-19 vaccination is not religious in nature or not sincerely held, employers are not required to grant a reasonable accommodation under Title VII.

UNDUE HARDSHIP

Employers are not required to grant accommodations where they would impose an "undue hardship" on the employer. The Supreme Court has held that requiring an employer to bear more than minimal (de minimis) cost to accommodate an employee's religious belief is an undue hardship. Costs can include monetary costs, as well as other burdens on the employer's business, such as impairing workplace safety, causing coworkers to bear the accommodated employee's share of hazardous or burdensome work, and the risk of spreading COVID-19 to other employees or the public.

Employers should look at the specific facts of each request and must rely on objective information, not speculation. The EEOC notes that factors to consider during COVID-19 may include:

- Whether the employee works outdoors or indoors;
- Whether the employee works alone or has close contact with coworkers or members of the public, especially those who are medically vulnerable; and
- The number of employees seeking a similar accommodation, as there can be a cumulative cost or burden on the employer.

While employers may deny a request for accommodation if it poses an undue hardship, the EEOC reiterates that under Title VII employers should consider "all possible reasonable accommodations" that may avoid imposing an undue hardship on the employers. Examples of reasonable accommodations for unvaccinated employees may include telework or, as a last resort, reassignment.

MUST AN EMPLOYER GRANT ALL REQUESTS?

Employers that grant some religious accommodations are not required to grant all such requests for accommodations. Each request is considered in the context of the applicable facts, including:

- The type of workplace;
- The nature of the employee's duties;
- The number of employees who are fully vaccinated;
- How many people, both employees and nonemployees, enter the workplace; and

- The number of employees who will need a particular accommodation (although a “mere assumption” that more people will seek a religious accommodation is not evidence of undue hardship, an employer can consider the cumulative cost/burden of granting accommodations).

PREFERRED ACCOMODATIONS

If more than one accommodation would resolve the conflict between an employee's sincerely held religious beliefs and a vaccination requirement, an employer can choose which accommodation to offer. An employer should consider an employee's preference but is not required to grant the preferred accommodation. However, an employer should explain to the employee why the accommodation selected was chosen.

RECONSIDERING A REQUEST

Employers who grant a reasonable accommodation have the right to reconsider the accommodation and discontinue a previously granted accommodation if it is no longer being used for religious purposes or if the accommodation subsequently poses an undue hardship on the employer. Before revoking a reasonable accommodation, an employer should discuss concerns with the employee and determine if there are alternative accommodations that would not impose an undue hardship on the employer. An employee also has the right the request additional or different religious accommodations, as beliefs and practices may change over time.

CONCLUSION

The EEOC's [key updates](#) include:

- Employees must inform employers that they are seeking a reasonable accommodation to a COVID-19 vaccination requirement due to a sincerely held religious belief, although they are not required to use “magic words.”
- Title VII requires employers to consider requests for religious accommodations to COVID-19 vaccination requirements, but not political, social, or economic views, or personal preferences.
- Employers are not required to grant a request for a religious accommodation to COVID-19 vaccination requirements if they would pose an “undue hardship” on the employer.

We recommend that employers carefully review the EEOC's full updated technical assistance for guidance on how to best approach requests for COVID-19 reasonable accommodations. Such requests are likely to be received by employers beyond the duration of the public health emergency.

If you have questions or need assistance regarding compliance with these vaccine requirements and other employment laws, please contact a member of Hancock Daniel's [Labor & Employment](#) team. For any other concerns arising from the pandemic, please contact a member of our COVID-19 Task Force.

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