

Mandated Vaccines: Denying Requests for Religious Accommodation in the Name of Safety

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Mandatory Vaccination Policies are on the Rise

On August 23, 2021, the U.S. Food and Drug Administration (FDA) granted full approval to Pfizer's COVID-19 vaccine. In the days that followed (and [encouraged by President Biden](#)), employers across a variety of industries have expressed an increased interest in establishing mandatory employee COVID-19 vaccination policies. Under most mandatory vaccination policies, employees are required to submit proof of vaccination by a specified date as a condition of employment, absent an approved medical or religious accommodation. As the number of mandatory vaccination policies rises, so too do employees' requests for special exemptions. Many employees are invoking religion to avoid getting the vaccine.

Title VII of the Civil Rights Act of 1964 prohibits employment discrimination on the basis of religion. [According to the Equal Employment Opportunity Commission \(EEOC\)](#), "[t]he law protects not only people who belong to traditional, organized religions, such as Buddhism, Christianity, Hinduism, Islam, and Judaism, but also others who have sincerely held religious, ethical or moral beliefs." Under Title VII, employers are required to provide reasonable accommodations, absent undue hardship, to employees claiming their beliefs conflict with getting vaccinated. However, existing case law and EEOC [guidance](#) make clear that employers have a number of defenses at their disposal and remain in compliance with the requirements of Title VII while prioritizing the health and safety of the workforce through broad enforcement of mandatory vaccination policies. This post aims to provide employers with tips for engaging with employees seeking religious accommodations and offers considerations for employers to keep in mind as they balance the requirements of Title VII with the need to engage in the war against the COVID-19 pandemic.

Questioning an Employee's Sincerely Held Religious Belief

Under Title VII, employers are required to accommodate an employee's "sincerely held" religious belief, observance, or practice. In this age of extreme political polarization, employers need to know

that political or social philosophies, as well as mere personal preferences, are not religious beliefs protected by Title VII. Thus, someone who subscribes to an “anti-vax” philosophy that is not rooted in a sincerely held religious belief is not afforded the protections of Title VII. Given the broad definition of religion under Title VII, the EEOC cautions that an employer should generally assume that an employee’s request for a religious accommodation is based on a sincerely held religious belief. That notwithstanding, an employer is permitted to question the sincerity of an employee’s purported religious belief where it has an objective basis for doing so. The [EEOC has identified four factors](#) that can create doubt in an employer’s mind as to the sincerity of the employee's belief. They include:

1. Whether the employee has acted in a way that is inconsistent with the claimed belief;
2. Whether the employee is seeking a benefit or an exception that is likely to be sought for nonreligious reasons;
3. Whether the timing of the request is questionable (for example, because it follows closely on the heels of the same employee's request for the same benefit for different reasons); and
4. Whether the employer has other reasons to believe that the employee is seeking the benefit for secular reasons.

Where an employer has an objective basis for questioning the employee’s stated religious belief, the employer can request additional information from the employee to decide whether to grant the religious accommodation request. Employers should collect this information on a standardized intake form, and the information should provide clarity as to the nature of the employee’s position. Where an employee’s objection to receiving the COVID-19 vaccine is not rooted in a “sincerely held religious belief,” no accommodation must be made and the employer is free to enforce the mandatory vaccination policy.

Recognizing an ‘Undue Burden’

According to a 1977 [U.S. Supreme Court decision](#), under Title VII, an employer is not required to accommodate an employee's religious beliefs and practices if doing so would impose an “undue hardship” on the employer’s legitimate business interests. An “undue hardship” exists as a matter of law where an employer is required to bear more than a de minimis cost. [EEOC Guidance](#) establishes that an employer can consider these factors in denying a religious accommodation:

1. The accommodation is too costly
2. It would decrease workplace efficiency
3. The accommodation infringes on the rights of other employees
4. The accommodation requires other employees to do more than their share of hazardous or burdensome work
5. The proposed accommodation conflicts with another law or regulation
6. It compromises workplace safety

Given the current explosion of COVID-19 cases and carefully analyzing how these factors apply to your workplace, employers may have good legal grounds to deny employees' claims for an exemption from the mandatory policy.

An Employee's Religious Belief is Not Paramount to Workplace Safety

Perhaps most relevant to the determination of whether a religious accommodation to a mandatory vaccination policy poses an undue hardship to the employer is the consideration of whether the requested accommodation compromises workplace safety.

Employers are permitted to weigh the importance of workplace safety against the religious beliefs of an employee; Title VII does not require that the religious beliefs of an employee be prioritized above safety in the workplace. Case law is clear: "Safety considerations are highly relevant in determining whether a proposed accommodation would produce an undue hardship on the employer's business." In *Draper v. U.S. Pipe & Foundry Co.*, the court held that undue hardship can exist if the proposed accommodation would "either cause or increase safety risks or the risk of legal liability for the employer. ... Title VII does not require employers to test their safety policies on employees to determine the minimum level of protection needed to avoid injury."

Though limited, there is some legal precedent, particularly in the health care field, for weighing these considerations and electing to prioritize safety above an employee's religious beliefs. In *Robinson v. Children's Hospital Boston*, the U.S. District Court for the District of Massachusetts determined that Children's Hospital did not violate Title VII by terminating an employee who refused an influenza vaccination because of her religious beliefs. The court concluded that granting the employee's requested accommodation not to receive the vaccine would have increased the risk of transmitting influenza to its already vulnerable patient population. This increased safety risk posed an undue hardship on the hospital and thus it was not obligated to accommodate the employee's sincerely held religious belief.

Employers need to carefully consider whether an employee's requested accommodation to not be vaccinated puts them and/or other employees at risk for contracting or spreading COVID-19 such that workplace safety is compromised, resulting in an undue burden on the employer. Employers should also consider offering alternative accommodations to employees, which may include remote work.

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