

EEOC Issues Additional Guidance on Religious Objections to COVID-19 Vaccine Mandates

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On October 25, the EEOC issued updated and expanded [guidance](#) regarding the obligations of employers under Title VII of the Civil Rights Act of 1964 (“Title VII”) when an employee presents with a religious objection to a mandatory COVID-19 vaccination policy. The guidance builds upon [prior EEOC guidance](#) regarding COVID-19 vaccinations in the employment context.

Key takeaways from the updated guidance include the following:

- **Requesting an Accommodation:** According to the guidance, “employees must tell their employer if they are requesting an exception to a COVID-19 vaccination requirement because of a conflict between that requirement and their sincerely held religious beliefs, practices, or observances.” That said, employees are not required to use “magic words” – such as “religious accommodation” or “Title VII” – when requesting the accommodation.
- **Definition of Religion:** The duty to accommodate (absent undue hardship) arises when an employee has: (1) a sincerely-held; (2) religious belief; (3) that conflicts with the employer’s COVID-19 vaccination requirement. The guidance explains that the definition of religion under Title VII is broad and protects nontraditional religious beliefs that may be unfamiliar to employers. That said, Title VII does not protect social, political, or economic views, or personal preferences. Further, the guidance is clear that nonreligious concerns about possible side effects of the vaccine do not qualify as “religious beliefs” under Title VII.
- **“Sincerely Held” Belief:** While an employee’s religious belief must be “sincerely held” to qualify for an accommodation, the guidance acknowledges that the “sincerity of an employee’s stated religious beliefs ... is not usually in dispute” and that the employee’s sincerity is generally a matter of individual credibility. The guidance lists several factors that might undermine an employee’s credibility, including: (1) whether the employee has acted in a manner inconsistent with the stated belief; (2) whether the accommodation sought is a particularly desirable benefit; and (3) whether the timing of the request renders it suspect. On the first factor, the guidance cautions employers that religious beliefs may change over time; and therefore, an employee’s inconsistently observed practices may nevertheless be

sincerely held.

- **Documentation:** The guidance acknowledges that employers may ask employees for an explanation of how the employee's religious belief conflicts with the employer's vaccination policy. The guidance also states that "if an employer has an objective basis for questioning either the religious nature or the sincerity of a particular belief, the employer would be justified in making a limited factual inquiry and seeking additional supporting information."
- **Undue Hardship:** As a general matter, employers are not required to provide an accommodation that would pose an "undue hardship" on the employer's business, which, in the context of a religious accommodation under Title VII, has been interpreted to mean anything more than a "*de minimis*" cost. According to the guidance, these costs include both monetary costs and "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." Relevant considerations in the context of a request for a religious accommodation under Title VII include: (1) whether the employee works outdoors or indoors; (2) whether or not the employee works in a group work setting; (3) whether the employee has close contact with others (especially vulnerable individuals); (4) the type of workplace; (5) the nature of the employee's duties; (6) the number of employees who are fully vaccinated; (7) how many individuals enter the workplace; and (8) the number of employees who are seeking a similar accommodation.
- **Accommodation of the Employee's Choice:** The guidance reiterates that if there is more than one effective accommodation that can be provided without creating an undue hardship, the employer may choose which accommodation to provide. The employer should consider the employee's preference, but is not obligated to provide the accommodation preferred by the employee.
- **Temporary Accommodations:** The EEOC's guidance recognizes that the requirement to provide reasonable accommodations is a continuing obligation. Therefore, according to the guidance, "an employer has the right to discontinue a previously granted accommodation if it is no longer utilized for religious purposes, or if a provided accommodation subsequently poses an undue hardship on the employer's operations due to changed circumstances." The guidance recommends that employers discuss concerns with employees before revoking an accommodation.

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