

# EEOC Provides Updated Guidance to Employers Regarding Title VII and Religious Objections to COVID-19 Vaccine Mandates (US)

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Since President Biden announced his “[Path Out of the Pandemic](#)” COVID-19 Action Plan on September 9, 2021 (see our prior post [here](#)), an increasing number of employers across the country have implemented, or are in the process of implementing, mandatory COVID-19 vaccination policies. Although these policies may differ in certain respects from employer to employer, they all include (indeed, must include) an opportunity for employees to request an accommodation from any vaccination requirement based on medical/disability grounds, or due to sincerely held religious beliefs.

As these policies have gone into effect, employers have confronted a slew of questions concerning the legal requirements, processes, and nuances of offering religious-based accommodations. In response to this outpouring of uncertainty, on October 25, 2021, the U.S. Equal Employment Opportunity Commission (“EEOC”) updated its [Technical Assistance](#) guidance to provide employers with answers to some of the most frequently asked questions concerning when they are required to accommodate (i.e., exempt) employees from mandatory COVID-19 vaccination requirements due to religious reasons under Title VII of the Civil Rights Act of 1964 (“Title VII”).

Title VII prohibits discrimination in employment based on religion, and includes a right for job applicants and employees to request an exception – here, a “reasonable accommodation” – from an employer requirement that conflicts with their sincerely held religious beliefs, practices, or observances. However, an employer is not required to honor every employee request. Rather, if an employer shows that it cannot reasonably accommodate an employee’s religious beliefs, practices, or observances without undue hardship on its operations, then it is not required to grant an accommodation. The EEOC’s updated guidance addresses the issues of when and how an employee may qualify for a religious-based accommodation, and when such an accommodation may nonetheless be denied because it imposes an undue burden on the employer.

Here are the key points from the [updated EEOC guidance](#) on religious accommodation from vaccination requirements (see Section L):

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- Employers must reasonably accommodate employees' (and applicants') sincerely held religious beliefs that conflict with an employer requirement (here, a requirement that employees be fully vaccinated against COVID-19).
  - The burden is on the employee (or applicant) to inform their employer that they are requesting a religious-based exception to a vaccination requirement, although no "magic words" are necessary from the employee/applicant to request an exception. They need only inform the employer that there is a conflict between their religious beliefs and the vaccination requirement.
  - Employers generally should assume that a request for a religious accommodation is based on sincerely held religious beliefs. However, if an employer has an objective basis for questioning the sincerity of that belief, it can make a limited factual inquiry and request supporting information. An employee who fails or refuses to comply with a request for more information can be denied the accommodation.
  - Factors that may inform whether an employer has an objective basis to question an employee's claimed sincerely held religious beliefs include:
    - whether the employee has acted in a manner inconsistent with the claimed belief (although scrupulous adherence to religious norms are not required);
    - whether the accommodation sought is a particularly desirable benefit that is likely to be sought for non-religious reasons;
    - whether the timing of the request renders it suspicious (i.e., it follows a prior request by the employee for accommodation for non-religious reasons); and
    - whether other factors may support that the request is not based on religious beliefs.
  - Employers can ask an employee how their religious beliefs conflict with a vaccination requirement.
  - Employers do not have to provide a religious accommodation if it would present an undue hardship, which for purposes of a religious belief, is anything more than minimal expense to the employer. "Expense" includes actual direct monetary costs, but also the burden the accommodation would have on the conduct of the employer's business, which here includes the risk of spread of COVID-19 to other employees or the public.
  - The EEOC guidance also explains that undue hardship can exist when the accommodation would impair workplace safety, diminish the efficiency of operations, or cause coworkers to have to bear the burden of the accommodated employee's job. The EEOC guidance notes that the number of employees who are seeking a religious accommodation – and the cumulative cost or burden of providing accommodation – also is a relevant consideration in

whether to grant the accommodation.

- If an employer grants some employees religious accommodations, the employer is not automatically required to offer religious accommodations to all employees, and each request should be evaluated on its own facts. However, an assumption that if an accommodation is provided to some employees, many more employees might seek a religious accommodation in the future is not evidence of undue hardship. With that said, an employer may take into account the cumulative cost or burden of granting accommodations to other employees.
- Employers do not have to provide the specific accommodation requested or preferred by the employee. There may be more than one reasonable accommodation available, in which case, the employer can choose which to provide.

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