

Religious Objections to Vaccine Mandates: EEOC Issues New Guidance

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Last week, the EEOC issued new [guidance](#) on how to apply anti-discrimination laws to an applicant or employee's request for a religious exemption from an employer's COVID-19 vaccination requirement.

Background: Title VII and Religion

The EEOC has previously explained that vaccine mandates are generally permissible, as long as there are exceptions provided for disability and religious reasons. Disability-related objections are governed by the Americans with Disabilities Act ("ADA") whereas religious objections are governed by Title VII of the Civil Rights Act of 1964 ("Title VII"). The EEOC indicated that it was providing updated guidance because it expects the number of employers with vaccine requirements will increase in the coming months.

Title VII generally requires employers to provide accommodations for employees' religious beliefs or practices that conflict with work requirements so long as those beliefs or practices do not pose an undue hardship to the employer.

Sincerity of Religious Beliefs

An employee who desires a religious accommodation must demonstrate that his or her religious belief is "sincerely held." This is the first point of emphasis in the EEOC's new guidance. The EEOC makes clear that Title VII "does not protect social, political, or economic views, or personal preferences." Therefore, "objections to COVID-19 vaccination that are based on social, political, or personal preferences, or on nonreligious concerns about the possible effects of the vaccine, do not qualify as 'religious beliefs' under Title VII."

Assuming the professed belief is not solely and obviously grounded in social, political or other nonreligious concerns, the employer "should ordinarily assume" that an employee's religious belief is sincerely held. That said, employers may question "either the religious nature or the sincerity of a particular belief, practice, or observance" if there are "facts that provide an objective basis" for doing

so. Examples of such scenarios, the EEOC explained, include the following:

- whether the employee has acted in a manner inconsistent with the professed belief (although employees need not be scrupulous in their observance);
- whether the accommodation sought is a particularly desirable benefit that is likely to be sought for nonreligious reasons;
- whether the timing of the request renders it suspect (e.g., it follows an earlier request by the employee for the same benefit for secular reasons);
- and whether the employer otherwise has reason to believe the accommodation is not sought for religious reasons.

In examining the sincerity of an employee's religious belief, the EEOC stresses that no one factor is determinative and instructs employers to evaluate religious objections on an individual basis. Just because one employee is granted a religious accommodation does not mean that an employer must grant all similar requests.

Determining Undue Hardship in the Era of COVID-19

Even if an employee's belief is sincerely held, an employer may deny accommodation if, after considering all possible solutions, the accommodation would pose an "undue hardship" to the employer.

Employers may be familiar with the undue hardship standard in the context of ADA disability accommodation claims. Despite the same verbiage, Title VII employs a different standard. To demonstrate undue hardship under Title VII, the requested accommodation need only bear more than a "de minimis," or a minimal, cost to the employer. These costs can be monetary or non-monetary.

With regard to possible undue hardships presented by COVID-19, the EEOC explained that the following considerations may be relevant: whether the employee requesting a religious accommodation works outdoors or indoors, works in a solitary or group work setting, or has close contact with other employees or members of the public (especially medically vulnerable individuals). Another consideration may be the number of employees who are seeking a similar accommodation (i.e., the cumulative cost or burden on the employer).

If a proposed religious accommodation would impair workplace safety, diminish efficiency in other jobs, or cause coworkers to carry the accommodated employee's share of potentially hazardous or burdensome work, an employer may be able to demonstrate that it is not required to accommodate the employee's request.

Conclusion

The EEOC recognizes the difficult questions that are posed by a religious objection to a vaccine mandate. As a result, the agency provided updated guidance and even took the rare step of including in the guidance the EEOC's own form that it will utilize to handle religious accommodation requests within the agency. A copy of that form can be found [here](#).

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