

New EEOC Guidance on Religious Accommodations to Vaccine Mandates

What is the Coronavirus?

Coronavirus Disease 2019 (COVID-19) is a respiratory disease caused by the Severe Acute Respiratory Syndrome (SARS)-CoV-2 virus. The current mutation is a new strain of the SARS virus and no individual has any immunity prior to an exposure. The CDC has reported that testing has begun on a vaccine but for now, everyone should prepare and plan for possible impacts resulting from COVID-19. It has spread from China to many other countries around the world, including the United States.

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Relevant to our analysis of OSHA's COVID-19 Vaccination and Testing emergency temporary standard, we wanted to call your attention to a development yesterday out of the EEOC that will impact how employers will implement their various vaccination, testing, and masking requirements. Specifically, EEOC finally updated its [guidance](#) on Title VII and Religious Objections to COVID-19 Vaccine Mandates.

The law has long-recognized an exemption from mandatory work policies (including vaccine-mandates) based on sincerely held religious beliefs, pursuant to Title VII of the Civil Rights Act of 1964 (and equivalent state statutes). For employers, evaluating religious exemption requests can be tricky (certainly trickier than requests for medical/disability-based exemptions), as there is often no readily verifiable evidence to help ascertain whether an employee's religious objection to the work policy is a sincerely held religious belief (or even a religious belief at all). In response to COVID-19 vaccine-mandates, many employees nationwide are attempting to seek a religious exemption when their actual objections are really based in political, ethical, or personal beliefs.

In response to requests from the regulated community, the EEOC has attempted to provide more clarity so that employers can have more confidence in implementing their accommodations process, and in many instances, to push back on suspect claims by employees of the need for a religious exemption. The guidance does offer some useful tools for employers, but unfortunately, it is not as helpful as we had hoped it might be.

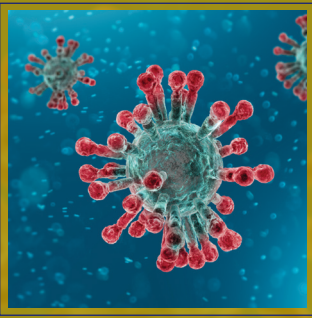
The theme of the EEOC's updated guidance is that employers must make an individualized evaluation of each employee's request for a religious accommodation. The EEOC renewed its historical instruction that employers should ordinarily presume that requests for religious accommodation are based on sincerely held religious belief, but the updated guidance now makes clear that employers may ask for explanation of how an employee's religious belief conflicts with the vaccination requirement. The agency provided one specific example of a valid reason for seeking a religious accommodation – when an employee has a religious conflict with a particular vaccine and asks to wait until an alternative version or specific brand of COVID-19 vaccine is available. But more importantly, EEOC now provides employers with a list of valid reasons to deny requests for religious accommodation:

- The employee asserts social, political, or economic views, personal preferences or a non-religious concern about the possible effects of the vaccine (these are not “religious beliefs” under Title VII);
- The employee fails to cooperate with an employer's reasonable request for verification of the sincerity or religious nature of a professed belief;
- The employee's request lacks credibility because:
 - ◆ The employee has acted in a manner inconsistent with the professed belief (e.g., by receiving other vaccinations or using similar medications);
 - ◆ The specific accommodation requested is a “particularly desirable benefit that is likely to be sought for nonreligious reasons”;
 - ◆ The timing of the request renders it suspect (e.g., it follows an earlier request by the same employee asserting other reasons for the exemption); or



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- ◆ The employer is aware of other reasons to believe the request is not based in a religious belief.

Even if the employer cannot identify a reason to discredit the sincerity of an employee's claimed religious belief, the employer does not necessarily need to accommodate the employee's request. Indeed, employers only need to accommodate a request for an exemption from a work policy based on religious beliefs if the accommodation would not work an undue hardship on the employer, and in the context of religious exemptions specifically, any accommodation that would represent any "more than *de minimis* cost" would be an undue hardship. The updated EEOC guidance identified "common and relevant considerations" for evaluating potential hardship caused by an employee's request for a religious accommodation, and they include both direct monetary costs, as well as the burden on employers' businesses, such as by the risk of spread of COVID-19 to co-workers or the public. Here are some of the enumerated considerations for how a requested accommodation (i.e., some measure other than getting vaccinated) could burden employers' businesses:

- What is the "objective burden" on the business?
 - ◆ direct monetary costs are more than *de minimis*
 - ◆ risk of the spread of COVID-19 to other employees or to the public
 - ◆ impairment of workplace safety
 - ◆ diminished efficiency in other jobs
 - ◆ shifting of potentially hazardous or burdensome work to other employee
 - ◆ ***cumulative costs to the employer due to the number of employees seeking a similar accommodation.***
- Does the employee seeking the accommodation work outdoors or indoors, in solitary or in a group work setting, have close contact with other employees or members of the public?
- What is the level of exposure to the employee seeking the accommodation (i.e., how many employees and non-employees physically enter the workplace, how many employees are fully vaccinated)?

The EEOC cautioned employers that employees are not required to use "magic words" when making a religious accommodation request. Employers should provide employees and job applicants with information about the accommodations process so that they can properly notify the employer that there is a conflict between their sincerely held religious beliefs, practices, or observances and the employer's COVID-19 vaccination requirement.

Finally, the EEOC recognizes particular circumstances may change for the employee or the employer:

- An employee's religious beliefs and practices may evolve or change over time and may result in requests for additional or different religious accommodations; and
- An employer has the right to discontinue a previously granted accommodation if it is no longer utilized for religious purposes, or the accommodation subsequently poses an undue hardship on the employer's operations due to changed circumstances (e.g., too many employees request the same accommodation).

As with most of the COVID-19 legislation and regulation, additional guidance is likely forthcoming. NECA will update these resources, as necessary. Please seek competent legal or human resources advice for assistance with any specific factual scenarios.

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