

Frequently Asked Questions on Religious Objections to Employer COVID-19 Vaccine Mandates

On October 25, 2021, the U.S. Equal Employment Opportunity Commission (EEOC) updated its [guidance](#) related to the COVID-19 pandemic, adding a brand-new section addressing religious objections to COVID-19 vaccine mandates.

Since the U.S. Food and Drug Administration (FDA) approved use of [three COVID-19 vaccines](#) under emergency use authorizations in April 2021, many public and private employers have announced and/or implemented mandatory vaccination policies. In addition, on September 9, 2021, President Biden signed an [executive order](#) requiring that certain federal contractors agree to contract clauses that effectively mandate vaccinations for their covered workers and directed the Occupational Safety and Health Administration (OSHA) to implement a rule that would require employers with 100 or more employees to mandate vaccination and/or weekly COVID-19 testing. OSHA's rule is expected to be published imminently.

Employers implementing mandatory vaccination policies (either by the company's decision or pursuant to government requirements) have been left with questions on how to properly address employee requests for accommodations to such policies due to religious beliefs, practices, and observances. The EEOC update provides some much-needed guidance.

1. Why Do Employers Have to Accommodate Religious Beliefs?

Title VII of the Civil Rights Act of 1964 and similar state statutes prohibit employment discrimination based on religion, which includes all aspects of religious beliefs, practices, or observances. These statutes require an employer to consider an employee's or applicant's request for an exception, called a religious or reasonable accommodation, from an employer requirement that conflicts with their sincerely held religious beliefs, practices, or observances. Employers must reasonably accommodate employees' sincerely held religious beliefs, practices, or observances unless providing the accommodation would cause an undue hardship.

2. How Do Employers Recognize a Request for Religious Accommodation?

Employees must notify their employer if they are requesting a religious accommodation from a COVID-19 vaccination requirement. While employees do not need to use specific words such as "religious accommodation," they do need to notify the employer that its vaccination requirement conflicts with their sincerely held religious belief. Employers should inform employees and applicants on how to request a religious accommodation. An employee simply saying that the employee does not wish to be vaccinated, without providing any reason as to why, is unlikely to put an employer on notice of the employee's need for a religious accommodation.

3. How Should Employers Respond to a Request for Religious Accommodation?

Courts interpreting Title VII do not require employers to provide an exception to the vaccination requirement as a religious accommodation unless: (1) the employee's belief, practice, or observance is religious in nature; (2) the belief conflicts with the vaccination requirement; (3) the belief is sincerely held; and (4) the employee does not seek an accommodation that imposes an undue hardship. Employers should evaluate religious

accommodation requests on an individual basis to determine whether these four factors are satisfied.

The EEOC [advises](#) employers to "assume that a request for religious accommodation is based on sincerely held religious beliefs. However, if an employer has an objective basis for questioning either the religious nature or the sincerity of a particular belief, employers would be justified in making a limited factual inquiry and seeking additional supporting information." Employers with an objective basis for doing so may ask employees to explain the nature of their religious belief and may inquire into the employee's sincerity of their religious belief. The EEOC has provided its [own form](#) as an example of an appropriate employer's inquiry into the nature of the religious belief. Employees who fail to cooperate with an employer's reasonable request for verification risk losing any subsequently made claim that the employer improperly denied an accommodation.

Step 1: Is the Request Based on a "Religious Belief, Practice, or Observance"?

Religious beliefs typically concern the ultimate ideas about life, purpose, and death, humanity's place in the universe, or right and wrong, and reflect a moral or ethical belief system. Religion includes not only traditional, organized religions, but also religious beliefs that are not part of a formal church or sect or are new or uncommon. An employee's belief, observance, or practice can be religious under Title VII even if no other person adheres to it (a religion of one person) and even if it seems illogical or unreasonable to others. Employers should therefore not assume a belief is not religious in nature because they are unfamiliar with the religion or believe it to be illogical.

Religious beliefs differ from personal, social, political, or economic beliefs, which are not protected by Title VII. For example, simply feeling passionately about something is not sufficient to give it the status of religion in someone's life. If an employee objects to a COVID-19 vaccination based on "social, political, or personal preferences, or on nonreligious concerns about the possible effects of the vaccine," then the employer is not obligated to provide a religious accommodation because these objections do not qualify as "religious beliefs" under Title VII. For example, an employee professing fear of being vaccinated against COVID-19 because testing is believed by the employee to have been rushed is likely insufficient to qualify as a religious belief.

Step 2: Does the Religious Belief Conflict With the Vaccination Requirement?

An employee's religious belief must actually conflict with the employer's vaccination requirement. Employers should evaluate whether a conflict exists and may ask employees to explain how their religious belief conflicts with the employer's vaccination requirement if it is unclear. If no conflict exists, the employer is not required to provide an accommodation for that reason.

Step 3: Is the Religious Belief "Sincerely Held"?

The EEOC has stated that an employee's sincerity is not usually in dispute and should be assumed, but, presuming that an employer has objective evidence to inquire further, determining sincerity is largely an issue of the employee's credibility. In determining credibility, employers should conduct an individualized assessment and may consider some or all the following factors:

- Whether the employee has acted in a manner inconsistent with the professed belief (although employees need not follow every tenet of the religion 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.

No one factor is determinative. For example, the EEOC [cautions](#) that although prior consistent conduct is relevant, because an employee's religious beliefs and degree of adherence to those beliefs may change over time, "an employee's newly adopted or inconsistently observed practices may nevertheless be sincerely held." Employers should not assume that employees who do not follow all tenets of a religion do not possess sincerely held religious beliefs.

Step 4: Does the Requested Accommodation Create an Undue Hardship?

If an employee's request for religious accommodation satisfies Steps 1 through 3, employers must reasonably accommodate the employee unless doing so would cause an undue hardship.

The EEOC [notes](#) that, "the Supreme Court has held requiring an employer to bear more than a 'de minimis' or a minimal, cost to accommodate an employee's religious belief is an undue hardship." Although the undue hardship standard under Title VII is a lower threshold than under the American with Disabilities Act (ADA), employers should be aware that there is limited case law interpreting the standard. Employers should rely on and document objective information evidencing undue hardship, and the EEOC reminds employers they cannot rely on speculative or potential burdens.

In conducting an undue hardship analysis, employers may consider:

- The direct monetary costs;
- The burden on the employer's business, including the risk of the spread of COVID-19 to other employees and to the public, and whether the religious accommodation would "impair workplace safety";
- The nature of the employee's duties, including whether the religious accommodation would diminish efficiency in other jobs, or cause coworkers to carry the accommodated employee's share of potentially hazardous or burdensome work";
- The type of workplace, including "whether the employee requesting a religious accommodation to a COVID-19 vaccination requirement 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)";
- The workforce, including the number of employees who are seeking a similar a particular accommodation (i.e., the cumulative cost or burden on the employer), the number of employees who are fully vaccinated, and the number of employees and nonemployees who physically enter the workplace; and
- CDC recommendations.

Before denying an accommodation request based on undue hardship, employers should consider possible alternative accommodations, including telework and reassignment. The EEOC cautions employers that in "many circumstances," it may be possible to accommodate religious beliefs without imposing an undue hardship. An employer need not provide an employee's preferred accommodation if other accommodations are effective in eliminating the religious conflict, but should consider the employee's preference and explain to the employee why the preferred accommodation is not being granted.

4. Can Employers Reconsider Religious Accommodations?

Under the EEOC guidance, an employer may reconsider religious accommodations in light of changing circumstances, such as an employee's changed religious beliefs and practices or the accommodation poses an undue hardship due to changes in the employer's business. Before discontinuing a religious accommodation, employers should engage in the interactive process with the employee to determine whether there is an alternative accommodation available that would not pose an undue hardship.

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The EEOC's guidance constitutes its interpretation of Title VII, but other federal, state, and local laws may impose additional requirements or define "undue hardship" differently. Employers with questions about religious accommodations and COVID-19 vaccination requirements should consult experienced counsel.

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