

## EEOC Expands Guidance for Employers on Religious Objections to Workplace Vaccination Requirements

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### What You Should Know:

- The latest EEOC guidance explains how Title VII applies when an applicant or employee requests exemption from a COVID-19 vaccine requirement because of the individual's sincerely held religious beliefs, practices, or observances.
- Employers should consider all possible reasonable accommodations after receiving a request for exemption due to a sincerely held religious belief.
- Employers should consult with legal counsel to ensure compliance with local and federal guidance related to their COVID-19 vaccination policies and related employee rights.

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On October 25, 2021, the Equal Employment Opportunity Commission (EEOC) updated and expanded its technical guidance to employers regarding religious objections to workplace vaccine requirements.

The expanded guidance explains how Title VII of the Civil Rights Act of 1964 (Title VII), which prohibits discrimination based on religion, applies when an applicant or employee requests exemption from an employer's COVID-19 vaccine requirement because of the individual's sincerely held religious beliefs, practices, or observances.

EEOC Chair Charlotte A. Burrows stated that "Title VII requires employers to accommodate employees' sincerely held religious beliefs, practices, and observances absent undue hardship. This update will help safeguard that fundamental right as employers seek to protect workers and the public from the unique threat of COVID-19."

The key EEOC updates for employers to consider are summarized below:

- Title VII does not protect an employee's right to be exempt from an employer's mandatory COVID-19 vaccine for social, political, or economic views, personal preference, or non-religious reasons such as concerns regarding possible side effects of the vaccine. Such reasons are not considered "religious beliefs" under Title VII.
- Employees and applicants must inform their employers if they seek an exception to the employer's mandatory vaccine requirement due to a sincerely held religious belief.

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- Employees or applicants seeking exemption do not need to use any “magic word” such as “religious accommodation.”
- If an employee or applicant is waiting for a specific brand of vaccine or an alternative version of the vaccine to become available because that individual has a conflict with receiving the vaccine offered by the employer due to sincerely held religious beliefs, the employee may request a religious accommodation.
- Employers should assume that a request for a religious accommodation is based on a sincerely held belief unless the employer has an objective basis for questioning either the religious nature or the sincerity of a particular belief. In such a case, the employer may be justified in making a limited factual inquiry and seeking additional supporting information.
- An employee’s prior inconsistent conduct is relevant to whether an employee or applicant’s religious belief is sincerely held. Although prior inconsistent conduct is relevant to the question of sincerity, an individual’s beliefs – or degree of adherence – may change over time and, therefore an employee’s newly-adopted, or inconsistently-observed practices may nevertheless be sincerely held. An employer should not assume that an employee is insincere simply because some of the employee’s practices deviate from the commonly followed tenets of the employee’s religion, or because the employee adheres to some common practices but not others. No one factor or consideration is determinative, and employers should evaluate religious objections on an individual basis.
- Employers considering whether a request for a religious accommodation causes an “undue hardship” must consider the “burden on the conduct of the employer’s business,” such as the risk of spreading COVID-19 to other employees or the public, and employers will need to demonstrate how much cost or disruption the employee’s proposed accommodation would entail.
- Employers should “thoroughly” consider all “possible reasonable” accommodations, including telework and reassignment.
- If there is more than one accommodation that would resolve the employee’s conflict, the employer may choose which religious accommodation to offer.
- Courts have found Title VII undue hardship where, for example, the 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.
- Employers have the right to discontinue a religious accommodation as circumstances evolve or change, however employers should discuss with the employee the change in circumstances and the concerns it has about continuing a religious accommodation before revoking it.

As a best practice, all employers should regularly communicate with legal counsel to ensure compliance with local and federal guidance related to employees’ rights, including COVID-19 vaccine policies. Please contact the author of this Alert, **Ghatul Abdul**, for additional information or to discuss your specific circumstances. Ms. Abdul is a member of the firm’s **Healthcare Department**.

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