

# EEOC Expands Guidance on Religious Exemptions to Vaccine Mandates Under Title VII

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On October 25, 2021, the Equal Employment Opportunity Commission (“EEOC”) expanded its [guidance](#) on religious exemptions to employer vaccine mandates under Title VII of the Civil Rights Act of 1964 (“Guidance”). This Guidance describes in greater detail the framework under which the EEOC advises employers to resolve religious accommodation requests.

The EEOC emphasizes that whether an employee is entitled to a religious accommodation is an individualized determination to be made in light of the “particular facts of each situation.” Guidance at L.3. The agency also was careful to note that the Guidance is specific to employers’ obligations under Title VII and does not address rights and responsibilities under the Religious Freedom Restoration Act or state laws that impose a higher standard for “undue hardship” than Title VII.

The EEOC provided its views on the following questions.

## **Who makes a religious accommodation request, and what form must it take?**

- Only sincerely held religious beliefs, practices, or observances qualify for accommodation. *Id.* at L.1.
- A religious accommodation request need not use “magic words,” but it must communicate to the employer that there is a conflict between the employee’s religious beliefs and a workplace COVID-19 vaccination requirement. *Id.*
- The EEOC encourages employers to create processes and/or designate particular employees to handle such religious accommodations requests. *Id.* Employers also should provide employees and applicants with information about whom to contact, and the procedures to follow, to request a religious accommodation, the EEOC advises.

## **May an employer ask an employee for more information regarding a religious accommodation request?**

Yes. An employer may ask for an explanation of how an employee’s religious beliefs conflict with a COVID-19 vaccination requirement. *Id.* at L.2. Furthermore, an employer may make a “limited factual inquiry” if there is an objective basis for questioning either: (1) the *religious nature* of the employee’s belief; or (2) the *sincerity* of an employee’s stated beliefs. *Id.*

- **The religious nature of the employee’s belief.** Employers are not prohibited from inquiring whether a belief is religious in nature, or based on unprotected “social, political, or economic views, or personal preferences.” *Id.* However, the EEOC cautions employers that even unfamiliar or nontraditional beliefs are

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protected under Title VII. *Id.*

- **The sincerity of an employee's stated beliefs.** The EEOC explains that "[t]he sincerity of an employee's stated religious beliefs ... is not usually in dispute," but provides factors that may "undermine an employee's credibility." *Id.* These factors are:

1. *actions* the employee has taken that are *inconsistent* with the employee's professed belief;
2. whether the accommodation may have a *non-religious benefit that is "particularly desirable"*;
3. the *timing of the request*; and
4. *any other reasons* to believe the accommodation is not sought for religious reasons. *Id.*

No single factor is determinative. *Id.* The EEOC cautions that religious beliefs "may change over time," "employees need not be scrupulous in their [religious] observance," and "newly adopted or inconsistently observed practices may nevertheless be sincerely held." *Id.*

## **What is an undue hardship under Title VII?**

The Supreme Court has held that an employer is not required to provide an accommodation if the accommodation would impose more than a *de minimis* cost. *Id.* at L.3. The Guidance takes an expansive view of what types of costs might justify denying an accommodation. The EEOC suggests that such costs may include:

- "[D]irect monetary costs";
- "[T]he burden on the conduct of the employer's business—including, in this instance, the risk of spread of COVID-19 to the public";
- Diminished efficiency in other jobs;
- Impairments to workplace safety; and
- Causing coworkers to take on the accommodated employee's "share of potentially hazardous or burdensome work." *Id.*

Furthermore, an employer "may take into account the cumulative cost or burden of granting accommodations to other employees," but may not rely on the "mere assumption" that "more employees might seek religious accommodation" with respect to a vaccine requirement. *Id.* at L.4. Likewise, an employer cannot rely on "speculative hardships" to deny an accommodation, according to the EEOC, but must rely "on objective information," considering factors such as whether the employee making the request works indoors or outdoors, in a solitary or group setting, or has close contact with others, especially "medically vulnerable individuals."

## **If an employer grants one religious accommodation request from a COVID-19 vaccination requirement, must it grant all religious accommodation requests?**

No. Religious accommodation determinations are individualized in nature and must focus on a specific employee's request and whether accommodating the specific employee would impose an undue hardship. *Id.* When assessing whether granting an exemption would impair workplace safety, the EEOC advises considering, among other factors, the number of employees who are fully vaccinated, physically enter the workplace, and will need a particular accommodation.

## **Must an employer provide a requesting employee's preferred religious**

## accommodation?

No. An employer may choose any reasonable accommodation that would “resolve the conflict” between the a vaccination requirement and an employee’s sincerely held religious belief, though it “should consider the employee’s preference.” *Id.* at L.5. If an employer does not choose an employee’s preferred accommodation, it should explain to the employee why that accommodation is not granted. *Id.*

## Can an employer discontinue a previously granted religious accommodation?

Yes. An employer may be able to discontinue an accommodation if the accommodation is no longer used for religious purposes or the accommodation subsequently imposes more than a *de minimis* cost. *Id.* at L.6. Employers also should be aware that an employee’s “religious beliefs and practices may evolve or change over time and may result in requests for additional or different religious accommodations.”

Questions the EEOC did **not** address include what steps large employers faced with tens of thousands of reasonable accommodation requests must take to satisfy the individualized-determination requirement; what may constitute reasonable accommodations for employees entitled to exemptions, particularly when community transmission is high; and how employers can comply with recordkeeping and privacy concerns under state and federal statutes, including how to receive and store employee vaccine and testing records.

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The following Gibson Dunn attorneys assisted in preparing this client update: Eugene Scalia, Katherine V.A. Smith, Jason C. Schwartz, Jessica Brown, Andrew G. I. Kilberg, Zoë Klein, Chad C. Squitieri, Hannah Regan-Smith, and Kate Googins.

Gibson Dunn’s lawyers are available to assist in addressing any questions you may have regarding these developments. To learn more about these issues, please contact the Gibson Dunn lawyer with whom you usually work, or any of the following in the firm’s Administrative Law and Regulatory or Labor and Employment practice groups.

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