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### **EEOC updates guidance on religious objections to COVID-19 vaccine mandates**

Updated and expanded EEOC guidance released on October 25 reminds employers of their obligation to consider requests for religious exceptions to a COVID-19 vaccination mandate. It also clarifies that workplace antidiscrimination laws do not protect employees' political, social, or economic objections to a vaccination requirement or their personal preferences.

#### **Background**

Mandatory COVID-19 vaccination policies are subject to exceptions for both medical and religious reasons under federal antidiscrimination laws enforced by the Equal Employment Opportunity Commission (EEOC). The Americans With Disabilities Act prohibits employment discrimination on the basis of disability, while Title VII of the Civil Rights Act of 1964 (Title VII) prohibits employment discrimination based on religion.

Under Title VII, job applicants and employees have a right to request an exception to an employer requirement — including a vaccine mandate — that conflicts with their sincerely held religious beliefs, practices, or observances. However, employers are not generally required to grant such an accommodation if they can show that it would pose an undue hardship on their business. In the context of a religious accommodation under Title VII, undue hardship has been interpreted to mean anything more than a “de minimis” cost.

As mandatory COVID-19 vaccine policies have become more common, employers have seen an uptick in religious accommodation requests from employees. On October 25, the EEOC updated and expanded its [Technical Assistance](#), adding a section that addresses religious objections to employer COVID-19 vaccine requirements.

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## Key employer considerations

The EEOC's latest guidance underscores key considerations for employers handling employee requests for religious exceptions to vaccine mandates. Highlights include the following.

- **Accommodation requests.** While employees must tell their employer if they are requesting a religious exception to a COVID-19 vaccination requirement, no “magic words” are required when making the request. However, employees must make clear that the employer’s vaccine requirement conflicts with their sincerely held religious beliefs, practices or observances. The same principles apply if employees have a religious conflict with getting a particular vaccine and wish to wait until an alternative version is available.

As a best practice, employers should provide employees and applicants with information about whom to contact and procedures for requesting a religious accommodation.

- **Religion broadly defined.** Title VII broadly defines religion and protects workers against discrimination based on “nontraditional religious beliefs” that may be unfamiliar to employers, but it does not protect social, political, or economic views, personal preferences, or nonreligious concerns about the possible effects of the vaccine.
- **Sincerely held beliefs.** While the sincerity of a religious belief is not normally in dispute, the employee’s sincerity is “largely a matter of individual credibility.” An employer should not assume a belief is insincere merely because some of the employee’s practices deviate from commonly followed tenets of the employee’s religion, or because the employee adheres to some religious practices but not others. Factors that may undermine an employee’s credibility include whether: (1) their actions are inconsistent with the stated belief; (2) the accommodation sought is a particularly desirable benefit likely to be sought for nonreligious reasons; (3) the timing of the request is suspect; and (4) the employer has other reasons to believe the accommodation is not sought for religious reasons.
- **Employer inquiries.** Employers may ask employees to explain the religious nature of their belief, as well as how their belief conflicts with the employer’s vaccine requirement. While employers should generally assume that requests for religious accommodation are based on sincerely held religious beliefs, they would be justified in making a limited factual inquiry and seeking additional supporting information if they have an objective basis for questioning either the religious nature or the sincerity of a particular belief. Because no one factor or consideration is determinative, religious objections to COVID-19 vaccine mandates should be evaluated on an individual basis. An employee who fails to cooperate with an employer’s reasonable request for information would risk losing any subsequent claim that they were improperly denied an accommodation.
- **Selecting an accommodation.** Employers should consider all possible reasonable accommodations, including telework and reassignment. However, they do not have to provide an employee’s preferred accommodation if other accommodations would eliminate the religious conflict without causing undue hardship.

- **Undue hardship.** Costs to be considered in determining whether a particular religious accommodation would cause an undue hardship include direct monetary costs as well as the burden on the conduct of the employer’s business — including the risk of the spread of COVID-19 to other employees or the public. Among the factors employers may consider are whether the employee requesting the 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. Another relevant consideration is the number of employees who are seeking a similar accommodation.

When assessing whether excepting an employee from a vaccination requirement would impair workplace safety, employers may consider such factors as the type of workplace, nature of the employee’s duties, number of employees who are fully vaccinated, number of employees and nonemployees who physically enter the workplace, and number of employees who will need a particular accommodation. The mere assumption that religious accommodation requests may increase later would not be evidence of undue hardship. However, employers may consider the actual cumulative cost or burden of granting accommodations to others.

- **Reevaluating an accommodation.** Employers may reevaluate and discontinue a previously granted accommodation if it no longer serves religious purposes, or if it later poses an undue hardship on the employer’s operations due to changed circumstances. As a best practice, employers should discuss with the employee any concerns it has about continuing a religious accommodation before revoking it and consider the availability of alternative accommodations that would not impose an undue hardship.

## In closing

Employers should review and update their accommodation process as needed in light of the latest EEOC guidance and continue to monitor evolving compliance obligations.

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