

LABOR AND EMPLOYMENT LAW

INFORMATION MEMO

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Updated Guidance on Religious Accommodations to COVID-19 Vaccine Mandates

On March 1, 2022, the EEOC updated its guidance on religious accommodations to COVID-19 vaccine mandates. While the guidance states that job applicants and employees have a right to request a religious accommodation from an employer's COVID-19 vaccination requirement under Title VII, the new guidance answers many questions specific to COVID-19 vaccination requirements and specifically addresses how employers should evaluate an employee's religious objection to the vaccine.

The full updated guidance is available [here](#).

How do employees request a religious accommodation?

Employees must inform their employer of their request to be exempt from the employer's COVID-19 vaccination requirement on the basis of their religious observance. "When making the request, employees do not need to use any 'magic words,' such as 'religious accommodation' or 'Title VII.'" The employee only needs to explain their religious objection to the vaccination requirement.

The guidance states that "as a best practice, an employer should provide employees and applicants with information about whom to contact and the proper procedures for requesting a religious accommodation." The EEOC included a link to its own internal workplace form, which its employees can use to request a religious accommodation.

How should an employer evaluate an employee's request for a religious exemption to the employer's COVID-19 vaccination requirement?

The guidance states that an employer may make a "limited factual inquiry" and seek "additional supporting information" from the employee regarding the employee's request for a religious accommodation if the employer has an objective basis for questioning the religious nature of the request or the sincerity of the employee's asserted religious belief. If an employee does not comply with an employer's "reasonable requests for verification of the sincerity or religious nature of the request of a professed belief, practice or observance" the employee risks losing any subsequent claim that his or her request for a religious accommodation was improperly denied.

Similarly, the employer may ask the employee to explain the religious nature of their belief. This is especially helpful in situations where the employee's asserted religious belief is nontraditional or unfamiliar to the employer. However, the employer should not automatically deny a request or assume that it is invalid simply because the employee's asserted religion is nontraditional or unfamiliar to the employer.

The guidance further states that Title VII does not protect "social, political, or economic views, or personal preferences." Accordingly, an employee who makes a request purely based on a social, political or economic view or based on a personal preference would not be entitled to a religious accommodation.

The guidance states that other “nonreligious concerns” are not protected such as a concern about “the possible effects of the vaccine.” Employers should be cautious with this approach and should note that there could be overlap between a religious belief and a nonreligious view and that such a belief may still be protected under Title VII.

May employers evaluate whether the asserted religious belief is sincerely held?

Yes. While the guidance states that the employee’s sincerity in holding a religious belief is typically not in dispute, there are certain factors that may indicate that the belief is not sincerely held. These factors include:

- Whether the employee has acted in a manner inconsistent with the possessed belief (although employees need not be scrupulous 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 (for example: 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 and requests should be evaluated on a case-by-case basis.

When would a requested accommodation constitute an undue hardship?

Under Title VII, an employer may deny a request for an accommodation when the accommodation would pose an “undue hardship” on the employer. Accordingly, before denying a request for a religious accommodation, the employer should assess whether the employer can reasonably grant an accommodation such as remote work or reassignment. The guidance includes a list of possible accommodations that an employer may want to consider for employees requesting a religious accommodation to the COVID-19 vaccination requirement.

However, an accommodation that would require an employer to bear more than a minimal cost is an “undue hardship.” The guidance expressly states with regards to employees who are unvaccinated against COVID-19, that a cost to consider would include the risk of the spread of COVID-19 to other employees or to the public. Other cost factors include:

- Whether the accommodation would burden the conduct of the employer’s business;
- Whether the accommodation would violate federal law;
- Whether the accommodation would impair workplace safety;
- Whether the accommodation would diminish efficiency in other jobs; or
- Whether the accommodation would cause coworkers to carry the accommodated employee’s share of potentially hazardous or burdensome work.

The guidance further states certain considerations that are relevant during the COVID-19 pandemic when an employee is requesting a religious accommodation to the COVID-19 vaccination requirement. These include:

- Whether the employee works outdoors or indoors;
- Whether the employee works in a solitary or group work setting;
- Whether the employee has close contact with other employees or members of the public (especially medically vulnerable individuals); or
- Whether many employees are seeking a similar accommodation (i.e., the cumulative cost or burden on the employer).

The guidance clearly states that the employer does not have to grant *all* requests for a religious accommodation to the COVID-19 vaccination requirement merely because it grants *one* request. Whether the religious belief is sincerely held and whether the accommodation would pose an undue hardship should be analyzed on a case-by-case basis. The guidance also states that an employer who grants a request for an accommodation may later re-evaluate the request based on a change in circumstances.

For any questions, please contact [Brittany Frank](#), any attorney in Bond's [Labor and Employment practice](#) or the Bond attorney with whom you are regularly in contact.

