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## Introduction



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# EEOC Updated Guidance On Objections to COVID-19 Vaccine Mandates



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## Introduction

- On March 1, 2022 the EEOC updated its guidance on religious accommodation to COVID-19 vaccine mandates
- Job applicants and employees have a right to request a religious accommodation to an employer's COVID-19 vaccination requirement
- Employees must inform their employer of their request for a religious accommodation
- Employers should provide information on how to make a request
  - EEOC included a link to its own internal workplace form for employees to use for request for religious accommodations



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## Evaluating an Employee's Request

- Employer may make a “limited factual inquiry” and seek “additional supporting information” if there is an objective basis for questioning religious nature or sincerity of belief
  - If employee does not comply with request, they risk losing subsequent claim that request was improperly denied
- Title VII does not protect “social, political, or economic views, or personal preferences” or “nonreligious concerns”
  - Example: concern about the possible effects of the vaccine
- Note: there could be overlap between a religious and nonreligious belief – such belief would still be protected.



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## Sincerely Held Belief

- EEOC listed factors that may indicate a belief is not sincerely held
  - Whether employee has acted in a manner inconsistent with possessed belief
  - 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 (i.e. it follows an earlier request by the employee for the same benefit for a secular reason)
  - Whether the employer has another reason to believe the accommodation is not sought for religious reasons
  - Note: no one factor is determinative & employer should evaluate case-by-case



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## Undue Hardship

- Employer may deny a request for a religious accommodation when it would pose an “undue hardship”
- Before denying a request, employer may want to consider accommodations such as remote work or reassignment

## Undue Hardship Cont'd

- Costs to consider include:
  - Whether accommodation would burden the conduct of the business
    - Includes the risk of spreading COVID-19 to other employees or to the public
  - Monetary costs (anything more than a “de minimis” or minimal cost)
  - Whether accommodation would violate federal law
  - Whether accommodation would impair workplace safety
  - Whether accommodation would diminish efficiency in other jobs; or
  - Whether accommodation would cause coworkers to carry the accommodated employee's share of hazardous or burdensome work

## Undue Hardship Cont'd: Considerations specific to COVID-19

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



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## Concluding Notes

- Employer does not have to grant *all* requests even if it grants *one* request
- Whether religious belief is sincerely held and whether accommodation constitutes undue hardship should be analyzed on a case-by-case basis
- Employer does not have to grant employee's *preferred* accommodation if another accommodation is available and reasonable
- Employer who grants a request for an accommodation may later re-evaluate the request based on a change in circumstances
  - Example: employer may discontinue a previously provided accommodation that later poses an undue hardship on the employer's operations due to a change in circumstances



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## Retirement Plan Amendment Deadlines



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## 2022 Retirement Plan Amendment Deadlines

- CARES Act Amendments
  - Last day of plan year beginning on or after January 1, 2022
    - December 31, 2022 for calendar year plans
    - December 31, 2024 for governmental plans
- SECURE Act Amendments
  - Last day of plan year beginning on or after January 1, 2022
    - December 31, 2022 for calendar year plans
    - December 31, 2024 of governmental plans
- Restatement of “Pre-Approved” Defined Contribution Plans
  - July 31, 2022



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## CARES Act Amendment Highlights

- Coronavirus-Related Distributions (1/1/20 – 12/31/20) (optional)
- Coronavirus-Related Participant Loan Relief (3/27/20 – 12/31/20) (optional)
- Waiver of 2020 Required Minimum Distributions (4/1/20) (optional)

## SECURE Act Amendment Highlights

- Increase in Required Beginning Date from 70½ to 72 and related required minimum distribution changes (mandatory)
- Participation of “long-term” part-time employees in 401(k) plans (mandatory)
- Qualified Birth/Adoption Distributions from defined contribution plans (optional)
- Age 59½ in-service distributions from defined benefit and money purchase pension plans (optional)

## Restatement of “Pre-Approved” Defined Contribution Plans

- Adopters of IRS pre-approved specimen plan documents can rely on IRS ruling regarding qualification of specimen plan
  - “Prototype” and “Volume Submitter” plan documents
  - Must be updated and restated every six years
    - Defined contribution and defined benefit plans are on different cycles
- Restated plan document must be signed by **July 31, 2022**
- If desired, application for individual IRS determination letter must be submitted by **July 31, 2022**
- Consult with providers



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## New York Court of Appeals Holds that Criminal Usurious Loans are Void in Their Entirety



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## New York Court of Appeals Holds that Criminal Usurious Loans are Void in Their Entirety

- Question presented by Second Circuit:
  - Where the interest charged on a loan is determined to be criminally usurious under N.Y. Penal Law § 190.40, is the underlying contract void in its entirety pursuant to N.Y. Gen. Oblig. Law § 5-511?
  - Court answered this in the affirmative.

## New York Court of Appeals Holds that Criminal Usurious Loans are Void in Their Entirety

- In *Adar Bays, LLC v. GeneSYS ID, Inc.*, 37 N.Y.3d 320 (2021), plaintiff Adar Bays, LLC issued defendant GeneSYS ID, Inc. a loan for \$35,000, with an 8% interest rate that would mature in one year. The loan agreement contained an option for Adar Bays to convert some or all of the debt into shares of GeneSYS stock at a discount of 35% from the lowest trading price for GeneSYS stock over the 20 days prior to the date on which Adar Bays requested a conversion.

## New York Court of Appeals Holds that Criminal Usurious Loans are Void in Their Entirety

- Approximately six months after the loan was issued, Adar Bays exercised its option to request conversion of part of the debt. GeneSYS refused, instead seeking to renegotiate the terms of the loan. Adar Bays sued GeneSYS for breach of contract. GeneSYS moved to dismiss the lawsuit, claiming that the contract was void because the rate of interest, including the conversion option, exceeded the criminal usury rate of 25%.
- Another significant question that was posed to the Court in this case was whether a stock conversion option that permits a lender, at its sole discretion, to convert any outstanding balance to shares of stock at a fixed discount should be treated as interest for the purpose of determining whether the transaction violates the criminal usury law. The Court also answered this question in the affirmative.



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## New York Court of Appeals Holds that Criminal Usurious Loans are Void in Their Entirety

- In reaching its conclusion, the Court of Appeals reviewed provisions of the General Obligation Law, the Banking Law and the Penal Law, which combined, comprise New York's usury law. The Court noted that under these combined provisions, loans of less than \$250,000 issued to individuals cannot exceed a 16% annual interest rate (the civil usury rate) and loans of between \$250,000 and \$2.5 million cannot exceed 25% (the criminal usury rate). The Court further held that loans of a value of \$2.5 million or more are not subject to the usury laws.



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## New York Court of Appeals Holds that Criminal Usurious Loans are Void in Their Entirety

- The Court also held that while the defense of civil usury contained within New York’s General Obligations Law is not available to corporations, a corporate borrower can still raise the defense of criminal usury in a civil action. More specifically, although Section 5-521(1) of the General Obligations Law “disallows” corporations from raising the defense of usury with respect to a loan charging less than 25% interest, this restriction is inapplicable where an interest rate is greater than 25%, bringing the loan within the realm of Penal Law § 190.40.



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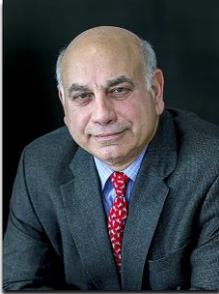
## New York Court of Appeals Holds that Criminal Usurious Loans are Void in Their Entirety

- Referring to the legislative history of the enactment of the criminal usury law, the Court came to its final conclusion that loans that charge an interest rate exceeding 25% are to be voided in their entirety because it would negate the purpose of the usury law to allow a lender to recover payments for a loan for which it could be prosecuted for criminal usury. The Court held that it only makes sense that loans that violate the criminal usury statute are subject to the same consequence as any other usurious loan – complete invalidity of the instrument.
- The *Adar Bays* decision should be understood as a caution for lenders to carefully review the terms and conditions of its lending instruments. The potential consequences of including interest rate terms that violate the principles explained by the Court of Appeals are significant.



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## From the Bond Lawyers Who (*Literally*) Wrote the Book on New York Employment Law...



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### **New York Employment Law: The Essential Guide**

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