

## Blog Post

# Handling Requests for Religious Exemptions from Mandatory Vaccination Policies

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Employers implementing mandatory COVID-19 vaccine policies are facing an avalanche of requests for exemptions as religious accommodations, far more than for medical exemptions. Fortunately, while employers are generally obligated to explore accommodations for requests based on a sincerely held religious belief, they are not necessarily obligated to grant exemptions.

## The Law: Title VII and Religious Accommodations

Title VII of the Civil Rights Act (Title VII) prohibits employers from discriminating against employees based on their membership in a protected class, and from retaliating against employees who report discrimination or participate in an investigation of such a report. Title VII also requires that an employer reasonably accommodate an employee whose sincerely held religious belief, practice, or observance conflicts with a work requirement, unless doing so would pose an undue hardship. In the context of a religious accommodation, “undue hardship” requires a showing that the proposed accommodation poses a “more than de minimis” cost or burden on the employer. This is a considerably lower standard for an employer to meet than under the Americans with Disabilities Act (ADA), where to demonstrate undue hardship the

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employer must show the proposed accommodation would involve “significant difficulty or expense.”

Once an employee requests exemption from vaccination as an accommodation on the basis of religion, what is an employer to do?

### Is There A Sincerely Held Religious Belief?

First, the employer must determine whether the request is based on a “sincerely held religious belief.” This is challenging because what constitutes a “sincerely held religious belief” is, practically speaking, up for grabs.

Religion does not just include the big three—Christianity, Judaism, and Islam. The EEOC has said that that “religion” also includes “religious beliefs that are new, uncommon, not part of a formal church or sect, or only held by a small number of people.” Further, the EEOC notes that an employee may follow some practices of their religion but not others, and still have a sincerely held religious belief. As such, an employee need not establish that he/she regularly attends church or follows the specific tenets of his/her religion.

Complicating matters further, the agency’s 2021 guidance also notes that “nontheistic beliefs can also be religious for purposes of the Title VII exemption as long as they ‘occupy in the life of that individual’ ‘a place parallel to that filled by. . . God in traditionally religious persons.’” “The non-discrimination provisions of the statute also protect employees who do not possess religious beliefs or engage in religious practices.”

The EEOC compliance manual (which guides its investigators looking into charges of religious discrimination), notes that “[t]he individual’s sincerity in espousing a religious observance or practice is ‘largely a matter of individual credibility’ and ‘a sincere religious believer doesn’t forfeit his religious rights merely because he is not scrupulous

in his observance.” However, the manual acknowledges that evidence “tending to show that an employee acted in a manner inconsistent with his professed religious belief” is relevant to the evaluation of sincerity.

Therefore, if an employer has a bona fide doubt about whether the basis for the requested accommodation is religious or is sincerely held, the EEOC says that the employer is entitled to make a limited inquiry into the facts and circumstances of the employee’s claim that the belief or practice at issue is religious, sincerely held and gives rise to the need for the accommodation.

Importantly, the EEOC in its 2014 guidance made this much crystal clear:

*“[S]ocial, political, or economic philosophies, or personal preferences, are not ‘religious’ beliefs under Title VII.”*

So the first step is to determine whether the request is based on social, political, or personal preferences, or is religious in nature.

If it is religious in nature, due to the breadth of what could be a sincerely held religious belief, the EEOC recommends that employers ordinarily assume the religious belief is sincerely held. However, if an employer has an objective basis for challenging the religious nature or sincerity of a belief that is the focus of the requested accommodation, then employers should seek more information from the requesting employee. EEOC guidance from 2008 recognizes certain factors that, when viewed alone or together, may undermine an employee’s claim of a sincerely held religious belief. These include:

- whether the employee has behaved in a manner markedly inconsistent with the professed belief;
- whether the accommodation sought is a particularly desirable benefit that is likely to be

sought for secular reasons;

- whether the timing of the request renders it suspect (e.g., 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.

Employers should also note that, today, many “pre-fab” form objections based on allegedly sincerely held religious beliefs are available for sale on the internet from a variety of websites and “pastors.” For that reason, employers dealing with exemption requests based on religion may want to start their analysis by having an employee submit a written statement in their own words explaining their sincerely held religious belief supporting their objection to vaccination.

Where an employee makes clear that s/he is simply opposed to the COVID-19 vaccine as a matter of purely personal preference or for political reasons, the employer need not grant any accommodation. However, where an employee has articulated a sincerely held religious belief, in most instances, it is best to assume its sincerity and move to the next step, engaging in the interactive process.

## Explore Reasonable Accommodations

Employers should undertake the standard “interactive process” to explore whether there is a reasonable accommodation. Typically, this would involve meeting with the employee to discuss their concerns about vaccination (including any factors undermining the employee’s claim that their objection is based on a sincerely held religious belief as outlined by the EEOC above), their job duties, and whether a reasonable accommodation is available. Keep in mind that the employer need not grant the particular requested accommodation (*i.e.*, in this case, an exemption from vaccination); the employer

may consider whether other reasonable accommodations are available.

Again, the key is determining what is reasonable. Remember, a religious accommodation would be unreasonable if it would involve more than a “de minimis” cost or burden. Note that in considering this aspect, employers are entitled to consider not only direct monetary costs, but also the burden on the employer’s operations.

What kinds of religious accommodations pose an undue hardship? Importantly, in its 2008 guidance, the EEOC acknowledged that “courts have found undue hardship where the accommodation diminishes efficiency in other jobs, infringes on other employees’ job rights or benefits, impairs workplace safety, or causes co-workers to carry the accommodated employee’s share of potentially hazardous or burdensome work.”

Also relevant to the current pandemic, in its 2014 guidance, the EEOC noted that “jeopardizing security or health” and “causing a lack of necessary staffing” would also be examples of a burden on a business that was more than minimal. Both of those could arise from unvaccinated workers, depending on the circumstances.

And in light of the new federal Executive Order and related guidance mandating vaccinations for covered workers, federal contractors should keep in mind the 2008 EEOC guidance expressly acknowledges that if a proposed accommodation conflicts with another law, that should be considered.

In assessing undue hardship, employers should keep in mind that having to endure disgruntlement or resentment of unvaccinated persons by their vaccinated co-workers will not generally be sufficient. However, while co-worker complaints may not be enough, if an employer has evidence that the accommodation would actually infringe on the

rights of co-workers or cause disruption of work, the 2008 guidance acknowledges that would be sufficient to constitute an undue hardship.

Finally, unionized workforces involve special considerations. The EEOC unequivocally notes that “a proposed religious accommodation poses an undue hardship if it would deprive another employee of a job preference or other benefit guaranteed by a bona fide seniority system or collective bargaining agreement.”

Accordingly, in considering whether religious exemption from vaccination would pose an undue hardship, an employer should consider the particular employee’s job duties and the particular workplace. Other factors might include the employee’s exposure to others who are unvaccinated or whose vaccination status is unknown, the extent to which the employee works in close proximity to co-workers, whether the employee could perform his/her duties remotely, and any other factors that may be relevant to the particular situation.

Keep in mind the burden of determining a reasonable accommodation does not fall entirely on the employer. As the EEOC has expressly noted in both the compliance manual and the 2008 guidance, “even if the employer does not grant the employee’s preferred accommodation, but instead provides a reasonable alternative accommodation, the employee must cooperate by attempting to meet his religious needs through the employer’s proposed accommodation if possible.”

Whatever the outcome of the interactive process and the ultimate decision reached, the employer should carefully document both the process it followed and the outcome.

## Document Your Policy, Practice, and Decision

Employers adopting mandatory vaccine programs are well advised to give employees advance notice



and to note that the company will consider reasonable accommodations for those with medical disabilities and those with religious objections.

It is best to establish a standard process for employees requesting accommodations. Employers should ensure that any requests for accommodation and any supporting documentation are maintained in confidential files separate from the employee's personnel file.

Persons who will have access to information regarding employee accommodation requests should be specifically trained in how to handle those requests and the importance of confidentiality. Those conducting the interactive process should also receive special training.

After concluding the interactive process and making a decision whether exemption or some other accommodation would be reasonable, the employer's decision must be communicated to the employee. If the exemption will be denied, the reasoning (such as the impact on the company's operations or the safety risk presented by the unvaccinated employee to customers, patients, co-workers, or others) should be included.

## Conclusion

Religious accommodation requests are a minefield. For assistance with these and other workplace issues, contact your Akerman attorney.

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