

EEOC Offers Some Help in Navigating the Murky Waters for Religious Exemptions From COVID-19 Vaccines

Labor & Employment Law Update

By Suzannah Wilson Overholt on October 27, 2021



As many employers begin implementing COVID-19 vaccine mandates, they are receiving a large number of employee requests for exemption from the vaccine for religious reasons. Before this week there was no direct guidance from the EEOC on this point, but that changed when the EEOC added this topic to its COVID-19

guidance. The following summarizes key points from that guidance.

An employer should assume that a request for religious accommodation is based on sincerely held religious beliefs. However, the employer may ask for an explanation of how the employee's religious belief conflicts with the COVID-19 vaccination requirement.

An employer is not required to bear more than a "de minimis," or a minimal, cost to accommodate an employee's religious belief. Costs include not only monetary costs but also the burden on conducting the employer's business, including the risk of the spread of COVID-19 to other employees or to the public. An employer should thoroughly consider all possible reasonable accommodations based on the employee's job duties, including telework and reassignment.

Undue hardship exists where the religious accommodation would impair workplace safety, diminish efficiency in other jobs, or cause coworkers to carry the accommodated employee's share of potentially hazardous or burdensome work. Relevant considerations include whether the employee requesting a religious 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 (especially medically vulnerable individuals). An employer may also

consider the number of employees who are fully vaccinated, how many employees and nonemployees physically enter the workplace, and the number of employees who will need a particular accommodation. Employers may rely on CDC recommendations when deciding whether an effective accommodation is available that would not pose an undue hardship.

If an employer grants some employees a religious accommodation, it does not have to grant the requests of all employees who seek such an accommodation. The employer may take into account the cumulative cost or burden of granting accommodations to other employees.

An employer does not have to provide the religious accommodation preferred by an employee if there are other possible accommodations that are effective in eliminating the religious conflict and do not cause an undue hardship. If there is more than one reasonable accommodation, the employer may choose which accommodation to offer. While the employer should consider the employee's preference, it is not obligated to provide the accommodation preferred by the employee. If the employer denies the employee's proposed accommodation, the employer should explain why that accommodation is not being granted.

If an employer grants a religious accommodation to an employee, the employer can later reconsider it. An employer has the right to discontinue an accommodation if it is no longer utilized for religious purposes or if the accommodation subsequently poses an undue hardship due to changed circumstances. An employer should discuss with the employee any concerns it has about continuing a religious accommodation before revoking it and consider whether there are alternative accommodations that would not impose an undue hardship.

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