

Equal Employment Opportunity Commission Updates Guidance on COVID-19 and Religious Accommodations

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On October 25, 2021, the Equal Employment Opportunity Commission (“EEOC”) updated its [FAQ section](#) for religious accommodations and COVID-19 requirements. Generally, an employee seeks to have a religious accommodation from a company’s mandatory vaccination policy, though exemption requests from other COVID-19 precautions occur as well.

The EEOC’s updated guidance likely stems from the growing number of religious-accommodation requests that employers are fielding due to the Occupational Safety and Health Administration’s impending Emergency Temporary Standard and other company-specific policies taking effect. Here’s a brief overview of the EEOC’s key points:

- **No magic words needed.** Employees do not have to use “magic words,” such as “religious accommodation” or “Title VII” to communicate a conflict between their sincerely held religious beliefs, practices, or observances and a COVID-19 vaccination requirement. Notice of the conflict is key.
- **Don’t question sincerity without an objective basis.** Employer should generally accept an employee’s statement of a sincerely held religious belief. But when an employer has an *objective* basis for questioning sincerity, a limited factual inquiry for additional supporting information may be justified. Though past practices, *i.e.*, receiving other vaccines, may be relevant when looking at sincerity, the EEOC cautions that “an individual’s beliefs — or degree of adherence — may change over time[.]”
- **Employers, consider all possibilities and explain yourselves.** An employer can deny an employee’s request for accommodations if the accommodation would create an undue hardship on the employer. Telework and reassignment should be “thoroughly considered” when determining whether undue hardship exists. An employer need not grant the employee’s preferred or recommended accommodation, but if the employer denies a proposed accommodation, it should explain its rationale.
- **Undue-hardship considerations in the COVID era.** Historically, financial and business costs are relevant considerations when determining undue hardship. Now, the risk of spreading COVID-19 to the public or other employees is also something for employers to consider. According to the EEOC, when reviewing workplace safety concerns, the following are appropriate factors to review: “the type of workplace, the nature of the employee’s duties, the number of employees who are fully vaccinated, how many employees and non-employees physically enter the workplace, and the number of employees who will in fact need a particular accommodation.” An employer’s concern that many employees will seek religious accommodations is not evidence of undue hardship on its own. The cumulative cost or burden of granting such considerations may be relevant.

- **Each employee's circumstances are unique.** Granting a reasonable accommodation is a fact-specific inquiry, meaning the granting of one request for a reasonable accommodation does not necessitate the granting of another employee's request.
- **Religious beliefs are not static, but neither are a business's considerations.** An employee's religious beliefs can evolve or change, which may result in requests for additional or different accommodations. An employer can also determine that a granted accommodation either (1) is no longer being used for religious purposes or (2) determine that changed circumstances in an employer's operations now makes the granted accommodation an undue hardship, thus discontinuing the accommodation. The EEOC recommends engaging in a discussion with an employee before discontinuing an accommodation to ensure that no other reasonable accommodations can be found.

GableGotwals' [Employment & Labor team](#) is available to help employers navigate religious accommodation requests. We will continue to monitor these developments and any and all related litigation. Please contact any member of the team for further assistance.



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