

4 Steps for Handling Religious Objections to Workplace Vaccine Mandates

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Employers generally must explore reasonable accommodations for employees who refuse to get vaccinated against the coronavirus based on a sincerely held religious belief—but objections based on personal or political views are not protected under federal anti-discrimination laws.

"Many employers who implemented vaccine mandates have faced a tidal wave of requests for religious exemptions," noted Michael Puma, an attorney with Morgan Lewis in Philadelphia. "The sheer volume of requests combined with the difficulty of separating protected versus unprotected claims, all while respecting an employee's stated beliefs, has been a significant challenge for human resources and legal departments."

How can HR tell the difference between protected and unprotected claims? Robert Duston, an attorney with Saul Ewing Arnstein & Lehr in Washington, D.C., recommended that employers initially ask for a statement from the employee as to the nature of the religious beliefs.

He noted that the U.S. Equal Employment Opportunity Commission (EEOC) appears to understand what employers are facing, as the agency updated its COVID-19-related guidance on Oct. 25 to help employers handle an influx of claims.

The agency's updated guidance "will help safeguard [employees' fundamental rights] as employers seek to protect workers and the public from the unique threat of COVID-19," said EEOC Chairwoman Charlotte Burrows.

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Here are four steps to help HR handle religious accommodation requests:

1. Create a clear process for employees.

Title VII of the Civil Rights Act of 1964 requires covered employers to accommodate employees who opt not to get vaccinated based on a sincerely held religious belief, practice or observance unless an accommodation would cause undue hardship for the business. Employees must notify their employer if they have a religiously based objection, but they don't need to use any "magic words," such as "religious accommodation" or "Title VII," according to the EEOC.

Employers should notify employees of the process and forms to be used and train supervisors to contact HR if workers raise concerns about the employer's policies, Duston said. "Employers cannot ignore verbal requests made to supervisors but can require employees to go through their procedures."

2. Use caution when reviewing whether a religious belief is "sincere."

"Title VII protects nontraditional religious beliefs that may be unfamiliar to employers," according to the EEOC.

Employers typically should assume that a request for religious accommodation is based on a sincerely held religious belief. "Take it on face value," said Jim Paretti, an attorney with Littler in Washington, D.C.

Joseph Kroeger, an attorney with Snell & Wilmer in Phoenix, said, "We have certainly had clients receive the same verbatim requests for religious accommodation from multiple employees, who apparently have cut-and-pasted the language from available forms on the Internet. However, just because language has been copied, it does not necessarily follow that the religious belief addressed by the copied language is not sincere."

Kroeger recommended that employers grant the exemption request and focus on exploring whether there is a reasonable accommodation that is not an undue hardship. "However, in rare circumstances, there is a valid and objective reason to request more information from an employee or to doubt the sincerity of a request," he noted.

Factors to Consider

The EEOC identified the following factors that might undermine the credibility of an employee's claim:

- The employee has acted inconsistently with the professed belief. However, the EEOC said, "employees need not be scrupulous in their observance."
- The employee is seeking a "particularly desirable" accommodation that is likely to be sought for nonreligious reasons.
- The timing of the request is suspicious. For example, the employee may have recently requested the same benefit for secular reasons and been denied.
- The employer otherwise has reason to believe the accommodation is not sought for religious reasons.

While prior inconsistent conduct is relevant to determining the sincerity of an employee's beliefs, the EEOC cautioned that an employee's beliefs (and degree of adherence to such beliefs) may change over time.

"An employer should not assume that an employee is insincere simply because some of the employee's practices deviate from the commonly followed tenets of the employee's religion, or because the employee adheres to some common practices but not others," the agency said.

Raeann Burgo, an attorney with Fisher Phillips in Pittsburgh, explained that employees do not have to rely on a specific religious text or provide documentation from a religious leader to support their belief.

When HR professionals aren't sure if an objection is based on religion, they may ask additional questions to make a full evaluation, she said. "These questions should be tailored for the individual assessment being conducted."

Paretti said an employee might explain that he hasn't received any vaccines since he turned 18 and that his children aren't vaccinated. "Assuming [his objection] is based on religion and not just personal preference, that's the easiest case scenario."

Kroeger noted that many employees have simply claimed they have the autonomy under their religious beliefs to make their own personal decisions on whether to be vaccinated, which isn't enough information for an employer to determine whether the belief is merely a personal belief or a sincerely held religious belief.

"In that circumstance, an employer can ask for additional supporting information as to why there is a conflict between the employee's sincerely held religious belief and the employer's vaccination requirement," he said. "If the employee does not provide additional requested information, the employer may deny the request."

3. Consider alternative accommodations and undue hardship.

"If an employee has stated a sincerely held religious belief, HR will still need to determine if a reasonable accommodation exists," Burgo noted.

Employers should consider all possible reasonable accommodations, including remote work. For employees who must report to a worksite, accommodation options might involve weekly COVID-19 testing and masking or moving the employee to a private workspace.

Puma noted that employers do not need to provide an employee's preferred accommodation and generally can select the accommodation that works best for them. The EEOC recommended that employers explain why an employee's preferred accommodation wasn't provided.

Notably, an employer is not required to provide a accommodation if it cannot do so without creating an undue hardship for the business. Courts have found that even small costs can cause undue hardship in religious accommodation cases, and the EEOC noted in its guidance that costs include the risk of spreading the coronavirus and other safety hazards.

Employers should consider objective information, the EEOC said, such as whether the employee works outdoors or indoors; works alone or in a group; or has close contact with co-workers, customers or other business partners.

Employers may also consider the number of employees who are seeking similar accommodations and the cumulative cost or burden on the employer.

4. Account for changing circumstances.

When employers evaluate their continued obligation to provide a religious accommodation, they should consider changing circumstances, such as an employee's evolving beliefs and the company's operational plans.

"As a best practice, 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," the EEOC said.

Employers should note that the EEOC's guidance covers only the anti-discrimination laws it enforces, and employees may have added protections under other federal and state laws.

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