

# EEOC answers prayer for guidance on religious exception

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As we know, in early September 2021, President Biden informed Federal employees that they would be required to be vaccinated against COVID-19 by November 22, 2021, unless they were covered by “legal exemptions.” Those exemptions excuse federal employees from the vaccine mandate if (1) they have one of the medical conditions recognized by the CDC, or (2) taking the vaccine would violate a “sincerely held religious belief.”

My colleague George Chuzi recently wrote an article<sup>1</sup> raising numerous questions regarding the religious exception to the vaccine mandate. On October 25, 2021, the EEOC issued guidance<sup>2</sup> explaining the religious exemption and how religious objections to COVID-19 vaccination should be handled.

(On October 27, 2021, the White House COVID-19 Response Team indicated<sup>3</sup> that the November 22 deadline was subject to “flexibility” if employees were considering vaccination. According to the White House, employees who were hesitant would “go through education, counseling, accommodations, and then enforcement.”).

## **Do employees with religious objections to receiving a COVID-19 vaccination need to tell their employer? Is there specific language that must be used?**

Employees need to tell their employers that they are requesting an exception to a COVID-19 vaccination mandate. In essence, the employee is asking their agency to accommodate their religious belief; therefore, this is considered a request for “reasonable accommodation” under Title VII.

While the request is not required to include any “magic words,” it does need to say that there is a conflict between their sincerely held religious belief and the vaccine mandate. (The same requirement applies if the employee wants to wait until a particular vaccination is available.) Employers must tell employees whom to contact and what will happen next if the employee wants to apply for a religious exception.

## **Does an employer have to accept your request for a religious exception? Can the employer question the employee about their religious beliefs?**

Agencies may assume that a request for a religious exception is sincere. Even then, however, the agency is not required to accept the request — rather, it is permitted to make a limited factual inquiry and seek additional supporting information from the employee.

Employees who do not cooperate with their employers’ reasonable request for information risk losing any subsequent claim that the employer improperly denied the request.

Because Title VII protects even untraditional religious beliefs that may be unfamiliar to the employer, employees with such beliefs should be prepared to explain their beliefs upon request. Title VII does not protect social, political, or economic views, or personal preferences. If the request is based on any of these factors, it will likely be denied, and an employer is within its rights to probe.

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Sincerity of a stated belief is not usually in dispute. However, factors that might undermine an employee’s claimed beliefs include:

- (1) Whether the employee has acted inconsistently with their stated belief. For example, employees who claim that taking the vaccine would violate their beliefs because the vaccines were tested using cell lines derived from aborted fetal cells may have to explain why they have taken any of the numerous prescription and over-the-counter medications that are developed using the same tests;<sup>4</sup>
- (2) Whether the accommodation sought is particularly desirable such that the request may be made for non-religious reasons;
- (3) Whether the timing of the request is suspect. For example, has the employee actually been vaccinated within the past several years for flu, shingles, tetanus, or pneumonia; and
- (4) Whether the employer has other reasons for believing the accommodation is being sought for non-religious reasons. For example, has the employee recently endorsed political views challenging the vaccine?

None of these factors is automatically disqualifying on its own, but they may support a finding that the espousal of a “religious exemption” is expedient and not sincere.

### How does an employer show that it would be an “undue hardship” to accommodate an employee’s request for religious accommodation?

The anti-discrimination statutes do not require the employer to provide an accommodation — medical, physical, or religious — if the employer can show that it cannot reasonably accommodate an employee’s religious belief without “undue hardship” on its operations.

*The employer can choose which accommodation to offer if more than one would resolve the issue. If the employer denies the employee’s preferred accommodation, the employer should explain why they are doing so.*

While the cost of accommodations may be a factor in medical or physical accommodations, they are rarely factors in the face of a claimed religious exemption. Instead, and as we pointed out in our earlier blog, in considering an employee’s religious belief, an employer is permitted to take into account the “fundamental right [of] employers . . . to protect workers and the public from the unique threat of COVID-19.”<sup>5</sup>

As employees return to the workplace, unvaccinated employees pose a concern for employees who either are medically unable to be vaccinated or have people in their households who are not eligible to be vaccinated. Agencies may have an obligation to protect those employees at the expense of those who resist the vaccine.

#### About the author



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### If an employer grants some exceptions for religious beliefs do they have to grant all such requests?

No. Each request must be looked at individually. An employee cannot assume they will receive a religious exemption because another request has been approved.

### Does the employer have to provide the religious accommodation preferred by the employee when there are other effective ways to eliminate the religious conflict that do not cause “undue hardship” to the employer?

No. The employer can choose which accommodation to offer if more than one would resolve the issue. If the employer denies the employee’s preferred accommodation, the employer should explain why they are doing so.

### If an employer grants the religious accommodation to the employee, can the employer reconsider later?

The obligation to provide a religious accommodation absent undue hardship can change based on the current circumstances. An employee’s religious views can change, which may result in additional or different religious accommodations being requested.

Similarly, an employer can discontinue previously granted accommodations should they later pose an undue hardship to the employer’s operations due to changed circumstances. An employer should discuss this with the affected employee before revoking the accommodation and consider alternative accommodations that would not impose an undue hardship.

#### Notes

<sup>1</sup> <https://bit.ly/3o4lvkj>

<sup>2</sup> <https://bit.ly/2ZC0qp7>

<sup>3</sup> <https://bit.ly/3pfLru1>

<sup>4</sup> <https://bit.ly/3l8KVXo>

<sup>5</sup> <https://bit.ly/2ZC0qp7>

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