



EEOC Updates Guidelines for Religious Objections to the COVID-19 Vaccine

Client Advisories

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On October 25, 2021, the Equal Employment Opportunity Commission (“EEOC”) issued new guidance for employers addressing requests for religious exemptions from employer vaccination mandates or other COVID-19 policies. The agency added “Section L” to its existing “Technical Assistance Questions and Answers” related to COVID-19 and the ADA, the Rehabilitation Act, and other EEO laws. On October 28, 2021, the EEOC issued an update to the new Section L. Both additions represent welcome guidance for employers from the EEOC regarding this important and timely issue.

Under Title VII, religious discrimination in the workplace is prohibited and employers must provide “reasonable accommodations” to those employees whose religious beliefs prevent them from abiding by company policies. As more companies adopt vaccine mandates, employees may request a religious exemptions in the form of a reasonable accommodation allowing them to remain unvaccinated despite an employer vaccine requirement. This exception may be requested if an employee can show the employer’s policy conflicts with the employee’s sincerely held religious belief, practice, or observance.

The EEOC lays out the new guidance in Section L. First, employees must tell their employer if they have a religious conflict to a COVID-19 vaccine policy and request an accommodation. There is no need for an employee to use any “magic words” when requesting an accommodation. Simply informing their employer that there is a conflict between the employer’s policy and their sincerely held religious beliefs will suffice as long as the employee provides advance notice.

Second, while no “magic words” are required to trigger the request, if an employer has an objective basis for questioning the sincerity of the religious belief an employer *can* ask the employee for additional information to support the request. However, employers should be aware that the definition of “religion” under Title VII is rather broad. The statute protects both traditional and nontraditional religious beliefs and need not be based on a formal organized religion. When determining the credibility of an employee’s request, an employer can consider multiple factors such as:

- whether the employee has acted in a manner inconsistent with the professed belief (although it should be noted that employees need not be scrupulous in their observance);
- whether the accommodation sought is a particularly desirable benefit that is likely to be sought for nonreligious 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 demonstrable reasons to believe the accommodation is not being sought for religious reasons.

It also bears mentioning that an employee's social, political, economic views or personal preferences are not protected under Title VII – the accommodation request must be based on a religious belief, albeit as term is broadly defined under Title VII.

Third, employers may refuse a requested accommodation if, based on objective evidence, it would cause “undue hardship” to the employer. Unlike the very high standard used to determine the existence of an undue hardship for a disability-based accommodation under the Americans with Disabilities Act, the standard for Title VII religious accommodations is far lower. An undue hardship with respect to a religious accommodation is any accommodation that would require more than a minimal cost the employer to implement. An undue hardship could be a monetary cost, but could also be the burden on the conduct of the employer's business, such as the risk of the spread of COVID-19 to other employees or to the public. The EEOC clarified that when considering undue burden in the context of COVID-19 policies, employers can consider an employee's work location—if they work outside or inside—if the employee works in a group or has close contact with other employees or the public (particularly medically vulnerable individuals), or even the number of employees seeking a religious accommodation. Employers may and should consider each request for accommodation separately, based on the particulars of the objection, but especially based on the specific context of the employee's job duties.

When an employee requests a religious accommodation, the employer should engage in an interactive process with the employee and before rejecting a request, consider *all* possible reasonable accommodations, not just the one specifically requested by the employee. Such accommodations may include telework and reassignment to an alternative available position. Moreover, if there is more than one reasonable accommodation that could resolve the employee's conflict and would not cause an undue hardship, the employer may decide which accommodation to choose. When making that choice, the employer should consider, but is not obligated to follow, the employee's preferences. When denying any accommodation, employers need to explain to their employees the reason for their denial.

Lastly, religious accommodations may be subject to periodic review based on changing circumstances. For example, if an employer grants a religious accommodation it may end the accommodation if the employee is no longer using the accommodation for religious purposes. More specific to COVID-19 vaccines, an employer may reassess undue hardship and end or modify an accommodation based on new facts, such as increased risks

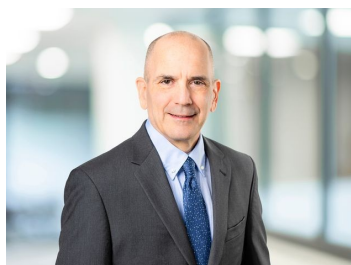


caused by changing job duties or, for example, worsening of the pandemic. The employer should have an open conversation with their employees explaining their reasons to deny or discontinue a religious accommodation.

The EEOC's updated guidance may be found **here**. If you have questions about the rights and requirements of employers under the new guidance or Title VII or would like your policies reviewed for compliance with these laws, please contact **David Rapuano** at drapuano@archerlaw.com or 856-616-2603 or any member of Archer's **Labor and Employment Group**.

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