

EEOC Updated Guidance for Handling Religious Exemption Requests from Vaccine Mandates

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Practice Area: Labor and Employment

Employers nationwide are implementing mandatory COVID-19 vaccination policies in light of the September 9, 2021 announcement of President Biden’s “Path Out of the Pandemic” COVID-19 Action Plan. In turn, employers are increasingly receiving requests from employees for exemptions from these mandatory vaccine policies for a wide variety of reasons, including medical, social, political, economic, and personal, as well as religious reasons.

In considering employee requests for an exemption from a vaccine mandate for religious reasons, employers need to consider the request under both state and federal law. While both the state Wisconsin Fair Employment Act (WFEA) and Title VII of the Civil Rights Act of 1964 under federal law recognize religious exemptions, the consideration under each has some differences.

The Wisconsin Fair Employment Act requires consideration under its prohibition of discrimination on the basis of creed. Under Wisconsin law, “creed” is defined as “a system of religious beliefs, including moral or ethical beliefs about right and wrong, that are sincerely held with the strength of traditional religious views”. See 111.32 (3m), Wis. Stats. Sincerely held moral or ethical beliefs about right or wrong having the strength of religious views are protected, but may not need to be religious based as traditionally viewed.

On October 25, the federal Equal Employment Opportunity Commission (“EEOC”) updated its Technical Assistance document to provide employers guidance on considering religious exemptions to vaccine mandates under Title VII of the Civil Rights Act of 1964.

In its update, the EEOC has confirmed that in the context of religious accommodation issues, Title VII applies to requests for religious accommodation, but does not require employers to grant merely social, political, economic or personal-preference based requests. Moreover, the EEOC confirmed that under Title VII, employers need only consider exemptions for employees who raise religious objections to the COVID-19 vaccine where such objections are based on sincerely held religious beliefs, customs, or practices. Additionally, for Title VII purposes, the EEOC clarified that employees are not entitled to a religious exemption if it would pose an “undue hardship” on the business, including the risk of spread of COVID-19 to other employees or to the public.

The following is a high-level summary of key points from the EEOC’s new guidance on exemption requests to mandatory vaccine policies based on religious objections:

- While no “magic words” are required, in order to be considered for an exemption, the employee must notify the employer of the need for an exemption based on sincerely held religious beliefs, customs, or practices.
- The employer retains the right to request additional information where needed to make an objective determination as to whether the request is both religious-based and sincerely held.
- An employer need not provide an exemption from a vaccine mandate if it would constitute an “undue hardship” on the employer’s operations: Even a minimal burden or cost is considered an “undue hardship.”
- Exemption requests must be considered on a case-by-case basis to determine eligibility for an exemption based on the specific factual context of the request.
- If an employee is entitled to an exemption, an employer may choose from several accommodations as long as the chosen accommodation resolves the conflict between the COVID-19 vaccine requirement and the sincerely held religious beliefs of the employee.
- An exemption, if granted, can be revoked if changing circumstances allow. If an accommodation becomes an “undue hardship” or it is no longer being used for religious purposes, an employer can revoke the accommodation.

Employer Takeaways in Light of Updated EEOC Guidance and Consideration under State Law

- With COVID-19 vaccination policies likely becoming mandatory for most large employers with 100 or more employees in the near future, employers should consider what their COVID-19 vaccination policy will cover.
- Religious accommodations are just the tip of the iceberg when it comes to COVID-19 vaccination considerations. There are OSHA considerations, medical and disability-related concerns, employee morale considerations, and numerous other state and federal requirements that employers must be aware of when crafting a mandatory COVID-19 vaccination policy.
- At a minimum, any mandatory COVID-19 policy should clarify:
 - Which employees are subject to the policy
 - The consequences for failing to comply
 - The procedures and processes for requesting an accommodation
 - Whether the policy adheres to what is minimally required by law, or grants additional exemptions
 - What type of documentation is useful for helping the employer consider a religious or medical exemption request
 - Clear timelines for submission of requests and communication expectations
 - The employer’s right to consider an undue burden.
- Establish a consistent protocol for evaluating religious and other exemption requests that may include:
 - An internal or external review process to ensure each accommodation request is reviewed and analyzed independently
 - Templates to use in analyzing requests
 - Training to recognize and distinguish between religious-based requests as opposed to personal or political-based requests
 - Guidelines as to what documentation may or may not be requested
 - Confidentiality protocols and safeguards
 - Uniform expectations and common questions to be directed to employees making requests for exemption
 - Guidelines for analyzing an undue burden
 - Templates for communicating a decision.

As always, while general guidelines and principles are helpful, ultimately, each accommodation request is unique. The law requires an individualized analysis for each request. Employers may find it useful to confer with experienced labor and employment counsel in order to maximize compliance and reduce the potential for legal exposure.

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