

Additional EEOC Guidance for Employers Processing Religious Exemption Requests in Workplace COVID-19 Vaccine Mandates

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On October 25, 2021, the Equal Employment Opportunity Commission (“EEOC”) released additional guidance for employers navigating their way through employee requests for religious exemptions from COVID-19 vaccine mandates. The update supplements guidance initially released by the EEOC in May, and attempts to address some of the situations employers have faced as workplace COVID-19 vaccine mandates grow in popularity and as the Occupational Safety and Health Administration (“OSHA”) and the Centers for Medicare & Medicaid Services (“CMS”) prepare to issue federal mandates in addition to those already in place for federal contractors.

In its new guidance, the EEOC makes clear that employees need not use “magic words” or specifically invoke Title VII to qualify for a religious exemption to a COVID-19 vaccine mandate. However, employees do need to “notify the employer that there is a conflict between their sincerely held religious beliefs and the employer’s COVID-19 vaccination requirement.” Determining whether an employee’s religious belief is sincerely held, without running afoul of Title VII, has proven to be difficult in some instances, with many employers reluctant to question the sincerity of employees’ purported religious beliefs for fear of being the next defendant in a test lawsuit.

That reluctance is based—at least in part—on the EEOC’s continued guidance that “[g]enerally, under Title VII, an employer should assume that a request for religious accommodation is based on sincerely held religious beliefs.” What options, then, do employers have for rooting out religious beliefs that are not sincerely held? According to the new guidance, employers are entitled to assess an employee’s credibility, and factors that might influence credibility include the following:

- whether the employee has acted in a manner inconsistent with the professed belief;
- 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 reason to believe the accommodation is not

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sought for religious reasons.

In determining whether employees have acted in a manner inconsistent with their professed belief, some employers are asking employees about other vaccines they have taken or refused, as well as medications that were developed using the same or similar methods as some COVID-19 vaccines. In making those inquiries, however, employers must remember that strict adherence is not required, and a minor slip up here and there will not automatically disqualify the employee from an exemption.

The timing of a request may also be telling. Many employers have set deadlines by which employees are to receive their first COVID-19 vaccine dose or submit a request for an exemption. In those circumstances, employers are giving employees plenty of time to submit an exemption request, both for the benefit of the employer and the employee. Employers might have an objective basis to question the sincerity of a request submitted at the last minute. Likewise, an employee who submits a request for a medical exemption and then later submits a request for a religious exemption after the denial of the first request will likely raise red flags. Employers should be careful to weigh the timing of a request for a religious exemption as one factor—suspicious timing alone is usually not enough to support denying a request for a religious exemption.

The updated guidance also reiterates that exemption requests cannot be based on “social, political, or economic views, or personal preferences,” though employees often commingle religious exemption requests with these issues, creating additional headaches for employers. Though Title VII does not protect social, political, or economic views, or personal preferences, the state of Texas is currently under its governor’s mandate that requires employers to grant exemptions based on “reasons conscience.” Whether the Texas governor’s mandate will be enforceable remains to be seen.

Perhaps the most important piece of the updated guidance is that “employers should evaluate religious objections on an individual basis.” In other words, there is no one-size-fits-all approach to religious exemptions. At the end of the day, employers need to ensure that they establish a record of thoughtful consideration of each individual request. Doing so will help minimize the risk of private litigation from employees or adverse consequences from federal agencies with whom employers contract.