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EEOC Issues Updated COVID-19 Guidance for Religious Exemption Requests



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On Monday, October 25, the EEOC issued the much-anticipated update to its COVID-19 guidance ([What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws](#)). The update again addresses how COVID-19 interacts with Title VII when employers are faced with mounting religious objections to workplace vaccine requirements.

Title VII prohibits employment discrimination based on religion and provides a right for applicants or employees to request a reasonable accommodation from an employer's policy or requirement that conflicts with their sincerely held religious beliefs, practices or observances. If there is no accommodation which is reasonable or if an employer shows that a reasonable accommodation would be an undue hardship on its operations, then the employer is not required to grant an accommodation.

The updated guidance reiterates longstanding requirements and considerations of employers as set forth in the EEOC's Compliance Manual on Religious Discrimination, including what constitutes a religion (a mere belief or personal preference is not a religious belief), how employers should treat requests for religious accommodations, and the choice employers have when selecting a reasonable accommodation.

In the context of COVID-19 vaccination mandates, the updated guidance confirms that employees must notify their employer of how a vaccine mandate, or how a certain brand of vaccine, conflicts with their sincerely held religious belief. While the guidance restates the EEOC's position that the sincerity of an employee's religious beliefs "is not usually in dispute," it concedes that an employee's sincerity in holding a religious belief is "largely a matter of individual credibility," thus opening the door for additional inquiry.

For example, while 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," (think the Catholic church's pronouncement that it is morally acceptable to get the COVID-19 vaccine) the employer may examine one or more of the following factors to assess the requesting employee's credibility in holding the belief:

- Whether the employee has acted in a manner inconsistent with the professed belief (although the EEOC then adopts an entirely inconsistent position that employees need not be scrupulous in their observance and that employers should beware that an individual's beliefs or adherence to those beliefs may change over time);
- 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 sought for religious reasons.

The EEOC was careful to delineate what is not protected under Title VII, specifically noting that “social, political, or economic views, or personal preferences” are not religious beliefs. Thus, any political “anti-vaxxers” would not be entitled to a religious accommodation based upon their mere political belief. Also, the EEOC also takes the position that employee concerns about the possible effects of the vaccine are not religious beliefs.

The EEOC’s updated guidance also implicitly gives employers suggestions on questions that it can ask a requesting employee, such as explaining (in their own words) the religious nature of their belief and the circumstances behind what may seem a sudden adoption of religious beliefs or practices. The EEOC also states that an “employee who fails to cooperate with an employer’s reasonable request for verification of the sincerity or religious nature of a professed belief” risks losing any subsequent claim for improper denial of an accommodation.

The EEOC also elaborates on what an undue hardship could look like in the age of COVID-19. For the first time in its COVID-19 guidance, the EEOC concedes that the U.S. Supreme Court has held that under Title VII the undue hardship burden on employers is “de minimis.” This means that an employer is not required to provide a religious accommodation under Title VII that is more than a *minimal* cost. Costs to be considered include not only direct monetary costs but also the burden on the conduct of the employer’s business – including, in this instance, the risk of the spread of COVID-19 to other employees or to the public.

Seemingly addressing the dual threats of infection spread and worker shortage, the guidance provides that employers may rely on CDC recommendations when deciding whether an effective accommodation is available that would pose more than a minimal cost, and states that “the employer may take into account the cumulative cost or burden of granting accommodation to other employees” including a review of “the type of workplace, the nature of the employee’s duties, the number of employees who are fully vaccinated, how many employees and nonemployees physically enter the workplace, and the number of employees who will in fact need a particular accommodation.”

Takeaway for Employers

While the updated guidance from the EEOC restates longstanding positions on religious accommodations, it certainly opens the door for employers to not just accept every religious accommodation request, particularly not where workplace safety is at issue.

[As we wrote about last month](#), the Biden Administration recently announced a sweeping mandate of COVID-19 for government employees, government contractors, and private entities with at least 100 employees. This announcement came months after the EEOC took the position that vaccines were not medical examinations under the ADA, paving the way for employers to require them and encouraging incentives where employers wished to encourage them.

As we await the release of OSHA’s emergency temporary standard, currently under review by the Biden Administration, the EEOC’s updated guidance suggests that, for as long as the COVID-19 pandemic continues, employers will enjoy some degree of leeway (more than in the past) when considering religious accommodations.

If you would like more information or would like to discuss these issues further, please contact a member of Gould & Ratner’s [Human Resources and Employment Practice](#).