

EEOC ISSUES UPDATED GUIDANCE ON RELIGIOUS AND PREGNANCY VACCINE ACCOMMODATIONS

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The US Equal Employment Opportunity Commission (EEOC) recently updated its COVID-19 guidance, detailing its view of employer obligations under Title VII when evaluating religious objections to COVID-19 vaccination mandates. The EEOC also added guidance on requests for accommodation based on pregnancy under the Americans with Disabilities Act and the Pregnancy Discrimination Act. Together, these comprise the second significant [update](#) to EEOC's COVID-19 guidance since the FDA and CDC authorized COVID-19 vaccines.



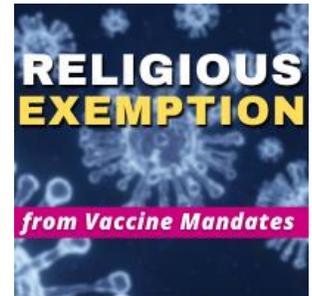
Employers who implemented vaccine mandates have faced a tidal wave of requests for religious exemptions. The sheer volume of requests combined with the difficulty of separating protected versus unprotected claims, all while respecting an employee's stated beliefs, has been a significant challenge for human resources and legal departments. With [these latest updates](#), made on October 13, and October 25, 2021, the EEOC has attempted to provide clearer guidance to employers on accommodation requests.

The EEOC's October 25 guidance mainly reiterates prior EEOC statements on religious accommodations, particularly those issued in its January 2021 [update](#) to its Religious Discrimination Compliance Manual Section. Still, the new guidance tailors those general principles to vaccine mandate accommodation requests, providing helpful clarifications that support common employer practices for handling these claims. For example, the October 25 guidance clarifies the EEOC's position regarding the following:



- Employers **do not** need to accommodate requests that are based on social, political, or personal preference, or on nonreligious concerns about the possible effects of the vaccine, as these are not "religious beliefs" protected by Title VII.
- Employers **can** make inquiries into the nature or sincerity of a purported religious belief when they have an objective basis to question either of these elements. This **can** include requests for additional documentation. The guidance further notes that employees who fail to cooperate with these employer inquiries risk losing a subsequent failure to accommodate claim.

- Employers **can** consider the credibility of an employee’s statements when determining the sincerity of belief. The guidance lists factors that might undermine an employee’s credibility, including (1) actions inconsistent with the professed belief, (2) whether the accommodation is likely to be sought for nonreligious reasons, and (3) the timing of the request, including requests that follow an earlier request for the same accommodation for secular reasons. The guidance notes that prior inconsistent conduct may not be dispositive because beliefs may change over time.
- Employers **can** consider the number of requests for similar exemptions and/or the cumulative cost or burden of granting accommodations to others when evaluating whether granting a request for an accommodation will impose undue hardship. This statement from the EEOC allowing employers to consider the cumulative impact of multiple requests is significant, particularly given the avalanche of requests employers have received. In addition, other relevant factors include the risk that an unvaccinated employee will spread COVID-19 to other employees or the general public, the nature of an employee’s workplace, whether the employee works in a solitary or group environment, and the contact the employee has with other employees or members of the public, especially medically vulnerable individuals.
- Employers **do not** need to provide an employee’s preferred accommodation and generally can instead select the accommodation that works best for them. The updated guidance further notes that if an employer denies an employee’s preferred accommodation, it may be wise for the employer to explain to the employee why it is not granting the preferred accommodation.
- Employers **do not** need to grant all requests for religious accommodation if they grant one. Each request should be evaluated on a case-by-case basis.
- Employees have an obligation to alert employers that a conflict exists between their religious beliefs and a vaccine requirement. While no “magic words” are required to request an accommodation, the employee must provide some notice to qualify for an accommodation.
- Employers **can** reevaluate religious accommodations if circumstances change, such as if the accommodation begins to impose an undue hardship on the employer, or the employer learns that a requested accommodation is “no longer utilized for religious purposes.”



In addition to the section on religious exemptions, on October 13, the EEOC updated its guidance on handling requests from pregnant employees. The EEOC reiterated its position that the Americans with Disabilities Act (ADA) and Pregnancy Discrimination Act may trigger accommodation requirements for pregnant employees in certain circumstances, including when pregnant employees refuse to receive a COVID-19 vaccine due to pregnancy. For instance, although pregnancy alone is not a disability under the ADA, the ADA may still



require reasonable accommodations, depending on the facts, for requests tied to pregnancy-related medical conditions that themselves constitute disabilities under the ADA.

IMPLICATIONS FOR EMPLOYERS

Employers should find some comfort in the update, as it more clearly delineates acceptable criteria to consider when evaluating requests for religious accommodation in the COVID-19 context. This is particularly true of the EEOC's guidance confirming an employer's right to request additional information from employees when there is an objective reason to doubt the religious nature or sincerity of a vaccine mandate religious accommodation request. In addition, although courts already had indicated that employers may rely on the cumulative impact of multiple requests when conducting an undue hardship analysis, this guidance further supports such a practice. Relying on the cumulative impact may be particularly valuable given the current state of affairs where employers face numerous religious accommodation requests at the same time.

**Reasonable
Accommodation**
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These issues will take on added importance as employers begin to comply with requirements for vaccine mandates (for example, those for [federal contractors](#)) and develop policies in response to the expected vaccination and testing requirements in the anticipated Emergency Temporary Standard from the Occupational Safety and Health Administration. Employers should continue to monitor developments closely in this area and consult with legal counsel on specific questions.

This guidance will have Employers still confused about the danger of running afoul of the religious discriminatory practices. Employers should still be cautious about making the decisions to reject. All interactive discussion should be documented

Resources

<https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws#L>

[[View source.](#)]

Thanks to the EEOC and Morgan Lewis for their interpretation of the new guidance



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