

EEOC Updated Its COVID-19 Guidance on Religious Accommodations, Here's What You Need to Know

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Since March 2020, the U.S. Equal Employment Opportunity Commission's (EEOC) COVID-19 technical assistance, "[What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws](#)," has been a valuable resource for employers in dealing with the unprecedented challenges of the COVID-19 pandemic. The EEOC updated the guidance on October 25, 2021, by adding Section L, which addresses additional questions relating to vaccination requirements in the context of Title VII of the Civil Rights Act and religious accommodations.

As with past updates to the guidance, it is important for employers to be aware of the EEOC's position and to factor the EEOC's guidance into their decision making.

While new Section L did not establish any new policy and largely echoed the EEOC's January 2021 update to its "[Compliance Manual on Religious Discrimination](#)," it provides a new user-friendly tool that can help employers grapple with the increasing number of religious accommodation requests many are seeing as a result of vaccine policies.

Key provisions of Section L include:

- The EEOC reiterated that employees must inform their employer if they need an exception to COVID-19 vaccine requirements due to a conflict with a sincerely held religious belief, practice, or observance. Employees need not use magic words such as "religious accommodation" or "Title VII."
- According to the EEOC, employers should assume a religious accommodation request by an employee is based on a sincerely held religious belief. However, an employer is permitted to make a limited factual inquiry as to the religious basis of the request or the employee's sincerity where the employer has an objective basis to doubt it. Furthermore, while what qualifies as a religion under Title VII can be broad, Title VII does not protect "social, political, or economic views, or personal preferences." The guidance sets forth several factors which, either alone or in combination, could potentially undermine an employee's credibility (*i.e.*, whether the accommodation is likely sought for nonreligious reasons, the timing is suspect, or the employer has reasons to believe the accommodation request is not for religious reasons).
- The EEOC reminds employers to consider possible alternative accommodations, such as telework and reassignment, in determining if an accommodation can be provided without an undue hardship and refers employers to Section K.6 of the guidance for additional available accommodations. The EEOC emphasized that employers can rely on Centers for Disease Control and Prevention recommendations when assessing accommodations and whether they would pose an undue hardship.
- Where an employer would suffer an undue hardship (*i.e.*, more than *de minimis* cost or burden under Title VII), it is not required to provide the accommodation. Employers may consider not only the direct monetary costs, but also 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. Employers will need to analyze undue hardship on a case-by-case basis, and they will need to demonstrate the cost or disruption caused by the accommodations.
- Granting religious accommodation requests for one employee does not mean an employer has to grant all religious accommodation requests. Employers may consider 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 in fact will need a particular accommodation (an employer may consider the cumulative cost or burden of granting accommodations to other employees) when determining whether to grant an exemption to vaccine requirements. The EEOC warns, however, that merely assuming that more employees will request religious accommodations may not be enough.

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- Where more than one reasonable accommodation is possible, the employer may choose which to offer. In other words, the employer does not have to provide the accommodation of the employee's choice. Employers are only obligated to provide an effective accommodation that resolves the religious conflict.
- Employers can continue to reevaluate the accommodations and determine if it should be adjusted or eliminated because of changed circumstances.

The EEOC's latest updates provide clarification on some of the questions facing employers but leave many more unanswered. Employers must keep in mind that the EEOC guidance relates only to issues under Title VII and the laws over which the agency has authority. Employers always need to consider state law and guidance in these matters, as well.

As employers continue to develop their strategy for response to the continuously evolving COVID-19 issues, Jackson Lewis attorneys are available to answer any questions and provide additional guidance. Jackson Lewis has a [dedicated team](#) tracking and responding to the developing issues facing employers as a result of COVID-19. Please contact a team member or the Jackson Lewis attorney with whom you regularly work if you have questions or need assistance.

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