



News & Types: Employment, Labor & Benefits Update

Masuda Funai Employment Newsflash - What Employers Should Know About the EEOC's Updates to Religious Accommodation and Vaccine Mandate Guidance

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Practices: Employment, Labor & Benefits

On March 1, 2022, the Equal Employment Opportunity Commission (“EEOC”) updated its guidance on religious accommodations and COVID-19 vaccine mandates. Here are some highlights from the EEOC’s updated guidance:

1. THE EEOC’S TECHNICAL ASSISTANCE APPLIES TO RELIGIOUS ACCOMMODATION CLAIMS UNDER TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 (TITLE VII)

Title VII prohibits employment discrimination based on religion and includes the right of job applicants and employees to request a religious accommodation from an employer requirement that conflicts with their sincerely-held religious beliefs, practices or observances. The right to a religious accommodation under Title VII can extend to COVID-19 vaccine requirements and mandates.

Title VII protects both traditional and untraditional religious beliefs, practices or observances and includes those that may be unfamiliar to employers. Employers should generally presume that an employee’s religious belief, practice or observance is sincere, but employers may consider certain factors that might underestimate an employee’s credibility, including whether the timing of the request renders it suspect. Employers should not assume that a request is invalid merely because it is based on an unfamiliar religious belief, practice or observance, although employers may ask an employee to explain the religious nature of the employee’s belief, practice or observance.

2. EMPLOYEES WHO HAVE A RELIGIOUS OBJECTION TO RECEIVING A COVID-19 VACCINATION MUST INFORM THEIR EMPLOYERS WHO MAY SEEK CLARIFICATION IF NEEDED

Employees must make a request for a “religious accommodation” if they are requesting an exception to a COVID-19 requirement because of a conflict between that requirement and their sincerely-held religious beliefs, practices or observances. There are no “magic words” to make such a request, but employees need to

explain the religious basis supporting an accommodation request and any conflict resulting in a potential inability to comply with an employer's COVID-19 requirements for the workplace. The same guidance applies to employees who have a religious conflict with getting a particular COVID-19 vaccine and want to wait until a specific brand or alternative version of a COVID-19 vaccine becomes available to them. If an employer has an objective basis for questioning either the religious nature or the sincerity of a particular belief, the employer would be justified in making a limited factual inquiry and seeking additional supporting information. An employee who fails to cooperate with an employer's reasonable requests for verification of the sincerity or religious nature of a professed belief, practice, or observance risks losing any subsequent claim that the employer improperly denied an accommodation.

3. EMPLOYERS SHOULD PROVIDE EMPLOYEES AND APPLICANTS WITH INFORMATION ABOUT REQUESTING A RELIGIOUS ACCOMMODATION

Employers should consider updating their religious accommodation policies within employee handbooks. Likewise, employers may wish to update language within their job applications or other form communications with applicants. The EEOC has released the request form that it utilizes for its own workplace, as an example of a religious accommodation request form that employers can tailor and utilize. The EEOC template can be accessed [here](#).

4. OBJECTIONS TO COVID-19 REQUIREMENTS THAT ARE PURELY BASED ON SOCIAL, POLITICAL OR ECONOMIC VIEWS OR PERSONAL PREFERENCES OR OTHER NONRELIGIOUS CONCERNS DO NOT QUALIFY

Title VII's protections do not extend to social, political or economic views, personal preferences or even concerns about the possible effects of the COVID-19 vaccine. However, if there is an overlap between a religious and political view, it is not automatically placed outside the scope of Title VII's religious protections, as long as the view is part of a comprehensive belief system and not simply an isolated teaching.

5. EMPLOYERS CANNOT RELY ON SPECULATIVE OR HYPOTHETICAL HARDSHIP

Instead, when faced with an employee's religious objection, employers should rely on objective information (e.g., whether the employee who is requesting the religious accommodation is working indoors or outdoors, what type of contact the employee has with others, how many employees have requested a religious accommodation, etc.) Determining whether a religious accommodation poses an undue hardship should be done on a case-by-case basis and documented.

6. A REDUCTION IN PAY OR SOME OTHER LOSS OF A BENEFIT OR PRIVILEGE OF EMPLOYMENT IS NOT A REASONABLE ACCOMMODATION IF AN ALTERNATIVE ACCOMMODATION EXISTS

For example, if unpaid leave is an employer's proposed accommodation and there is a reasonable alternative accommodation that does not require a loss of benefit or privilege and would not impose undue hardship, the employer's proposed accommodation would not be reasonable.

If you have any questions about this article or how it impacts your workplace, please contact Naureen Amjad, Riebana E. Sachs or any member of the Employment, Labor and Benefits Group.