On October 25, 2021, the Equal Employment Opportunity Commission (EEOC) expanded its prior guidance “What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws” to include recommendations for employers who receive religious objections from employees in response to the employer’s mandatory COVID-19 vaccination policy. Specifically, the EEOC added section L to its prior guidance, which addresses specific questions relating to religious objections. The newly added questions are set forth below. All employers should review and familiarize themselves with this guidance as they continue to face objections and accommodation requests from employees with respect to COVID-19 vaccine mandates.

Do employees who have a religious objection to receiving a COVID-19
vaccination need to tell their employer? If so, is there specific language that must be used under Title VII?

According to the EEOC’s guidance, employees must inform their employer they are requesting an exception to a COVID-19 vaccination requirement. Although there are no “magic words” employees must use, they need to inform their employer that there is a conflict between their sincerely held religious belief and the employer’s vaccination requirement.

The EEOC recommends that employers provide employees and applicants with information regarding whom to contact and any procedure to use to request a religious accommodation.

As a best practice, an employer should provide employees and applicants with information about whom to contact, and the procedures (if any) to use, to request a religious accommodation.

Does an employer have to accept an employee’s assertion of a religious objection to a COVID-19 vaccination at face value? May the employer ask for additional information?

The guidance states employers should assume that a request for religious accommodation is based on a sincerely held religious belief. However, if an employer has an objective basis for questioning either the religious nature or the sincerity of a particular belief, the employer can make a limited factual inquiry and seek additional supporting information, including asking for an explanation of how the employee’s religious belief conflicts with the employer’s COVID-19 vaccination requirement.

The EEOC notes that Title VII protects nontraditional religious beliefs which may be unfamiliar to employers. Employers should not assume an employee’s request is invalid simply because it is based on an unfamiliar religious belief. Employees may be asked to explain the religious nature of their belief. However, Title VII does not protect social, political, or economic views, or personal preferences.

The sincerity of an employee’s stated religious beliefs is not usually in dispute, as the employee’s sincerity in holding a religious belief is “largely a matter of individual credibility.” The guidance provides the following factors which – either alone or in combination – might undermine an employee’s credibility: (1) whether the employee has acted in a manner inconsistent with the professed belief (although employees need not be scrupulous in their observance); (2) whether the accommodation sought is a particularly desirable benefit that is likely to be sought for nonreligious reasons; (3) whether the timing of the request renders it suspect; and (4) the employer has other reasons to believe the accommodation is not sought for religious reasons. No single factor or consideration is determinative.

How does an employer show that it would be an “undue hardship” to accommodate an employee’s request for religious accommodation?

Title VII does not require an employer to provide a religious accommodation if the
employer demonstrates that it is unable to reasonably accommodate an employee’s religious belief without an “undue hardship” on its operations. 42 U.S.C. § 2000e(j). The Supreme Court has held that requiring an employer to bear more than a “de minimis,” or a minimal, cost to accommodate an employee’s religious belief is an undue hardship. 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. Undue hardship may include circumstances in which the religious accommodation would impair workplace safety, diminish efficiency in other jobs, or cause coworkers to carry the accommodated employee’s share of potentially hazardous or burdensome work.

Employers will need to assess undue hardship on a case-by-case basis. Further, employers will need to demonstrate how much cost or disruption the employee’s proposed accommodation would involve. Employers should rely on objective information and must not rely on speculative hardships when dealing with an employee’s religious objection. Relevant considerations include, for example: whether the employee requesting a religious accommodation to a COVID-19 vaccination requirement works outdoors or indoors; works in a solitary or group work setting; has close contact with other employees or members of the public (especially medically vulnerable individuals); and the number of employees who are seeking a similar accommodation (i.e., the cumulative cost or burden on the employer).

If an employer grants some employees a religious accommodation from a COVID-19 vaccination requirement because of sincerely held religious beliefs, does it have to grant the requests of all employees who seek an accommodation because of sincerely held religious beliefs?

No. Employers should conduct an individualized inquiry for each request for accommodation received, as the determination of whether a proposed accommodation imposes an undue hardship on the conduct of the employer’s business depends on its specific factual context.

Must an employer provide the religious accommodation preferred by an employee if there are other possible accommodations that also are effective in eliminating the religious conflict and do not cause an undue hardship under Title VII?

No. If there is more than one reasonable accommodation that would eliminate the conflict between the vaccination requirement and the sincerely held religious belief without causing an undue hardship, the employer may choose which accommodation to offer. If the employer denies the employee’s proposed accommodation, the employer should provide an explanation to the employee as to why their preferred accommodation is not being provided.

If an employer grants a religious accommodation to an employee, can the employer later reconsider it?

Employers may discontinue a previously granted accommodation if it is no longer
being utilized for religious purposes, or if the provided accommodation subsequently poses an undue hardship on the employer’s operations as a result of changed circumstances. Before revoking an accommodation, the employer should discuss with the employee any concerns regarding continuing the accommodation and consider whether any alternative accommodations exist that would not impose an undue hardship.

It should also be noted that an employee’s religious beliefs and practices may evolve or change over time.

**Practical Takeaways for Employers**

- Consider and assess the EEOC’s guidance and related issues when implementing a COVID-19 vaccination program to ensure appropriate procedures and safeguards are in place to comply with ADA, Title VII, and other federal and states laws. Be mindful of state and local laws that may impose additional or different requirements.

- Establish a process and protocol to engage employees in an interactive process if they cannot have a vaccine for religious reasons or other reasons.

- Update COVID-19 policies to account for this new guidance and your company’s COVID-19 vaccine program.

The legal landscape continues to evolve quickly and there is a lack of clear-cut authority or bright line rules on implementation. This article is not intended to be an unequivocal, one-size-fits-all guidance, but instead represents our interpretation of where applicable law currently and generally stands. This article does not address the potential impacts of the numerous other local, state and federal orders that have been issued in response to the COVID-19 pandemic, including, without limitation, potential liability should an employee become ill, requirements regarding family leave, sick pay and other issues.

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