**Checklist in Considering Employee Requests for Religious Accommodations to COVID-19 Vaccine Mandates**

Employers are required to provide reasonable accommodations to employees whose sincerely-held religious beliefs render them unable to receive a vaccination against COVID-19. This checklist is intended to facilitate a proper evaluation of an employee’s request for such an accommodation within the confines of Title VII.

Employers must assess three questions when faced with an employee request for an exemption from a mandatory COVID-19 vaccination requirement based on religious belief:

1. Is the belief religious?
2. Is the belief sincerely held?
3. Would providing a reasonable accommodation impose an undue hardship on the employer?

**Is the Belief Religious?**

**THE LEGAL STANDARD**

* “Religion” is identified by evaluating three factors: (1) it concerns “fundamental and ultimate questions having to do with deep and imponderable matters; (2) it is comprehensive, and not simply an isolated teaching; and (3) it “often can be recognized by the presence of certain formal and external signs.”
* Personal, political and other non-religious beliefs or views are not required to be accommodated.
* A religious belief is defined as “a given belief that is sincere and meaningful [and] occupies a place in the life of its possessor parallel to that filled by the orthodox belief in God of one who clearly qualifies for the exemption.” This definition has been expanded to include moral and ethical beliefs that assume the function of a religion in a person’s life. Therefore, an individual does not have to belong to any established religious group, as long as the individual’s belief is held with the strength of traditional religious conviction.
* Traditionally, the EEOC and courts have taken a very broad view of the definition of religion. When in “doubt about whether a particular set of beliefs constitutes a religion,” courts will “err on the side of” finding the beliefs to be religious.

**PRACTICAL GUIDANCE**

* Beliefs do not need to be widely practiced to be religious. A belief can be religious even if no one else practices it.
* Because the issue of whether a belief is religious is such a nebulous one, employers must exercise caution in determining too quickly that a specific belief falls outside the scope of a “religious belief.”
* If there is an objective basis for questioning the religious nature of an accommodation request, employers may seek additional supporting information, including asking respectful questions about the practice and the beliefs underlying it, to understand whether the employee’s belief is truly religious in nature.

**Is the Belief Sincerely Held?**

**THE LEGAL STANDARD**

* The EEOC lists four factors to consider in determining whether a belief is sincerely held:

(a) Whether the employee has behaved in a manner markedly inconsistent with the professed belief;

(b) Whether the accommodation sought is a particularly desirable benefit that is likely to be sought for secular reasons;

(c) 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);

(d) Whether the employer otherwise has reason to believe the accommodation is not sought for religious reasons.

* As with the definition of “religion,” the EEOC and courts have generally adopted a very employee-friendly standard in determining whether an employee’s belief is “sincerely held.”

**PRACTICAL GUIDANCE**

* Employers must consider all of the above factors, as none is dispositive. This is a heavily fact-specific analysis and employers should be extremely cautious in evaluating the sincerity of the employee’s belief, as courts have recognized that an individual’s beliefs can change over time.
* Be aware that employees who may not be traditionally religious, or who appear to be only nominally religious, may still request a religious accommodation. Employers should treat them with the same sensitivity as they would treat someone professing a strong faith in a more traditional religion. Additionally, the fact that an employee is not a frequent observer of his or her faith or had not previously made his or her faith public does not necessarily limit its sincerity.
* In its [recent guidance](https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws) regarding COVID-19 vaccinations, the EEOC stated that “EEOC guidance explains that the definition of religion is broad and protects beliefs, practices, and observances with which the employer may be unfamiliar. Therefore, the employer should ordinarily assume that an employee’s request for religious accommodation is based on a sincerely held religious belief, practice, or observance. However, if an employee requests a religious accommodation, and an employer is aware of facts that provide an objective basis for questioning either the religious nature or the sincerity of a particular belief, practice, or observance, the employer would be justified in requesting additional supporting information. *See* also 29 CFR 1605.”
* Employers should be mindful and selective in requesting additional verification and documentation regarding an employee’s sincerely held beliefs.

**Would Providing a Reasonable Accommodation Impose an Undue Hardship on the Employer?**

**THE LEGAL STANDARD**

* Undue hardship under Title VII is a “more than a *de minimis* cost” to the employer, which is a *lower* burden for the employer to meet than the undue hardship standard under the Americans with Disabilities Act (“significant difficulty or expense”).
* The [*EEOC Religious Accommodation Guidance*](https://www.eeoc.gov/laws/guidance/section-12-religious-discrimination#h_43419997237501610749887061) states that some factors that are relevant to determining whether undue hardship exists include: “the type of workplace, the nature of the employee’s duties, the identifiable cost of the accommodation in relation to the size and operating costs of the employer, and the number of employees who will in fact need a particular accommodation.”
* Undue hardship can exist “where the accommodation diminishes efficiency in other jobs, infringes on other employees’ job rights or benefits, impairs workplace safety, or causes co-workers to carry the accommodated employee’s share of potentially hazardous or burdensome work.” Courts have also found that undue hardship can exist if the proposed accommodation would “either cause or increase safety risks or the risk of legal liability for the employer.”
* An employer’s mere assumption that many more people with the same religious practices as the individual being accommodated may also seek accommodation is not evidence of undue hardship.

**PRACTICAL GUIDANCE**

* Employers should explore multiple accommodation possibilities, and be sure it has concrete, non-speculative evidence of undue hardship on its business before denying any religious accommodation.
* If an employee’s proposed accommodation would pose an undue hardship, the employer should explore alternative accommodations. In the context of a COVID-19 vaccine mandate, this might include requiring the unvaccinated employee wear a face mask in the workplace, work at a social distance from coworkers or non-employees, work a modified shift, get periodic tests for COVID-19, and/or be given the opportunity to telework.
* Employers should solicit input from the employee's supervisor about the duties of the particular position/the worksite, to help determine what may be a realistic reasonable accommodation, including any alternative accommodations to the one requested by the employee.

**PRACTICAL TIPS REGARDING THE ACCOMMODATION PROCESS**

* In every case, the accommodation process should feature an open dialogue with the employee and documentation at every step.
* When an employee’s religious beliefs or practices interfere with the employer’s decision to mandate the COVID-19 vaccination, the employee and HR should meet to discuss the conflict and potential accommodations. **The following are recommended action items when engaging in the accommodation process:**
  + Employers should provide employees with a form to document their religious accommodation request in writing and provide additional details as necessary. The form should request information relating to the accommodation request and include a certification from the employee that the statements and information provided are true and accurate.
  + HR should ask enough questions to understand what the religious belief or practice is, how it causes a conflict with the employer’s COVID-19 vaccination mandate, and how the employee suggests the conflict be resolved (e.g., remain unvaccinated but work with a mask/socially distanced from others within the workplace, work from home, etc.).
  + If a belief or practice is unfamiliar to HR, it is acceptable to ask employees if they have written information that describes the belief or practice or can point them to a website that would give more information. It is **not** appropriate to demand a note from a priest or minister; many religious traditions may not have persons occupying comparable leadership positions.
  + This initial discussion should be documented, and the documentation should, at a minimum, outline the belief or practice at issue, the nature of the conflict between that belief or practice and the employer’s vaccination mandate, and any accommodations the employee proposes. If the situation warrants it, the employer should brainstorm with the employee about alternative solutions to the conflict.
  + After the initial meeting with the employee, HR should continue to think through the proposed accommodation and any alternative accommodations that might be appropriate. When thinking through the situation, HR must assess each possible accommodation in terms of the potential monetary cost to the employer, safety factors, the impact of the religious accommodation on other employees, and any other potential undue hardship to the business. Regarding potential reasonable accommodations in connection with the COVID-19 vaccination, the EEOC [recently stated](https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws) “[f]or example, as a reasonable accommodation, an unvaccinated employee entering the workplace might wear a face mask, work at a social distance from coworkers or non-employees, work a modified shift, get periodic tests for COVID-19, be given the opportunity to telework, or finally, accept a reassignment.”
  + If no undue hardship is identified, the employer can select a reasonable accommodation. As long as the provided accommodation fully eliminates the conflict between the employee’s work requirements and religious requirements, the employer is not required to offer the specific accommodation the employee prefers. More than one reasonable accommodation may be identified, and options may be offered if each option fully eliminates the conflict and does not result in undue hardship to the employer.
  + If an accommodation is not readily apparent, then management should have further fact-gathering conversations with the employee and/or seek assistance of counsel. Several perspectives are always better than one. In addition, the case law teaches that all stakeholders need to be involved in an accommodation discussion. If third parties would be instrumental in implementing an accommodation, it may be prudent to make them part of the conversation before an accommodation is finally allowed or denied.
  + Once an accommodation is selected, the supervisor or HR should meet with the employee and explain the accommodation. If the employee accepts, the supervisor or HR should take steps to implement the accommodation. If the employee refuses the proposed accommodation, everyone should work together to try to resolve the matter.
  + The employer’s responsibility for responding to a request for accommodation is fulfilled when it provides a reasonable accommodation to the employee, even if the employee refuses the requested accommodation. Accordingly, the employee should acknowledge each offer of accommodation in writing and indicate in writing whether it is accepted or rejected.
  + If management determines that it is not possible to offer *any* reasonable accommodation without causing undue hardship, HR should communicate that determination to the employee in writing.
  + Supervisors should be reminded that it is unlawful to disclose that an employee is receiving a reasonable accommodation or to retaliate against an employee for requesting and/or receiving an accommodation.