

FEDERAL RELIGIOUS EXEMPTION TO MANDATORY VACCINATION IN THE WORKPLACE

Some employers may require that employees receive specific vaccinations as a condition of employment. However, as a general rule, an employer's mandatory vaccination policy must provide exemptions to comply with the federal [Civil Rights Act of 1964](#) [“Title VII”] and the Michigan [Elliot-Larsen Civil Rights Act](#).

A necessary exemption to a mandatory vaccination policy is a religious exemption. ([42 U.S.C. § 2000e-2\(a\)\(1\)](#)). When an employee objects to a mandatory vaccination because of a sincerely held religious belief, the employer should provide a reasonable accommodation to the mandate, unless doing so would impose an undue hardship on the employer. An example of a reasonable accommodation is an employer transferring the employee to another position. An at-will employee may face disciplinary action and termination if the employee refuses to comply with the employer's mandatory vaccination policy or any reasonable accommodation granted pursuant to Title VII.

Although beyond this article's scope, an employer may also need to reasonably accommodate an employee with a physical or mental disability who refuses a vaccination pursuant to the federal Americans with Disabilities Act [“ADA”] and the Michigan Persons with Disabilities Civil Rights Act. That is unless the accommodation would impose an undue hardship on the employer. For more on the ADA, visit the Equal Employment Opportunity Commission [“EEOC”] [technical assistance document](#).

To summarize in general terms, an employer must accommodate an employee’s sincerely held religious belief or practice if the following are true:

1. the employee has a religious belief;
2. the religious belief is sincerely held;
3. the employee provides notice regarding the need for accommodation; and
4. the employer can accommodate the belief without undue hardship.

Some exceptions to the general rules described above exist, and you should consult with an experienced employment law attorney to get specific advice based upon your unique circumstances. The following sections provide general information regarding the subject matter and is not legal advice.

The EEOC is a federal government agency charged with the administration, interpretation, and enforcement of Title VII. The EEOC is authorized to institute civil actions on behalf of employees whose employers violate those rights protected by Title VII. Much of the information presented in this guide was adapted from the EEOC's [guidance document regarding religious discrimination](#). Furthermore, the EEOC has published four informal discussion letters on the issue dated [March 5, 2012](#), [November 2, 2012](#), [December 5, 2012](#), and [July 24, 2013](#). These letters provide a wealth of information.

I. COVID 19

COVID 19 law, policies, and legal issues are a moving target; currently, more questions than answers exist regarding COVID 19 vaccines. For example, workers' compensation cases have not been tested in courts regarding a COVID-19 vaccination. Workers' compensation liability will evolve as COVID-19 cases are litigated and as state lawmakers define COVID-19-specific rules in the context of workers' compensation claims.

Furthermore, the federal [Public Readiness and Emergency Preparedness Act](#) [the "PREP Act"] may provide immunity from certain types of liability arising from the administration of vaccines to "covered persons" under the Act. This immunity may extend to certain private-sector employers as specified under the U.S. Department of Health & Human Services' advisory guidance. Consequently, an employer providing a COVID-19 vaccine onsite may be immune from claims of injury or loss arising from the administration of a COVID-19 vaccine, except in instances of "willful misconduct."

As a side note, PREP also provides a compensation program, the [Countermeasures Injury Compensation Program](#) [the "CICP"], to eligible individuals who suffer serious injury from one of the protected countermeasures. However, of the 499 claims filed to date, CICP has compensated only [29](#).

Finally, the EEOC published a COVID 19 specific [technical assistance document](#) on December 16, 2020. This document is a rich source of information, and all employees should review it. Regarding the exclusion of an employee with a religious exemption to vaccination, the EEOC stated:

If an employee cannot get vaccinated for COVID-19 because of a disability or sincerely held religious belief, practice, or observance, and there is no reasonable accommodation possible, then it would

be lawful for the employer to exclude the employee from the workplace. This does not mean the employer may automatically terminate the worker. Employers will need to determine if any other rights apply under the EEO laws or other federal, state, and local authorities.

II. FREQUENTLY ASKED QUESTIONS

1. What constitutes a religious belief?

Short Answer

Title VII broadly defines “[t]he term ‘religion’ [as] all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that [it] is unable to reasonably accommodate to an employee’s or prospective employee’s religious observance or practice without undue hardship on the conduct of the employer’s business.” [42 U.S.C. § 2000e\(j\)](#).

Long Answer

Religion is not an easy term to define, and the statutory definition has been the source of much litigation. The Supreme Court clarified the definition for “religion” by creating a standard for determining whether a belief is religious: “does the claimed belief occupy the same place in the life of the objector as an orthodox belief in God holds in the life of one clearly qualified for exemption?” [United States v Seeger](#), 380 U.S. 163, 184, (1965). In creating this standard, the court aimed to differentiate between religious views (which are covered by the statute) and “essentially political, sociological, or philosophical” ideas (which are not). *Id.* at 165.

The Supreme Court later applied the same test in [Welsh v United States](#). In that case, the court clarified that religion does not require belief in God or divine beings. Instead, the court found that nontheistic beliefs could also be religious within the meaning of Title VII as long as the belief “occup[ies] in the life of that individual ‘a place parallel to that filled by God’ in traditionally religious persons.” [398 U.S. 333, 340 \(1970\)](#).

Later, the Third Circuit identified three "useful indicia" to determine the existence of a religion. “First, a religion addresses fundamental and ultimate questions having to do with deep and imponderable matters. Second, a religion is comprehensive in nature; it consists of a belief system as opposed to an isolated teaching. Third, a religion often can be recognized by the presence of certain formal and external signs.” [Africa v Commonwealth of Pennsylvania](#), 662 F.2d 1025 (1981).

The EEOC’s [Questions and Answers: Religious Discrimination in the Workplace](#) has also attempted to define “religion.” The document explains religion in the context of Title VII as follows:

Title VII protects all aspects of religious observance and practice as well as belief and defines religion very broadly for purposes of determining what the law covers. For purposes of Title VII, religion includes not only traditional, organized religions such as Christianity, Judaism, Islam, Hinduism, and Buddhism, but also religious beliefs that are new, uncommon, not part of a formal church or sect, only subscribed to by a small number of people, or that seem illogical or unreasonable to others.

An employee's belief or practice can be "religious" under Title VII even if the employee is affiliated with a religious group that does not espouse or recognize that individual's belief or practice, or if few – or no – other people adhere to it. Title VII's protections also extend to those who are discriminated against or need accommodation because they profess no religious beliefs. Religious beliefs include theistic beliefs (i.e. those that include a belief in God) as well as non-theistic "moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views."

Although courts generally resolve doubts about particular beliefs in favor of finding that they are religious, beliefs are not protected merely because they are strongly held. Rather, religion typically concerns "ultimate ideas" about "life, purpose, and death." Social, political, or economic philosophies, as well as mere personal preferences, are not "religious" beliefs protected by Title VII.

2. What constitutes a valid religious belief?

Short Answer

It is unlawful for an employer to question the accuracy of a sincerely held religious belief; thus, most any belief is valid under Title VII. The biggest hurdle in securing a religious accommodation pursuant to Title VII is not whether the belief is correct but whether it is sincerely held.

Long Answer

Recall that Title VII requires employers to accommodate only those religious beliefs that are "sincerely held." *Seeger*, 380 U.S. at 185. However, the court stated in *Seeger* and has continued to reiterate that no court should inquire into the validity or plausibility of the beliefs; instead, the task of a court is "to decide whether the beliefs professed [] are sincerely held and whether they are, in [the believer's] own scheme of things, religious." *Id.* at 185. The religious belief need not be "correct" or even "plausible." It is unlawful for the employer to question the correctness of a sincerely held religious belief. Furthermore, Title VII protects a sincerely held

religious belief even if the employee’s spiritual advisor (such as a pastor) or the affiliated religious sect (such as Protestant) disagrees with it. [Emp’t Div., Dep’t of Human Res. of Or. v Smith](#), 494 U.S. 872, 887 (1990); [U.S. E.E.O.C. v Consol Energy, Inc.](#) 860 F.3d 131 (2017).

3. Can the employer inquire into the sincerity of the employee’s belief?

Short Answer

Yes. When an employer has a genuine uncertainty about the basis for the employee’s accommodation request, it is permitted to make a limited inquiry to determine if the belief or practice is religious and sincerely held and gives rise to the need for accommodation.

Long Answer

Typically, an employer has no reason to question whether the practice at issue is religious or sincerely held. However, when an employer has a genuine doubt about the basis for the employee’s accommodation request, it is permitted to make a *limited inquiry* into the facts and circumstances of the employee’s claim that the belief or practice at issue is religious and sincerely held and gives rise to the need for accommodation.

The EEOC’s [Questions and Answers: Religious Discrimination in the Workplace](#) lists factors that might weaken an employee’s claim that he or she sincerely holds the religious belief at issue as:

1. whether the employee has behaved in a manner markedly inconsistent with the professed belief;
2. whether the accommodation sought is a particularly desirable benefit that is likely to be sought for secular reasons;
3. 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); and
4. whether the employer otherwise has reason to believe the accommodation is not sought for religious reasons.

The issue of “sincerely held” is a totality-of-the-circumstances assessment. Therefore, none of the above-listed factors are dispositive of the issue of sincerity. For example, although prior inconsistent conduct is relevant, an individual’s beliefs and degree of adherence may evolve. Thus, a requestor’s newly adopted or inconsistently followed religious practices can qualify as “sincerely held” under Title VII. [EEOC v Ilona of Hungary, Inc.](#), 108 F.3d 1569 (7th Cir. 1997). Furthermore, “an employer [] should not assume that an employee is insincere simply because some of his or her practices deviate from the commonly followed tenets of [the] religion.” [Questions and Answers: Religious Discrimination in the Workplace](#). See also, Commission Guidelines, [29 C.F.R. § 1605.1](#).

If an employer makes a reasonable request for information regarding the need for accommodation, a requestor should respond. An employee who refuses to cooperate with an employer's requests for valid information may deprive the employer of the information necessary to resolve the accommodation request and forfeit the requested accommodation.

4. What constitutes notice?

Short Answer

A person requiring a religious accommodation must give the employer notice of the need. No magic language is required to put the employer on notice. However, the requestor must inform the employee that an accommodation is needed because a conflict exists between religion and work.

Long Answer

The requestor needs not to use specific language, mention Title VII, or use the words "religious accommodation" to request a religious accommodation. However, an applicant or employee seeking a religious accommodation must make the employer aware that (1) accommodation is needed, and (2) the employee requests accommodation due to a conflict between religion and work.

The requestor must also explain the belief or practice's religious nature and not assume that the employer will already know or understand it. [Seshadri v Kasraian](#), 130 F.3d 798, 800 (7th Cir. 1997); [Chrysler Corp. v Mann](#), 561 F.2d 1282, 1285 (8th Cir. 1977); [Redmond v GAF Corp.](#), 574 F.2d 897, 902 (7th Cir. 1978). For example, courts have ruled against employees who refused to cooperate with an employer's requests for reasonable information when, as a result, the employer was deprived of the information necessary to resolve the accommodation request. [Macon v J.C. Penney Co.](#), 17 F. Supp. 3d 695 (N.D. Ohio 2014).

On the other hand, the employer should not assume that a request is invalid because the associated religious beliefs or practices are unfamiliar to the employer. Instead, the employer should request that the employee explain the practice's religious nature and how it conflicts with a work requirement.

5. What constitutes reasonable accommodation?

Short Answer

A reasonable religious accommodation is any adjustment to the work environment that will allow the employee to comply with the religious belief, but that does not cause undue hardship for the employer.

Long Answer

Title VII ([42 U.S.C. § 2000e-2\(a\)\(1\)](#)) requires employers to adhere to certain employment standards and makes it unlawful for an employer to discharge an individual based upon that

person's religious beliefs or practices. Once an employer is on notice that a religious accommodation is needed, Title VII requires that the employer "make reasonable accommodation for the religious observances of its employees, short of incurring an undue hardship." [EEOC v Firestone Fibers & Textiles Co.](#), 515 F.3d 307, 312 (4th Cir. 2008); [42 U.S.C. § 2000e\(j\)](#). Title VII requires only reasonable accommodation, not "satisfaction of an employee's every desire." [Rodriguez v City of Chicago](#), 156 F.3d 771, 776 (7th Cir. 1998).

The accommodation requirement is "plainly intended to relieve individuals of the burden of choosing between their jobs and their religious convictions, where such relief will not unduly burden others." [Protos v Volkswagen of Am., Inc.](#), 797 F.2d 129, 136 (3d Cir. 1986). A reasonable religious accommodation is any adjustment to the work environment that will allow the employee to comply with the religious belief. An employer violates the "reasonable accommodation" duty where an employee can prove (1) a bona fide religious belief that conflicts with an employment requirement; (2) notice to the employer of this belief; and (3) discipline for failure to comply with the conflicting employment requirement. [Firestone Fibers](#), 515 F.3d at 312.

However, an employer has an "undue hardship" defense for failure to provide accommodation. This defense requires a showing that the proposed accommodation in a particular case poses a "more than de minimis" cost or burden. The [EEOC lists factors](#) relevant to a finding of undue hardship as "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 [] need a particular accommodation." Costs relevant to "undue hardship" include the direct monetary costs and the burden on the employer's business. For example, according to the [EEOC](#), undue hardship exists where the accommodation "diminishes efficiency in other jobs, infringes on other employees' job rights or benefits, impairs workplace safety, or causes coworkers to carry the accommodated employee's share of potentially hazardous or burdensome work." Finally, the employer must also assess whether the proposed accommodation conflicts with another law.

Finally, an employer violates an employee's religious rights if it provides more favorable accommodation to other employees for non-religious purposes. In the case of Memorial Hospital, the lawsuit alleged it treated the employee's request for religious accommodation to wear a mask, rather than receive a flu vaccine differently, than the same request made by employees for medical, rather than religious, reasons. [EEOC v Memorial Healthcare](#), No. 2:18-cv-10523 (E.D. Mich. Feb. 13, 2018). Therefore, an employer that provides a medical accommodation to a mandatory vaccination do so without undue hardship, and the employer can make similar accommodation for religious exemptions.

6. Must I provide support from a spiritual advisor such as a pastor or priest?

Short Answer

No.

Long Answer

Religious beliefs can be unique to an individual; thus, evidence from others is not always necessary. However, letters of support from a spiritual advisor may help bolster the “sincerely held” element, expedite the requested accommodation, and eliminate the employer's justification in conducting an inquiry. Furthermore, courts have ruled against employees who refused to cooperate with an employer’s requests for reasonable information when, as a result, the employer was deprived of the information necessary to resolve the accommodation request. [Macon v J.C. Penney Co.](#), 17 F. Supp. 3d 695 (N.D. Ohio 2014).

7. Is my employer liable if I receive a mandated vaccine and have an adverse reaction?

Short Answer

Maybe.

Long Answer

A vaccine-related injury sustained from an employer-mandated vaccine may qualify for a “work-related injury” pursuant to workers’ compensation law.

8. Aside from workers’ compensation, can I get compensation for an injury caused by an employer-mandated vaccine?

Short Answer

Maybe.

Long Answer

The Vaccine Injury Compensation Program [the "VICP"] is a federal program developed in the 1980’s to compensate people with specific reactions and injuries caused by certain vaccinations. The VICP compensates for pain and suffering and past and future lost wages and medical expenses. However, only about 33% of VICP claims receive compensation.

Workers’ compensation benefits typically pay around 2/3 of the employee’s actual lost wages. A person receiving workers’ compensation cannot “double-dip” and receive full compensation from the VICP. However, the person can seek the difference between the workers’ compensation benefit and the actual lost wages from the VICP. If the person incurred costs for treatment of the vaccine injury, the VICP will reimburse the costs. The VICP will only reimburse the portion paid, or due to be paid, by the injured person. The VICP does not reimburse any amount paid by insurance companies or Medicaid. Currently, COVID-19 vaccines are covered countermeasures under the CACP, not the VICP.

III. FLU VACCINE RELIGIOUS ACCOMMODATION CASES INITIATED BY EEOC

The EEOC is a federal government agency charged with the administration, interpretation, and enforcement of Title VII. The EEOC is authorized to institute civil lawsuits on behalf of employees whose employers violated those rights protected by Title VII. In the following cases, the EEOC initiated lawsuits on behalf of the employee(s), alleging that the employer violated the employee's right to a religious accommodation exemption to a mandated influenza policy. These cases ended in a settlement between the parties. While these cases do not create precedence, they do offer practice guidance to both employers and employees.

***EEOC v Saint Thomas Health*, No. 3:18-cv-0978 (M.D. Tenn. April 17, 2019)**

In this Title VII lawsuit, EEOC alleged that a hospital in Murfreesboro, Tennessee, interfered with an individual's employment by a third-party by denying the individual a religious accommodation. The individual was employed by an entity that contracted with the hospital to provide food and environmental services, and he performed cleaning and maintenance duties at the hospital. The individual was a member of the Moorish Science Temple of America and held a sincere religious belief against putting unnatural substances into his body, including receiving a flu shot. Defendant required everyone working at the hospital to receive an annual flu shot. It denied the contractor's employee's request to wear a protective mask in lieu of receiving the shot; the contractor then terminated him.

The suit was resolved through a 2-year consent decree providing the contractor's employee with \$75,000 and enjoining Defendant from failing to provide religious accommodations for sincerely held religious beliefs.

***EEOC v Mission Hospital, Inc.*, No. 1:16-cv-00118 (W.D.N.C. Jan. 29, 2018)**

EEOC alleged in this Title VII lawsuit that an Asheville, North Carolina, hospital failed to accommodate three employees' religious objections to receiving flu vaccinations. According to the EEOC's complaint, Mission Hospital requires employees to receive a flu vaccination annually, no later than December. An employee may request an exemption to the vaccination requirement based on religious beliefs, but the hospital required that the request be made by September 1, or the claim was subject to being denied. The EEOC alleged that three employees requested religious exemptions to the vaccination requirement because of their various sincerely held religious beliefs after the deadline, and the hospital denied the requests. Mission Hospital subsequently fired all three claimants. The EEOC argued that "[a]n arbitrary deadline does not protect an employer from its obligation to provide a religious accommodation," and that "[a]n employer must consider, at the time it receives a request for a religious accommodation, whether the request can be granted without undue burden."

The case was resolved by a 2-year consent decree providing \$89,000 to the three affected individuals. Additionally, Defendant agreed to provide the individuals with letters of reference stating their work was exemplary and are eligible for rehire. Defendant also agreed to revise its

staff immunization policy to permit requests for religious and medical exemptions to its flu vaccination requirement to be made up to the deadline for receipt of the vaccine.

EEOC v Memorial Healthcare, No. 2:18-cv-10523 (E.D. Mich. Feb. 13, 2018)

EEOC alleged in this Title VII lawsuit that an Owosso, Michigan, hospital discriminated against a newly hired employee based on her religion by failing to provide a reasonable accommodation. The applicant applied for a position as a medical transcriptionist in January of 2016. After the hospital offered her the job, she was informed that the hospital had a mandatory flu vaccination requirement during flu season. The employee told the hospital that she had a religious belief against injecting or ingesting foreign substances in her body and is committed to relying only on natural methods for health. The employee offered to wear a mask during flu season, which was an acceptable alternative under hospital policy for those with medical exemptions to the flu shot. However, Memorial refused to extend this accommodation to her, and the hospital rescinded the offer of employment.

This case was resolved pursuant to a consent decree settling the suit. Memorial now permits those with religious objections to wear a mask instead of having a flu vaccine. The hospital will also train managerial staff participating in the accommodation process on the religious accommodation policy. The transcriptionist will also receive \$34,418 in back pay, along with \$20,000 in compensatory damages and \$20,000 in punitive damages.

EEOC v Saint Vincent Health Center, No. 16-224 (W.D. Pa. Dec. 23, 2016)

EEOC alleged in this Title VII lawsuit that an Erie, Pennsylvania, healthcare provider failed to accommodate employees' religious beliefs. On religious grounds, the employees refused to be vaccinated against the influenza virus, and the hospital discharged them as a result. Employees could request religious exemptions from Defendant's mandatory seasonal influenza vaccination policy; however, the employee was required to obtain certification from a clergy member or other third party that the individual "practices a religion where influenza vaccination is contraindicated according to doctrine or accepted religious practices." The affected employees, who followed various Christian faiths, asked for exemptions from the policy and supplied Defendant with their religious objections, but were discharged for failing to provide sufficient evidence of a sincerely held religious belief that conflicted with the vaccination requirement.

The case was resolved via a consent decree that provides \$300,000 to six individuals and requires that Defendant offer them reinstatement with retroactive pay, benefit increases, and seniority. Should Defendant reinstitute a mandatory influenza vaccination policy during the 2-year term of the decree, it is prohibited from requiring that any particular religion endorse an applicant's or employee's religious objection to vaccination. Finally, the hospital may not require ratification of a belief by clergy or other persons.

IV. EEOC CASE INVOLVING MASK-WEARING THAT WAS LITIGATION AND WON BY HOSPITAL

***EEOC v Baystate Medical Center Inc.*, No. 3:16-cv-30086 (D. Mass. June 2, 2016)**

EEOC alleged in this Title VII lawsuit that a Springfield, Massachusetts, hospital discriminated against an employee based on her religion by failing to provide a reasonable accommodation. According to EEOC's complaint, the hospital requires all employees to receive an annual flu vaccination. An employee may request an exemption to the vaccine requirement based on religious beliefs, but the employer requires those workers to wear a mask. EEOC alleged that a recruiter in the human resources department initially wore the mask after declining the flu shot because of her religious beliefs. However, when job applicants complained to the employee that they could not understand her, she removed the mask to be heard. The employee then asked for an alternative accommodation that would permit her to honor her religious beliefs while effectively performing her job. Instead, Baystate placed the employee on indefinite, unpaid leave. EEOC alleged that when the employee complained and sought alternative accommodation to the policy, Baystate terminated her.

The judge entered summary judgment for the hospital, reasoning that the requirement to wear a mask “was itself the employment requirement, rather than merely an accommodation,” and that the EEOC’s case failed as a result. The plaintiffs’ argument that wearing a mask would not effectively prevent the spread of the flu failed because the judge noted the employee had “no religious objection” to the requirement that she wear a mask and that the court would defer to the hospital’s “business and health-policy judgment.” The EEOC also argued that the hospital retaliated against employees who opted to wear a mask because it wanted to maximize the number of employees who received the flu shot. The court found the EEOC had not presented sufficient evidence to show that the masking requirement was merely a pretext designed to force individuals to get vaccinated.