**When May an Employer Reject a Religious Accommodation Request?**

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*Society for Human Resource Management (SHRM), and is available* [*here*](file:///C%3A%5CUsers%5Cjulie%5CAppData%5CLocal%5CMicrosoft%5CWindows%5CINetCache%5CContent.Outlook%5CEBGY01LC%5Chere)*.*

An employer that requires vaccinations against COVID-19 must grant sincere religious accommodation requests, so long as they don't cause an undue hardship on the company. How can a business tell whether an objection to vaccination is based on a genuinely held religious belief and accommodate without creating an undue hardship?

"Because it is so hard to effectively challenge whether a particular belief is genuinely held, most employers will probably choose to skip the first step and go straight to the accommodation question," said Anthony George, an attorney with Bryan Cave Leighton Paisner in Denver.

**Sincerely Held Religious Belief**

The Equal Employment Opportunity Commission's (EEOC's) [guidance on COVID-19 and EEO laws](https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws) states that employers "should ordinarily assume that an employee's request for religious accommodation is based on a sincerely held religious belief, practice or observance."

"Under this guidance, employers should request additional information only in the rare cases when the employer has an objective basis to question whether the employee is sincere or to question whether the employee's belief is actually religious in nature," said Erika Todd, an attorney with Sullivan & Worcester in Boston.

"What is considered a religious belief under Title VII [of the Civil Rights Act of 1964] is very broad and difficult for employers to challenge," said Jill Cohen, an attorney with Eckert Seamans in Lawrenceville, N.J.

The EEOC has said in its [compliance manual on religious discrimination](https://www.eeoc.gov/laws/guidance/section-12-religious-discrimination) that the definition of "religion" extends to traditional religions as well as 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."

"Beliefs pertaining only to economic, social, personal preferences, or political ideals typically are not considered religious for purposes of Title VII," Cohen said.

"If the objection refers to vague constitutional rights or political views or natural law, then the employer may reasonably conclude that the objection is not based in religion and may be overruled," George said.

"Concerns about vaccine safety, toxicity, efficacy, the trustworthiness of the media, government or the pharmaceutical industry are not religious beliefs," said Richard Reice, an attorney with Kauff McGuire & Margolis in New York City.

That said, an [employee with a disability](https://www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/if-workers-refuse-a-covid-19-vaccination.aspx) may need to be excused from a vaccine mandate.

"Employers [that] develop an objective basis for questioning either the religious nature or the sincerity of a particular belief are permitted to seek additional supporting information, as necessary, to make a reasonable business decision," said Joseph Vaughan, an attorney with Vaughan Baio & Partners in Philadelphia.

Employers should consider four factors established by the EEOC in its [questions and answers on religious discrimination in the workplace](https://www.eeoc.gov/laws/guidance/questions-and-answers-religious-discrimination-workplace). These factors might undermine an employee's assertion that he or she sincerely holds the religious belief at issue and include whether:

* The employee has behaved in a manner markedly inconsistent with the professed belief.
* The accommodation sought is a particularly desirable benefit that is likely to be sought for secular reasons.
* The timing of the request renders it suspect—for example, it follows an earlier request by the employee for the same benefit for secular reasons.
* The employer otherwise has reason to believe the accommodation is not sought for religious reasons.

Employers sometimes question the sincerity of a religious belief by probing into whether the employee has acted contrary to the belief in the past, Cohen noted.

For example, some employees have requested accommodations to vaccinations based on the alleged use of fetal cell lines in the initial testing of the drug, she said. In response, [some employers](https://www.beckershospitalreview.com/workforce/prove-it-hospital-asks-unvaccinated-employees-claiming-religious-exemption.html) are asking these employees to certify that they similarly do not take other common medicines that use fetal cell lines in testing, such as Tylenol, Motrin and other [common drugs](https://www.webmd.com/vaccines/covid-19-vaccine/news/20210918/some-medications-also-tied-to-religious-vaccine-exemption), Cohen stated.

Bona fide doubt that a religious belief is genuinely held might also exist if an employee who gets a flu shot every year now asserts that his or her religion prohibits piercing the skin, George said.

Nonetheless, Cohen said, if acting contrary to the religious belief is explainable, the inconsistency may not be enough to conclude that the religious belief is insincere.

**Undue Hardship**

Employers must try to reasonably accommodate workers with sincere religious beliefs if the employees ask for an accommodation, but they don't have to provide accommodations that would result in an undue hardship.

The standard for undue hardship is lower under Title VII—which prohibits religious discrimination—than under the Americans with Disabilities Act. Under Title VII, undue hardship has been defined as more than a minimal burden, said Tracey Diamond, an attorney with Troutman Pepper in Princeton, N.J., and Philadelphia.

Because COVID-19 has killed more than 700,000 people in the U.S. "and unvaccinated workers are more likely to get COVID-19 and transmit COVID-19 to others, employers will have a compelling argument that allowing unvaccinated workers into the workplace would be an undue hardship," George said.

In making an undue hardship determination, "employers will want to consider the cost to the company and whether the accommodation will impose a direct threat to others," Diamond said

Even if unvaccinated entry into the workplace would be an undue hardship, that doesn't end the inquiry, George said. "The employer must still consider whether some alternative is possible."

Alternatives could include routine COVID-19 testing, mask wearing, social distancing and working remotely, noted Abby Warren, an attorney with Robinson & Cole in Hartford, Conn.

"Some employees may be entitled to a religious exemption to the vaccine mandate but still find themselves out of a job when the employer is unable to accommodate that exemption without it causing an undue hardship," said Helene Hechtkopf, an attorney with Hoguet Newman Regal & Kenney in New York City.

"Termination could be legally permissible, but there is a risk that dissatisfied former employees will pursue litigation," cautioned Erika Todd, an attorney with Sullivan & Worcester in Boston.