

# Client Alert

## October 26, 2021

### Update on Religious Exemptions to the State COVID-19 Vaccine Mandate

On October 25, 2021, the Equal Employment Opportunity Commission (EEOC) updated its guidance document to address religious objections to COVID-19 vaccine mandates.

Among other things, the EEOC stated that:

- ▶ Employees must inform their employers if they are requesting an exemption from the COVID-19 vaccines, whether generally or to a specific vaccine, due to a conflict between their religious belief and a vaccination mandate. The same principles apply if employees have a religious conflict with getting a particular vaccine and wish to wait until an alternative version or specific brand of COVID-19 vaccine is available.
- ▶ Generally, under Title VII, an employer should assume that a request for religious accommodation is based on sincerely held religious beliefs. However, 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 request for verification of the sincerity or religious nature of a professed belief risks losing any subsequent claim that the employer improperly denied an accommodation.
- ▶ The definition of "religion" under Title VII protects nontraditional religious beliefs that may be unfamiliar to employers. While the employer should not assume that a request is invalid simply because it is based on unfamiliar religious beliefs, employees may be asked to explain the religious nature of their belief and should not assume that the employer already knows or understands it. By contrast, Title VII does not protect social, political, or economic views, or personal preferences. Thus, objections to COVID-19 vaccination that are based

on social, political, or personal preferences, or on nonreligious concerns about the possible effects of the vaccine, do not qualify as “religious beliefs” under Title VII.

- ▶ The sincerity of an employee’s stated religious beliefs also is not usually in dispute. The employee’s sincerity in holding a religious belief is “largely a matter of individual credibility.
- ▶ Employers may ask for an explanation of how the employee’s religious belief conflicts with the employer’s COVID-19 vaccination requirement. Although prior inconsistent conduct is relevant to the question of sincerity, an individual’s beliefs – or degree of adherence – may change over time and, therefore, an employee’s newly adopted or inconsistently observed practices may nevertheless be sincerely held.
- ▶ If an employer demonstrates that it is unable to reasonably accommodate an employee’s religious belief without an “undue hardship” on its operations, then Title VII does not require the employer to provide the accommodation. Employers need to assess undue hardship by considering the particular facts of each situation and need to demonstrate how much cost or disruption the employee’s proposed accommodation would involve.
- ▶ If there is more than one reasonable accommodation that would resolve the conflict between the vaccination requirement and the sincerely held religious belief without causing an undue hardship under Title VII, the employer may choose which accommodation to offer.
- ▶ An employer has the right to discontinue a previously granted accommodation if it is no longer utilized for religious purposes, or if a provided accommodation subsequently poses an undue hardship on the employer’s operations due to changed circumstances.

With regard to the ongoing lawsuits, the 2nd U.S. Circuit Court of Appeals will hear two appeals that test whether New York state’s vaccine mandate for healthcare workers is unconstitutional because it does not include a religious exemption. The first appeal was filed by We the Patriots USA and three individuals after a federal judge in Brooklyn denied their bid to block enforcement of the mandate. The 2nd Circuit had planned to hear that case on Oct. 14; however, its plans changed on Oct. 13, when the state appealed a ruling by a federal judge in Utica, who granted a preliminary injunction to several healthcare professionals represented by the Thomas More Society.

We will continue to monitor and advise as soon as updates become available. Please contact our office with any questions regarding the decision, or the development of policies and procedures addressing the religious exemption process.

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