

A Primer for Seeking Exemptions From Vaccine Mandates in the Employment Context¹

A. The General Rule Regarding Vaccine Mandates

As a general rule, courts are going to hold a vaccine mandate to be a legal exercise of government power. It follows from this that an employer does not break the law when he requires an employee to be vaccinated as a condition of employment. Moreover, even if no governmental mandate applies, the EEOC has determined that employers generally may require employees to be vaccinated, and courts are likely to defer to the EEOC's interpretation of the law. There may be exceptions to the general rule based on medical and/or religious accommodations, which will be discussed below, but there is little hope that a court will hold that such mandates are illegal *per se*.

B. The EEOC Guidance

In May 2021, the EEOC issued guidance regarding covid vaccines and the rights and obligations of employers. “*What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws – Technical Assistance Questions and Answers*”² Anyone seeking an exemption from a vaccine mandate is advised to review the EEOC guidance carefully. In very brief summary, the EEOC stated flatly that, subject to two exceptions, employers may legally require employees to receive a COVID-19 vaccination and fire them if they refuse to do so. The two exceptions are (1) ADA accommodations for disabled persons; and (2) Title VII accommodations for persons of faith.

C. ADA Accommodations

The Americans with Disabilities Act prohibits employers from discriminating against employees with disabilities. The term “disability” is defined very broadly to mean any physical or mental condition that impairs a major life function. The ADA requires employers to make reasonable accommodations to disabled employees who are able to perform the essential functions of a job so long doing so would not be an “undue burden” (this standard has a very

¹ The guidance set forth in the paper is a summary of legal principles for general informational purposes. It is not comprehensive, and it should not be construed as legal advice in any particular case. Anyone seeking an exemption is advised to consult counsel to determine how the law applies to their particular circumstances.

² Available at: <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>

high threshold and does not mean mere inconvenience or significant expense) and the employee does not pose a “direct threat” to the safety of the workplace.

An employee with a disability may request an exemption from an employer’s vaccine mandate. This will generally require the employee to submit documentation from a health care professional certifying the existence of the disability and the need for an accommodation. When an employee requests an ADA accommodation, an employer is required to enter into an “interactive process” with the employee. The goal of this process is to determine whether the employer can provide a reasonable accommodation to the disabled employee. Remember, establishing a disability and requesting an accommodation is only the first step in the process. The employee must still work with his employer to determine if a reasonable accommodation is possible.

The application of the ADA to a particular employee’s circumstances is a very fact-specific inquiry that defies generalization and is beyond the scope of this paper. If an employee believes that ADA might apply, he is advised to seek medical certification of his disability status and apply for an exemption.

D. Title VII Accommodations

Title VII of the Civil Rights Act of 1964 prohibits employers from discriminating on the basis of certain protected classifications such as race, color, national origin, sex, or religion.³ Thus, under Title VII, an employer must accommodate an employee’s religious convictions unless doing so would impose an undue hardship. 42 U.S.C. § 2000e(j); *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63, 74 (1977). Thus, an employee with a religious objection a covid vaccine may request a Title VII accommodation.

There is often confusion about the significance of a Title VII exemption to the mandate. An exemption does not mean the employee can act as if the mandate does not exist and be free to carry on as normal. Rather, it means the employer must provide an “accommodation” to qualifying employees. Such accommodations can themselves be somewhat onerous. For example, in its guidance the EEOC states that reasonable accommodations may include requiring an employee to do such things as (1) wear a face mask, (2) observe social distancing, (3) work a modified shift, (4) obtain periodic tests, (4) telework, or (5) accept a reassignment.

From the outset it is important to understand that to be eligible for a religious accommodation, the employee’s objection to the vaccine must be based on his religious views.

³ Title VII applies only to employers with 15 or more employees. Some states have a similar law that applies to employers with fewer employees. Since governmental employers are also constrained by the Constitution, governmental employees may have constitutional claims (particularly under the First Amendment) that would not be available to employees of private companies.

One can go on the internet and find a multitude of non-religious objections to the covid vaccines,⁴ but none of these objections implicates Title VII, which, in this context, concerns religious objections only.

Employees who object to vaccines generally have a greater chance of establishing a sincerely held religious objection than employees who object to the covid vaccine only but have had multiple other vaccinations (e.g., MMR, hepatitis, etc.). Employees in the latter category must be able to articulate why they object to the covid vaccines on religious grounds but not these others. For resources regarding possible theological objections, see our “*Theological Objections*” paper.

This is not to say that having accepted other vaccines while rejecting the covid vaccine is necessarily fatal to a Title VII case. That an employee has in the past acted inconsistently with an asserted belief or has only recently come to act on the belief, do not necessarily bar a Title VII claim.. *EEOC v. Ilona of Hungary, Inc.*, 108 F.3d 1569, 1575 (7th Cir. 1997). An employee might not have been aware that other vaccines also had abortion connections. Similarly, an employee might have only recently concluded that such connections violate their beliefs. In either case, the objection is sincere even if only recently acquired.

Employee should beware of employers who make claims such as “your religion does not really teach that.” For example, on September 13, 2021, New York Governor Kathy Hochul said that New York’s vaccine mandate consciously excluded a religious exemption because, according to her, there was not “sanctioned religious exemption from any organized religion. She said, “ in fact, they are encouraging the opposite,” and “Everybody from the pope on down is encouraging people to get vaccinated.” Governor Hochul’s comments were outrageous, morally bigoted and legally indefensible. No one – especially the government – gets to dictate to another person what their religious beliefs are. “The fact that no religious group espouses such beliefs or the fact that the religious group to which the individual professes to belong may not accept such belief will not determine whether the belief is a religious belief of the employee” *EEOC Guidelines on Discrimination Because of Religion*, 29 C.F.R. § 1605.1. *See also Heller v. EBB Auto Co.*, 8 F.3d 1433, 1438 (9th Cir. 1993). Thus, an employer may not require an employee to obtain a letter from his minister “proving” his belief or otherwise require the employee to show that a particular religious group responses that belief. Nor may an employer question the validity of a belief or express disagreement with it. The issue under Title VII is whether the belief is sincerely held, not whether someone else thinks the belief is valid.

E. Pointers for Religious Accommodation Requests

⁴ These objections include: the vaccines are experimental and have not been tested for long term effects; there have been side effects and deaths; the vaccines violate the Nuremburg Code; the vaccines alter DNA; the vaccines contain “tracers,” etc.

We have provided a form religious accommodation request for general informational purposes. It is important to note that an employer should NEVER simply cut and paste this form. By their very nature, requests for religious accommodation must be accommodated to reflect an employee's specific circumstances. There are, however, some general guidelines an employee should consider, including:

1. ADA requests should be separate

Combining health-related and religion related requests for accommodation only serves to dilute both. If you have a basis for both requests, submit them separately.

2. Do not talk about other objections

As we discussed above, Title VII applies to religious objections only. Discussing other possible objections (e.g., “the mandate violates the Nuremberg Code”), for from strengthening the request, will only serve to undermine it.

3. Explain the religious basis for your request

You will be required to demonstrate that your belief is sincerely held. In doing so, while it is not strictly required, it is very helpful if you are able to articulate the grounding of your objection, such as by quoting scripture, a statement of faith, or religious authorities.

VaccineExemption.com Legal Team

Note: This is document is not meant to be legal advice but is provided for informational purposes only. We recommend that you seek the advice of an attorney in your state for legal advice.