

Guidelines for Employers Who Receive Accommodation Requests

Many employers either voluntarily or pursuant to a government mandate are requiring their employees to be vaccinated against COVID-19. Employers who require employees to be vaccinated should know that under certain circumstances, federal law (and possibly state law depending on the state in which the employer is located) requires employers to make reasonable accommodations to employees who request an exemption from mandate. Title I of the Americans with Disabilities Act (ADA) requires employers to provide reasonable accommodation to qualified applicants and employees with a disability, unless the employer can demonstrate that doing so creates an undue hardship to the employer or poses a direct threat to the safety of the employee or others in the workplace. Employers also have an obligation to accommodate an employee's sincerely held religious belief under Title VII of the Civil Rights Act (Title VII), unless the accommodation creates an undue hardship. Set forth below are the steps employers should follow if they receive a request for an accommodation under these statutes.

1. Review Each Request on its Own Merits

Each request should be reviewed on an individual basis. Blanket denials of categories of requests (e.g. “no religious exemptions”) will almost certainly run afoul of the law. Employers may (but are not required to) request an employee to support his/her medical request with documentation from the employee’s healthcare provider. Employers may not require an employee to provide a note from a clergy to support their request for a religious exemption. This is because as long as a religious belief is sincerely held, it makes no difference if any particular denomination. For example, a Catholic is entitled to request a religious exemption even if the Vatican has expressed official support for vaccinations. Also, an employer may not deny a request for exemption on religious grounds because he/she thinks the employee’s religious belief is irrational or unreasonable. The courts look only to whether the belief is sincerely held. If so, the employee may request accommodation even if others might find their belief unreasonable.

2. Enter into the Interactive Process

Once an employee makes a valid request for an accommodation, the employer is required to begin discussions with the employee. This is called the “interactive process.” The law requires the employee and the employer to make a good faith effort to determine what accommodations can be made given the employee’s individual circumstances.

3. Determine an Appropriate Accommodation

Under the ADA and Title VII, accommodating an employee is NOT optional if the accommodation would not result in an undue hardship on the employer or pose a direct threat to the health and safety of others. Employers should be careful when asserting “undue hardship.”

Under the ADA, undue hardship must be based on an individualized assessment of current circumstances that show that a specific reasonable accommodation would cause significant difficulty or expense. This is generally a difficult test to meet. Under Title VII, the undue hardship defense requires the employer to demonstrate the accommodation poses a “more than de minimis” cost or burden.

There are numerous ways to accommodate employees who assert a medical or religious exemption from a vaccine mandate. For example, if an employee worked remotely during the lockdown phase of the response to the pandemic, it would be difficult for an employer to show that a request to work remotely is unreasonable. Other accommodations include periodic testing, social distancing, and protective equipment. It will probably be rare circumstance that an accommodation is not possible.

4. Maintain Confidentiality; Do Not Retaliate

It is illegal to disclose that an employee is receiving a reasonable accommodation or to retaliate against an employee for requesting an accommodation.