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EEOC's Advice to Employers on Accommodating Religion and COVID-19 Vaccines in the Workplace

As employees return to the office, many employers have questions about how to address requests for religious accommodations for COVID-19 vaccination requirements. As a result, on March 1, the Equal Employment Opportunity Commission (EEOC) issued guidance on responding to such accommodation requests. As a general matter, employees and job applicants can request an accommodation for an employer's COVID-19 vaccination requirement if it conflicts with their sincerely held religious beliefs, practices or observances.

No Magic Words

In response to the question of whether employees should inform their employer of their religious objection to receiving a COVID-19 vaccination, the EEOC clarified that while employees seeking such an accommodation must tell their employers that they are requesting an exception because of a conflict between that requirement and their sincerely held religious beliefs, practices or observances, employees do not need to use any "magic words" (e.g., "religious accommodation" or "Title VII") and don't need to explain the conflict and religious basis for it. The EEOC suggests that as "best practice, an employer should provide employees and applicants with information about whom to contact and the proper procedures for requesting a religious accommodation." The EEOC has published the religious accommodation request form it uses with its own employees.

What Is a Sincerely Held Belief?

In response to the question of whether an employer may ask for additional information about an employee's request for a religious accommodation, while the initial assumption is that a request for religious accommodation is based on sincerely held religious beliefs, if an employer has an objective basis for questioning either the religious nature or the sincerity of a particular belief, the employer may make a limited factual inquiry and seek additional supporting information. An employee who fails to cooperate with a reasonable request for such additional information risks not only a denial of an accommodation but also loss of any subsequent claim based on allegations of an improper denial.

The EEOC made clear that Title VII does not protect social, political or economic preferences, but an overlap between a religious and a political view may not place the objections to a COVID-19 vaccine requirement outside the scope of Title VII's protections as long as the view is part of a comprehensive religious belief system and is not simply an isolated teaching.

The EEOC advises that an employer may use certain factors to determine an employee's credibility. The employer may consider whether the employee has acted in a manner inconsistent with the professed belief (though employees need not be scrupulous in their observance), whether the accommodation provides a desirable benefit that is likely to be sought for nonreligious reasons, whether the timing of the request is suspect and there is any reason to believe the accommodation is not sought for religious reasons. The EEOC cautions that while an employee's prior inconsistent conduct is relevant to the question of sincerity, one's beliefs may change over time, so newly adopted or inconsistently observed practices may nevertheless be sincerely held.

Consider All Requests and Alternative Accommodations

Employers need not grant requests for religious accommodations that would impose an undue hardship on the business. In evaluating whether a requested accommodation would impose an undue hardship, the EEOC states that employers should consider all possible reasonable accommodations, including telework and reassignment. Under Title VII, a requested accommodation causes undue hardship if it would impose on the employer more than a de minimis, or minimal, cost or burden. Such a burden may include the risk of the spread of COVID-19 to other employees or to the public, but it cannot be speculative or hypothetical.

Specifically for requested accommodations from COVID-19 vaccine requirements, relevant considerations may include whether the requesting employee works outdoors or indoors, or in a solitary or a group work setting; whether that employee has close contact with other employees or members of the public (especially medically vulnerable individuals); and the cumulative cost or burden on the employer of the total number of employees seeking similar accommodations. For these reasons, the EEOC advises that if an employer grants some employees a religious accommodation for a COVID-19 vaccination requirement because of sincerely held religious beliefs, the employer does not necessarily have to grant all such requests from other employees.

Employee's Choice?

As is the case with other types of requested accommodations, an employer need not provide an employee's preferred accommodation. Instead, the employer may choose which accommodation to offer as long as it is reasonable and does not require the employee to accept a reduction in pay or some other loss of a benefit or privilege of employment, such as unpaid leave, when an alternative reasonable accommodation exists that does not require that and would not impose undue hardship on the employer's business. If an employer denies an employee's request for a particular accommodation, the employer should explain its basis for doing so.

Reconsidering the Request

Employers may reconsider requested accommodations as circumstances change. For example, an employer may discontinue a previously granted accommodation if it is no longer utilized for religious purposes or it subsequently poses an undue hardship on the employer's operations due to changed circumstances. However, employers must consider whether there are alternative accommodations that would not impose an undue hardship, and they should discuss their concerns with the employee before discontinuing a previously granted accommodation.

Takeaways for Employers

Employers should have a clear process for their employees to request accommodations and for the employers' evaluation of such requests. Especially since no "magic words" are required to request a religious accommodation, employers should be sure not to overlook such requests. The EEOC's recognition of the potential overlap of political and religious beliefs should help make sure that employers address accommodation requests with an open mind.

Employers should be cognizant of potential alternative accommodations and of the potential for undue hardship, which should be discussed with the requesting employee. If an accommodation request is denied, the employer should provide clear reasons for the denial and document the process. Similarly, when reconsidering already provided religious accommodations, employers should discuss any changed circumstances with the employee. Finally, while the EEOC's recent guidance addressed only potential religious accommodations of COVID-19 vaccination requirements under Title VII, employers should remain aware that there may be other grounds for such accommodations, such as the Americans with Disabilities Act and state or local laws. As the law in this area continues to develop, it is a good idea to discuss these requests with employment counsel.

For more Day Pitney alerts and articles related to the impact of COVID-19, as well as information from other reliable sources, please visit our COVID-19 Resource Center.

COVID-19 DISCLAIMER: As you are aware, as a result of the COVID-19 pandemic, things are changing quickly and the effect, enforceability and interpretation of laws may be affected by future events. The material set forth in this document is not an unequivocal statement of law, but instead represents our best interpretation of where things stand as of the date of first publication. We have not attempted to address the potential impacts of all local, state and federal orders that may have been issued in response to the COVID-19 pandemic.

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