

# Responding to Requests for Religious Exemptions from Vaccine Mandates

***DISCLAIMER:** This document should not be considered legal advice. Each state has different laws and regulations for COVID issues -- and local laws may also apply. Therefore, you should not rely upon the contents of this information piece in lieu of and without obtaining legal advice from a legal advisor in your state and jurisdiction. It would also be wise to consult with your insurer on COVID issues.*

The Stated Clerk has issued an information piece to inform PC(USA) members, churches, and councils that Presbyterian theology and polity do not support a religious exemption from COVID vaccines. Questions have arisen and may arise from churches and councils that are employers concerning how to respond if they mandate that their employees be vaccinated and get a request for a religious exemption from an employee. This information piece will share information based upon published guidance from the Equal Employment Opportunity Commission (“EEOC”). It is recommended that congregations and councils consult with their local employment attorney at all steps in the process of reviewing and considering requests for accommodation from COVID vaccines.

## IS YOUR CONGREGATION OR COUNCIL A COVERED EMPLOYER?

Title VII is a federal law that applies to employers with 15 or more employees. The U.S. Supreme Court adopted the payroll method of determining coverage: an entity that has "fifteen or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year." Employers should count all employees who are on its payroll for each day of a given week regardless of whether an employee was present for work each day.

When an employer receives a request for a religious accommodation under Title VII (or comparable state anti-discrimination law), the employer needs to determine if, as an employer, it is subject to Title VII. That determination should be done in consultation with your local attorney.

Comparable state laws typically cover employers with fewer than 15 employees, so check with local counsel to see if you are an employer subject to those laws in your state. For example, in Kentucky employers are subject to the Civil Rights Act (which is akin to Title VII) if they employ **8 or more** employees in each of twenty (20) or more calendar weeks in the current or preceding calendar year. Your church or council may not have enough employees to be subject to Title VII, but you may have enough employees to be subject to the comparable state laws in your jurisdiction.

When you are counting employees remember to count **all** employees of your church or council corporation. The *Book of Order* requires each congregation and council to form and maintain a corporation (G-4.0101). That corporation will likely be the employer of all employees of your congregation or council. For example, if you have two ministers, a music director, a Christian educator, a secretary, and a sexton, that is six employees. But if you also have a daycare or weekday school and those folks are also employees of the corporation, you likely count them as well to determine with which laws you must comply.

## CAN WE REQUIRE EMPLOYEES TO BE VACCINATED?

Guidance from the EEOC indicates that you can require employees to be vaccinated but recommends that employers strongly urge employees to get vaccinated rather than mandate it. If employers ask for employees to be vaccinated, the employer must consider requests for religious accommodations.

## WHAT IF AN EMPLOYEE REPORTS HAVING SYMPTOMS OF COVID?

The Occupational Safety and Health Act (OSH Act) covers religious organizations with one or more persons who are engaged in secular activities (i.e., church secretary, sexton). The OSH Act General Duty Clause requires covered employers to provide each worker with a place of employment free from recognized hazards that cause or are likely to cause death or serious physical harm.<sup>1</sup>

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The Occupational Safety and Health Administration expects employers to identify and isolate potentially infected employees. The Centers for Disease Control recommends that if an employer confirms an employee is diagnosed with COVID it notifies all employees who may have been exposed to that employee.<sup>2</sup>

So, as an employer, if you are notified that an employee has symptoms of COVID you should encourage them to seek a diagnostic test for COVID. It would be advisable to inform employees who may have been exposed to this employee so they can quarantine and get tested too. If an employee is diagnosed with COVID, the same applies. **However**, as the employer you should NOT inform your employees by name of who had COVID symptoms or was diagnosed with COVID; that is confidential medical information. Merely say an employee had symptoms or was diagnosed, and no more.

*See also:*

- <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws> (see K.1)
- <https://www.eeoc.gov/laws/guidance/pandemic-preparedness-workplace-and-americans-disabilities-act#q13> (see question 13)

### **RESPONDING TO A REQUEST FOR ACCOMMODATION**

If you and your attorney determine that as an employer you are not subject to Title VII or its equivalent under state law, you may not be required to grant a vaccine accommodation for religious reasons. If you are an employer subject to Title VII or its state equivalent, employees with sincerely held religious beliefs are entitled to seek accommodations from employer vaccine mandates to return to the workplace.

A religious accommodation is an adjustment to the work environment that will allow the employee to comply with his or her religious beliefs. An employer need not provide a reasonable accommodation if doing so would cause undue hardship on the conduct of the employer's business, which the Supreme Court has interpreted to mean an accommodation that would require the employer to bear more than a de minimis cost or burden. The employer's duty to accommodate will usually entail making a special exception from, or adjustment to, the particular requirement that creates a conflict so that the employee or applicant will be able to observe or practice his or her religion. Accommodation requests often relate to work schedules, dress and grooming, or religious expression or practice while at work.<sup>3</sup>

### **HOW MUST EMPLOYERS RESPOND TO A REQUEST FOR ACCOMMODATION?**

When an employer receives a request for accommodation, the employer should engage in a dialogue with the employee:

Although an employer is not required by Title VII to conduct a discussion with an employee before making a determination on an accommodation request, as a practical matter it can be important to do so. Both the employer and the employee have roles to play in resolving an accommodation request. In addition to placing the employer on notice of the need for accommodation, the employee should cooperate with the employer's efforts to determine whether a reasonable accommodation can be granted. Once the employer becomes aware of the employee's religious conflict, the employer should obtain promptly whatever additional information is needed to determine whether a reasonable accommodation is available without posing an undue hardship on the operation of the employer's business. This typically involves the employer and employee mutually sharing information necessary to process the accommodation request. Employer-employee cooperation and flexibility are key to the search for a reasonable accommodation. If the accommodation solution is not immediately apparent, the

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employer should discuss the request with the employee to determine what accommodations might be effective. If the employer requests additional information reasonably needed to evaluate the request, the employee should provide it.<sup>4</sup>

As stated earlier, you should consult with your local employment attorney at each stage in the accommodation process and responding to a request for accommodation is a key step in that process. Regarding a religious exemption, the employer needs to determine the basis for the exemption and whether it is a sincerely held religious belief.

### **Reasonable Accommodation - Generally**

- Employers should inform employees that they will make reasonable efforts to accommodate the employees' religious practices.
- Employers should consider developing internal procedures for processing religious accommodation requests.
- Employers should individually assess each request and avoid assumptions or stereotypes about what constitutes a religious belief or practice or what type of accommodation is appropriate.
- Employers and employees should confer fully and promptly to the extent needed to share any necessary information about the employee's religious needs and the available accommodation options.
- An employer is not required to provide an employee's preferred accommodation if there is more than one effective alternative to choose from. An employer should, however, consider the employee's proposed method of accommodation, and if it is denied, explain to the employee why his proposed accommodation is not being granted.<sup>5</sup>

*See also:*

- <https://www.eeoc.gov/laws/guidance/what-you-should-know-workplace-religious-accommodation>

### **REQUESTS FOR RELIGIOUS ACCOMMODATIONS**

The EEOC guidance indicates that evaluating a request for religious accommodation is complicated. The complications start with Title VII's definition of religion.

Title VII defines "religion" to include "all aspects of religious observance and practice as well as belief," not just practices that are mandated or prohibited by a tenet of the individual's faith. Religion includes not only traditional, organized religions such as Christianity, Judaism, Islam, Hinduism, Sikhism, and Buddhism, but also 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. Further, a person's religious beliefs "need not be confined in either source or content to traditional or parochial concepts of religion." A belief is "religious" for Title VII purposes if it is "religious" in the person's "own scheme of things," i.e., it is a "sincere and meaningful" belief that "occupies a place in the life of its possessor parallel to that filled by . . . God." The Supreme Court has made it clear that it is not a court's role to determine the reasonableness of an individual's religious beliefs, and that "religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection." An employee's belief, observance, or practice can be "religious" under Title VII even if the employee is affiliated with a religious group that does not espouse or recognize that individual's belief, observance, or practice, or if few – or no – other people adhere to it.<sup>6</sup>

Employees are entitled to a reasonable accommodation for any sincerely held religious belief. They are not entitled to an accommodation for a personal, philosophical, or political belief. Using Title VII's definition of religion and any explanation an employee gives an employer for the alleged sincerely held

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religious belief to make an analysis is challenging. It is an analysis best made with the help of your local employment attorney.

### **WHAT ARE REASONABLE ACCOMMODATIONS?**

A reasonable accommodation is defined as:

The term “reasonable accommodation” is a relative term and cannot be given a hard and fast meaning. Each case . . . necessarily depends upon its own facts and circumstances, and comes down to a determination of “reasonableness” under the unique circumstances of the individual employer-employee relationship.”<sup>7</sup>

There are a variety of accommodations you can consider as a covered employer under Title VII for religious accommodation. Examples:

- Can the employee work remotely from home?
- Can the employee participate in team meetings on Zoom or other meeting platform?
- If the employee must be in the office, have them wear a mask and recognize social distancing from other co-workers.
- Does it make sense to deploy a plexiglass barrier between the employee and co-workers or the public?
- Does it make sense to change an employee’s work schedule?<sup>8</sup>

### **UNDUE HARDSHIP**

By law an employer is not required to grant an accommodation that the employer can demonstrate causes it an undue hardship. This is another analysis to assess with your local employment attorney. It includes issues such as excessive cost, burden on your organization, and potential safety risk.

An employer can refuse to provide a reasonable accommodation if it would pose an undue hardship. The Supreme Court has defined “undue hardship” for purposes of Title VII as imposing “more than a de minimis cost” on the operation of the employer’s business.<sup>9</sup>

The discernment over whether an accommodation is an undue hardship is made on a case-by-case basis.

The determination of whether a particular proposed accommodation imposes an undue hardship “must be made by considering the particular factual context of each case.” Relevant factors may include the type of workplace, the nature of the employee’s duties, the identifiable cost of the accommodation in relation to the size and operating costs of the employer, and the number of employees who will in fact need a particular accommodation.<sup>10</sup>

Example, the type of accommodations you consider for church sextons whose duties require them be on your property constantly to clean and maintain it and perhaps perform other duties that require onsite, personal attention may be different than for daycare or day school workers who also need to be onsite but will have constant interaction with minors under their care as well as regular personal interactions with parents and co-workers. Remote work is not an option for either position, but a sexton can wear a mask, may be advised to social distance from co-workers, members, and visitors or can work shifts in the early mornings or late evenings or other times when fewer people may be in your church buildings.

### **IF YOU GRANT AN ACCOMMODATION, WHAT NEXT?**

If you grant an accommodation on religious grounds, you cannot share that information with all employees. If someone asks for and is granted an accommodation, it would be reasonable to inform their

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supervisor about this so they supervisor can make sure the accommodation(s) are followed (ex. masking, social distancing). But beyond that the information cannot be shared.

### **COVID VACCINE MANDATES AND MEDICAL ACCOMMODATIONS**

The subject of this information piece is responding to requests for religious accommodations if an employer issues a COVID vaccine mandate for employees.

As an employer, you should also be aware that if you are covered by the Americans with Disabilities Act, or a state equivalent, you are also required to consider requests for reasonable accommodations from employees who claims they are unable to receive a COVID vaccine due to a medical condition. Guidance from the EEOC can be found at these links:

- <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>
- <https://www.eeoc.gov/laws/guidance/enforcement-guidance-disability-related-inquiries-and-medical-examinations-employees>

Cited Online Source Materials – links accessed September 24, 2021.

<sup>1</sup> <https://www.osha.gov/laws-regs/oshact/section5-duties>

<sup>2</sup> <https://www.osha.gov/coronavirus/control-prevention>

<sup>3</sup> [https://www.eeoc.gov/laws/guidance/section-12-religious-discrimination#h\\_79076346735821610749860135](https://www.eeoc.gov/laws/guidance/section-12-religious-discrimination#h_79076346735821610749860135)

<sup>4</sup> <https://www.eeoc.gov/laws/guidance/section-12-religious-discrimination>

<sup>5</sup> <https://www.eeoc.gov/laws/guidance/best-practices-eradicating-religious-discrimination-workplace>

<sup>6</sup> [https://www.eeoc.gov/laws/guidance/section-12-religious-discrimination#h\\_9593682596821610748647076](https://www.eeoc.gov/laws/guidance/section-12-religious-discrimination#h_9593682596821610748647076)

<sup>7</sup> [https://www.eeoc.gov/laws/guidance/section-12-religious-discrimination#h\\_9593682596821610748647076](https://www.eeoc.gov/laws/guidance/section-12-religious-discrimination#h_9593682596821610748647076)

<sup>8</sup> <https://askjan.org/>

<sup>9</sup> [https://www.eeoc.gov/laws/guidance/section-12-religious-discrimination#h\\_79076346735821610749860135](https://www.eeoc.gov/laws/guidance/section-12-religious-discrimination#h_79076346735821610749860135)

<sup>10</sup> [https://www.eeoc.gov/laws/guidance/section-12-religious-discrimination#h\\_43419997237501610749887061](https://www.eeoc.gov/laws/guidance/section-12-religious-discrimination#h_43419997237501610749887061)