



*Building Better Workplaces Through Compliance, Culture, Connection*

## **Vaccine Mandates and Religious Exceptions**

As vaccine mandates are becoming more common, whether due to state or local rules or per employer policy, more employees are requesting exceptions based on their religious beliefs. Here are a few things to keep in mind as it relates to these requests:

### **Does the request fall under Title VII?**

Title VII requires employers to make reasonable accommodations for an individual's sincerely held religious belief, practice or observance, which in this context, would prevent them from receiving a COVID-19 vaccine. The definition is quite broad but specifically includes moral or ethical beliefs as to what is right and wrong. These beliefs have to be sincerely held with the strength of traditional religious views. It does not cover general oppositions which are more political, sociological, or philosophical in nature

In determining whether a belief, practice or observance is personal or religious in nature, employers should proceed with caution. In general, employers are better to assume the request is based on a legitimate religious belief, practice or observance, and focus their energy on reasonable accommodations.

### **What if the objection appears to be a personal choice rather than a “Sincerely Held Religious Belief”?**

While employers should first assume the request is legitimate, some situations may warrant a further look. For example, if an employee states that they think vaccines are just a political play and not necessary, that could suggest their opposition is personal and/or political in nature and not due to a sincerely held religious belief.

#### *Documentation*

In that case, employers may want to require the employee to provide supporting information to verify their opposition is truly due to a sincerely held religious belief, practice or observance. This could

include an attestation from the employee explaining their belief or providing information from their church.

Employers should take caution when making such a request and limit it to circumstances where there is an objective reason to question the validity of the employee's claim, such as in the scenario above.

If an employer determines that the request for an exception is not based on a sincerely held religious belief, practice or observance, then it would not have to provide a reasonable accommodation or exception to the vaccine mandate.

### **The Interactive Process**

If an employer determines that the request is based on sincerely held religious beliefs, practices or observances, the employer should then engage in the interactive process to determine if there is a reasonable accommodation. The interactive process must be done on a case-by-case basis in light of the individual's job requirements.

Importantly, the reasonable accommodation analysis under Title VII for religious beliefs is much less stringent than the reasonable accommodation analysis under the ADA. Under Title VII, an undue hardship is defined as having "more than a minimal cost or burden on the employer."

Employers may consider factors including, but not limited to: the number of vaccinated and unvaccinated employees; contact with customers, clients or other employees; and the nature of work being performed.

### **What are reasonable accommodations?**

Accommodations employers may consider include, but are not limited to:

- Working a modified shift or schedule.
- Requiring periodic tests for COVID-19; please note that periodic testing, such as weekly testing, is only an option as a potential accommodation due to a medical or religious exception. It is not an option outside of those exceptions.
- Remote work.
- Reassignment.
- Requiring face masks and shields.
- Modifying working areas.
- A combination of these options.

### **What if the accommodation would create an "Undue Hardship" or it is unreasonable?**

#### *Undue Hardship*

In some situations, there may be no reasonable accommodation because the cost or impact of the accommodation would be more than minimal to the employer.

Some factors that might create an undue hardship include, but are not limited to:

- Safety risks;
- The number of other requests for accommodations;
- Increasing other employees' responsibilities or hours of work;
- Lack of other available staff;

- Disruption on processes.

It is important that employers consider multiple accommodations before declaring there are no reasonable accommodations.

### *Reasonableness*

Further, employers can choose which accommodation is reasonable, if any, even if such accommodation is not preferred by the employee. It is also important to note that accommodations may change over time. For example, if an employer allows an employee to work remote as a reasonable accommodation, there may be a point in the future where such accommodation creates an undue hardship because of new business factors, including but not limited to a change in process, services and/or staffing.

If an employer determines that there is no reasonable accommodation, then the next steps might include putting the employee on a leave of absence or potential termination due to vaccine noncompliance.

Of course, it is extremely important to be sure to document each step in this process, including: the request for the accommodation; all communications during the interactive process; accommodations that are made; and record of why an accommodation was denied, if applicable.

The Oregon Health Authority (OHA) has published a [form for employees to complete to request a religious exception](#). Although this form is not required (outside of the healthcare setting), employers may choose to require employees making such requests to complete this form.

Please do not hesitate to reach out to Cascade with questions.



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