



Thou Shall Not Vax: Employers Deal with More Attempts to Escape COVID-19 Vaccine Mandates

The religious exemption to employer-mandated vaccination policies has generally been considered narrow and historically used only by those with religious beliefs requiring the rejection of modern medical treatments. There has been a recent spate of dubious applications for religious exemptions from employer COVID-19 vaccine requirement. Many of those applications are fueled by politics or fear of the vaccine, likely due to misinformation. Employers, therefore, need to put in place careful vetting strategies for employees whose exemption requests raise red flags.

Legitimate Exemption Application

Notwithstanding the rise in illegitimate religious exemption applications, those reviewing religious exemption applications must be mindful of its legitimate scope. These religious exemptions cover not only traditional faiths, but also faiths that are new, uncommon, informal, or have a small number of practitioners. Religious beliefs also do not have to be theistic but can be based on strongly held moral or ethical beliefs. Federal law does **not** consider beliefs based on social, political, or economic philosophies, as well as mere personal preferences, to be religious beliefs. Thus, employers offering religious exemptions cannot limit them to organized religion, because that would discriminate against those with sincere beliefs that are not part of an organized religion.

No major religious denomination is on record opposing vaccination, despite some individual clergy members who have raised objections. Even the Christian Science Church, which teaches members to use prayer rather than medicine to maintain their health, has not come out with a prohibition on the use of the vaccine by its adherents. Its statement calls for members to have "respect for public health authorities and conscientious obedience to the laws of the land, including those requiring vaccination."

Vaccine development and production over the last several decades has often relied upon some cell lines that were originally developed from cells obtained from two fetuses that were aborted in the '70s and '80s. The Pfizer and Moderna vaccines are not dependent on these cell lines. Other vaccines, including AstraZeneca and Johnson & Johnson, have been developed from such cell lines and may pose concerns to some religious groups that oppose abortion. However, the Vatican's doctrinal office, the Congregation for the Doctrine of the Faith (CDF), has determined that it is "morally acceptable" for Catholics to take vaccines against the COVID-19 Virus.

Handling of Dubious Religious Accommodation Requests

An employer receiving questionable employee requests need not automatically attempt to accommodate these employees. If the employer has a bona fide doubt about the basis for a

religious exemption accommodation request, the employer is entitled to make a limited inquiry into the facts and circumstances of the employee's claim that the belief or practice at issue is religious and sincere. The employer also can require an explanation letter and request independent corroboration. Recent religious accommodation requests have included certifications from "ministers" who exchange such certifications for donations at a certain level. Others have a biblical quote along with the employee's vague attestation of belief. With such attempts to expand the narrow religious exemption, employers must be fully aware of their rights and responsibilities related to religious exemption requests. If there is an objective basis for questioning the employee's sincerity, employers can request documents to use in the review process to further assess the employee's sincerity in the professed belief.

Examples of such requests include:

- Written religious materials describing the religious belief or practice;
- Written statements or other documents from third parties, such as religious leaders, practitioners, or others with whom the employee has discussed his or her beliefs, or who have observed the employee's past adherence.

If the employer has any reason to believe the accommodation is not sought for religious reasons, this could potentially nullify the employee's request. Factors that – either alone or in combination – might undermine an employee's assertion that they sincerely hold the religious belief include whether the employee:

- has behaved in a manner markedly inconsistent with the professed belief;
- has recently subscribed to this faith;
- has previously deviated from the followed tenets of his or her belief;

The reviewer(s) should take a holistic approach, as not one of these considerations are dispositive. The collection of documents listed above should be used to help assess the employee's sincerity.

The question of whether an individual's belief is sincere is an issue of an individual's credibility. Accordingly, employers will have to review the assessment of each employee's request for an exemption on a case-by-case basis. Consistency in the decision-making process is crucial to avoid claims of bias and discrimination.

Accommodating Religious Exemptions

Once an employer approves a religious exemption to a vaccine requirement, the employer must accommodate the exempt employee. In such situations, the employer must continue to employ the exempted employee notwithstanding that the employee will remain unvaccinated. The employer must also take measures to protect that employee and the rest of the workforce from COVID-19. A likely accommodation would be weekly COVID-19 testing and requiring continued masking and social distancing from the employee.

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