

HR Insights

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COVID-19 Vaccination Accommodation Requests

As the COVID-19 pandemic continues, employers are having to find balances between productivity and worker health. Namely, workplaces are pondering whether COVID-19 vaccination should be a condition of employment.

The White House attempted to mandate vaccinations to make this decision for certain private employers, but that effort has been delayed. When the Occupational Safety and Health Administration (OSHA) announced the details of its [COVID-19 vaccination and testing mandate](#), it was immediately challenged in the courts and effectively halted until further notice.

Although the rules sit in legal limbo, some employers have taken it upon themselves to get their workplaces vaccinated anyway—earning praise from the White House, which has urged all employers to do the same. As such, many employers are currently deciding whether and how to mandate COVID-19 vaccinations among their employees.

And while the OSHA mandate may be on hold, other workplace laws are still in play, including those regarding accommodation requests. Employees must be allowed to request an accommodation for COVID-19 vaccination exemption—just as they are allowed in the case of mandatory flu shots.

This article outlines how employers can handle COVID-19 vaccination accommodation requests.

Additionally, this article contains details that pertain to federal laws only, provided solely for example and informational purposes. State and local laws will

vary. This article is not intended as advice of any kind. Employers should contact legal counsel for advice on any of the information discussed herein.

Accommodation Policy Groundwork

There are two primary workplace laws that provide for employee accommodations: the Americans with Disabilities Act (ADA) and Title VII of the Civil Rights Act (Title VII). Both of these laws apply to employers with at least 15 workers.

The ADA compels employers to reasonably accommodate qualified employees with a disability unless doing so would cause an “undue hardship” on the organization or pose a direct threat to the safety of the employee or others in the workplace. Similarly, Title VII requires employers to accommodate employees’ sincere religious beliefs, unless it would cause an undue hardship.

Given these employee protections, employers must tread carefully when determining whether to approve or deny an employee’s accommodation request. Workplaces can use an interactive determination process to make an informed decision. But before that can begin, employers must set some policy groundwork, which involves determining legal obligations and drafting written rules.



Determining Employer Obligation

Before anything else, employers should know what their specific legal obligations are. For instance, the ADA and Title VII generally only apply to employers with 15 or more employees. If an employer with at least 15 workers receives a vaccination accommodation request, they should begin the interactive process.

Establishing a Written Policy

Having accommodation policies in writing is a starting point for uniform enforcement. A sufficient written policy will clearly detail how an employee might request an accommodation, the various steps involved in the determination process and similar details.

To supplement policies, employers may consider reviewing job descriptions to ensure they include all workplace expectations and requirements, including COVID-19 vaccination or testing rules.

Interactive Process Overview

Note that the following process is only one potential avenue to follow when handling employee accommodation requests. Interactive processes will vary and be unique to each situation. The following information is provided for example purposes only and is not intended to be construed as legal or insurance advice.

The first step in reviewing an accommodation request is simply receiving the request. In terms of mandatory COVID-19 vaccinations, accommodation requests will likely be for exemption.

Accommodation requests can come in many forms; while an employee may fill out and submit an exemption form, a request doesn't need to be submitted in writing. Managers should be aware of this and know how to interpret an accommodation request when it is brought up by an employee. For instance, an employee may simply ask their manager if they can be exempt from the COVID-19 vaccination requirement. In other cases, a request may come from an employee's doctor or another associate; the request doesn't even need to include the words "reasonable accommodation."

While each organization may have slightly differing procedures for handling accommodation requests, below is an overview of the general steps.

Reviewing Vaccine Exemption Requests

When an employee submits a vaccine exemption request, it should first be reviewed to determine if it falls under the ADA or Title VII, as that will determine specific steps. This means ascertaining whether the request is due to a medical reason/disability or a sincere religious belief.

When it comes to COVID-19 vaccinations, personal objections are generally not protected under workplace laws. If an employer receives such an accommodation request for vaccine exemption, they can reiterate the requirements of their workplace policy without taking further action toward honoring the request.

Starting the Interactive Process

When an employer receives a request that appears legitimate, they can begin the interactive process for determining what accommodation, if any, will suit the employee's circumstances.

The first step to this process is typically speaking with the employee, their health care provider or religious leader (as applicable) to get more information about the employee's situation. This good-faith effort is intended to help find the best accommodation possible.

During this process, employers might ask the employee for documentation attesting to an employee's medical condition. Alternatively, for a religious accommodation, an employer might ask an employee for a written explanation of their religious beliefs.

Determining ADA Eligibility

*Note that this subsection pertains to **medically related accommodation requests** only, not religious. See the following subsection for religion-related requests.*

After collecting evidence attesting to an employee's medical condition, employers will need to determine if the circumstances satisfy the ADA's accommodation requirements. For the purposes of ADA eligibility, an

employee must be a “qualified individual with a disability.” The ADA defines a disability generally as “a physical or mental impairment that substantially limits one or more major life activities.”

The following are examples of medical conditions that may be considered disabilities:

- Deafness
- Blindness
- Cancer
- Diabetes
- Autism
- Mobility impairments
- Bipolar disorder

Additionally, the Equal Employment Opportunity Commission (EEOC) maintains a [list of questions](#) related to ADA accommodations that may help employers in this area. The agency also has guidance [regarding disability discrimination](#) that may be helpful for employers.

Determining Title VII Eligibility

*Note that this subsection pertains to **religion-related accommodation requests** only, not medical. See the previous subsection for medically related requests.*

After collecting evidence attesting to an employee’s religious convictions, employers will need to determine if the circumstances satisfy Title VII’s accommodation requirements. Under Title VII, employers need only accommodate “sincerely held” religious beliefs. Given this broad definition, it’s typical for employers to err on the side of caution and assume an employee’s expressed religious sentiments are sincerely held.

However, if an employer has an objective basis for questioning an employee’s religious beliefs, they may request the employee provide additional supporting information.

[According to the EEOC](#), potential reasons to suspect insincerity may include:

- The employee has behaved in a manner markedly inconsistent with their professed religious beliefs.

- The accommodation sought is a particularly desirable benefit that is likely to be sought for secular reasons.
- The timing of the request is suspect.
- The employer otherwise has reason to believe the employee’s religious beliefs are insincere.

However, these factors are not necessarily enough to make a determination regarding the sincerity of religious belief. Again, most employers typically assume professed beliefs are sincere unless there is evidence to the contrary. Employers may find it prudent to speak with legal counsel when issues of this nature arise.

Additionally, the EEOC maintains a [list of questions](#) related to religious accommodations that may help employers in this area.

Determining “Reasonableness”

Employers, employees and employees’ direct supervisors will ordinarily interactively seek an “effective” accommodation (one that will allow the employee to perform the essential functions of the job) that is “reasonable” under the circumstances. Accommodations are considered “reasonable” if they do not create an undue hardship or a direct threat. Seeking legal advice during this process is wise, but it is particularly important if an employer is considering rejecting a possible accommodation as “unreasonable” and not required.

Undue Hardship and Direct Threat

Employers are compelled to honor accommodation requests unless the accommodation would result in an “undue hardship” for the employer or pose a direct threat to others’ health and safety.

The ADA defines an undue hardship as an action requiring significant difficulty or expense. Under Title VII, undue hardship is when a request would result in more than a de minimis cost to the operation of the employer’s business. This is a lower standard than that of the ADA.

With regard to whether an accommodation would pose a “direct threat,” according to the EEOC, “an employer must consider the duration of the risk, the nature and severity of

the potential harm, the likelihood that the potential harm will occur, and the imminence of the potential harm. Analysis of these factors will likely include considerations based on the severity of the pandemic in a particular area, the employee's own health, and their particular job duties. A determination of direct threat also would include the likelihood that an individual will be exposed to the virus at the worksite. Measures that an employer may be taking in general to protect all workers, such as mandatory social distancing, also would be relevant."

If a request appears to present an undue hardship or pose a direct threat to the health and safety of others, employers will typically reach out to the employee and their supervisor to discuss alternative accommodations.

Selecting an Accommodation and Informing the Employee

Finally, after reviewing the accommodation request and its evidentiary materials, the employer and employee may settle on an accommodation.

Once a final determination is made, the employee should be promptly informed. Employers can detail what the new accommodations will be, why the request was denied or alternative accommodation suggestions, as applicable.

Ultimately, it will be the employee's decision whether to accept the accommodation offered. An employer cannot require a qualified individual to accept an accommodation they do not want, even if it's effective and satisfies the other ADA or Title VII criteria.

All communication related to the accommodation request should be retained. Medical information should be kept separate from the employee's personnel file.

Note that it is unlawful for employers to discuss an employee's accommodation request. It is also illegal to retaliate against employees for submitting an accommodation request.

Summary

Employee accommodation requests can sometimes be straightforward, but often they require a good amount of

effort from employers. It's important to enter into these requests in good faith, keeping all parties informed about necessary steps.

In terms of COVID-19 vaccinations, it's important to remember that each accommodation request should be reviewed on an individual basis. Employers are cautioned not to make assumptions about an individual's health status or religious beliefs before going through the interactive process with the employee.

Reach out to Relation Insurance Services for more workplace guidance related to reasonable accommodation.