



# An Employer's 3-Step Guide to Responding to COVID-19 Vaccine Religious Objections

Insights

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As the Delta variant surges throughout the country, more and more employers are implementing mandatory vaccine policies, especially now that the Pfizer vaccine has received full FDA approval. Most employers know they may need to make reasonable accommodations to the mandatory vaccine plan under the Americans with Disabilities Act (ADA) because of an employee's disability. But what about an employee's religious objection to a COVID-19 vaccine? How can you respond to an employee's request for an exemption based on religion without running astray of state and federal antidiscrimination laws but while still upholding your workplace safety goals? Here is your three-step plan for responding to requests for religious exemptions.

(Note: This insight focuses on federal law. Employers should be aware that there may be state-specific laws that may need to be considered in this analysis as well.)

## Step 1: Decide Whether the Objection is Based on a Personal Choice or a "Sincerely Held Religious" Belief

The threshold inquiry to any request for a religious accommodation under Title VII is whether the employee has a **sincerely held religious belief, practice, or observance** which prevents them from receiving the vaccine. Under federal law, sincerely held religious beliefs "include moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views." Moreover, the term "religion" includes all aspects of religious observance and practice, as well as belief.

But this doesn't mean that an employee can get a free pass just because they *personally* or *philosophically* do not agree with receiving the vaccine. The U.S. Supreme Court has differentiated religious beliefs from those personal beliefs that are "essentially political, sociological, or philosophical."

We know it can be difficult for an employer to discern religious beliefs from personal ones, and it is often a tough choice to decide whether to challenge an accommodation request based on your conclusion that this purported religious belief could actually be a personal choice. You should generally assume that an employee's stated religious belief is sincerely held unless you have a good faith and objective basis for questioning the religious nature or the sincerity of the stated belief. Some examples of when this question might be properly triggered is if the employee recently

adopted this belief system in response to your vaccine mandate, or acquired a “religious certification” from a “church” they found online.

If the employee’s purported reason is based on their distrust of the vaccine or a philosophical news article they read online, that will likely not rise to the level of “sincerely held religious beliefs.” But don’t make this assumption right away. Instead, your questions regarding the employee’s stated belief for the exemption should be answered through an interactive process with the employee in which you may be able to – in some circumstances – request additional information or documentation from the employee.

## **Step 2: Engage in the Interactive Process**

If you conclude that the employee’s objection to the mandate is (or could be) grounded in an actual sincerely held religious belief, that doesn’t mean the worker gets to automatically skip the vaccine and resume work as normal. The second step is to engage in what’s known as “**the interactive process**.” If an employee requests to be exempted from your mandatory vaccination policy due to religious beliefs, you are allowed to – and should – engage in an interactive dialogue with the employee to determine what reasonable accommodation, if any, may be suitable for them and your organization.

Part of this process may entail requesting further information from the employee regarding their faith system in order to determine whether it is, in fact, a sincerely held religious belief. Beyond that, you are permitted to tailor specific questions to your employee in order to address the unique circumstances involved with their request and your work environment.

Regardless of the questions you pose, your interactive process should be well documented so you clearly prove the steps you took. This includes initially providing the employee with a reasonable accommodation request form, tailored and adjusted for your business needs and the specific circumstance at play, and ultimately documenting any reasonable accommodations offered to and accepted/rejected by the employee. Whenever possible, one person or team of people should be assigned to handle such requests in order to ensure the consistent treatment of accommodation requests and the interactive process. You should also ensure that all of your managers are trained in how to recognize requests for religious accommodation and that these requests are forwarded immediately to an assigned religious accommodation liaison or team.

## **Step 3: Make a Decision on the Accommodation Request**

Once you have all the information in hand, your final step is **making a decision on how to respond to the request**. There are a few key principles your organization should understand before going further:

- First, you may end up concluding that there are **no accommodations that are reasonable in nature** that you can offer the employee. or that any workable accommodations they identify would

cause an **undue hardship**.

- Second, even if one or more reasonable accommodations are identified, **you are not obligated to provide the specific accommodation requested by the employee** if you identify and offer them an effective alternative.
- Third, you don't need to feel locked into whatever choice you end up making. You could grant an accommodation request and soon realize it's not workable for some objective reason (that you also document). The law permits you to **revisit accommodation requests and adjust as necessary**.

Once you decide it's time to determine what types of accommodations, if any, might be possible, you should take into account your particular work environment. Reasonable accommodations in this context may include requiring the employee to wear a mask at all times, weekly or biweekly COVID-19 testing, working at a social distance from other employees, a reassignment to another vacant and available position, unpaid leave, or a combination of these options. Take the employee's input into account and make a decision about which accommodation(s) you will provide.

If the employee refuses all options you offer to them, holding out for an accommodation of their choosing that you have decided is not reasonable, **you may have no choice but to exclude them from the workplace**. You might be in a situation where you would place them on an unpaid leave of absence until circumstances surrounding the pandemic change and permit the safe return of unvaccinated workers.

You have one final consideration to make: in determining if a religious accommodation can be made, the last step is determining whether the specific accommodation request made by the employee or the only accommodation request you can identify causes an **undue hardship**.

- An undue hardship is one that would require more than a *de minimis* cost or burden to your organization or the operations of your business. This is a lower standard to meet than the undue burden standard under the ADA, which is "significant difficulty or expense."
- Besides the monetary cost, the safety risk imposed by the requested accommodation also plays a factor in determining undue hardship.
- Note that some state laws, like California, may have a higher standard for proving undue hardship than is required under federal law. Please check with your local Fisher Phillips attorney before proceeding.

The determination of whether a specific request would pose an undue hardship is fact-specific and may change as your workforce changes. For example, a particular reasonable accommodation request, such as isolation to a particular room or a temporary unpaid leave of absence, may not normally be an undue hardship. However, these accommodations may prove to create an undue hardship if there are an inordinate number of individuals making accommodation requests (religious or medical) such that your business operations shift over time.

If you determine that the particular accommodation requested by the employee will cause an undue hardship and are unable to find an alternative accommodation through the interactive process, the next step may be to consider placing the employee on an unpaid leave of absence or separation of employment. We recommend contacting employment counsel prior to taking this next step.

## **Conclusion**

We will continue to monitor developments related to the COVID-19 vaccines and related workplace questions that arise. Make sure you are subscribed to [Fisher Phillips' Insight system](#) to get the most up-to-date information. If you have questions about how to ensure that your vaccine policies comply with workplace and other applicable laws, visit our [Vaccine Resource Center for Employers](#) or contact the authors of this Insight, your Fisher Phillips attorney, or any attorney on our [FP Vaccine Subcommittee](#).

## ***Related People***



**Aymara Ledezma**

Partner

213.330.4470

Email





**Raeann Burgo**  
Partner  
412.822.6630  
[Email](#)



**Samantha J. Monsees**  
Partner  
816.842.8770  
[Email](#)

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