

What You Need to Know About Your Right to a COVID Vaccine Religious Exemption in the Workplace



This article is designed to provide you with the relevant law you may need to include in your religious vaccine exemption request, and will help you understand your rights as an employee.

President Biden on Sept. 9, announced [stringent new vaccine requirements](#) for federal workers, large employers and healthcare staff across the nation, in what was arguably one of the biggest overreaches by the federal government in U.S. history.

According to Biden's "[COVID-19 Action Plan](#)," the military, federal workers and contractors, and healthcare facilities that participate in Medicare and Medicaid must require their workers get vaccinated against COVID. In addition, all employers with over 100 employees must require their workers

to receive a COVID vaccine or undergo weekly testing.

However, there are [legal limitations](#) to the Biden Administration's vaccine mandates. Under federal nondiscrimination laws, employers must make reasonable accommodations – allow religious and medical vaccine exemptions – for “sincerely held religious beliefs,” pregnant women and disabilities covered under the [Americans with Disabilities Act](#).

In addition, vaccines approved under [emergency use authorization](#) (EUA) must be voluntary. (Although Pfizer's Comirnaty and Moderna's Spikevax have been “fully approved,” they are not available in the U.S.)

Relevant laws on vaccine religious exemptions

Under [Title VII of the Civil Rights Act of 1964](#) (“Title VII”), individuals have the right to be [free from discrimination](#) on the basis of religion. This [law requires](#) employers to make “**reasonable accommodations**” for an employee's “**sincerely held**” religious beliefs if doing so does not impose “undue hardship” on the employer.

As part of their religious beliefs, many individuals have objections to vaccines, and thus, may seek a religious exemption as an “accommodation” to an employer's COVID vaccine mandate.

“Religion” is very [broadly defined](#) and encompasses not only organized religions, but also informal beliefs. “Religion” under the law can also encompass non-theistic and moral beliefs.

[Title VII defines](#) “religion” as “all aspects of religious observance and practice, as well as belief unless an employer demonstrates that he is unable to reasonably accommodate an

employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business." [42 U.S.C. § 2000e\(j\)](#).

According to the U.S. Department of Labor's [website](#), Title VII requires federal agencies, upon notice of a request, to reasonably accommodate employees whose sincerely held religious beliefs, practices or observances conflict with work requirements, unless the accommodation would create an undue hardship.

The [U.S. Equal Employment Opportunity Commission](#) (EEOC) – a federal agency established via the Civil Rights Act of 1964 to administer and enforce civil rights laws against workplace discrimination – reaffirmed an employee's right to obtain a religious accommodation to the COVID vaccine requirement in a May 2021 [press release](#):

"Federal EEO laws do not prevent an employer from requiring all employees physically entering the workplace to be vaccinated for COVID-19, so long as employers comply with the reasonable accommodation provisions of the ADA and Title VII of the Civil Rights Act of 1964 and other EEO considerations."

According to the [EEOC](#), Title VII [requires employers](#) to accommodate religious beliefs that are "sincerely held." However, whether a religious belief is sincerely held by an applicant or employee is rarely at issue.

The EEOC says employers generally should assume that a [request for a religious exemption](#) is sincere, regardless of how untraditional the religion may be or appear to be, and that an employee seeking an exemption need not show they are scrupulous in their religious observance.

However, EEOC suggests that if an employer [wants to push the matter](#), "evidence tending to show that an employee acted in a manner inconsistent with his professed religious beliefs is, of course, relevant to the fact finder's evaluation of

sincerity.”

The EEOC has also [identified three other factors](#) that could undermine the credibility of an employee seeking a vaccine religious exemption:

- Whether the accommodation would produce a particularly desirable benefit that is likely sought for secular reasons; (For example, this may occur if you request a vaccine exemption based on philosophical reasons, but then after denial, request the same accommodation based on religious reasons.)
- whether the timing of the request is suspect;
- whether the employer has reason to believe that the accommodation is not sought for religious reasons.

In the case where someone claims to have a religious objection to a COVID vaccine, but has been vaccinated in the past, the following EEOC guidance may be helpful:

“Although prior inconsistent conduct is relevant to the question of sincerity, an individual’s beliefs – or degree of adherence – may change over time, and therefore an employee’s newly adopted or inconsistently observed religious practice may nevertheless be sincerely held.”

In addition, the EEOC says that an [employer should not assume](#) an employee is “insincere simply because some of his or her practices deviate from the commonly followed tenets of his or her religion, or because the employee adheres to some common practices but not others.”

This may come into play when an employer points to the leader of a particular denomination who supports vaccines, to undermine the ability of a person from the same denomination seeking a religious vaccine exemption because they do not.

As noted by the EEOC, courts have held that “Title VII protects more than . . . practices specifically mandated by an

employee's religion.”

The Religious Freedom Restoration Act of 1993

The [Religious Freedom Restoration Act](#) (RFRA) of 1993 may provide additional support to those attempting to obtain a vaccine religious exemption.

According to the [National Conference of State Legislatures](#), RFRA “aimed to restore and codify Americans’ religious freedom rights by requiring that even laws of general applicability must be narrowly tailored to meet a compelling government interest in instances where the free exercise of religion is affected.”

RFRA “prohibits any agency, department or official of the United States or any State (the government) from [substantially burdening](#) a person’s exercise of religion even if the burden results from a rule of general applicability, except that the government may burden a person’s exercise of religion only if it demonstrates that application of the burden to the person: (1) furthers a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.”

According to the [EEOC](#), some government employees may argue their religious expression is protected by the First Amendment of the U.S. constitution, RFRA, and/or Title VII, and “some government employees raise claims under the First Amendment or RFRA parallel to their Title VII accommodation claims.”

Requesting a COVID vaccine religious exemption

To [request](#) a vaccine religious exemption, an employee or

applicant is not required to use “magic words.” However, an employee must make the agency aware of the need for accommodation based on a conflict between the individual’s religious belief or practice and the employer’s vaccine mandate.

The employee should make the request orally and/or in writing to his or her immediate supervisor unless otherwise specified. The request for accommodation may trigger a review process, particularly in the case of an employer who reasonably needs more information or between the management official and the individual making the request to discuss available options.

Once an [employer determines](#) a true religious exemption exists, the employer must make an accommodation for the employee. If an employer can establish that the employee is seeking an exemption for non-religious reasons, the employer may deny the employee’s request.

For example, in [Fallon v. Mercy Catholic Med. Ctr.](#), No. 16-3573 (3d Cir. Dec. 14, 2017), the court denied an employee’s request for exemption finding that the employee’s concerns were really about the health effects of the flu vaccine, meaning the concerns were medical rather than religious-based.

Vaccines authorized for emergency use only

There’s another important area of law you may find useful in asserting your right to a religious exemption. As long as a COVID vaccine is authorized under [emergency use authorization](#) (EUA), it must be voluntary, according to [21 U.S. Code Sec.360bbb-3\(e\)\(1\)\(A\)\(ii\)\(III\)](#), which deals with medical products authorized for emergency use.

Under the [Federal Food, Drug and Cosmetic Act](#), the Secretary

of Health and Human Services may declare that [emergency circumstances exist](#) (involving chemical, biological, radiological, and nuclear agents, including infectious disease threats), and [may issue an EUA](#) in connection with the emergency. 21 USC § 360bbb-3(b)(1)

The EUA statute requires the Secretary of HHS provides certain notices to recipients of an EUA vaccine, including the following information:

(I) that the Secretary has authorized the emergency use of the product;

(II) of the significant known and potential benefits and risks of such use, and of the extent to which such benefits and risks are unknown; and

(III) of the option to accept or refuse administration of the product, of the consequences, if any, of refusing administration of the product and of the alternatives to the product that are available and of their benefits and risks.

The U.S. Food and Drug Administration (FDA) provides Section 360bbb-3(e) notice for COVID-19 vaccines in the [patient fact sheets](#) available on its website for [Moderna](#), [Pfizer](#) and [Johnson & Johnson](#).

Moderna and Johnson & Johnson are only authorized for use under EUA. Pfizer has both a vaccine under EUA and an interchangeable licensed vaccine — which is currently not being distributed in the U.S., known as “Comirnaty.”

Although the FDA fully approved Pfizer’s “Comirnaty” vaccine for people over age 16 on Aug. 23, buried in the fine print of [the approval](#) are two critical facts that affect whether the vaccine can be mandated.

First, the FDA said the Pfizer-BioNTech vaccine under the EUA should remain unlicensed but can be used “interchangeably”

([page 2, footnote 8](#)) with the newly licensed Comirnaty product. Second, the FDA said the licensed Pfizer Comirnaty vaccine and existing EUA Pfizer/BioNTech vaccine are “legally distinct.”

Essentially, the “Comirnaty” vaccine is not used in the U.S. yet, but this is what the FDA issued the approval for in an effort to both fully approve Pfizer’s vaccine and shield the company from liability. However, in doing so, this means that the Pfizer/BioNTech vaccine is still experimental and only authorized under EUA.

What to do if you’re denied a religious accommodation

If your exemption is denied, you may face repercussions, including termination of employment. This is not the end of the road. For your sake, and for all the rest of us, consider challenging the decision. Before securing an employment law or civil rights attorney, the first step is meditation with your local U.S. Equal Employment Opportunity Commission. [EEOC mediation](#) costs nothing.

Mediation is a form of Alternative Dispute Resolution offered by the EEOC as an alternative to the traditional investigative and litigation processes. It’s an informal process in which a trained mediator assists the parties in reaching a resolution. The mediator does not decide who is right or wrong and has no authority to impose a settlement on the parties. Instead, the mediator helps the parties to jointly explore and reconcile their differences.

Sometimes, just the presence of the EEOC is enough to make an employer think twice about denying a religious vaccine exemption.

If a resolution cannot be reached, the charge (complaint) is

returned to an investigative unit and is processed just like any other charge. If the EEOC finds discrimination, they will issue a "Letter of Determination" to you and your employer that explains their finding. If a solution is not found, EEOC will decide whether to take your case to court.

An alternative to EEOC mediation is consulting with an attorney, who can send a letter to your employer and/or assess the facts and circumstances of your case to determine what legal course of action may be appropriate.

Although you may never need to include any law in your request for a COVID vaccine religious exemption, if you do, this article may help you provide a solid foundation for your request.