



Staff Recommendation

How to Handle an Employee's Request for a Medical or Religious Accommodation to a Vaccine Requirement

Many employers require employees to receive vaccinations to reduce the spread of communicable diseases in the workplace. Employer-required flu vaccinations have been a common practice for years and the COVID-19 vaccine will soon become more widely available. Employers who want to require employees to take the vaccine should know that federal law allows employees to ask to be exempted from the requirement due to medical or religious reasons.

Title I of the Americans with Disabilities Act (ADA) requires employers to provide reasonable accommodation to qualified applicants and employees with a disability, unless the employer can demonstrate that doing so creates an undue hardship to the employer or poses a direct threat to the safety of the employee or others in the workplace.

Employers also have an obligation to accommodate an employee's sincerely held religious belief under Title VII of the Civil Rights Act (Title VII), unless the accommodation creates an undue hardship. A sincerely held religious belief can include an employee's religious-based objection to vaccinations.

This guide takes you through the steps to handle a current employee's accommodation request to be exempt from the employer's vaccination requirement(s).

Step 1: Determine Whether the Employer is Covered by the ADA and Title VII

All employers, including state and local government employers, with 15 or more employees are covered under the ADA and Title VII. Federal government employers are also covered by Title VII; however, for disability accommodations, federal government employers must comply with the Rehabilitation Act of 1973 instead of the ADA, although the protections are very similar.

Step 2: Ensure That a Policy and Procedure Exist For Handling Accommodation Requests

Organizations should implement or review [policies](#) and procedures for handling requests for medical and religious accommodations.

Existing job descriptions should also be reviewed to confirm they include all aspects of the job and include any requirements for mandatory vaccinations.

Step 3: Review Requests for Exemption from The Vaccine Requirement

Employee requests for exemption from the vaccination requirement should be reviewed to determine if the request falls under the ADA or Title VII obligations for the employer to consider accommodation. A request for exemption due to a personal preference not to receive a vaccine is not protected by law, and the employer should reiterate the company policy and the consequences for not complying with the vaccination mandate.

Employees need not use any particular verbiage when requesting an accommodation. Managers and supervisors should understand how to recognize a request for accommodation and who to relay the information to within the company.

Requests for accommodation due to a [disability](#) or [religious belief](#) should be further reviewed following the steps below.

Step 4: Initiate the Interactive Process

Upon learning of the possible need for a reasonable accommodation, employers should engage in a process in which the employee, his or her health care provider or religious leader, and the employer share information about the nature of the disability or religious belief and the limitations on receiving an employer-required vaccination. This process is referred to as the interactive process and involves a good-faith effort by the employer and the employee to discuss the employee's specific circumstances. The purpose of this discussion is to determine what (if any) accommodations may be needed.

The interactive process involves a review of the accommodation request from the employee. Neither the ADA nor Title VII requires the request to be put in writing; however, having documentation of the request is a good practice.

For ADA accommodations, the employee should be asked to provide appropriate documentation from his or her health care provider regarding the nature of any impairment(s), the duration of the need for accommodation and the extent to which the impairment(s) conflict with the employer's vaccination requirement.

In the event the employer needs to consult with the employee's health care provider, the employer must obtain a written medical release or permission from the employee. The employee's health care provider may not disclose information or answer questions about the employee's disability without his or her permission. For religious accommodations, the employee should be asked to provide an explanation of his or her sincerely held religious beliefs and, if necessary, appropriate documentation from his or her religious leader regarding the religious belief that conflicts with the employer's vaccination requirement.

Step 5: Determine Whether the Employee Has a Disability Under The ADA

For religious accommodation requests, skip this step.

Organizations should use the definition of a "disability" and a "qualified individual with a disability" under provisions of the ADA, along with information obtained during the interactive process, to help make this determination. The ADA defines disability as an impairment that substantially limits a major life activity. The [Job Accommodation Network](#) has resources to assist employers in making this determination. The ADA also includes a [list of medical conditions](#) that would automatically be considered disabilities.

Step 6: Determine Whether the Employee Has A Sincerely Held Religious Belief

For medical accommodation requests, skip this step.

Title VII requires employers to accommodate only those religious beliefs that are "[sincerely held](#)." Because the definition of religion is broad and protects beliefs and practices with which the employer may be unfamiliar, the employer should ordinarily assume that an employee's request for religious accommodation is based on a sincerely held religious belief. If, however, the employer has an objective basis for questioning either the religious nature or the sincerity of a particular belief or practice, the employer would be justified in seeking additional supporting information.

Step 7: Determine If the Accommodation Poses a Direct Threat or Creates an "Undue Hardship"

The ADA requires employers to grant an accommodation request, unless the accommodation would result in undue hardship on the employer or poses a direct threat to the health and safety of others.

When evaluating the existence of a direct threat, the Equal Employment Opportunity Commission (EEOC) provides the following [guidance](#), "employers should conduct an individualized assessment of four factors in determining whether a direct threat exists: 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. A conclusion that there is a direct threat would include a determination that an unvaccinated individual will expose others to the virus at the worksite. If an employer determines that an individual who cannot be vaccinated due to disability poses a direct threat at the worksite, the employer cannot exclude the employee from the workplace—or take any other action—unless there is no way to provide a reasonable accommodation (absent undue hardship) that would eliminate or reduce this risk so the unvaccinated employee does not pose a direct threat."

Similarly, employers should be careful when using the undue hardship defense as a rationale to not provide an accommodation. Under the ADA, undue hardship must be based on an individualized assessment of current circumstances that show that a specific reasonable accommodation would cause significant difficulty or expense. Under Title VII, the undue hardship defense to providing religious accommodation requires a showing that the proposed accommodation in a particular case poses a "more than de minimis" cost or burden.

Employers should seek input from the employee's supervisor, who has knowledge about the duties of the position and the worksite, to help determine the feasibility of what may be a "reasonable" accommodation, including alternative accommodations to the one requested by the employee.

According to the EEOC, "if an employee cannot get vaccinated for COVID-19 because of a disability or sincerely held religious belief, practice, or observance, and there is no reasonable accommodation possible, then it would be lawful for the employer to exclude the employee from the workplace. This does not mean the employer may automatically terminate the worker. Employers will need to determine if any other rights apply under the EEO laws or other federal, state, and local authorities."

Step 8: Notify the Employee

The next step is for HR to notify the employee in writing that his or her requested accommodation has been approved or denied. If the request is denied, the employer should communicate and document any available alternative accommodations.

HR must maintain all copies of accommodation requests, supporting information and documentation, including denials, in a file separate from the employee personnel file, consistent with the confidentiality requirements of the ADA and to protect sensitive religious preference information.

Managers and supervisors must understand that it is unlawful to disclose that an employee is receiving a reasonable accommodation or to retaliate against an employee for requesting an accommodation.

Step 9: Review and Modify

The accommodation process is not set in stone and may need to be reviewed, especially if an employee's circumstances change or the needs of the business change.

Conclusion

SESCO Management Consultants will continue to monitor and report on developments with respect to the COVID-19 pandemic and will post updates in the firm's [COVID-19 Resource Center](#) as additional information becomes available.

SESCO retainer clients and members of select associations can call or email SESCO to discuss specific industry, state and/or company questions and concerns. Those receiving these alerts that are not SESCO clients can contact SESCO by phone, fax or email to explore support options.

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