



Employers Face Tough Call On Vaccine Exemptions, Business Insurance Magazine, KDV's Allyson Thompson quoted, November 16, 2021

Contending that a religious accommodation request not to have a COVID-19 vaccination poses an undue hardship may be the most effective way for companies to deal with the deluge of such employee requests, experts say. Such a move would be preferable to getting into the quicksand of closely exploring whether workers have “sincerely held” religious beliefs that would permit them to be exempted from vaccinations, as required by Title VII of the Civil Rights Act of 1964, they say.

Last month, the U.S. Equal Employment Opportunity Commission, which oversees Title VII’s regulation, updated its guidance on the issue of religious accommodation with respect to COVID-19 vaccine mandates, which many employers are introducing. The agency advised that while employers should assume a request is valid, they can make “a limited factual inquiry” and seek additional supporting information before granting it. Some employees contend the vaccine conflicts with the tenets of their organized faith or with their own individual beliefs. In some cases, for instance, employees assert the development of the vaccine involved the use of fetal cell lines, which violates their religious belief.

Employers, however, are not obligated under Title VII to comply with accommodation requests if they can establish it would cause them undue hardship. Possible accommodations include working from home, wearing a mask, social distancing and frequent testing. A factor expected to influence accommodation requests is the ultimate fate of the emergency temporary standard issued by the Occupational Safety and Health Administration earlier this month, which requires employers with 100 or more employees to either mandate vaccinations for their workforce or enforce weekly testing. The standard faces numerous court challenges.

Experts note that documentation for employees to submit with their accommodation requests is available on the web. Experts say religious accommodation requests vary based on industry and region.

Allyson K. Thompson, a partner with Kaufman Dolowich Voluck LLP in Los Angeles said, “There has been a deluge of religious accommodation requests because this is the easier request to make,” as medical or disability accommodations require documentation. Ms. Thompson said, “Ultimately, the employer needs to be able to document that they have looked at the employee’s request, and considered factors that affect the business,” including the cost and resources available for accommodation. Company procedures should be consistent and tailored to the business. “Don’t just grab something from the internet,” she said. “Make sure it makes sense for the organization.”