

COVID-19 Vaccination Requirement for K–12 School Employees: Guidance for Employers on Evaluating Religious Accommodation Requests

This guidance document was developed by the Office of Superintendent of Public Instruction in consultation with the Washington State Attorney General's Office.

Background

An employee who has a sincerely held religious belief that prevents them from being vaccinated against COVID-19 may request an accommodation by notifying a supervisor in their chain of command or their Human Resources office. The employee must actively participate in the interactive accommodation process and provide all information reasonably needed to evaluate the request. The employer should provide the employee the option to submit their religious accommodation request in writing, but should not require the request in writing. The employer should offer an alternative method of requesting a reasonable accommodation for religious reasons, i.e., engaging in an interactive conversation with a Human Resources professional. Written documentation of the request and interactive process is required.

Defining Religion when Assessing a Request for Religious Accommodation

Under federal and state law, "religion" is broadly defined. It includes traditional, organized religions such as Christianity, Judaism, Islam, Hinduism, and Buddhism. A religious belief may be individualistic, and it also includes religious beliefs that are new, uncommon, not part of a formal church or sect, or only held by a small number of people. Moral or ethical beliefs about what is right and wrong, which are sincerely held with the strength of traditional religious views, may meet the definition of a sincerely held religious belief. However, social, political, or economic philosophies, or personal preferences, are not "religious" beliefs under the law. The template religious accommodation request form asks about the employee's religious beliefs, observances, or practices.

Questions about an Employee's Request for Religious Accommodation

Federal guidance on religious accommodation encourages employers to presume that an employee's request for religious accommodation is based on a sincere belief in a religion, unless the employer has a valid, objective reason to question the employee. The employer should review the request on its own merits, initiate discussion with the employee about possible accommodation, and assess whether accommodation is possible. Employees have an obligation



to actively participate in the accommodation process and must cooperate with an employer's attempt to accommodate their needs. In addition, the employee must show that the proposed accommodation would enable the employee to perform the essential functions of their position and is practical for the employer.

According to the U.S. Equal Opportunity Employment Commission's (EEOC) guidance on religious discrimination, because the definition of religion is broad and protects beliefs, observances, 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, an employee requests religious accommodation, and an employer has an objective basis for questioning either the religious nature or the sincerity of a particular belief, observance, or practice, the employer would be justified in seeking additional supporting information.

In determining whether an employee's religious belief is sincerely held, a limited initial inquiry could include objective, general questions, without delving too far into an employee's reasons for a particular belief and without requiring input from an outside source, such as a formal religious leader. Such inquiries might include asking how long the employee has followed the professed belief or what constitutes the basic tenets of the religion. The employer does not have to accept a high-level statement of religious observance that provides no details; an employer can ask about the specific belief, tenet, or observance that conflicts with the vaccination requirement. The template religious accommodation request form includes a question about the conflict presented.

Employers should proceed with caution and obtain legal advice before seeking additional supporting information if they have doubts as to the sincerely held religious belief, including third-party verification (e.g., requesting verification from the employee's pastor, rabbi, church elder, etc.). Because the definition of religion is broad and protects beliefs, observances, 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.

In evaluating a request for accommodation, employers are not required to only consider the accommodation that the employee believes is the best one. However, if an employer is not willing or able to accept the accommodation proposed by the employee, the employer must offer an alternative accommodation that is reasonable. A reasonable accommodation can be determined only by analyzing the specific facts surrounding a particular request. Generally, an accommodation is unreasonable if it (1) does not remove the conflict between the workplace and the employee's need for accommodation; (2) discriminates against the employee; or (3) compromises the employee's access to the terms, conditions, and privileges of employment. Federal guidance recommends that if more than one accommodation is possible, the employer

should offer the accommodation that will least disadvantage the employee's opportunities in the workplace.

Seek legal advice from your legal counsel if you need assistance.

Determining if a Religious Accommodation Imposes more than a Minimal Burden on Operation of the Business (or an "Undue Hardship")

To establish "undue hardship," the employer must demonstrate that the accommodation would require the employer to bear more than a *de minimis* cost. It is incumbent upon the employer to establish that an accommodation is an undue hardship. An employer cannot rely on hypothetical hardship when faced with an employee's religious obligation that conflicts with scheduled work but should rely on objective data.

Considerations of an undue hardship may include:

- Type of workplace.
- Nature of employee's duties.
- Actual work disruption.
- A request that is unduly difficult, substantial, or disruptive to implement.
- Causes a lack of staffing.
- Cost of the accommodation and number of employees needing the accommodation.
- Number of employees impacted by permitting the requested accommodation including seniority systems and collectively bargained rights – for example, other employees had CBA seniority right to choose their preferred jobs and shifts, and accommodation in this case would interfere with those rights.
- Size and operating costs of the business impact of the accommodation on the school district as a whole, not just the impact on a specific school building or site.
- Safety concerns and security considerations.

Seek legal advice from your legal counsel if you need assistance.

Resources

U.S. Equal Employment Opportunity Commission (EEOC) Section 12, Religious Discrimination (updated January 15, 2021):

<https://www.eeoc.gov/laws/guidance/section-12-religious-discrimination>

EEOC Technical Guidance, "What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws" (updated May 28, 2021):

<https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws#K.6>

Washington Human Rights Commission, "Guide to Religion and Washington State Nondiscrimination Laws" (updated July 2015):

https://www.hum.wa.gov/sites/default/files/public/99_Religion%20and%20non-discrimination.pdf

Title VII of the Civil Rights Act of 1964:

<https://www.eeoc.gov/statutes/title-vii-civil-rights-act-1964>

Revised Code of Washington 49.60, Washington Law Against Discrimination:

<https://app.leg.wa.gov/rcw/default.aspx?cite=49.60>