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Legal Considerations for Religious Leaders Faced with Religious Exemption Requests

Service

Nonprofit Organizations & Religious Institutions

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Husch highlights

In the context of vaccine mandates and religious exemption requests, religious employers and faith leaders continue to receive religious exemption requests relating to vaccine mandates or requests to write letters in support of individuals' claimed religious exemptions.

There is a strong argument that a religious employer's decision to deny certain employees' religious exemption requests, even if the requests are based on sincerely held religious beliefs, will be immune from judicial review.

Faith leaders have a right to provide written support of an individual's claimed religious exemption – and those statements may be considered by employers in granting a religious exemption – but they do not have an obligation to do so. Faith leaders, however, would be wise to limit any language "supporting" a religious exemption to the requesting individual's sincerely held belief and omit statements suggesting that such belief is approved or even mandated by the beliefs or teachings of a faith community.

Many faith communities have instituted and communicated COVID-19 vaccine mandates for their employees that allow for health-related and religious exemptions. In some cases, employees of faith communities are treated exactly the same as employees of secular organizations. A difference can arise with employees who qualify as ministers of the faith and are subject to application of the ministerial exception, which recently has been expanded to include

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employees who "play a vital role in carrying out the mission" of the religious employer. Application of the ministerial exception in the context of vaccine mandates and denial of exemptions likely provides the religious employer with protection from judicial review of their exemption and accommodation decisions regarding ministerial employees. However, faith leaders' statements supporting an individual's claimed religious exemption are not similarly shielded from liability, and faith leaders would be wise to refrain from professing that sincerely held religious beliefs in opposition to a vaccine mandate are supported by the beliefs or teachings of a faith community.

Religious exemption under Title VII

Title VII's definition of "religion" is broad and encompasses all aspects of "religious observance and practice, as well as belief." The U.S. Equal Employment Opportunity Commission (EEOC) and Courts have further broadened the definition of "religious" belief to include theistic, non-theistic, moral and ethical beliefs as to "what is right and wrong, which are sincerely held with the strength of religious views."

Title VII requires an employer to provide a reasonable accommodation for an employee who has a sincerely held religious belief, practice or observance that conflicts with a work requirement, including a COVID-19 vaccination requirement, unless providing the accommodation would create an undue hardship. When an employee makes a request for a religious accommodation, an employer should engage in a discussion or "interactive process" to determine what the employee is requesting and whether a reasonable accommodation is possible. An employer is not required to provide an accommodation if doing so would pose an undue hardship on the operation of the employer's business. Unlike the "undue hardship" defense under the Americans with Disabilities Act (ADA), Title VII's "undue hardship" defense has been defined by the Supreme Court as requiring a showing that the proposed accommodation in a particular case poses "more than a *de minimis*" cost or burden on the operation of an employer's business. Although the burden is on the employer to prove undue hardship under Title VII, this is a much easier standard for employers to meet than under the ADA. Please refer to this previous post for a detailed discussion of undue hardship under both the ADA and Title VII.

Religious exemption requests and the impact of the ministerial exception

Religious employers should consider the impact of the "ministerial exception," which is an application of the First Amendment that shields religious organizations from judicial review of internal employment disputes regarding selection, control and removal of employees who are designated as ministers or perform other "vital religious duties."

In a 2012 case entitled *Hosanna-Tabor Lutheran Church and School v. Equal Employment Opportunity Commission,* the Supreme Court found the ministerial exception barred discrimination

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claims filed by a teacher, who was also an ordained minister, at a religious elementary school and was terminated from her position. In a pair of 2020 cases entitled *Our Lady of Guadalupe v. Morrissey-Berru and St. James School v. Biel*, the Supreme Court expanded the application of the ministerial exception to lay elementary school teachers who educated students in the Roman Catholic faith because the teachers "played a vital role in carrying out the mission of the church." More recently, in *Sandor Demkovich v. St. Andrew the Apostle Parish, et al.*, the U.S. Court of Appeals for the Seventh Circuit affirmed that the ministerial exception precludes any inquiry into the reasons behind a religious organization's ministerial employment decision, regardless of the type of employment law claims at issue, including hostile work environment claims.

Based on this line of cases, there is a strong argument that a religious employer's decision to deny certain employees' religious exemption requests, even if the requests are based on sincerely held religious beliefs, will be immune from judicial review. Such employees may include pastors, music directors, worship leaders and educators. Employers should seek legal counsel if it is unclear whether an employee qualifies for the ministerial exception.

The obligations of faith leaders

As the issue of religious exemptions to vaccine mandates has caught the public's attention, many faith leaders have been asked to fill out religious exemption request forms or write letters in support of an individual's claimed religious exemption. Although the question of whether a religious belief is "sincerely held" is generally a matter of credibility of the individual espousing such belief, it is logical that these individuals turn to faith leaders to ask that they support their exemption request. Additionally, some employers are requiring employees seeking religious exemptions to provide written documentation in support of their requests. As a result, some employees have begun asking faith leaders to provide such documentation and some faith leaders have begun offering documentation in support of religious exemption requests for purchase online for approximately $40-$60.

There is no mandate that faith leaders take any action to "certify" another's religious beliefs. Forcing a faith leader to do so would be a direct violation of their First Amendment rights. Given the Supreme Court's recent decisions involving religious liberty, it is hard to imagine a court forcing a faith leader to make any statement regarding the beliefs of another individual.

Numerous courts have considered the question of whether a religious belief is "sincerely held" and have concluded that the belief need not be an express tenet or requirement of a religion. In other words, whether an individual's religious belief is worthy of protection is not dependent on the belief being a core tenet of the individual's religion. The EEOC recommends that unless the employer has an objective basis for questioning the religious nature or sincerity of a belief, observance or practice, the employer should presume the request for religious accommodation is sincere.

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Obviously, faith leaders have a right to make such statements – and those statements may be considered by employers in granting a religious exemption – but they do not have an obligation to do so. Indeed, many faith communities have spoken out in favor of COVID-19 vaccines and encouraged followers of their religion to get vaccinated. Most notably, Pope Francis has called vaccinations an act of love: "Getting vaccinated is a simple yet profound way to care for one another, especially the most vulnerable." Additionally, the Rev. Franklin Graham, President and CEO of Samaritan's Purse and son of the Rev. Billy Graham, has spoken out in support of vaccination, as has Rabbi Elliot Dorff, Rector and Distinguished Professor in Philosophy at the American Jewish University in Los Angeles and Imam Mohamed Magid, a former president of the Islamic Society of North America and the current Executive Imam of the All Dulles Area Muslim Society Center in Sterling, Virginia, one of the largest mosques in America.

If a faith leader opts to support an individual's religious exemption request, the risk of liability to the faith leader or faith community is low. However, imagine if that individual contracts COVID-19 and becomes extremely ill or even dies. The individual or their family could conceivably file suit against the faith leader, claiming the faith leader's teachings or support caused the individual to turn down an available vaccine and, therefore, caused the disease or death. Such a lawsuit would face innumerable legal challenges, but it is not out of the question. Faith leaders would be wise to limit any language "supporting" a religious exemption to the requesting individual's sincerely held belief and omit statements suggesting that such belief is approved or even mandated by the beliefs or teachings of a faith community.

What this means to you

Religious leaders are not required by federal employment laws to verify an individual's sincerity about a religious belief or even to identity individuals' beliefs regarding the COVID-19 vaccination as a tenet of the faith. Statements that a member's religious exemption request is supported by the religious community may lack credibility given that leaders across the religious spectrum support COVID-19 vaccination efforts. Moreover, such statements may expose the religious leader to the risk of liability if the choice to refuse a vaccination leads to serious illness. When faced with members who request religious exemptions to the COVID-19 vaccine, religious leaders can adopt their familiar role of guiding their members to make good decisions, helping to influence behaviors and shape attitudes, and dispelling misleading information. Consistent thoughtful guidance communicated by religious leaders on the issue of COVID-19 vaccinations will help orient members' understanding of vaccine requirements.

Contact us

If you have questions about the implications of religious exemptions as it relates to your religious institutions, contact Jordan Ault, Jessica Brown, Beth Zewdie or your Husch Blackwell attorney.

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