

CMS COVID-19 Staff Vaccination Interim Final Rule FAQ

On November 4, 2021, the Centers for Medicare and Medicaid Services issued the Omnibus COVID-19 Health Care Staff Vaccination [Interim Final Rule](#) requiring health care workers at Medicare and Medicaid-certified facilities to be vaccinated unless they have approved religious or medical exemptions. The responses below are based on the Interim Final Rule and [CMS FAQ](#). We encourage health centers to review the information below and periodically check for updates.

1. Which Vaccine Mandate applies to FQHCs?

The [CMS Omnibus COVID-19 Health Care Staff Vaccination Interim Final Rule](#) with Comment Period (the “Interim Final Rule”) applies to all FQHCs that participate in and are certified under the Medicare and Medicaid programs and are regulated by the CMS health and safety standards known as the Conditions of Participation (CoPs), Conditions for Coverage (CfCs), and Requirements for Participation are expected to abide by the requirements established in the Interim Final Rule. **This rule takes priority above other federal vaccination requirements.**

Health Resources and Services Administration (HRSA) has established new programs to help FQHCs meet the needs of their communities and ensure continuity of health care services during the PHE. To implement these programs and to provide services and care, FQHC staff must interact with patients and members of the community at large. CMS recognized that FQHCs have played an essential role in reaching the medically underserved communities that have been disproportionately affected by COVID-19.

CMS acknowledges that there may be rare occasions where a FQHC is subject to other COVID-19 vaccine requirement regulations, such as [OSHA’s COVID-19 Vaccination and Testing Emergency Temporary Standard](#) (applicable to employers with greater than 100 employees) or the Executive Order on Ensuring Adequate COVID Safety Protocols for Federal Contractors (including the Safer Federal Workforce Task Force’s [COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors](#)).

2. What does the CMS Omnibus COVID-19 Staff Vaccination Interim Final Rule require?

As detailed at [42 CFR § 491.8\(d\)](#), CMS requires FQHCs to develop and implement policies and procedures to ensure their staff are vaccinated for COVID-19 and that appropriate documentation of those vaccinations are tracked and maintained. All staff includes employees; licensed practitioner; students, trainees, and volunteers; and other individuals who provide care, treatment, or other services for the provider or its patients.

CMS requires facilities to ensure that requests for religious exemptions are documented and evaluated in accordance with applicable federal law and as a part of a facility’s policies and procedures.

This rulemaking's effectiveness is not associated with or tied to the PHE declarations, nor is there a sunset clause.

Please review: [NACHC Operational Resource Guide COVID-19 Vaccine Mandate](#)

3. What are the compliance deadlines?

The regulation requires CMS facilities, like FQHCs, to establish a process or policy to fulfill the staff vaccination requirements over two phases:

Phase 1: December 6, 2021:

Staff at all health care facilities included within the regulation must have received, at a minimum, **the first dose of a primary series or a single dose COVID-19 vaccine** prior to staff providing any care, treatment, or other services for the facility and/or its patients. Additionally, facilities are required to have appropriate policies and procedures **developed and implemented**.

Phase 2: January 4, 2022:

Staff at all CMS facilities included in the regulation must complete the primary vaccination series, except for those who have been granted exemptions from the COVID-19 vaccine or those staff for whom COVID-19 vaccination must be temporarily delayed, as recommended by CDC.

The completion of a primary vaccination series for COVID-19 is defined in the rule as the administration of a single-dose vaccine (such as the Janssen (Johnson & Johnson) COVID-19 Vaccine), or the administration of all required doses of a multi-dose vaccine (such as the Pfizer-BioNTech COVID-19 Vaccine or the Moderna COVID-19 Vaccine).

For the purposes of compliance with the Interim Final Rule, staff who have completed the primary series for the vaccine by the phase 2 implementation date are considered to have met the requirements, even if they have not yet completed the 14-day waiting period required for full vaccination. As of now, the Interim Final Rule does not require booster shots; however, facilities must develop a process for tracking and securely documenting when staff obtain any booster doses as recommended by the CDC.

4. Does this regulation apply to PCAs and HCCNs?

The CMS COVID-19 Vaccine requirement does not apply to PCAs nor HCCNs, unless the organization has contractual arrangements that require staff to visit FQHC sites.

PCAs and HCCNs may be subject to other COVID-19 vaccine requirement regulations, such as [OSHA's COVID-19 Vaccination and Testing Emergency Temporary Standard](#) (applicable to employers with greater than 100 employees) or the Executive Order on Ensuring Adequate COVID Safety Protocols for Federal Contractors (including the Safer Federal Workforce Task Force's [COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors](#)). Note that the vaccine requirements for Federal Contractors **do not apply** to federal grantees.

5. What type of FQHC staff are required to comply with the CMS COVID-19 vaccine requirement?

The CMS COVID-19 vaccine requirement applies to current and new staff. The requirement is not based on the frequency of how often an individual is present in the facility or at the physical site of patient care. The policies and procedures must apply to all staff, including those providing services in home or community settings, who directly provide any care, treatment, or other services for the facility and/or its patients. This includes administrative staff, facility leadership, volunteer or other fiduciary board members, housekeeping and food services, and others. To ensure maximum patient protection, CMS extends the vaccination requirement to all staff who interact with other staff, patients, residents, or PACE program participants in any location beyond the formal clinical settings.

Under the Interim Final Rule “staff” includes:

- facility employees
- licensed practitioners
- students
- trainees
- volunteers*
- board members
- individuals who provide care, treatment, or other services for the facility and/or its patients, under contract or other arrangement

When determining whether to require COVID-19 vaccination of individuals under contractual arrangements, facilities should consider frequency of presence, services provided, and proximity to patients and staff. In the preamble to the Interim Final Rule, CMS uses the example of a contractor who uses shared facilities (restrooms, cafeteria, break rooms) during their breaks and who visits the facility on a regular basis (versus a single, emergency visit to the facility) with CMS stating that such an individual would be subject to the requirements of the CMS Interim Final Rule.

The COVID-19 vaccination requirement does not apply to 100% fully remote employees that do not have contact with patients and other staff.

** The regulation does not define volunteer. Providers and suppliers are not required to ensure the vaccination of individuals who infrequently provide ad hoc non-health care services (such as annual elevator inspection), or services that are performed exclusively off-site, not at or adjacent to any site of patient care (such as accounting services), but they may choose to extend COVID-19 vaccination requirements to them if feasible.*

6. Are facilities required to collect documentation for contractors and board members?

CMS requires all facilities to track and securely document the vaccination status of each staff member (or information related to staff exemptions). This extends beyond the full-time

health center staff to all individuals that fall under the Interim Final Rule’s definition of “staff.” (please see question 5 above).

Under this Interim Final Rule, CMS defines staff to include individuals who provide services directly, on a regular basis, under contract or arrangement. This including hospice and dialysis staff, physical therapists, occupational therapists, mental health professionals, social workers, and portable x-ray suppliers. The requirement is not limited to staff who perform their duties within a formal clinical setting and includes staff who routinely care for patients and clients outside of the facility.

7. We just started a capital project, does the vaccination requirement include construction workers at a health center site?

Any individual that performs their duties at any site of care, or has the potential to have contact with anyone at the site of care, **including staff or patients**, must be fully vaccinated or be granted an exemption. When determining whether to require COVID-19 vaccination of an individual who does not fall into the definition of staff established by this Interim Final Rule, facilities **should consider frequency of presence, services provided, and proximity to patients and staff**.

When the vaccination requirement applies to construction workers or contractors:

- Individuals that use shared facilities (restrooms, cafeteria, break rooms) during breaks
- Individuals that use the same common areas used by staff, patients, and visitors.

When the vaccination requirement does not apply to construction workers or contractors:

- Individuals that provide infrequent services and tasks performed in or for a health care facility are conducted by “one off” vendors, volunteers, and professionals
- Individuals who infrequently provide ad hoc non-health care services (such as annual elevator inspection), or services that are performed exclusively off-site, not at or adjacent to any site of patient care, such as accounting services
- Individuals who may infrequently enter a facility or site of care for specific **limited purposes** and for a **limited amount of time**, but do not provide services by contract or under arrangement, may include delivery and repair personnel
- Individuals wears proper PPE and practices social distancing or works in isolation

CMS strongly encourage facilities, when the opportunity exists and resources allow, to facilitate the vaccination of all individuals who provide services infrequently and are not otherwise subject to the requirements of the Interim Final Rule.

8. What if some of my staff are not fully vaccinated by the Phase 2 deadline?

Under the regulation, CMS requires that facilities make contingency plans in consideration of staff that are not fully vaccinated to ensure that they will soon be vaccinated and **will not** provide care, treatment, or other services for the provider or its patients until such time as

such staff have completed the primary vaccination series for COVID-19. It is to the health center's discretion on the details of the contingency plan and how they will handle unvaccinated staff.

Contingency planning should also address the safe provision of services by individuals who have requested an exemption from vaccination while their request is being considered and by those staff for whom COVID-19 vaccination must be temporarily delayed, as recommended by the CDC, due to clinical precautions and considerations.

Contingency planning may extend beyond the specific requirements of this rule to address topics such as staffing agencies that can supply vaccinated staff if some of the facility's staff are unable to work.

Facilities may already have contingency plans that meet the requirements of this Interim Final Rule in their existing Emergency Preparedness policies and procedures.

9. Can staff members attest that they have been vaccinated?

No, all staff COVID-19 vaccinations must be appropriately documented by the facility.

Examples of acceptable forms of proof of vaccination include:

- CDC COVID-19 vaccination record card (or a legible photo of the card),
- Documentation of vaccination from a health care provider or electronic health record, or
- State immunization information system record

All medical records, including vaccine documentation, must be kept confidential and stored separately from an employer's personnel files, pursuant to Americans with Disabilities Act (ADA) and the Rehabilitation Act. Examples of appropriate places for storing vaccine documentation include a facilities immunization record, health information files, or other relevant documents. Facilities have the flexibility to use the appropriate [tracking tools of their choice](#).

10. Are exemptions allowed?

Yes, the Interim Final Rule **requires** facilities to allow exemptions for staff with recognized medical conditions for which vaccines are contraindicated (a medical exemption under the ADA) or for staff who are not vaccinated due to their strongly held religious beliefs, observances, or practices (a religious exemption under Title VII of the Civil Rights Act of 1964 (Title VII)). Employers following CDC guidelines and the new requirements in the Interim Final Rule are required to provide appropriate accommodations, to the extent required by Federal law, for employees who request and receive exemption from vaccination because of a disability, medical condition, or sincerely held religious belief, practice, or observance.

Facilities should establish exemptions as a part of their policies and procedures and in alignment with Federal law. Providers and suppliers must have a process for collecting and

evaluating such requests, including tracking and securing documentation of information provided by those staff who have requested exemptions, the facility's decision on the requests, and any accommodations that are provided.

In granting an accommodation, employers must ensure that they minimize the risk of transmission of COVID-19 to at-risk individuals, in keeping with their obligation to protect the health and safety of patients. Employers must also follow Federal laws protecting employees from retaliation for requesting an exemption on account of religious belief or disability status. Please review [the EEOC's FAQ on Religious Objections and Medical Exemptions to COVID-19 Vaccine Mandates](#). (see attachment on page 8)

CMS believes that exemptions could be appropriate in certain limited circumstances, but no exemption should be provided to any staff for whom it is not legally required (under the ADA or Title VII of the Civil Rights Act of 1964) or who requests an exemption solely to evade vaccination.

Staff who have previously contracted COVID-19 **are not** exempt from these vaccination requirements. The regulation permits a "temporary delay" in vaccination, for individuals who recently received monoclonal antibodies, convalescent plasma, or other recommendations due to clinical precautions.

Resource: [Sample Request for Religious Exemption Form](#)

11. How will this new requirement be enforced on FQHCs?

To date, NACHC has not received clarity from CMS on the [enforcement of the Interim Final Rule for FQHCs](#). Under the current law, [FQHCs attest](#) to their eligibility to participate in Medicare and agree to remain in compliance with all of the FQHC requirements specified in Medicare regulations at 42 CFR Part 405 Subpart X, and at 42 CFR Part 491, with the exception of §491.3.

Other CMS certified facilities are subject to onsite surveys. While we know that CMS will issue interpretive guidelines, including survey procedures, to review the vaccine policies and documentation for other types of CMS certified facilities, it is not yet clear how CMS will ensure compliance by FQHCs.

Accrediting organizations will be required to update their survey processes to assess facilities they accredit for compliance with applicable vaccination regulations. FQHCs should monitor survey policy changes for other related accrediting organizations.

12. Will HRSA enforce the CMS COVID-19 Staff Vaccination Requirement?

CMS will enforce the requirements under the Interim Final Rule. This regulation is outside of HRSA's jurisdiction and is not currently a requirement under the Health Center Program

Compliance Manual. As of now, HRSA will not include requirements under this Interim Final Rule into operational site visits (OSV).

As mentioned above, accrediting organizations will be required to update their survey processes to assess facilities they accredit for compliance with vaccination regulations. FQHCs should monitor survey policy changes for other related accrediting organizations.

13. How does the CMS COVID-19 employee vaccination requirement interact with OSHA ETS for Health Care Staff requirements?

CMS believes this Interim Final Rule is complementary to the [OSHA COVID-19 Healthcare ETS](#), which generally applies to all workplace settings where any employee provides health care services or health care support services. Because the OSHA COVID-19 Healthcare ETS targets settings where care is provided for individuals with known or suspected COVID-19, FQHCs are subject to the OSHA COVID-19 Healthcare ETS requirements, unless an exception applies.

The OSHA COVID-19 Healthcare ETS, incorporated into OSHA's regulations at [29 CFR 1910.502](#), requires covered health care employers to develop and implement a COVID-19 plan to identify and control COVID-19 hazards in the workplace and implement requirements to reduce transmission of COVID-19 in their workplaces related to the following: patient screening and management, standard and transmission-based precautions, personal protective equipment (facemasks, respirators), controls for aerosol-generating procedures, physical distancing of at least six feet when feasible, physical barriers, cleaning and disinfection, ventilation, health screening and medical management, training, anti-retaliation, recordkeeping, and reporting. The OSHA ETS encourages vaccination by requiring employers to provide reasonable time and paid leave for employee vaccinations and any side effects.

A COVID-19 vaccination requirement reduces the likelihood of medical removal of health care staff from the workplace, as required by the OSHA COVID-19 Healthcare ETS. This is yet another way in which the CMS Interim Final Rule protects the individuals who receive services from the providers and suppliers to whom the rule applies by minimizing unpredictable disruptions to operations and care.

Resource: [OSHA ETS for Healthcare Workers FAQ](#), [NACHC OSHA ETS FAQ](#)

14. How does the CMS COVID-19 employee vaccination requirement interact with State and Local laws?

This rule would preempt some State laws that prohibit employers from requiring their employees to be vaccinated for COVID-19. CMS finds that State and local laws that forbid employers in the State or locality from imposing vaccine requirements on employees directly conflict with the exercise of CMS' statutory health and safety authority to require vaccinations for staff of the providers and suppliers subject to the Interim Final Rule.



To the extent that State-run facilities that receive Medicare and Medicaid funding are prohibited by State or local law from imposing vaccine mandates on their employees, there is direct conflict between the provisions of this Interim Final Rule (requiring such mandates) and the State or local law (forbidding them). As is relevant here, **this regulation preempts the applicability of any State or local law providing for exemptions to the extent such law provides broader grounds for exemptions than provided for by Federal law and are inconsistent with this regulation.** In these cases, consistent with the Supremacy Clause of the Constitution, CMS intends that the Final Interim Rule preempts State and local laws to the extent the State and local laws conflict with the Final Interim Rule.

(Updated 11/19/21)

For questions, please contact regulatoryaffairs@nachc.org

EEOC Technical Assistance Question and Answers for COVID-19 Vaccinations

Below are excerpts of relevant Q&As from the EEOC’s “[What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws.](#)” Health centers should review the entire document, which is periodically updated by the EEOC.

Title VII and COVID-19 Vaccinations

K.12. Under Title VII, how should an employer respond to an employee who communicates that he or she is unable to be vaccinated for COVID-19 (or provide documentation or other confirmation of vaccination) because of a sincerely held religious belief, practice, or observance? (Updated 5/28/21)

Once an employer is on notice that an employee’s sincerely held religious belief, practice, or observance prevents the employee from getting a COVID-19 vaccine, the employer must provide a reasonable accommodation unless it would pose an undue hardship. Employers also may receive religious accommodation requests from individuals who wish to wait until an alternative version or specific brand of COVID-19 vaccine is available to the employee. Such requests should be processed according to the same standards that apply to other accommodation requests. For more information on requests for religious accommodations related to COVID-19 vaccination requirements, see [Section L, Vaccinations – Title VII and Religious Objections to COVID-19 Vaccine Mandates](#).

EEOC guidance explains that the definition of religion is broad and protects beliefs, practices, and observances with which the employer may be unfamiliar. Therefore, the employer should ordinarily assume that an employee’s request for religious accommodation is based on a sincerely held religious belief, practice, or observance. However, if an employee requests a religious accommodation, and an employer is aware of facts that provide an objective basis for questioning either the religious nature or the sincerity of a particular belief, practice, or observance, the employer would be justified in requesting additional supporting information. See also 29 CFR 1605.

Under Title VII, an employer should thoroughly consider all possible reasonable accommodations, including telework and reassignment. For suggestions about types of reasonable accommodation for unvaccinated employees, see [question and answer K.6.](#), above. In many circumstances, it may be possible to accommodate those seeking reasonable accommodations for their religious beliefs, practices, or observances.

Under Title VII, courts define “undue hardship” as having more than minimal cost or burden on the employer. This is an easier standard for employers to meet than the ADA’s undue hardship



standard, which applies to requests for accommodations due to a disability. Considerations relevant to undue hardship can include, among other things, the proportion of employees in the workplace who already are partially or fully vaccinated against COVID-19 and the extent of employee contact with non-employees, whose vaccination status could be unknown or who may be ineligible for the vaccine. Ultimately, if an employee cannot be accommodated, employers should determine if any other rights apply under the EEO laws or other federal, state, and local authorities before taking adverse employment action against an unvaccinated employee

K.13. Under Title VII, what should an employer do if an employee chooses not to receive a COVID-19 vaccination due to pregnancy? (Updated 10/13/21)

[CDC recommends](#) COVID-19 vaccinations for everyone aged 12 years and older, including people who are pregnant, breastfeeding, trying to get pregnant now, or planning to become pregnant in the future. Despite these recommendations, some pregnant employees may seek job adjustments or may request exemption from a COVID-19 vaccination requirement.

If an employee seeks an exemption from a vaccination requirement due to pregnancy, the employer must ensure that the employee is not being discriminated against compared to other employees similar in their ability or inability to work. This means that a pregnant employee may be entitled to job modifications, including telework, changes to work schedules or assignments, and leave to the extent such modifications are provided for other employees who are similar in their ability or inability to work. Employers should ensure that supervisors, managers, and human resources personnel know how to handle such requests to avoid [disparate treatment in violation of Title VII](#).

L. Vaccinations – Title VII and Religious Objections to COVID-19 Vaccine Mandates

The EEOC enforces Title VII of the Civil Rights Act of 1964 (Title VII), which prohibits employment discrimination based on religion. This includes a right for job applicants and employees to request an exception, called a religious or reasonable accommodation, from an employer requirement that conflicts with their sincerely held religious beliefs, practices, or observances. If an employer shows that it cannot reasonably accommodate an employee's religious beliefs, practices, or observances without undue hardship on its operations, the employer is not required to grant the accommodation. See generally [Section 12: Religious Discrimination](#); [EEOC Guidelines on Discrimination Because of Religion](#). Although other laws, such as the Religious Freedom Restoration Act (RFRA), may also protect religious freedom in some circumstances, this technical assistance only describes employment rights and obligations under Title VII.

L.1. Do employees who have a religious objection to receiving a COVID-19 vaccination need to tell their employer? If so, is there specific language that must be used under Title VII? (10/28/21)

Employees must tell their employer if they are requesting an exception to a COVID-19 vaccination requirement because of a conflict between that requirement and their sincerely held religious beliefs, practices, or observances (hereafter called “religious beliefs”). Under Title VII, this is called a request for a “religious accommodation” or a “reasonable accommodation.”



When making the request, employees do not need to use any “magic words,” such as “religious accommodation” or “Title VII.” However, they need to notify the employer that there is a conflict between their sincerely held religious beliefs and the employer’s COVID-19 vaccination requirement.

The same principles apply if employees have a religious conflict with getting a particular vaccine and wish to wait until an alternative version or specific brand of COVID-19 vaccine is available.

As a best practice, an employer should provide employees and applicants with information about whom to contact, and the procedures (if any) to use, to request a religious accommodation.

As an example, here is how [EEOC designed its own form for its own workplace](#). Although the EEOC’s internal forms typically are not made public, it is included here given the extraordinary circumstances facing employers and employees due to the COVID-19 pandemic. (Note: Persons not employed by the EEOC should not submit this form to the EEOC to request a religious accommodation.)

L.2. Does an employer have to accept an employee’s assertion of a religious objection to a COVID-19 vaccination at face value? May the employer ask for additional information? (10/25/21)

Generally, under Title VII, an employer should assume that a request for religious accommodation is based on sincerely held religious beliefs. However, if an employer has an objective basis for questioning either the religious nature or the sincerity of a particular belief, the employer would be justified in making a limited factual inquiry and seeking additional supporting information. An employee who fails to cooperate with an employer’s reasonable request for verification of the sincerity or religious nature of a professed belief risks losing any subsequent claim that the employer improperly denied an accommodation. See generally [Section 12-IV.A.2: Religious Discrimination](#).

The definition of “religion” under Title VII protects nontraditional religious beliefs that may be unfamiliar to employers. While the employer should not assume that a request is invalid simply because it is based on unfamiliar religious beliefs, employees may be asked to explain the religious nature of their belief and should not assume that the employer already knows or understands it. By contrast, Title VII does not protect social, political, or economic views, or personal preferences. [Section 12-I.A.1: Religious Discrimination \(definition of religion\)](#). Thus, objections to COVID-19 vaccination that are based on social, political, or personal preferences, or on nonreligious concerns about the possible effects of the vaccine, do not qualify as “religious beliefs” under Title VII.

The sincerity of an employee’s stated religious beliefs also is not usually in dispute. The employee’s sincerity in holding a religious belief is “largely a matter of individual credibility.” [Section 12-I.A.2: Religious Discrimination \(credibility and sincerity\)](#). Factors that – either alone or in combination – might undermine an employee’s credibility include: whether the employee has acted in a manner inconsistent with the professed belief (although employees need not be scrupulous in their observance); whether the accommodation sought is a particularly desirable benefit that is likely to be sought for nonreligious reasons; whether the timing of the



request renders it suspect (e.g., it follows an earlier request by the employee for the same benefit for secular reasons); and whether the employer otherwise has reason to believe the accommodation is not sought for religious reasons.

The employer may ask for an explanation of how the employee's religious belief conflicts with the employer's COVID-19 vaccination requirement. 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 practices may nevertheless be sincerely held. An employer should not assume that an employee is insincere simply because some of the employee's practices deviate from the commonly followed tenets of the employee's religion, or because the employee adheres to some common practices but not others. No one factor or consideration is determinative, and employers should evaluate religious objections on an individual basis.

When an employee's objection to a COVID-19 vaccination requirement is not religious in nature, or is not sincerely held, Title VII does not require the employer to provide an exception to the vaccination requirement as a religious accommodation.

L.3. How does an employer show that it would be an “undue hardship” to accommodate an employee’s request for religious accommodation? (10/25/21)

Under Title VII, an employer should thoroughly consider all possible reasonable accommodations, including telework and reassignment. For suggestions about types of reasonable accommodations for unvaccinated employees, *see* K.6, above. In many circumstances, it may be possible to accommodate those seeking reasonable accommodations for their religious beliefs, practices, or observances without imposing an undue hardship.

If an employer demonstrates that it is unable to reasonably accommodate an employee's religious belief without an “undue hardship” on its operations, then Title VII does not require the employer to provide the accommodation. 42 U.S.C. § 2000e(j). The Supreme Court has held that requiring an employer to bear more than a “de minimis,” or a minimal, cost to accommodate an employee's religious belief is an undue hardship. Costs to be considered include not only direct monetary costs but also the burden on the conduct of the employer's business – including, in this instance, the risk of the spread of COVID-19 to other employees or to the public.

Courts have found Title VII undue hardship where, for example, the religious accommodation would impair workplace safety, diminish efficiency in other jobs, or cause coworkers to carry the accommodated employee's share of potentially hazardous or burdensome work. For a more detailed discussion, *see* [Section 12-IV.B: Religious Discrimination \(discussing undue hardship\)](#).

An employer will need to assess undue hardship by considering the particular facts of each situation and will need to demonstrate how much cost or disruption the employee's proposed accommodation would involve. An employer cannot rely on speculative hardships when faced with an employee's religious objection but, rather, should rely on objective information. Certain common and relevant considerations during the COVID-19 pandemic include, for example, whether the employee requesting a religious accommodation to a COVID-19 vaccination requirement works outdoors or indoors, works in a solitary or group work setting, or has close



contact with other employees or members of the public (especially medically vulnerable individuals). Another relevant consideration is the number of employees who are seeking a similar accommodation (i.e., the cumulative cost or burden on the employer).

L.4. If an employer grants some employees a religious accommodation from a COVID-19 vaccination requirement because of sincerely held religious beliefs, does it have to grant the requests of all employees who seek an accommodation because of sincerely held religious beliefs? (10/25/21)

No. The determination of whether a particular proposed accommodation imposes an undue hardship on the conduct of the employer's business depends on its specific factual context. When an employer is assessing whether exempting an employee from getting a vaccination would impair workplace safety, it may consider, for example, the type of workplace, the nature of the employee's duties, the number of employees who are fully vaccinated, how many employees and nonemployees physically enter the workplace, and the number of employees who will in fact need a particular accommodation. A mere assumption that many more employees might seek a religious accommodation to the vaccination requirement in the future is not evidence of undue hardship, but the employer may take into account the cumulative cost or burden of granting accommodations to other employees.

L.5. Must an employer provide the religious accommodation preferred by an employee if there are other possible accommodations that also are effective in eliminating the religious conflict and do not cause an undue hardship under Title VII? (10/25/21)

No. If there is more than one reasonable accommodation that would resolve the conflict between the vaccination requirement and the sincerely held religious belief without causing an undue hardship under Title VII, the employer may choose which accommodation to offer. If more than one accommodation would be effective in eliminating the religious conflict, the employer should consider the employee's preference but is not obligated to provide the reasonable accommodation preferred by the employee. If the employer denies the employee's proposed accommodation, the employer should explain to the employee why the preferred accommodation is not being granted.

An employer should consider all possible alternatives to determine whether exempting an employee from a vaccination requirement would impose an undue hardship. *See, e.g.*, K.2. Employers may rely on [CDC recommendations](#) when deciding whether an effective accommodation is available that would not pose an undue hardship.

L.6. If an employer grants a religious accommodation to an employee, can the employer later reconsider it? (10/25/21)

The obligation to provide religious accommodations absent undue hardship is a continuing obligation that takes into account changing circumstances. Employees' religious beliefs and practices may evolve or change over time and may result in requests for additional or different religious accommodations. Similarly, an employer has the right to discontinue a previously granted accommodation if it is no longer utilized for religious purposes, or if a provided accommodation subsequently poses an undue hardship on the employer's operations due to



changed circumstances. As a best practice, an employer should discuss with the employee any concerns it has about continuing a religious accommodation before revoking it and consider whether there are alternative accommodations that would not impose an undue hardship.