

EEOC Issues Guidance on COVID-19 Related Caregiver Discrimination and Religious Accommodations for Mandatory Vaccines

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The Equal Employment Opportunity Commission (EEOC) continues to update its guidance on employers' obligations during the evolving COVID-19 pandemic. Most recently, the EEOC has provided further guidance on COVID-19 related caregiver discrimination in the workplace, and religious accommodation requests for mandatory COVID-19 vaccinations.

On March 14, 2022, the EEOC added a section to its COVID-19 [guidance](#) titled, "Caregivers/Family Responsibilities," and issued a new [technical assistance document](#) regarding caregiver discrimination during the COVID-19 pandemic. The COVID-19 pandemic has significantly impacted caregiving responsibilities, resulting in demands which are often concurrent and, at times, competing with caregivers' job duties and responsibilities. The guidance addresses how employers can avoid unlawful discrimination against people caring for children, spouses, older relatives, and individuals with disabilities in light of the impact that the pandemic has had on familial and workplace responsibilities. It explains that while federal employment discrimination laws do not prohibit discrimination based on caregiver status alone, caregiver discrimination is prohibited when it is based on an applicant or employee's sex (including pregnancy, sexual orientation, or gender identity), race, color, religion, national origin, age (40 or older), disability, or genetic information. It clarifies that employees generally do not have a right to accommodations to handle caregiving duties, such as teleworking or flexible schedules. However, employees who are unable to perform their job duties because of pregnancy, childbirth, or related medical conditions must be treated the same as other employees who are temporarily unable to perform their job duties. Additionally, the guidance states that employers are not required to excuse poor performance resulting from employees' caregiving responsibilities during the pandemic but may not apply performance standards inconsistently based on gender or another protected characteristic.

The guidance provides many examples of caregiver discrimination in the context of COVID-19. Particularly, it focuses on the disparate impact on female caregivers, stating that such discrimination often arises out of gender-based stereotypes about caregiving responsibilities and roles. For instance, an employer may not refuse to hire or promote a woman based on the assumption that she would be focused on caring for her children while they attend remote schooling; issue more harsh discipline to female employees than similarly situated male employees for absences due to pandemic-related caregiving duties; or decline to offer female caregivers demanding assignments that could result in advancement based on the assumption that female caregivers cannot work extra hours if a family member has COVID-19. Similarly, male caregivers are protected from discrimination based on the stereotype that men are breadwinners and women are caretakers, for example an employer may not deny male employees the option to telework to perform pandemic related caregiving duties while granting the same requests made by similarly situated female employees. An employer also may not impose more burdensome requirements on LGBTQI+ employees who make caregiver requests, such as requiring proof of a marital or familial relationship with the person needing care, if other employees are not subject to the same requirement when making a request. Additionally, the guidance provides several

examples of “harassing” conduct relating to caregiving responsibilities, including disparaging female employees for focusing on their careers instead of their families during the pandemic; baselessly accusing female employees of being preoccupied with familial duties related to COVID-19; asking intrusive questions of LGBTQI+ employees when they request leave to care for their same-sex spouse or partner with COVID-19; and insulting Asian employees caring for family members with COVID-19 because COVID-19 was first identified in an Asian country.

Additionally, on March 1, 2022, the EEOC issued [guidance](#) on responding to religious accommodation requests for mandatory COVID-19 vaccines in the workplace. The guidance clarifies that while employees must tell their employer if they are requesting an exception to a vaccine requirement due to a religious belief, employees need not use any “magic words” when making the request, such as “accommodation” or “Title VII.” It further explains that employers should generally assume a religious accommodation request is based on a sincerely held religious belief, however if an employer has an objective basis for questioning the sincerity of the belief, it may make a limited factual inquiry for additional information. The guidance notes that an employee’s sincerity in holding a religious belief is mostly a matter of individual credibility, and references factors that would tend to undermine an employee’s credibility, including if the employee acted in a manner inconsistent with the professed belief; if the accommodation sought is particularly desirable and likely to be sought for nonreligious reasons; or if the timing of the request is suspicious. It further states that an employer has a right to ask for an explanation of how the employee’s religious belief conflicts with the vaccine mandate. Objections that are based solely on social, political, or economic views do not qualify as religious beliefs under Title VII. Finally, the guidance states that an employer is not required to provide a religious accommodation if it would result in an undue hardship, such as impairing workplace safety or diminishing the efficiency of other jobs.