



OFFICE OF THE ASN (MANPOWER AND RESERVE AFFAIRS)

Guidance for Processing Civilian Exemption Requests from Coronavirus Disease 2019 Workplace Safety Protocols

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Background

On January 20, 2021, President Joseph R. Biden signed Executive Order (E.O.) 13991, “Protecting the Federal Workforce and Requiring Mask-Wearing,” which required the executive agencies to comply with the Centers for Disease Control and Prevention (CDC) guidelines with respect to wearing masks, maintaining physical distance, and other public health measures by on-duty or on-site Federal employees, subject to exemptions required by law. E.O. 13991 states that, if agencies make such exemptions, “they shall require appropriate alternative safeguards, such as additional physical distancing measures, additional testing, or reconfiguration of workspace, consistent with applicable law.” The E.O. also requires that all approved exemptions be documented in writing.

The Department of Defense (DoD) has implemented various requirements to ensure compliance with workplace safety measures. On July 28, 2021, the Deputy Secretary of Defense issued a memorandum requiring all Federal employees, regardless of vaccination status, to wear a mask in an indoor setting in installations and other facilities owned, leased, or otherwise controlled by DoD. The Under Secretary of Defense for Personnel and Readiness (USD (P&R)) memorandum titled “Force Health Protection (Supplement 23) Revision 3 – Department of Defense Guidance from Coronavirus Disease 2019 Vaccination Attestation, Screening Testing, and Vaccination Verification,” requires weekly COVID-19 testing for those civilian employees who are not fully vaccinated. On January 6, 2022, the USD (P&R) issued “Force Health Protection Guidance (Supplement 18) Revision 1 – Department of Defense Guidance for Protecting All Personnel in Department of Defense Workplaces During the Coronavirus Disease 2019 Pandemic,” which directed DoD Components to implement workplace safety protocols such as mask-wearing in indoor workspaces, minimizing close contact between individuals in the workplace to maintain at least six feet of separation from others where possible, assigning telework if possible to decrease normal space occupancy, and complying with Coronavirus Disease 2019 (COVID-19) screening testing requirements.

The Department of the Navy (DON) has implemented various workplace safety protocols in accordance with EO 13991 and the aforementioned DoD requirements. In order to protect the health and safety of the workforce, DON Federal civilian employees who are not fully vaccinated must comply with all DoD requirements, including those related to mask-wearing, testing, screening, physical distancing, and travel.

Overview

DON civilian employees may request an exemption to such workplace safety protocols. Exemptions will be granted only where legally required. Legal exemptions may include a **reasonable accommodation** because of a disability, or a **religious accommodation** because of a sincerely held religious belief, practice, or observance. Federal regulations state that an employer does not have to provide an accommodation that would pose an undue hardship; therefore, if granting a request would pose an undue hardship, then the request will be denied.

Reasonable Accommodation: Any modification or adjustment to a job application process, the work environment or to the manner or circumstances under which work is customarily performed that enables a qualified individual with a disability to perform the essential



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functions of a position or enjoy equal benefits and privileges of employment as are enjoyed by similarly situated individuals without a disability.

Religious Accommodation: Any adjustment to the work environment that will allow the employee to comply with their religious, ethical, or moral beliefs. The concept of religion not only includes traditional, organized religions such as Christianity, Judaism, Islam, Hinduism, and Buddhism, but 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. In addition, the law protects employees who do not possess religious beliefs or engage in religious practices.

The processes for reasonable accommodation because of a disability, and for religious accommodation because of a sincerely held belief, practice, or observance, are two distinct processes. Employees have legal protections under separate statutes, and the factors to assess eligibility and whether a reasonable accommodation or a religious accommodation can be granted are based on the applicable statutes. In addition, the accommodation request processes for Federal civilian employees are inherently different than the related processes for military members.

The servicing Equal Employment Opportunity (EEO) office manages the reasonable accommodation and religious accommodation processes, where each request is handled on an individualized, case-by-case basis. Supervisors and employees are encouraged to have an interactive discussion to understand the nature of the request, where the cooperation of both parties is key. Additional subject matter experts, to include the Human Resources Office (HRO) and the Office of General Counsel (OGC), may be consulted depending on the request's complexity.

Medical-Based Requests

The request to be exempt from workplace safety protocols on the basis of a medical condition or disability, shall be processed as a reasonable accommodation under the Rehabilitation Act of 1973, as amended, and follow the regulations implementing this statute. As the DON has existing guidance that is thoroughly documented in the DON Procedures for Processing Requests for Reasonable Accommodation, this document only provides clarifying details for assessing and tracking these requests, and issuing accommodation decisions.

The decision-making framework for determining the outcome of the medical-based request to be exempt from workplace safety measures are as follows:

- 1) Evaluating whether the individual has a disability or medical condition, or a record of such condition, that substantially limits one or more major life activities;
- 2) Articulating the foreseeable impact on the DON's operations ("undue hardship"), including protecting other agency employees and the public from COVID-19 ("direct threat").

Undue hardship is a legal standard, which under the Rehabilitation Act of 1973, as amended, means significant difficulty or expense. For the DON, an argument of financial difficulty usually does not prevail compared to the resources available to the agency. Therefore, the supervisor or management official making the decision should focus on whether granting the exemption from workplace safety protocol(s) would be disruptive or would fundamentally alter the nature or operation of the business.



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Undue hardship includes “direct threat,” which means a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by the accommodation.

The duration of the medical condition or disability, as well as Force Health Protection requirements, will determine whether the request is for a temporary need or will be required on a long-term basis.

The servicing EEO Office is responsible for maintaining and retaining all documentation in the DON’s system of record for reasonable accommodation requests, the Navy Electronic Accommodations Tracker (NEAT). Access to NEAT is only granted to EEO practitioners who process reasonable accommodation requests and provide program oversight (e.g. Deputy Directors, EEO and Directors, EEO). Reasonable accommodation request files are of a sensitive nature, and will only be shared with those with a need to know. The EEO practitioner entering these requests in NEAT must use the tags “COVID-19 Testing” or “Masking or Other Safety Protocols” from the drop-down selection within the Accommodation Type field.

Religious-Based Requests

The request to be exempt from workplace safety protocols on the basis of religion, shall be processed as a religious accommodation under Title VII of the Civil Rights Act of 1964 (herein referred to as “Title VII”). Title VII places a duty upon Federal agencies, to include the DON, to accommodate the religious beliefs, practices, and observances of its employees and applicants when requested, unless it proves that doing so would pose an undue hardship. Amplifying guidance regarding religious discrimination and religious accommodation can be found on the Equal Employment Opportunity Commission website: <https://www.eeoc.gov/laws/guidance/section-12-religious-discrimination>

Please consult with the servicing Attorney Advisor if a request for exemption or accommodation specifically mentions Religious Freedom Restoration Act of 1993 (RFRA). Unless the request specifically mentions RFRA, religious accommodation requests will be processed under Title VII using the procedures identified below.

STEP 1 – The Religious Accommodation Request

An employee or selectee who seeks a religious accommodation must put the agency on notice that the need for a religious accommodation is based on a conflict between the individual’s religious belief, practice, or observance and their work duties or the agency’s application process. In requesting a religious accommodation, an individual is not required to use “magic words,” such as “religious accommodation” or “Title VII.” The definition of a religious accommodation request, as well as other notable key terms, are listed in Attachment 1 for reference.

As it relates to the COVID-19 workplace safety protocols, the individual would need to notify their supervisor or management official within their chain of command that their sincerely held religious belief prevents them from complying with the mandated workplace safety protocol(s) implemented due to the ongoing COVID-19 pandemic.



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The DON does not currently have a standardized, approved form to document the religious accommodation; however, the request can be made orally or in writing without the use of a standardized form. Individuals may have utilized the DD Form 3177, “Request for a Religious Exemption to the COVID-19 Vaccination Requirement,” to submit their request to be exempt from a particular COVID-19 workplace safety requirement, and the DON can accept those for processing; however, some of the questions are specific to COVID-19 vaccines and may not apply to a workplace safety protocol(s). At a minimum, the DON must have the following information in order to effectively process a religious accommodation request:

- 1) A description of the religious belief, practice, or observance that is the basis for the request for a religious accommodation from the required workplace safety protocol(s);
- 2) A description of the religious accommodation the individual is seeking and why they are requesting the accommodation;
- 3) A description of when and how the individual came to hold the religious belief or observe the religious practice; and
- 4) A description of how the individual has demonstrated the religious belief or observed the religious practice in the past.

The individual requesting the religious accommodation is encouraged to provide any additional information, including any supporting documentation that may be helpful in addressing their request.

Upon receipt, supervisors or management officials must forward religious accommodation requests to be exempt from the workplace safety protocols to the servicing Equal Employment Opportunity (EEO) Office to begin processing in accordance with this document. The requests will also be thoroughly documented and tracked in accordance with Step 6 of this document.

STEP 2 – Initiating the Interactive Process and Gathering Information

The request for a religious accommodation triggers the interactive process between the DON and the individual seeking the accommodation. Although Title VII does not require the agency to have a discussion with an employee before making a determination, the DON believes that the interactive process is vital in obtaining the information needed for the religious accommodations process. Both the DON and the employee have roles to play in resolving an accommodation request, where cooperation and flexibility are key in identifying an appropriate religious accommodation.

During the interactive discussion, the individual is asked to provide an explanation of their sincerely held religious beliefs, and why they are requesting a religious accommodation. The individual is requested to explain the religious nature of the belief, observance, or practice at issue, and cannot assume that the employer will already know or understand it. Similarly, the DON should not assume that a request is invalid simply because it is based on religious beliefs, practices, or observances with which the DON is unfamiliar. If not already provided, the individual will be asked to explain the religious nature of the practice, belief, or observance and the way in which it conflicts with a work requirement.

In addition to placing the agency on notice of the need for accommodation, the individual should cooperate with the DON’s efforts to determine whether a religious accommodation can be granted.



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Once the agency becomes aware of the individual's religious conflict, the DON should promptly obtain whatever additional information is needed to determine whether an accommodation is available, without posing an undue hardship on the DON's operations. This typically involves the agency and employee/selectee mutually sharing information necessary to process the accommodation request.

Individuals should provide information that addresses any reasonable doubts about the sincerity or religious nature of their professed religious belief when additional supporting information is requested. That information need not, however, take any specific form. For example, written materials or the employee's own first-hand explanation may be sufficient to alleviate doubts such that third-party verification is unnecessary. Further, since idiosyncratic beliefs can be sincerely held and religious, even when third-party verification is requested, it does not have to come from a clergy member or fellow congregant, but rather could be provided by others who are aware of the employee's religious practice or belief.

In addition, input from the employee's supervisor, who has knowledge regarding the duties of the position and the worksite, will help to determine the feasibility of what may be a "reasonable" accommodation, including alternative accommodations to the one requested by the individual. Some accommodation options to consider include flexible schedules, telework, change of the work location, alternative masks or tests, etc.

STEP 3 – Assessing the Religious Accommodation Request

There are two major considerations that may need to be examined for religious accommodation requests: whether granting the request would pose an "undue hardship," and whether the religious belief, practice, or observance is "sincerely held." Unless there is clear objectionable evidence to have a bona fide doubt as to whether the individual's religious beliefs are sincerely held, the DON will first examine whether the religious accommodation will pose an undue hardship on its operations.

Undue Hardship

Employers are not required to grant a religious accommodation that would pose an undue hardship. To establish undue hardship, the DON must demonstrate that the accommodation would require the employer "to bear more than a *de minimis* cost." "*De minimis*" is a much lower standard than the burden on employers in disability accommodation cases. Relevant factors may include:

- The type of workplace;
- The nature of the employee's duties;
- The identifiable cost of the accommodation in relation to the size and operating costs of the employer; and
- The number of employees who will in fact need a particular accommodation.

An employer cannot rely on hypothetical hardship when faced with an employee's religious obligation that conflicts with scheduled work, but rather should rely on objective information. A mere assumption that many more people with the same religious practices as the individual being accommodated may also seek accommodation is not evidence of undue hardship.



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Generally, the payment of administrative costs necessary for an accommodation, such as costs associated with rearranging schedules and recording substitutions for payroll purposes, or infrequent or temporary payment of premium wages (e.g. overtime rates) while a more permanent accommodation is sought, will not constitute more than a *de minimis* cost, whereas the regular payment of premium wages or the hiring of additional employees to provide an accommodation will generally require more than *de minimis* cost to the employer.¹

Costs to be considered include not only direct monetary costs, but also the burden on the conduct of the employer's business, for example:

- Where the accommodation diminishes efficiency in other jobs;
- Infringes on other employees' job rights or benefits;
- Impairs workplace safety;
- Causes coworkers to carry the accommodated employee's share of potentially hazardous or burdensome work; and
- Whether the proposed accommodation conflicts with another law.

A religious accommodation that creates a genuine safety or security risk can undoubtedly constitute an undue hardship for an employer. If granting the accommodation creates such a safety or security risk, the employer must show specific facts to demonstrate the undue hardship. An employer should not assume that a conflict alone demonstrates undue hardship.

With respect to processing the request to be exempt from workplace safety protocols and determining whether granting the request would pose an undue hardship, the case file may include the following descriptions:

- How would the health and safety of the workplace be affected if the individual does not participate in the workplace safety protocol(s);
- How would the operational needs of the office be affected by granting the accommodation;
- Would there be any monetary costs associated with granting the accommodation (e.g. alternative COVID-19 tests, increased cleaning of the workplace, etc.), and if so, what is the estimated cost; and
- Any other individualized considerations or relevant information pertaining to the employee or their accommodation request, as it relates to the work environment, the nature of the employee's work, etc., or accrued undue hardship impacts resulting from the quantity of exemption requests received (i.e. how many other accommodations have been granted in the work unit, if available).

If the agency determines that an accommodation will pose an undue hardship, the servicing EEO Office must retain information pertaining to why the agency determined that the accommodation would pose an undue hardship. Evidence regarding whether and what kind of a hardship would in fact have been posed, to include whether the alleged burden would be *de minimis*, must be retained in the request file.

¹ See *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63 (1977).



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Sincerely Held Religious Belief

Title VII requires employers to accommodate only those religious beliefs that are “sincerely held.” The definition of religion is broad and protects beliefs and practices with which the employer may be unfamiliar. Unless the accommodation request itself does not provide enough information to enable the employer to make a determination, the employer should ordinarily assume that an employee’s request for religious accommodation is based on a sincerely held religious belief. Whether or not a religious belief is sincerely held by an individual is rarely at issue in many types of Title VII religious claims.

The Equal Employment Opportunity Commission (EEOC) has listed certain facts that might create some doubt as to the sincerity of the employee’s belief. Ultimately, this judgment must be based on all of the facts and circumstances, but the following might indicate that an employee’s professed religious belief is not sincerely held:

- Whether the employee has acted in a way that is inconsistent with the claimed belief;
- Whether the employee is seeking a benefit or an exception that is likely to be sought for nonreligious reasons;
- Whether the timing of the request is questionable (for example, because it follows closely on the heels of the same employee’s request for the same benefit for different reasons); and
- Whether the agency has other reasons to believe that the employee is seeking the benefit for secular reasons.

In these cases, the DON is entitled to make a limited inquiry into the facts and circumstances of the individual’s claim that the belief or practice at issue is religious and sincerely held, and that the belief or practice gives rise to the need for the accommodation. Whether the DON has a reasonable basis for seeking to verify the employee’s stated beliefs will depend on the facts of a particular case. However, none of the above factors is dispositive. For example, 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 religious practice may nevertheless be sincerely held. Similarly, an individual’s belief may be to adhere to a religious custom only at certain times, even though others may always adhere. An employer also should not assume that an employee is insincere simply because some of their practices deviate from the commonly followed tenets of their religion, or because the employee adheres to some common practices but not others. As noted, courts have held that “Title VII protects more than . . . practices specifically mandated by an employee’s religion.”²

Requesting additional information of an employee is permissible under the circumstances stated in the EEOC Compliance Manual. After a review of the initial request or after reviewing the individual’s responses during subsequent interactive discussions, the EEO Specialist processing the request will consult appropriate subject matter experts as part of the interactive process. If it is believed additional information is required, the EEO Specialist must consult with the Deputy Director, EEO or Director, EEO.

² See *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63 (1977).



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STEP 4 – The Religious Accommodation Request Determination

Once the DON has all the relevant information needed for the religious accommodation request, the next step is to notify the employee in writing that their requested accommodation has been approved or denied. Sample approval and denial letters are provided in Attachments 2 and 3, respectively. All determinations must be reviewed by the servicing Attorney Advisor before issuance.

All requests should be processed as quickly as possible, especially given the critical timelines associated with ensuring workplace safety during the COVID-19 pandemic. Absent extenuating circumstances, all religious accommodation determinations shall be made within **45 calendar days**.

STEP 5 – Reassignment

The employee should generally be accommodated in their current position if doing so does not pose an undue hardship. When an employee with a sincerely held religious belief cannot be accommodated either as to their entire job or an assignment within the job, the DON shall consider whether or not it is possible to change the job assignment or transfer the employee to a different position or location that eliminates the conflict with the employee's religion.

An employer can accommodate an employee by offering a lateral transfer to another assignment at the same pay, if available. If, however, no job at the same pay is readily available, then the DON could satisfy its obligation to reasonably accommodate the employee by offering to transfer them to a different job, even at lower pay, if one is available. For this purpose, the DON is able to utilize the reassignment framework established for processing reasonable accommodation requests.

STEP 6 – Records Maintenance Requirements

The servicing EEO Office is responsible for maintaining and retaining all documentation in the DON SharePoint site developed for capturing religious accommodation requests for workplace safety protocols. The servicing EEO Office must maintain all copies of accommodation requests, supporting information and documentation in a separate file consistent with the confidentiality requirements in the Privacy Act. This matter is a sensitive nature, and will only be shared with those with a need to know.

Upon receipt of a request, the servicing EEO Office will enter the request into SharePoint using the directions provided to them by the DON Office of EEO. It is imperative that the EEO practitioner select the appropriate accommodation type/workplace safety protocol (e.g. COVID-19 Testing, "Masking or Other Safety Protocols," etc.) so that the requests can be accurately tracked.



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Attachment 1: Key Terms and Definitions

Fully Vaccinated: An individual is considered fully vaccinated two weeks after they have received the requisite number of doses of a COVID-19 vaccine approved or authorized for emergency use by the U.S. Food and Drug Administration or that has been listed for emergency use by the World Health Organization. For Pfizer-BioNTech, Moderna, or AstraZeneca/Oxford, that is two weeks after an individual has received the second dose in a two-dose series. For Johnson and Johnson (J&J)/Janssen, that is two weeks after an individual has received a single dose.

Interactive Process: A dialogue between the individual requesting a religious accommodation, the supervisor (or the hiring manager in the case of applicants), and the servicing EEO Office, that determines the individual's eligibility for religious accommodation, identifies an effective accommodation, and informs the individual of the status of their request for religious accommodation. The interactive process begins upon receipt of an individual's request for religious accommodation, occurs throughout the processing of the request, and continues after the religious accommodation has been provided to ensure that the individual's need for accommodation has been met.

The interactive process typically involves the agency and the employee mutually sharing information necessary to process the accommodation request. Employer-employee cooperation and flexibility are key in identifying an appropriate religious accommodation. If the accommodation solution is not immediately apparent, the employer should discuss the request with the employee to determine what accommodations might be effective. If the agency requests additional information reasonably needed to evaluate the request, the individual should provide it.

Depending on the specific circumstances and/or the complexity of the religious accommodation request, other parties may be consulted at the discretion of the EEO Office processing the request, to include representatives from the Human Resources Office (HRO) and Office of General Counsel (OGC), etc.

Reasonable: To qualify the religious accommodation as "reasonable," the adjustment must not discriminate against the individual or unnecessarily disadvantage the individual's terms, conditions, or privileges of employment.

An adjustment offered by the agency is not "reasonable" if it merely lessens rather than eliminates the conflict between religion and work, provided that eliminating the conflict would not pose an undue hardship. If all accommodations eliminating such a conflict would impose an undue hardship on the agency, the agency must reasonably accommodate the individual's religious practice to the extent that it can without suffering an undue hardship, even though such an accommodation would be "partial" in nature.

Where there is more than one reasonable religious accommodation that would not pose an undue hardship, the agency is not obliged to provide the accommodation preferred by the individual. However, the agency's proposed religious accommodation will not be "reasonable" if a more favorable accommodation is provided to other employees for non-religious purposes, or, for example, if it requires the employee to accept a reduction in pay rate or some other loss of a benefit or privilege of employment and there is an alternative religious accommodation that does not do so.



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Reasonableness of an employer's attempt at religious accommodation must be determined on a case-by-case basis, as what may be reasonable for one situation may not be reasonable for another.

Religion: Title VII of the Civil Rights Act of 1973 defines "religion" to include "all aspects of religious observance and practice as well as belief," not just practices that are mandated or prohibited by a tenet of the individual's faith. Religion includes not only traditional, organized religions such as Christianity, Judaism, Islam, Hinduism, Sikhism, and Buddhism, but also religious beliefs that are new, uncommon, not part of a formal church or sect, only subscribed to by a small number of people, or that seem illogical or unreasonable to others. Further, a person's religious beliefs "need not be confined in either source or content to traditional or parochial concepts of religion."

A belief is "religious" for Title VII purposes if it is "religious" in the person's "own scheme of things," i.e., it is a "sincere and meaningful" belief that "occupies a place in the life of its possessor parallel to that filled by...God." An employee's belief, observance, or practice can be "religious" under Title VII even if the employee is affiliated with a religious group that does not espouse or recognize that individual's belief, observance, or practice, or if few – or no – other people adhere to it.

Religious beliefs include theistic beliefs as well as non-theistic "moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views." Religion typically concerns "ultimate ideas" about "life, purpose, and death."

Religious observances or practices include, for example, attending worship services, praying, wearing religious garb or symbols, displaying religious objects, adhering to certain dietary rules, proselytizing or other forms of religious expression, and refraining from certain activities. Determining whether a practice is religious turns not on the nature of the activity, but on the employee's motivation. The same practice might be engaged in by one person for religious reasons and by another person for purely secular reasons.

Social, political, or economic philosophies, as well as mere personal preferences, are not religious beliefs protected by Title VII. However, overlap between a religious and political view does not place it outside the scope of Title VII's religion protections, as long as that view is part of a comprehensive religious belief system and is not simply an "isolated teaching."

Examples of these concepts can be found in the Equal Employment Opportunity Commission's Compliance Manual on Religious Discrimination.

Religious Accommodation: A religious accommodation is an adjustment to the work environment that will allow an employee or applicant to comply with their religious beliefs. The agency's duty to accommodate will usually entail making a special exception from, or adjustment to, the particular requirement that creates a conflict so that the employee or applicant will be able to observe or practice their religion.



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Request for Religious Accommodation: When an employee or applicant puts the agency on notice that the need for a religious accommodation is based on a conflict between the individual's religious belief, practice, or observance and their work duties or the agency's application process.

In requesting a religious accommodation, an employee or applicant is not required to use "magic words" (such as indicating that they are seeking "an accommodation"). The request for a religious accommodation triggers the interactive process between the individual seeking the accommodation and the agency.

Religious accommodation requests often relate to work schedules, dress and grooming, or religious expression in the workplace. If it would not pose an undue hardship, the agency must grant the accommodation.

Sincerely Held: Title VII requires employers to accommodate those religious beliefs that are "sincerely held." Whether or not a religious belief is sincerely held by an applicant or employee is rarely at issue in many types of Title VII religious claims. For example, with respect to an allegation of discriminatory discharge or harassment, it is the motivation of the discriminating official, not the actual beliefs of the individual alleging discrimination that is relevant in determining if the discrimination that occurred was because of religion.

Like the religious nature of a belief, observance, or practice, the sincerity of an employee's stated religious belief is usually not in dispute and is "generally presumed or easily established." Further, the Equal Employment Opportunity Commission (EEOC) and courts "are not and should not be in the business of deciding whether a person holds religious beliefs for the 'proper' reasons. We thus restrict our inquiry to whether or not the religious belief system is sincerely held; we do not review the motives or reasons for holding the belief in the first place."

Undue Hardship: A showing that the proposed religious accommodation in a particular case poses "more than a *de minimis*" cost or burden, which means more than a minimal impact. This is a lower standard for an employer to meet than undue hardship under the Americans with Disabilities Act, which is defined in that statute as "an action requiring significant difficulty or expense."

An agency may justify a refusal to accommodate an individual's religious beliefs or practices if the agency can demonstrate that the accommodation would cause an undue hardship. The hardship upon the agency must be genuine and cannot be merely speculative.

The Equal Employment Opportunity Commission (EEOC) provides examples of burdens on operations that are more than minimal, which include violating a seniority system; causing a lack of necessary staffing; jeopardizing security or health; security requirements; or costing the employer more than a minimal amount. EEOC also contends that infrequent payment of overtime to employees who substitute shifts is not considered an undue hardship, and that customer preference or co-worker disgruntlement does not justify denying a religious accommodation.



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Attachment 2: Sample Approval Letter

(Insert Date)

From: *(Insert Supervisor's Name and Title)*

To: *(Insert Requestor's Name and Title)*

Subj: Approval of Religious Accommodation Request

1. The Coronavirus Disease 2019 (COVID-19) was first declared a national public health emergency by the U.S. Secretary of Health and Human Services on January 31, 2020. Subsequently, the national emergency concerning COVID-19 was declared pursuant to the National Emergencies Act in Proclamation 9994 of March 13, 2020. Both public health emergencies remain in effect today. As a result, the White House directed responsive measures, including the manufacturing of a vaccine, the use of telework, mask-wearing, and social distancing. On January 20, 2021, President Joseph R. Biden signed Executive Order 13991 (Protecting the Federal Workforce and Requiring Mask Wearing), which established the Safer Federal Workforce Task Force (Task Force). The Task Force issued additional requirements to protect the Federal workforce and individuals interacting with the Federal workforce.

2. On *(insert request date)*, you made a religious accommodation request to be exempt from Federally-required workplace safety protocols that have been implemented as a result of COVID-19. Based on the information that you have provided, you indicated that *(insert details regarding the religious accommodation request, to include the explanation for why they are requesting the religious exemption, which workplace safety protocol(s) they are requesting to be exempt from, and their religion or religious principles that guide their objection to the workplace safety protocol(s))*.

3. This letter is to notify you that after assessing the information you provided, as well as using the resources available to me, your religious accommodation request is approved. In order to promote the health and safety of the workforce and to maintain a workplace that is free of known hazards, you will need to: *(Be specific in describing how the approved religious accommodation will be implemented in accordance with the CDC, DON, state, and local guidance, e.g. modifications to the mask-wearing requirements, maximizing physical distancing, telework/remote work, saliva testing, etc.)*

4. If you become aware of circumstances changing surrounding your request, you must notify me immediately so that your request may be reevaluated. In addition, please note that your approval decision may be reevaluated if there are other circumstances that arise that impact the DON's ability to protect the health and safety of the workforce. If you have any questions or concerns, please contact me or *(insert name of servicing EEO Office POC)*.

(Insert Supervisor's Name/Signature block)

Copy to: *(Insert parties with a need-to-know)*

Acknowledgement of receipt:

Requestor's signature

Date



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Attachment 3: Sample Denial Letter

(Insert Date)

From: *(Insert Supervisor's Name and Title)*

To: *(Insert Requestor's Name and Title)*

Subj: Denial of Religious Accommodation Request

1. The Coronavirus Disease 2019 (COVID-19) was first declared a national public health emergency by the U.S. Secretary of Health and Human Services on January 31, 2020. Subsequently, the national emergency concerning COVID-19 was declared pursuant to the National Emergencies Act in Proclamation 9994 of March 13, 2020. Both public health emergencies remain in effect today. As a result, the White House directed responsive measures, including the manufacturing of a vaccine, the use of telework, mask-wearing, and social distancing. On January 20, 2021, President Joseph R. Biden signed Executive Order 13991 (Protecting the Federal Workforce and Requiring Mask Wearing), which established the Safer Federal Workforce Task Force (Task Force). The Task Force issued additional requirements to protect the Federal workforce and individuals interacting with the Federal workforce.
2. On *(insert request date)*, you made a religious accommodation request to be exempt from Federally-required workplace safety protocols that have been implemented as a result of COVID-19. Based on the information that you have provided, you indicated that *(insert details regarding the religious accommodation request, to include the explanation for why they are requesting the religious exemption, which workplace safety protocol(s) they are requesting to be exempt from, and their religion or religious principles that guide their objection to the workplace safety protocol(s))*.
3. This letter is to notify you that after assessing the information you provided, as well as using the resources available to me, your request to be accommodated based on your sincerely held religious beliefs, practices, or observances is denied.
4. This decision is based on the following: *(Be specific and provide as much detail as necessary to justify the decision. More than likely, the reason for the denial will be because the religious accommodation would pose an undue hardship on the operations.)*
5. *[If the individual demonstrated that they have a sincerely held religious belief, practice, or observance that would justify exemption from workplace safety protocol(s), but the accommodation would pose an undue hardship on the DON's operations, please insert this language: As your accommodation request is denied because of undue hardship, you may be eligible to be considered for reassignment into a vacant DON position where an exemption from workplace safety protocol(s) may be granted. You will receive additional information regarding this option from your supervisor.*
6. You have the right to:
 - a. Invoke the Alternative Dispute Resolution (ADR) process. To invoke the ADR process, please contact *(provide ADR Convener's contact information)*. ADR may also be appropriately considered as an option in the negotiated grievance and/or discrimination complaint procedures.



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- b. *[Insert this language only for bargaining unit employees]* File a grievance under the negotiated grievance procedure. If you are a bargaining unit employee, you have the right to file a grievance, in accordance with *(reference appropriate provisions of the collective bargaining agreement)*. To file a grievance, please contact *(insert contact information for appropriate union official)*.
OR
- c. *[Insert this language for non-bargaining unit employees]* File a grievance under the administrative grievance procedure in accordance with the SECNAVINST 12771.2, Department of the Navy Administrative Grievance System. If you are covered under SECNAVINST 12771.2, you may file an administrative grievance.
- d. Initiate the discrimination complaint process pursuant to 29 Code of Federal Regulations (CFR) Part 1614. To do so, you must contact *(provide contact information for EEO Counselor, who is different from the RA Coordinator)* within 45 calendar days from your receipt of this notification of the initial denial.

Unless noted as an exception above, you must file a grievance or initiate the discrimination complaint process within the applicable timeframes for it to be considered a timely filing.

7. The Department of the Navy is committed to ensuring the health and safety of the workforce, and maintaining a workplace that is free of known hazards. If you have any questions or concerns regarding religious accommodation, please contact me or *(insert name of servicing EEO Office POC)*.

(Insert Supervisor's Name/Signature block)

Copy to: *(Insert parties with a need-to-know)*

Acknowledgement of receipt:

Requestor's signature

Date