

First Liberty Institute

Religious Liberty Protection Toolkit for People Seeking Religious Exemptions from COVID-19 Vaccine Mandates

Introduction

The year 2020 will go down in history as the year that COVID-19 spread globally, resulting in a worldwide pandemic. By December 2020, the U.S. Food and Drug Administration (FDA) issued emergency use authorizations for the Pfizer-BioNTech and the Moderna COVID-19 vaccines, and in February 2021, the FDA issued an emergency use authorization for the Johnson & Johnson COVID-19 vaccine. When vaccination rates did not reach the desired level by late summer 2021, the federal government, joined by several states, private employers, schools, began requiring vaccines for employees, students, and military servicemembers. Not long after, in August 2021, the FDA granted the Pfizer-BioNTech vaccine full approval for people age 16 and older. Pfizer will begin marketing its fully licensed vaccine as Comirnaty. Are these vaccine mandates legal? What can someone with a religious objection to receiving the COVID-19 vaccines do?¹

First Liberty Institute has advised many people about their religious liberty rights from mandatory vaccines. Our guidance has helped them secure accommodations that protect

¹ First Liberty Institute's *Religious Liberty Protection Toolkit for People Seeking Religious Exemptions from the COVID-19 Vaccine Mandates* provides general guidance to assist you in responding to current legal threats to your rights of conscience and religious liberty. This document does not create an attorney-client relationship, and it is not a substitute for legal advice from a licensed attorney. Because the law is constantly changing and each legal and factual situation is unique, First Liberty Institute and its attorneys do not warrant, either expressly or impliedly, that the law, cases, statutes, and rules discussed or cited in this guide are applicable or have not been changed, amended, reversed, or revised. If you have a legal question or need legal advice, please contact an attorney. To request assistance from one of First Liberty Institute's attorneys, visit www.FirstLiberty.org.



their religious beliefs. First Liberty Institute is a nationwide, nonprofit law firm dedicated to protecting religious freedom for all Americans, at no cost to our clients. Our President and CEO, Kelly Shackelford, has over 30 years of experience defending the constitutional rights of people like you.

We carefully summarized our recommendations for seeking exemptions from vaccination mandates in this toolkit. First Liberty wants you to know your rights and be empowered and confident to live out your faith without fear. America thrives when our government institutions and employers protect faith as a daily, positive aspect of society.

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I. Overview

Religious opposition to vaccination has existed almost as long as the practice of vaccination itself.² Thus, perhaps unsurprisingly, in the wake of recent vaccine mandates issued by both public and private entities, large numbers of people are voicing religious objections to receiving the COVID-19 vaccines.

Vaccine mandates affect numerous people of differing faiths and backgrounds. Many world religions, including Christianity,³ Judaism,⁴ Islam,⁵ Buddhism,⁶ Hinduism,⁷ and New Age religions,⁸ hold to religious precepts that lead some adherents to decline vaccination

² See J.G. Hodge & L.O. Gostin, *School Vaccination Requirements: Historical, Social, and Legal Perspectives*, KY LAW J. 2001-2002 Summer, 840-49 (discussing the use of compulsory smallpox vaccination programs in the United States, England, France, Germany, Denmark, Russia, and Sweden in the early 19th century).

³ See Catherine Ruth Pakaluk, et al., *To Awaken Conscience*, <https://mailchi.mp/7742dd12483f/statement-of-conscience-to-awaken-conscience>; see also Rebecca Randall, *Not Worth a Shot: Why Some Christians Refuse Vaccinations on Moral Grounds*, CHRISTIANITY TODAY, (April 26, 2019), <https://www.christianitytoday.com/ct/2019/april-web-only/why-christians-refuse-measles-vaccinations-moral-grounds.html>.

⁴ See, e.g., Josh Nathan-Kazies, *Are Ultra-Orthodox Turning Away from Vaccination?*, FORWARD MAGAZINE, (Sept. 17, 2014), <https://forward.com/news/205801/are-ultra-orthodox-turning-away-from-vaccination/>.

⁵ See, e.g., *Eighty Percent of Acehnese Consider Immunization Haram, Here's the Reason*, Tribunnews.com, (May 3, 2015), <https://www.tribunnews.com/regional/2015/05/03/80-persen-warga-aceh-anggap-imunisasi-haram-ini-alasannya>.

⁶ Gordana Pelcic, et al., *Religious Exception for Vaccination or Religious Excuses for Avoiding Vaccination*, CROATIAN MEDICAL JOURNAL, (Oct. 2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5141457/> ("Modern Buddhists will generally use vaccines to make sure their health is protected. But according to the essential teaching of Buddhism, if the vaccine is derived from any life form its use is debatable. The first of the Ten Buddhist Precepts is 'not taking life.'").

⁷ Nijika Shrivastwa, et al., *Predictors of Vaccination in India for Children Aged 12-36 Months*, NATIONAL LIBRARY OF MEDICINE, (Nov. 27, 2015), <https://pubmed.ncbi.nlm.nih.gov/26615176/> ("After adjusting for state of residence, age, gender, household wealth, and maternal education, additional significant predictors of children's vaccination status were religion," among other factors.).

⁸ See, e.g., Padmananda Rama, *Joining the Herd: What Were My New Age Parents Thinking When They Didn't Vaccinate Me?*, SLATE.COM, (Feb. 19, 2015), <https://slate.com/technology/2015/02/adult-measles-vaccination-child-of-california-new-age-parents-joins-the-immune-herd.html>.

in some circumstances.⁹ Many religions teach adherents to honor the convictions of their individual consciences, to take special care what they put into their bodies, and to regard life as sacred. Many religious traditions take a strong stance against abortion, including vaccines derived from aborted fetal cells. And some faiths oppose medical treatment broadly—for example, Christian Scientists believe that diseases must be healed through prayer alone, and many Amish oppose the use of medical treatments that have arisen out of advances in modern technology. Moreover, in many cases, religious adherents from a single faith tradition can vary in their beliefs, religious exercise, and consequently their approach to vaccination, particularly if the faith tradition allows individuals to interpret religious teachings for themselves.

Many legal provisions protect people of faith. The legal protections available to each person—whether employee, student, or service member—depends on their particular situation. Below we will explain the protections available to all employees under Title VII of the Civil Rights Act of 1964, the protections available to government workers and students at public universities under the First Amendment to the U.S. Constitution, the protections for military service members, and additional considerations.

The most notable of these legal protections is the Bill of Rights to the U.S. Constitution. But the Bill of Right constrains only government actors, not private entities. There are laws that constrain private entities, as well, though in many cases those laws allow private entities the freedom to run their schools or businesses according to those private entities' own beliefs and preferences. At the same time, some students and employees have convinced private entities to voluntarily provide religious exemptions after meeting with

⁹ See also John H. Moxley, III, *Report of the Council on Scientific Affairs: Religious Exemptions from Immunizations*, 7 (1987) (listing religious groups opposed to immunization).

decisionmakers and explaining how these entities' vaccine requirements are creating a religious hardship for the student or employee.

Despite the uncharted nature of the legal landscape we are now traversing, First Liberty will continue to fight for the right of all Americans to freely practice their faith. This toolkit will help anyone seeking a religious exemption from a COVID-vaccine mandate to understand his or her legal rights and to successfully request a religious accommodation, allowing him or her to continue to follow the dictates of faith and conscience.

II. Employees of Private Companies and Government Entities

This section outlines the legal protections for employees of private employers with 15 or more employees and government entities: Title VII of the Civil Rights Act of 1964. (Government employees have additional protections discussed in the next section.)

A. What Title VII Protects

Title VII prohibits employers (private and governmental) that employ 15 or more employees from engaging in discrimination, harassment, or retaliation on the basis of religion. Employers must provide a "reasonable accommodation" of an employee's sincerely held religious beliefs and practices—unless the employer can demonstrate that it is unable to do so without undue hardship on the conduct of the employer's business.¹⁰ An undue hardship is any burden that is more than a minimal burden.¹¹ For example, courts have held that the employer does not have to provide a religious accommodation

¹⁰ 42 U.S.C. § 2000e-2(a)(1), (j).

¹¹ *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63, 84 (1977).

if doing so would be financially costly, compromise workplace safety, decrease workplace efficiency, or require other employees to do more than their share of potentially hazardous or burdensome work.

At the same time, the Supreme Court has held that an employer's proposed religious accommodation was not reasonable when the employer provided a more favorable accommodation to other employees for non-religious purposes.¹² Thus, in some circumstances, if an employer provides certain accommodations for employees for secular reasons, the employer must offer the same or a similar accommodation to religious employees. But also note that, where there is more than one reasonable accommodation that would not pose an undue hardship, the employer is not obligated to provide the accommodation that the employee prefers.

In the context of COVID-19 and vaccines, EEOC Guidance states that an employer should thoroughly consider all possible reasonable accommodations, including telework and reassignment,¹³ and suggests that masking, social distancing, and periodic testing could be within the parameters of reasonable accommodations for unvaccinated employees, depending on the type of work the employee performs.¹⁴

¹² See *Ansonia Bd. of Educ. v. Philbrook*, 479 U.S. 60, 70-71 (1986) ("unpaid leave is not a reasonable accommodation when paid leave is provided for all purposes *except* religious ones . . . [because] [s]uch an arrangement would display a discrimination against religious practices that is the antithesis of reasonableness").

¹³ See *What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws, Title VII and COVID-19 Vaccinations, K.12*, EEOC Technical Assistance Questions and Answers, (Updated on May 28, 2021), <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws#K.12>.

¹⁴ See also *Chenzira v. Cincinnati Child.'s Hosp. Med. Ctr.*, No. 1:11-CV-00917, 2012 WL 6721098, at *4 (S.D. Ohio Dec. 27, 2012) (holding that Title VII could cover a request to be excused from hospital mandatory vaccination policy due to vegan opposition to a vaccine that was animal-tested or contains animal byproducts if plaintiff "subscribe[d] to veganism with a sincerity equating that of traditional religious views," noting her citation to essays about veganism and to Biblical excerpts).

Some courts have held that an employer may violate Title VII when the employer fails to at least consider a request for an accommodation.¹⁵ If an employer states that they will not allow *any* religious accommodations, regardless of the employee's specific situation (not taking into account the specifics of an employee's job assignment and the available accommodations), the employer's vaccine policy may discriminate on the basis of religion in violation of Title VII. Case law on Title VII counsels each employer to make determinations regarding religious accommodations on a case-by-case basis.¹⁶

Although Title VII's religious accommodation provision is usually thought of as relating to dress codes, grooming provisions, scheduling conflicts, or religious expression or practice in the workplace, it has occasionally been applied to individuals seeking an religious exemption from a flu vaccination requirement.

In addition, Title VII protections apply to religious beliefs and practices even if those beliefs and practices are not recognized by any organized religion. The test under Title VII's definition of religion is whether the beliefs are, in the individual's "own scheme of things, religious."¹⁷

¹⁵ See *EEOC v. Arlington Transit Mix, Inc.*, 957 F.2d 219 (6th Cir. 1991); *EEOC v. Ithaca Indus., Inc.*, 849 F.2d 116 (4th Cir. 1988).

¹⁶ Because determinations of burden and hardship must be evaluated on a case-by-case basis, it is possible that some accommodations will be granted and others denied. For example, a hospital may have a stronger interest in requiring the vaccination for a nurse working in a cancer wing with immune-compromised patients than for a physical therapist providing remote services to elderly, homebound clients whom she never sees in person. That said, it may be a reasonable accommodation to transfer the nurse in the cancer wing to a comparable position elsewhere in the hospital.

The case-by-case determination of what is a reasonable accommodation might also reflect whom within the company has been required to receive the vaccination. For example, if only management has been required to receive the vaccination but among the remaining employees unvaccinated individuals are simply asked to wear masks, it will be harder for the employer to argue that accommodating the sincere religious beliefs of a manager who cannot in good conscience receive the vaccination poses an undue burden.

¹⁷ To properly determine whether beliefs are religious under Title VII, courts rely on the seminal Supreme Court decisions interpreting the conscience exemption in the Military Selective Service Act, 50 U.S.C.

When requesting a religious accommodation, the employee need not use any “magic words,” such as “religious accommodation” or “Title VII,” but the employee should provide enough information so that the employer is aware that the employee’s religious beliefs conflict with the employer’s vaccine requirements.

B. Employer Requests for Additional Information and Clergy Letters

Generally, employers should assume that an employee’s request for a religious accommodation is based on a sincerely held religious belief. But sometimes an employer reasonably needs more information about a religious accommodation request. In that case, the employer may ask the employee some follow up questions, and the employee should be willing to discuss his or her religious beliefs.¹⁸ EEOC guidance states that, when determining whether there is a conflict between an employee’s religious beliefs and the employer’s vaccination requirements, it is irrelevant that the employer does not think that the employer’s requirements actually conflict with an employee’s religious beliefs, nor

§ 3806(j). *See, e.g., Redmond v. GAF Corp.*, 574 F.2d 897, 901 n.12 (7th Cir. 1978) (“We believe the proper test to be applied to the determination of what is ‘religious’ under § 2000e(j) can be derived from the Supreme Court decisions in *Welsh v. United States*, 398 U.S. 333 (1970), and *United States v. Seeger*, 380 U.S. 163 (1969), i.e., (1) is the ‘belief’ for which protection is sought ‘religious’ in person’s own scheme of things, and (2) is it ‘sincerely held.’” (quoting those decisions)); *Fallon v. Mercy Cath. Med. Ctr.*, 877 F.3d 487, 490-91 (3d Cir. 2017) (applying same test to Title VII claim of religious discrimination); *Davis v. Fort Bend Cnty.*, 765 F.3d 480, 485 (5th Cir. 2014) (same); *Adeyeye v. Heartland Sweeteners, LLC*, 721 F.3d 444, 448 (7th Cir. 2013) (same); *EEOC v. Union Independiente de la Autoridad de Acueductos*, 279 F.3d 49, 56 (1st Cir. 2002) (same); *see also, e.g.*, EEOC Guidelines on Discrimination Because of Religion, 29 C.F.R. § 1605.1 (stating that EEOC has “consistently applied” this standard to Title VII).

¹⁸ *See Seshadri v. Kasraian*, 130 F.3d 798, 800 (7th Cir. 1997) (holding that a person who seeks to obtain an accommodation by virtue of his religion cannot preclude inquiry designed to determine whether he has a religion); *Chrysler Corp. v. Mann*, 561 F.2d 1282, 1285 (8th Cir. 1977) (observing that the plaintiff “did little to acquaint Chrysler with his religion and its potential impact upon his ability to perform his job”); *see also Redmond*, 574 F.2d at 902 (noting that an employee who is disinterested in informing his employer of his religious needs “may forego the right to have his beliefs accommodated by his employer”).

does it matter whether most people of the employee's faith would agree with the employee's religious beliefs—it is the employee's own religious beliefs that are relevant.¹⁹

In addition, sometimes an employer will ask the employee to submit a letter from the employee's clergy or faith leader to help show the employee's sincerity. If an employer has reasonable doubts as to the sincerity of an employee's beliefs, employees should provide information that addresses an employer's reasonable doubts. In cases where an employee can easily get a letter from clergy, the employee may do so, but is not required. Verification of the sincerity of an employee's beliefs need not take the specific form of a letter from clergy or fellow congregants. In other Title VII cases, courts have accepted verification of religious beliefs from the written testimony from previous supervisors or community members who were aware of the employees' religious practice or belief.²⁰

C. Reasonable Accommodations

As you approach your employer asking for a religious accommodation, you should carefully consider what accommodation you would accept. For example, several employers have accommodated employees who have religious objections to having the vaccine injected into their bodies by instead requiring them to submit to regular testing, temperature checks, physical distancing, and/or masking.

¹⁹ See U.S. Equal Employment Opportunity Commission Compliance Manual on Religious Discrimination, *Section 12: Religious Discrimination, IV Reasonable Accommodation*, (Jan. 15, 2021), <https://www.eeoc.gov/laws/guidance/section-12-religious-discrimination>; see also *Toronka v. Cont'l Airlines, Inc.*, 649 F. Supp. 2d 608, 611-12 (S.D. Tex. 2009) (holding in Title VII case that a moral and ethical belief in the power of dreams that is based on religious convictions, and that this determination does not turn on the veracity of the beliefs).

²⁰ See *United States v. Broyles*, 423 F.2d 1299, 1302 (4th Cir. 1970) (letter from retired Army officer who had known conscientious objector for more than twenty years, and letter from college president who had known him for more than ten years were "[i]mpressive backing" for his claims of sincere religious belief).

In sum, Title VII applies to the vast majority of public and private employers, and it requires that these employers accommodate employees who have a sincerely held religious objection to the vaccination unless doing so would impose an undue hardship on the employer. To receive an accommodation, you should make your request in writing. Sample language can be found at the end of this toolkit.

III. Government Employees and Students at Public Universities

The First Amendment of the U.S. Constitution prohibits federal, state, and local governments from impermissibly burdening the free exercise of religion. The Free Exercise Clause requires government entities to refrain from disfavoring religious exercise and to treat religious exercise as favorably as comparable secular activities. The Constitution protects all those facing a vaccine mandate from a government entity—from workers at state parks, to nurses at the Veterans' Administration, to students at public universities.

Over the course of our history, the United States Supreme Court has heard only two cases involving vaccination laws. Over 100 years ago in *Jacobson v. Massachusetts*, the Court upheld a state smallpox vaccine mandate, but that mandate did in essence offer an exemption for any reason, allowing a person to pay a \$5 fine rather than receive the vaccine.²¹ And in 1922 in *Zucht v. King*, the Court held that states can mandate childhood vaccines for students attending public schools.²²

²¹ 197 U.S. 11 (1905).

²² 260 U.S. 174 (1922).

A. Government Exemptions to Vaccine Requirements

The Supreme Court has never spoken directly to the narrow topic of religious exemptions to government vaccination requirements, but the Court will usually uphold a law that incidentally burdens religious exercise if that law is neutral towards religion and applies generally to all people.²³ However, the Court looks more closely at a rule that allows for secular exemptions while refusing religious exemptions. Such a law is not neutral and generally applicable.

For example, just this year, the Court said that it will evaluate with the most demanding scrutiny any law that provides a mechanism for individualized exemptions.²⁴ If the government allows for the possibility of an exemption in one circumstance, even if the government has never actually granted such an exemption, the government, absent a compelling justification, must allow exemptions in situations involving religious hardship.²⁵ The Court asserted, “[S]o long as the government can achieve its interests in a manner that does not burden religion, it must do so.”²⁶

This standard has already come into play in the COVID context as state and local governments restricted religious gatherings. The Supreme Court said that religious rights remain intact even during a pandemic. In considering restrictions placed on varying activities and individuals, the Court specified that activities are comparable when they

²³ See *Employment Div. v. Smith*, 110 S. Ct. 1595 (1990).

²⁴ *Fulton v. City of Philadelphia*, 141 S. Ct. 1868 (2021).

²⁵ *Id.* at 1877 (“*Smith* went on to hold that ‘where the State has in place a system of individual exemptions, ‘it may not refuse to extend that system to cases of religious hardship without compelling reason.’”) (cleaned up).

²⁶ *Id.* at 1881.

present similar risks²⁷ and precautions that suffice for secular activities suffice for religious exercise too.²⁸

Therefore, the First Amendment prohibits governmental entities from refusing to provide religious exemptions when it provides medical exemptions. The government likely has no compelling reason to refuse religious exemptions while granting medical exemptions, as both exemptions present similar risks: in both cases, a person is remaining unvaccinated. If the government already recognizes that it can achieve its public health goals while allowing medical exemptions, it can also achieve its public health goals while allowing religious exemptions as well.

B. Government Requests for Additional Information and Clergy Letters

While the government may ask for additional information to help it better understand the nature or sincerity of a person's religious objection, a government's determination of whether to grant a religious exemption should not turn upon the government's perception of a particular religious belief.²⁹ This is because "[r]eligious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection."³⁰ Indeed, when a religious person draws a line, "it is not for [the government] to say that the line he drew was an unreasonable one" simply because that person's beliefs "are not articulated with the clarity and precision that a more sophisticated person might employ."³¹ This means that a person's religious exemption

²⁷ See *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021); see also *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 67 (2020).

²⁸ See *Tandon*, 141 S. Ct. at 1297.

²⁹ See *Thomas v. Review Bd. of Ind. Employment Sec. Div.*, 450 U.S. 707, 714 (1981).

³⁰ *Id.*

³¹ *Id.* at 715.

request need not be articulated with the vocabulary or logical framework of a trained bioethicist or theologian. The government must merely ascertain whether the person requesting a religious exemption holds an “honest conviction”³² that God does not want him or her to receive the COVID vaccine.

Furthermore, the government cannot require someone to prove that his or her faith leader, other clergy, or fellow congregants agree with that person’s religious views. The Court has held that “the guarantee of free exercise is not limited to beliefs which are shared by all of the members of a religious sect,” and that the government need not inquire whether someone correctly perceives the commands of his or her faith to merit First Amendment protections for his religious exercise.³³ The government is not an arbiter of scriptural interpretation. Accordingly, the government may not require someone requesting a religious exemption to first show that his pastor or rabbi support and agree with his religious convictions about a vaccine. The First Amendment protects that person’s religious exercise with or without support from clergy.

C. Additional Legal Protections

In addition to the First Amendment, various laws offer additional legal protections for government workers and students. For example, federal workers and government workers within the District of Columbia are protected by the Religious Freedom Restoration Act (RFRA).³⁴ RFRA also constrains all federal actions—including actions by a Presidential Administration, Congress, and U.S. agencies. Many states have religious freedom restoration acts of their own, which often provide some of the strongest state protections

³² *Id.* at 716.

³³ *Id.* at 715-16.

³⁴ 42 U.S.C. § 2000bb-1.

for religious liberty.³⁵ State and local governments must also comply with religious liberty protections in state constitutions.³⁶ Detailing those protections is beyond the scope of this toolkit, so one should consult an attorney to ascertain current law in his or her state.

If you are a public employee seeking a religious accommodation from your government employer, you should formally request one in writing. Please see the materials at the end of this toolkit for some sample language that others have used successfully to request a religious accommodation from their employer. If you are a member of a union you should seek guidance from your union as well.

As to students at public universities, almost all of the colleges that require the COVID vaccine allow students to request medical or religious exemptions.³⁷ Some schools provide alternate arrangements for students, such as remote learning or regular testing. We recommend that you make your request for a religious exemption in writing. See the end of this toolkit for some sample language that others have used successfully to request a religious exemption.

³⁵ Twenty-one states have passed their own versions of RFRA. Those states include: Alabama, Arizona, Arkansas, Connecticut, Florida, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, New Mexico, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, and Virginia.

³⁶ Although they have not passed their own RFRA-style laws, ten additional states have interpreted their state constitutions' religious freedom provisions to protect against laws that incidentally burden religious exercise. Those states include: Alaska, Maine, Massachusetts, Michigan, Minnesota, Montana, North Carolina, Ohio, Washington, and Wisconsin.

³⁷ At least one federal appellate court has concluded that a public university may legally require students to receive a vaccine unless students have a religious or medical exemption. See *Klaassen v. Trs. of Indiana Univ.*, 2021 WL 3281209 (7th Cir. Aug. 2, 2021). The school required students that received an exemption to wear masks and be tested twice a week.

IV. Military Servicemembers

The Department of Defense (DOD) may issue an order to require service members to receive the COVID-19 vaccine.³⁸ Servicemembers, however, retain the right to challenge unlawful orders (*see, e.g., Nuremburg, My Lai*). Whether an order to receive the COVID-19 vaccine is lawful remains an open question, a question that likely would require a court-martial to answer.

A better option may be to request a religious accommodation. Under DODI 1300.17, any servicemember has the right to request a religious accommodation from any regulation, policy, directive, order, etc. A religious accommodation does not challenge the lawfulness of an order, etc., but it seeks to render the order inapplicable to the requestor under the circumstances. There is no requirement that a religious accommodation request include proof of the sincerity of religious belief. All that is necessary is that a servicemember have a sincerely held religious belief that is substantially burdened by the order or directive at issue.

Servicemembers may use the form at the end of this toolkit to request a religious accommodation from the vaccine mandate. In accordance with DODI 1300.17, the Office of the Secretary concerned has 60 days from receipt of a written religious accommodation request to conduct review and final action, and to provide written notification to the requestor. There is no guarantee a request will be granted. In the event a religious

³⁸ But note that a district court granted summary judgment for military personnel and civilian contract employees who had been instructed by the U.S. Department of Defense to submit to an anthrax vaccine without their consent, because the FDA failed to provide a meaningful opportunity for the public to comment, as required by its own procedures for rulemakings. *Doe v. Rumsfeld*, 341 F.Supp.2d 1 (D.D.C. 2004).

accommodation is denied, the servicemember has, in accordance with DODI 1300.17, the right to appeal the denial.

Non-military courts traditionally have been hesitant to intervene in military affairs.³⁹ Courts are concerned that they lack the ability to accurately predict how their intervention between soldiers and their military superiors could erode military discipline.⁴⁰ Likewise, based on similar concerns, the Supreme Court has declined to entertain service-related damages claims under the Federal Tort Claims Act.⁴¹

And, finally, you should note that DOD has no authority over members of the National Guard unless the Guard has been activated by federal authorities pursuant to Title 10 of the U.S. Code. Thus, members of the National Guard remain subject to the authority and orders of their respective state governors.

V. Students at Private Universities

Unfortunately, there are few legal protections available to students at private universities who have a religious objection to a vaccine mandates. Title VII, which does require religious accommodations, protects employees of private universities, not students. Titles IV, VI, and IX, which do apply to most private universities, do not contain a provision prohibiting discrimination on the basis of religion. Still, some states may have laws that

³⁹ See, e.g., *United States v. Stanley*, 483 U.S. 669, 683–84 (1987); *Chappell v. Wallace*, 462 U.S. 296, 300 (1983).

⁴⁰ See, e.g., *Gilligan v. Morgan*, 413 U.S. 1, 10 (1973) (observing that the “complex subtle, and professional decisions as to the composition, training, equipping, and control of a military force are essentially professional military judgments....”).

⁴¹ See, e.g., *Feres v. United States*, 340 U.S. 135 (1950).

prohibit private schools from discriminating against religious students.⁴² And, whether or not required by law, many private schools will have processes for handling requests for religious or medical exemptions that mirror public schools. You should also check your school’s written policies on religious diversity or religious discrimination.

VI. General Tips for Requesting a Religious Accommodation or Exemption

Given all the information above, you may still be wondering, “How do I request a religious exemption or accommodation?”

First, make sure that your objection to the COVID-19 vaccine is a *religious* objection. Religious objections do not discuss the concerns about the science of a vaccine, objections to whether a vaccine has been adequately tested, or any health concerns related to receiving a vaccine. Religious objections focus on religious beliefs and cite religious texts and historic religious practices to explain the objection. Courts have found that religious beliefs tend to address fundamental and ultimate questions having to do with deeper and more “imponderable” issues than the mere belief about whether a vaccine will harm one’s body.⁴³

You will want to respectfully request a religious accommodation (in the employment context) or a religious exemption (in the school context) in writing. An employer or school may have a particular form or procedure for you to use. As you draft your request, be honest about your religious beliefs. You should include an explanation about *why* your

⁴² See also Colombo, Ronald J., When Exemptions Discriminate: Unlawfully Narrow Religious Exemptions to Vaccination Mandates by Private Colleges and Universities (July 26, 2021). Hofstra Univ. Legal Studies Research Paper Forthcoming, available at <https://ssrn.com/abstract=3893802> or <http://dx.doi.org/10.2139/ssrn.3893802>.

⁴³ See *Fallon v. Mercy Cath. Med. Ctr. of S.E. Pa.*, 877 F.3d 487, 492 (3d Cir. 2017).

religious beliefs prevent you from getting this vaccine or vaccines in general. You can include references to scripture or religious authorities for additional support.

If you are concerned about facing a vaccine mandate soon in the future, it may be prudent to send a letter requesting a religious exemption before your employer or school mandates the vaccine. This approach can be helpful because, first, such a request informs your employer or school that some employees or students have religious objections to the COVID vaccine, and second, because your request opens a valuable line of dialogue with your employer or school. You may be able to influence COVID vaccine policies while leaders are still deciding what to do. Some religious objections to the COVID vaccines may be obvious to you, but they are not obvious to employers or school administrators. By patiently explaining your religious objections or offering to make certain precautionary arrangements, employers and schools may be more likely to work with religious employees and students seeking a religious accommodation.

If you would like examples of how to write a request for a religious accommodation, please refer to the samples below.

VII. Frequently Asked Questions

A. General Questions

What is the difference between requesting a religious “exemption” and a religious “accommodation”?

In essence, there is no difference, as both are requesting that your employer or school honor your religious convictions that prevent you from receiving the vaccination. Traditionally, vaccine mandates have been associated with public schools, and many states have granted religious and medical “exemptions” from these vaccine requirements. However, Title VII uses the word “accommodation” when describing the deference employers must show to an employee’s religious convictions. Therefore, it is advisable to phrase the request as a “religious accommodation” request in the employment context so that employers are aware that you are appealing to the protections of Title VII.

My employer previously granted me an exemption from a flu vaccination mandate. Should they also exempt me from the COVID-vaccine requirement?

As you draft your request for a religious accommodation, note your previous exemption request and accommodation. This will serve as additional evidence of the sincerity of your beliefs and may also suggest that accommodating those beliefs will not create an undue burden on the employer.

My employer says that because I previously received a flu vaccination, my religious objection to the COVID-vaccine must not be sincere. How can I respond?

If you have previously received a flu vaccine but have a religious objection to receiving the COVID vaccine, you should consider what differences there are between the two and/or what differences there are between the two situations. For example, if a concern about the COVID vaccine is its relationship to fetal tissue research, is the same true for flu vaccines? Perhaps your awareness of some of the religious issues involved has changed since you received the flu vaccine and your personal religious convictions have changed. Perhaps you have religious concerns about receiving the COVID vaccine but not about receiving the flu vaccine, given your understanding of the science and how God has called you to care for your body. Whatever the situation may be, be prepared to explain why you did not previously object to receiving the flu vaccine but you now have a religious objection to receiving the COVID vaccine.

You could also mention that, as we explained above, “[r]eligious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection.”⁴⁴ Similarly, private employers should defer to employees regarding the sincerity of their beliefs, rather than applying their own interpretation or understanding of religious doctrine.

I thought my governor said that employers can’t require a COVID vaccine in my state. What should I do?

⁴⁴ *Id.*

As of the time of publication, seven states have enacted laws to prevent some types of COVID-19 vaccine mandates or passports.⁴⁵ Most of these laws restrict only state and local governments (not private employers) from requiring vaccination or they specifically exempt health care facilities. In contrast, Montana’s law prohibits employers—including hospitals—from discriminating against a worker based on vaccination status; additionally, Montana employers can’t require vaccinations, and workers don’t have to tell their bosses whether they are vaccinated. Many other states are considering implementing laws that could limit when proof of vaccination may be required.

Explaining individual state laws is beyond the scope of this tool kit, but your state Family Policy Center may be able to point you to additional resources specific to your state.

My government employer is requiring that, with my religious exemption, I take greater precautions than my coworker who was granted a medical exemption. Is this allowed?

The First Amendment requires the government to treat equally both medical exemptees and religious exemptees by imposing the same precautionary measures on both groups. If people that receive medical exemptions do not need to undergo regular COVID tests or wear masks, neither should those who receive religious exemptions. First Liberty recommends review of written policies to ensure that both federal and state government actors are treating exemption recipients similarly.

⁴⁵ *State Lawmakers Submit Bills to Ban COVID-19 Vaccine Mandates and Passports*, National Academy for State Health Policy, (July 29, 2021), <https://www.nashp.org/state-lawmakers-submit-bills-to-ban-employer-vaccine-mandates/>.

Can my employer require that I get a statement from my religious leader affirming my beliefs?

An employer should not require that a spiritual leader validate the sincerity of your religious beliefs. An employer who requests confirmation from a religious leader of a student or employee's religious beliefs risks suggesting a preference for organized, hierarchical religions over other faiths. Such a preference would be religious discrimination. It also reflects a fundamental misunderstanding of how many religious faiths work themselves out in daily life. A church may have specific teachings about how it understands the Bible to apply to a specific situation but allow individuals to determine what it means for them to apply these teachings and live by them. For example, the Catholic church, which is hierarchical, has stated that it is morally permissible to receive the COVID vaccines while it also condemns the research methods used in deriving and/or testing them. Yet the church has also said that it respects the conscientious decisions of individual Catholics who embrace a higher standard by refusing to take the vaccines.

What if my pastor or my religious denomination doesn't share my religious objection to the vaccination?

Your personal religious beliefs can be "sincerely held religious beliefs" even if they do not align with a particular denomination. There are often disagreements within religions about particular ethical issues. The most important point is to be sincere about your own beliefs.

Also, even if your religious leader does not personally hold identical convictions, he or she may still be willing to affirm that your religious beliefs are sincerely held.

What can I do if my exemption request is denied?

If your religious exemption request has been denied or if you have additional questions about your religious liberty rights, please visit First Liberty's website (www.FirstLiberty.org) and fill out the online form to request legal help. Our legal team offers free legal assistance, and our attorneys stand ready to protect religious liberty for you and for all Americans.

B. Questions Applicable to Military Servicemembers

Can DOD issue a direct order for me to take the vaccine?

Yes. Any superior in the military chain of command can issue an order. But service members also retain the right to challenge unlawful orders (*see, e.g., Nuremburg, My Lai*). Whether an order to "take the vaccine" is lawful is still an open question. And it would likely take someone being court-martialed in order to challenge and settle the question. Not necessarily an advisable course of action.

If I am ordered to take the vaccine, do I have to take it?

Not necessarily. The attached religious accommodation request template is a potential mechanism to delay or even prevent such an order being applied to an individual service member. As explained, a religious accommodation does not

challenge the lawfulness of an order, policy, regulation, etc., but it seeks to simply not have that order applied to the requestor under the circumstances.

What happens if my religious accommodation request is denied?

In accordance with DODI 1300.17, you have the right to appeal a denied religious accommodation request.

Do I have to provide proof or an explanation of my religious beliefs?

No. There is no requirement that a religious accommodation request include proof of the sincerity of religious belief. All that is necessary is that a service member have a sincerely held religious belief that is substantially burdened by the order or directive at issue. The attached religious accommodation template satisfies this requirement.

How long does it take for my religious accommodation request to be reviewed and acted upon?

In accordance with DODI 1300.17, the Office of the Secretary concerned has 60 days from receipt of a written religious accommodation request to conduct review and final action, and to provide written notification to the requestor.

VIII. Sample Language for Requesting a Religious Accommodation or Exemption

Below we have included some sample language that others we have worked with have used successfully to request a religious exemption or accommodation.

- Sample A is a general request for a religious accommodation.
- Sample B is a request for an accommodation focused on the teachings of the Catholic church.

If any of the sample language reflects your sincerely held religious beliefs, **please reword the sample into your own words.** (We are sharing this sample language with numerous people and suspect that employers may be more receptive to a request that they can tell reflects an employee's personal thoughts and is not simply a "cookie-cutter" request.)

SAMPLE A – Protestant/General Christian Exemption Request

I am seeking a religious accommodation from _____'s COVID-19 vaccine requirement because of my sincerely held religious beliefs. In 1 Corinthians 6:19-20, the Bible commands Christians to honor God by caring responsibly for our bodies as temples of the Holy Spirit. I believe that receiving any COVID-19 vaccine would violate the Bible's command to honor God with my body because of the involvement of fetal stem cell lines in the COVID vaccines' development (Johnson & Johnson) and testing (Moderna and Pfizer). *See* David Prentice, Ph.D., *COVID-19 Vaccine Candidates and Abortion-Derived Cell Lines*, Charlotte Lozier Institute, June 2, 2021, <https://lozierinstitute.org/update-covid-19-vaccine-candidates-and-abortion-derived-cell-lines/>. My Church teaches that a developing fetus in the womb was created by God and is a life that deserves to be protected. *See, e.g.*, Psalm 139. Therefore, receiving a COVID vaccine would violate my deeply held beliefs about, first, honoring God in caring for my body, and second, advocating for the protection of sacred life. *See* Proverbs 31:8-9, Jeremiah 22:3, James 1:27.

SAMPLE B – Religious Exemption Request for Catholics

As a conscientious and devout Catholic, I request a religious accommodation to _____'s COVID-19 vaccine policy. I believe that my body is a temple of the Holy Spirit and that I have an obligation to honor this God-given gift (1 Corinthians 6:19-20). I believe in the Church's teachings regarding abortion (Catechism of the Catholic Church (2270-2275)), which states that this procedure breaks the fifth commandment (Exodus 20:13, Catechism of the Catholic Church (2322-2323)) and violates the beautiful and sacred formation of a person by God in the womb (Psalm 139 13-16). Furthermore, I believe that the use of cell lines which have been derived from abortions violates the Catholic teaching to respect the dead (Catechism of the Catholic Church (2300)).

The vaccines (BNT162b2 by Pfizer-BioNTech, mRNA-1273 by Moderna, and Ad26.COVS.2 by Janssen) were all manufactured or tested using cell lines derived from an abortion in 1972 (HEK-293) and an abortion in 1985 (PER.C6) (Tostanoski, L. H. et al.; Corbett K. S. et al; Vogel A. B et al). Given my beliefs on my body, abortion, and morally compromised cell lines, I cannot in good conscience accept a vaccine which employed cell lines derived from both of these aborted fetuses.

I recognize that my Church has made various pronouncements by authorities within the Church that ultimately conclude that it is morally licit to take the vaccines despite clear moral condemnation of research methods in deriving and/or testing them. These pronouncements conclude that the use of tissues from aborted children are sufficiently remote from use, thereby avoiding the matter of formal cooperation with evil, which cannot be allowed. However, these same pronouncements also are clear in respecting the conscientious decisions of individuals, allowing individual Catholics to embrace a higher standard by refusing to take the vaccine. *See* Congregation For the Doctrine of the Faith, *Note on the Morality of Using Some Anti-COVID-19 Vaccines*, (December 21, 2020), https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20201221_nota-vaccini-anticovid_en.html (“[P]ractical reason makes evident that vaccination is not, as a rule, a moral obligation and that, therefore, it must be voluntary.”) Thus, there is no moral responsibility to become vaccinated.

Indeed, good reasons exist to pursue a moral path that does not embrace the vaccine. Father Kevin Flannery, S.J., delivered a lecture on the subject in April 2021, and I have attached to this request his paper, “Avoiding Illicit

Involvement With Evil.” Father Flannery agrees that persons might take the vaccines without formally cooperating with evil, but he is also quite clear that vaccine participation should be voluntary, not coerced. He also recognizes strong religious reasons exist to resist using the vaccines.

One such reason involves the avoidance of scandal associated with their use. If Catholics widely use vaccines tainted by morally illicit research involving the tissue of aborted children, there will be no financial penalty on those researchers and pharmaceutical companies who engage in illicit practices because the market demand for their research and products will remain high. Other Catholic scholars have echoed this view, noting that, “The march of science, the treatment it pursues, the political incentives it responds to, none of them are immune from moral witness.” See *To Awaken Conscience*, <https://mailchi.mp/7742dd12483f/statement-of-conscience-to-awaken-conscience> (“We know that trafficking in aborted fetal body parts exists and amounts to an industry. The acceptance of the use of tissues derived in the past does have implications for incentivizing this industry.”)

Father Flannery also identifies another serious reason to avoid the vaccines – the need to respect the dead. In his paper, he notes: “But if respect might reasonably be shown to a possession of a beloved deceased, respect might reasonably be shown also to the cells derived from the cells of a fetus whom we know to be the ultimate source of cells currently being used in order to produce or test vaccines.” (See page 9, attached). While he seems to agree with the conclusion that vaccines ought to be recommended, he also recognizes that “some faithful Catholics ... might object to using the vaccines and that these decisions in conscience must be respected.” (See page 10, attached). Therefore, this protection of conscience accords with the teaching of my Church, as well as scripture. See Mark 8:36 (“What does it profit a man to gain the whole world, but lose his own soul?”).

MILITARY EXEMPTION REQUEST FORM

DATE

MEMORANDUM

From: NAME, RANK

To: Office of the Secretary of the [SERVICE]

Via: [IMMEDIATE COMMANDER]

Subj: REQUEST FOR RELIGIOUS ACCOMMODATION

Ref: (a) DoD Instruction 1300.17 of 10 September 2020

(b) 42 U.S.C. §2000bb-2000bb-4

(c) [CHOOSE RELEVANT SERVICE-SPECIFIC REGULATION

Army Regulation (AR) 600-20

Secretary of the Navy Instruction (SECNAVINST) 1730.8B

Air Force Instruction (AFI) 1-1

U.S. Coast Guard Commandant Instruction (COMDTINST) 1730.4C]

1. Pursuant to the references, I hereby request religious accommodation from any [CHOOSE SERVICE-Army/Navy/Air Force/Marine Corps/Coast Guard] regulation, policy, or duty that requires me to obtain immunization or vaccination against SARS-CoV-2 (Covid-19).

2. My request is based on my sincerely held religious belief, which forbids me from obtaining the Covid-19 vaccine. In accordance with Reference (a), "DoD Components will normally accommodate practices of a Service member based on sincerely held religious belief. Accommodation includes excusing a Service member from an otherwise applicable military policy, practice, or duty. In accordance with Reference (b), if such a military policy, practice or duty substantially burdens a Service member's exercise of religion, accommodation can only be denied if:

(1) The military policy, practice, or duty is in furtherance of a compelling governmental interest.

(2) It is the least restrictive means of furthering that compelling governmental interest.

In applying [this] standard, the burden of proof is placed upon the DoD Component, not the individual requesting the exemption."

3. The U.S. Supreme Court very recently addressed a case in which the government refused to grant a religious accommodation request. In *Fulton v. City of Philadelphia*, the court struck down the government's refusal to grant a religious accommodation request, stating "where [] a system of individual exemptions exists, the government may not refuse to extend that system to cases of religious hardship without a compelling reason." *Fulton v. City of Philadelphia*, No. 19-123, slip op. at 2 (Jun. 17, 2021).

In order to satisfy the requirements set forth in Reference (a) and *Fulton*, the government must demonstrate why it is unable to grant my religious accommodation request despite the fact that it has granted other exceptions to its vaccine requirement. The government must further demonstrate that there are no alternatives to mandatory vaccination that are less restrictive on my sincerely held religious beliefs. Examples of possibly less restrictive means include testing for Covid-19 antibodies that might already be present from previous exposure or infection, allowing for remote or tele-working, or the use of masks.

4. Finally, in accordance with Reference (a), a Service member's expression of such beliefs may not in so far as practicable, be used as the basis of any adverse personnel action, discrimination, or denial of promotion, schooling, training, or assignment.

5. I certify that I understand that any approved or partially-approved accommodation may not be appropriate for future duty to which I may be assigned, including operational, non-operational or training command(s), and may be suspended or withdrawn in accordance with Reference (a) and my Service-specific regulations.

F. M. LAST