

---

## Coates' Canons Blog: An In-Depth Look at Religious Exemptions from COVID-19 Vaccine Mandates

By Diane Juffras

Article: <https://canons.sog.unc.edu/an-in-depth-look-at-religious-exemptions-from-covid-19-vaccine-mandates/>

This entry was posted on October 08, 2021 and is filed under Employment, Featured Posts Related To COVID-19, Miscellaneous

---

An increasing number of employers are making vaccination against COVID-19 a condition of employment. In the near future, the federal Occupational Safety and Health Administration (OSHA) and the North Carolina Division of Occupational Safety and Health (NC OSH) are likely to require most larger employers to adopt a vaccine mandate (see here). Vaccine mandates are lawful, subject only to religious exceptions required by Title VII of the Civil Rights Act of 1964 and medical exceptions required by the Americans with Disabilities Act (ADA). Media reports suggest that employees are asking for religious or religious medical exemptions in significant numbers. An earlier blog post discussed medical exemptions from vaccine mandates (see here). This blog post looks at the religious exemption under Title VII.

### Background

Title VII's prohibition on religious discrimination protects people who belong to traditional, organized religions, such as Christianity, Judaism, Islam, Hinduism and Buddhism. But not only them. It also protects people who have sincerely held religious, ethical or moral beliefs but do not belong to a traditional, organized religion. Religion is broadly defined under Title VII. A religious belief does not require a belief in God or any deity. A sincerely held religious belief can be one held by only a single person.

Title VII's protection of religion requires something more than mere nondiscrimination. Like the ADA, Title VII requires an employer to accommodate an employee's sincerely held religious beliefs, practices and observances unless an accommodation would cause undue hardship. This means an employer may be required to make reasonable adjustments to the work environment that will allow an employee to practice his or her religion. A *bona fide, sincerely held* religious belief that conflicts with an employer policy requiring an employee to be vaccinated against COVID-19 must be accommodated in the absence of undue hardship. One possible accommodation would be exemption from the vaccination requirement, although other accommodations are possible, as discussed below. An employer may require an employee to explain how their religious beliefs prohibit them from being vaccinated, but it cannot require confirmation from a religious leader such as a minister, priest, rabbi or imam.

### What Counts as Religion or Religious Belief?

On one hand, religious beliefs protected by Title VII include beliefs in the existence of a divine power as well as "moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views." See 29 CFR § 1605.1. But in successful claims under Title VII, "religion" has typically concerned ideas about the meaning of life and death, the afterlife and the soul. And in the Equal Employment Opportunity Commission's interpretation, religion is "comprehensive in nature; it consists of a belief-system as opposed to an isolated teaching."

Mere personal preferences, are **not** religious beliefs protected by Title VII. And neither are social, political, or economic philosophies, no matter how deeply held. In *Fallon v. Mercy Catholic Medical Center* (3d Cir. 2017), an employee who sought a religious exemption from a flu vaccine requirement on the basis of his belief that one should not harm one's own body and that the flu vaccine might do more harm than good. He argued that if he allowed himself to be vaccinated, he would violate his conscience as to what is right and what is wrong. The court did not find this to be a religious belief, even if sincerely held:

It does not appear that these beliefs address fundamental and ultimate questions having to do with deep and imponderable matters, nor are they comprehensive in nature. Generally, he simply worries about the health effects of the flu vaccine, disbelieves the scientifically accepted view that it is harmless to most people, and wishes to avoid this vaccine. In particular, the basis of his refusal of the flu vaccine—his

---

concern that the flu vaccine may do more harm than good—is a medical belief, not a religious one. He then applies one general moral commandment (which might be paraphrased as, “Do not harm your own body”) to come to the conclusion that the flu vaccine is morally wrong. This one moral commandment is an “isolated moral teaching”; by itself, it is not a comprehensive system of beliefs about fundamental or ultimate matters.

### **Objection: My Religion Doesn’t Allow Vaccination**

#### ***Few Organized Religions Prohibit Vaccinations***

The vast majority of religions have no theological objections to vaccination in general. For more detailed discussion, see here, here and here. Some religions object to vaccines that contain certain ingredients, such as pork. The COVID-19 vaccines do not contain pork or pig-derivatives. Some Christian denominations have a theological objection or a tradition of not accepting vaccinations, such as faith-healing denominations. But many allow for individuals to make their own choices when it comes to vaccination, such as the Christian Science church and the Dutch Reformed Church (see here and here).

On the specific subject of COVID-19 vaccination, numerous religious leaders have encouraged their followers to get vaccinated. The Southern Baptist Ethics & Religious Liberty Commission has said that it is morally permissible to receive the COVID-19 vaccination and several Southern Baptist theological professors have said that vaccination is “strongly morally advisable.” The Southern Baptist International Mission Board now requires those participating in missions to be vaccinated against COVID-19. The Pope has said, “Thanks to God’s grace and the work of many, we now have vaccines to protect us against COVID-19 . . . . Getting the vaccines that are authorized by the respective authorities is an act of love.” The Mormon Church has also issued a statement calling on its followers to get vaccinated against COVID-19. The Islamic Society of America and the National Black Muslim COVID Coalition, as well as official Islamic religious institutions in both Egypt and United Arab Emirates have declared that COVID-19 vaccination is permitted by Islamic law. All of these organizations have encouraged Muslims to get vaccinated (see here and here).

As noted earlier, however, an employee’s religious beliefs do not have to be based on the teachings of a recognized, organized religion to be protected. Even if an employee has concluded that they should not be vaccinated based on independent religious beliefs, the employee must be accommodated. The test is whether the belief is religious and whether it is sincerely held.

### **Objection: My Religion Prohibits Abortion and the COVID-19 Vaccines Use Fetal Cells**

Some employees may ask for a religious exemption because they are opposed to abortion and they believe that fetal cells derived from abortions have been used in the development and production of the COVID-19 vaccines. While some objections based on the connection between fetal cells and COVID-19 vaccines will be bona fide and exemptions will have to be granted, closer examination into the basis for an employee’s objection may reveal that their request is based on misinformation and that their objection is inconsistent with their willingness to take other vaccines and to use medications that have been developed through the use of fetal cells. The use of fetal cells in the development of prescription and over-the-counter medications is much more widely spread than most people know. In addition, the relationship between the fetal stem cells used in drug development and stem cells harvested from an abortion is much more tenuous than most realize.

#### ***The Role of Stem Cells in Medical Research and Drug Development***

As the National Institute of Health and the Mayo Clinic explain, embryonic or fetal stem cells are ideal for medical research because they can divide and renew themselves over a long time. Fetal stem cells can divide to form more cells called daughter cells. These daughter cells either become new stem cells (self-renewal) or can become specialized cells (differentiation) with a more specific function, such as blood cells, brain cells, heart muscle cells or bone cells. No other cell in the body has the natural ability to generate new cell types.

To test new drugs and vaccines, fetal stem cells are programmed to acquire properties of the type of cells targeted by a drug. In other words, the cells are manipulated in the lab to specialize into specific types of cells, such as heart muscle cells, blood cells or nerve cells. To test a drug to treat heart disease, for example, heart muscle cells could be developed.

---

Tests then may show whether this new drug had any effect on the cells and whether the cells were harmed (see here).

According to the American Medical Association, research with human fetal tissue has led to major research and medical advances, such as the development of the polio vaccine. Fetal tissue has also been used to study the mechanism of viral infections and to diagnose viral infections and inherited diseases. It has been used to develop transplant therapies for a variety of conditions such as Parkinson's Disease.

### ***The Role of Fetal Stem Cells in the Development and Production of the COVID-19 and Other Vaccines***

The Pfizer and Moderna COVID-19 vaccines used cells from a fetal cell line in the development and testing of the vaccines. That cell line descended from an original fetal cell line acquired in the Netherlands in 1973 – it is unknown whether the cells became available as the result of an elective abortion or a spontaneous miscarriage. The development of the Pfizer and Moderna vaccines did not use fetal cells from any other embryo. ***Fetal stem cells are not used in the manufacture and production of the Pfizer and Moderna vaccines.***

The Johnson & Johnson vaccine does use cells from a different fetal cell line in its manufacture. This cell line descends from original fetal retinal cells obtained from an abortion performed in 1985. The Johnson & Johnson vaccine does not use fetal cells from any other embryo. In this vaccine, the fetal cells are used to produce the adenovirus that carries the coronavirus DNA into the vaccine recipient's cells to induce an immune response.

For more on fetal cells and the COVID-19 vaccines, see [here](#), [here](#), [here](#) and [here](#).

### ***Fetal Cells Have Frequently Been Used in the Development of Other Vaccines***

Fetal stem cells have been used in the development and manufacture of numerous other vaccines. To fall within Title VII's protection, *an employee's religious objection to the use of fetal cells in the COVID-19 vaccines must be consistent with their practices with respect to other vaccines whose development has involved the use of fetal stem cells.* Many of the common childhood vaccines that employees themselves have had and that are required for entry to school have been developed using fetal stem cells. These include the MMR (measles, mumps and rubella) vaccines, the chickenpox vaccine, and the polio vaccine. Vaccines in which fetal stem cell lines have been used also include those more typically administered to adults, such as those for hepatitis A and B, shingles and rabies. See [here](#), [here](#) and [here](#). It would be reasonable for an employer to inquire into whether an employee requesting a religious exemption took other vaccines that used fetal cell lines or allowed their children to do so. An inconsistent attitude could be evidence that the employee's religious belief is not bona fide or sincerely held and that the employee is not entitled to an accommodation.

### ***Fetal Cells Have Frequently Been Used in the Development of Commonly Used Medications***

Prescription and over-the-counter medications also use fetal stem cells in their development and manufacture. Arkansas-based Conway Regional Health System developed a list of such drugs and asked its employees who requested a religious exemption from vaccination to attest that they did not and will not use of the drugs on the list. The list includes the following popular formulations:

- Acetaminophen (Tylenol), aspirin and ibuprofen (Advil, Motrin)
- Albuterol (for asthma inhalers)
- Pepto Bismol, Tums, and Maalox (for upset stomachs)
- Prilosec OTC (for GERD or gastroesophageal reflux disease)
- Lipitor, Simvastatin and Zocor (for cholesterol)
- Ex-Lax and Senekot (for constipation)
- Benadryl and Claritin (antihistamines)
- Sudafed, Suphedrine (decongestants) and Tylenol Cold and Flu
- Preparation H (topical hemorrhoid formulation)
- Zoloft (antidepressant); and
- Azithromycin (antibiotic).

For Conway Regional's complete list, see [here](#). By not asking whether an employee used a specific medication and merely asking for an attestation that they did not use any of the listed products, Conway Regional avoided making a

medical inquiry that would be prohibited under the ADA. Employers may want to consider this approach if they think that a significant percentage of those asking for a religious exemption are not sincere but are motivated instead by personal or political considerations.

### **How May Employers Determine Whether Professed Religious Beliefs Are Sincerely Held?**

There has been a great proliferation of online form requests for religious exemptions (for one, see here), letters from pastors in return for church donations (see here and here, for examples), and letters from lawyers who oppose vaccine mandates (for an example, see here). That proliferation means that employers may find it necessary to delve into requests for religious accommodations more deeply than they ordinarily would. The EEOC has said that there is usually no reason to question whether the practice at issue is religious or sincerely held, but that an employer with a bona fide doubt about the basis for the accommodation request is entitled to make a limited inquiry into the facts and circumstances of the employee's claim.

The EEOC has identified four factors that might suggest that an employee's professed religious belief is not, in fact, sincerely held, and therefore not entitled to Title VII protection:

- whether the employee has behaved in a manner markedly inconsistent with the professed belief;
- whether the accommodation sought is a particularly desirable benefit that is likely to be sought for secular reasons;
- whether the timing of the request renders it suspect (e.g., it follows an earlier request by the employee for the same benefit for secular reasons);
- and whether the employer otherwise has reason to believe the accommodation is not sought for religious reasons.

In the context of a claim that vaccination against COVID-19 conflicts with religious beliefs, these factors might take the form of

- receiving other types of vaccines or having one's children receive other vaccinations (inconsistency);
- submitting a request for a religious exemption only after a request for a medical exemption from vaccination has been denied (secular request first);
- previous statements by the employee either in person or on social media expressing health-based opposition or political opposition to the COVID-19 vaccine (not sought for religious reasons).

### **What a Religious Exemption Request Form Might Look Like**

A religious exemption request form need not be complex. An employer may require employees simply to explain how COVID-19 vaccination is inconsistent with their religious beliefs, as the religious exemption form used by Duke Health does (hospitals have been among the earliest employers to require vaccination as a condition of employment and to have developed exemption forms). Although straightforward, the downside to such a form is that the employer may have to go back to the employee for further elaboration if the employer does not think the explanation is detailed enough for it to make a judgment about whether the employee has a sincerely-held religious objection.

At the other extreme is an religious exemption request form like that developed by the University of Pennsylvania (UPenn). The UPenn form begins by asking the employee to describe the sincerely held religious belief their receipt of COVID-19 vaccination. It then goes on to ask whether this religious belief has changed over time and, if so, to explain how it changed, when it changed and why it changed. The third question asks whether this religious belief prevents the employee from receiving all vaccines or only some vaccines. If the answer is that it prevents the employee from receiving only some vaccines, the form asks the employee to specify which vaccines they cannot receive and what is different about them.

The UPenn form then asks whether the employee has received any vaccines over the last five years, whether they received the flu vaccines between 2016 and 2020, and whether they received vaccines other than the flu, such as the Tdap (tetanus, diphtheria and pertussis), MMR and the chickenpox vaccines.

Finally, the UPenn form probes into whether the professed belief is truly a religious belief or whether it is simply a personal belief about vaccination or COVID-19 vaccination that is independent of religion. It asks whether the employee's religious belief derives from an organized religion and if so, asks the employee to identify that religion and when the employee

---

began to practice it and where. For employees who answer “no,” that their religious does not derive from an organized religion, UPenn asks three more questions:

1. Is the religious belief that prevents you from receiving COVID-19 vaccination part of a comprehensive belief system and not simply an isolated idea or teaching?
2. Does your religious belief address fundamental questions regarding things such as life, death, the existence of a higher power, purpose or other imponderable matters?
3. Are there any formal and external signs related to your religious belief, similar to the forms and external signs used by traditional religions – for example, formal services, ceremonies, teachers/leaders/clergy, structure and organization, observation of holidays, symbols or objects, clothing/religious garb, etc.?

Employees who answer “yes” to any of the three questions above, are asked to explain.

At first glance, these questions may seem highly personal and invasive. In fact, it might be hard to believe that an employer could ask them. But these are the very considerations that the EEOC has said an employer may take into account in determining whether the religious belief for which the employee is requesting an accommodation is bona fide and not a subterfuge for indulging a personal preference. In the author's opinion, detailed questions such as these are lawful.

### ***Employers Are Not Required to Honor Exemption Form Letters from Religious Groups***

There have been numerous reports in the media of employees submitting form letters or form statements prepared by churches or law firms in support of their request for a religious accommodation. Such letters or form statements may be considered evidence of an employee's sincerely held religious belief, but they need not be considered conclusive proof. An employer is allowed to ask more detailed questions about the belief, how it relates to other forms of vaccination and about the employee's history of vaccinations. If the objection is related to the use of fetal cells, the employer may ask about the employee's use of drugs in whose development fetal cells played a role.

### **Accommodations for Those with Sincerely Held Religious Objections to Vaccination**

Employers requiring vaccination against COVID-19 must accommodate those who are unable to take any of the authorized vaccines because vaccination conflicts with a sincerely held religious belief. Accommodation could consist of a straightforward exemption from the vaccination requirement. It may, however, take a different form, including having the employee work remotely, requiring the employee to wear a well-fitting mask at all times, frequent testing for COVID-19, reassigning the employee to job duties that require less interaction with other employees or the public, or even putting the employee on an administrative leave without pay until the rate of COVID-19 transmission in the community becomes sufficiently low. As is the case with ADA accommodations, the employer is entitled to choose among equally effective accommodations.

### **Undue Hardship**

Even if the employee's religious belief is sincerely held and qualifies for protection under Title VII, an employer need not accommodate it if the accommodation would constitute an undue hardship.” Under Title VII, courts define “undue hardship” as having more than minimal cost or burden on the employer. This is an easier standard for employers to meet than the ADA's undue hardship standard, which applies to requests for accommodations due to a disability. According to the EEOC, considerations relevant to undue hardship can include, among other things, the proportion of employees in the workplace who already are partially or fully vaccinated against COVID-19 and the extent of employee contact with non-employees whose vaccination status could be unknown or who may be ineligible for the vaccine.

### **Conclusion**

There are three main points to keep in mind in responding to employee requests for a religious exemption from an employer's COVID-19 vaccination requirement. First, employers **must** accommodate those employees whose sincerely held religious beliefs do not allow them to be vaccinated against COVID-19, unless the employer would suffer an undue hardship. Second, to determine whether the employee is entitled to an accommodation, the employer is entitled to a full and complete explanation of the employee's religious belief and how it precludes COVID-19 vaccination. Third, where an

accommodation is called for, the employer chooses the accommodation. It does not have to be to allow the employee to continue performing their job duties unvaccinated but may include reassignment or leave without pay.

## Links

- [www.law.cornell.edu/cfr/text/29/1605.1](http://www.law.cornell.edu/cfr/text/29/1605.1)
- [www.eeoc.gov/laws/guidance/section-12-religious-discrimination#\\_ftn26](http://www.eeoc.gov/laws/guidance/section-12-religious-discrimination#_ftn26)
- [caselaw.findlaw.com/us-3rd-circuit/1882679.html](http://caselaw.findlaw.com/us-3rd-circuit/1882679.html)
- [www.immunize.org/talking-about-vaccines/pdf/religion-vaccines-antibodies-grabenstein-2011.pdf](http://www.immunize.org/talking-about-vaccines/pdf/religion-vaccines-antibodies-grabenstein-2011.pdf)
- [www.vumc.org/health-wellness/news-resource-articles/immunizations-and-religion](http://www.vumc.org/health-wellness/news-resource-articles/immunizations-and-religion)
- [www.vaccinesafety.edu/Religion.htm](http://www.vaccinesafety.edu/Religion.htm)
- [www.christianscience.com/press-room/a-christian-science-perspective-on-vaccination-and-public-health](http://www.christianscience.com/press-room/a-christian-science-perspective-on-vaccination-and-public-health)
- [www.faithward.org/the-emotional-moment-i-got-the-covid-19-vaccine/](http://www.faithward.org/the-emotional-moment-i-got-the-covid-19-vaccine/)
- [www.faithward.org/short-term-mission-trip-planning-toolkit/mission-trip-travel-safety-tips/](http://www.faithward.org/short-term-mission-trip-planning-toolkit/mission-trip-travel-safety-tips/)
- [erlc.com/resource-library/articles/explainer-covid-19-raises-concern-about-abortive-fetal-cells-in-medicine/](http://erlc.com/resource-library/articles/explainer-covid-19-raises-concern-about-abortive-fetal-cells-in-medicine/)
- [www.thepublicdiscourse.com/2020/12/73110/](http://www.thepublicdiscourse.com/2020/12/73110/)
- [www.imb.org/2021/09/08/imb-updates-vaccination-policy-maximize-access-unreached](http://www.imb.org/2021/09/08/imb-updates-vaccination-policy-maximize-access-unreached)
- [www.youtube.com/watch?v=zY5rwTnJF0U](https://www.youtube.com/watch?v=zY5rwTnJF0U)
- [newsroom.churchofjesuschrist.org/article/first-presidency-message-covid-19-august-2021](http://newsroom.churchofjesuschrist.org/article/first-presidency-message-covid-19-august-2021)
- [isna.net/wp-content/uploads/2020/04/Press-Release-NMCTF-COVID-Vaccines-12.22.2020.pdf](http://isna.net/wp-content/uploads/2020/04/Press-Release-NMCTF-COVID-Vaccines-12.22.2020.pdf)
- [www.loc.gov/item/global-legal-monitor/2021-01-22/egypt-and-united-arab-emirates-covid-19-vaccine-ruled-permissible-under-islamic-law/](http://www.loc.gov/item/global-legal-monitor/2021-01-22/egypt-and-united-arab-emirates-covid-19-vaccine-ruled-permissible-under-islamic-law/)
- [medlineplus.gov/stemcells.html](http://medlineplus.gov/stemcells.html)
- [www.mayoclinic.org/tests-procedures/bone-marrow-transplant/in-depth/stem-cells/art-20048117?p=1](http://www.mayoclinic.org/tests-procedures/bone-marrow-transplant/in-depth/stem-cells/art-20048117?p=1)
- [www.ama-assn.org/delivering-care/ethics/research-using-human-fetal-tissue](http://www.ama-assn.org/delivering-care/ethics/research-using-human-fetal-tissue)
- [www.nebraskamed.com/COVID/you-asked-we-answered-do-the-covid-19-vaccines-contain-aborted-fetal-cells](http://www.nebraskamed.com/COVID/you-asked-we-answered-do-the-covid-19-vaccines-contain-aborted-fetal-cells)
- [www.nebraskamed.com/COVID/how-the-johnson-johnson-covid-19-vaccine-works](http://www.nebraskamed.com/COVID/how-the-johnson-johnson-covid-19-vaccine-works)
- [publichealth.lacounty.gov/media/coronavirus/docs/vaccine/VaccineDevelopment\\_FetalCellLines.pdf](http://publichealth.lacounty.gov/media/coronavirus/docs/vaccine/VaccineDevelopment_FetalCellLines.pdf)
- [abcnews.go.com/Health/aborted-fetuses-vaccines/story?id=29005539](http://abcnews.go.com/Health/aborted-fetuses-vaccines/story?id=29005539)
- [columbuscatholic.org/documents/2017/4/Vaccines%20and%20Alternatives.pdf](http://columbuscatholic.org/documents/2017/4/Vaccines%20and%20Alternatives.pdf)
- [www.immunize.org/talking-about-vaccines/vaticandocument.htm](http://www.immunize.org/talking-about-vaccines/vaticandocument.htm)
- [www.npr.org/2021/09/28/1041017591/getting-a-religious-exemption-to-a-vaccine-mandate-may-not-be-easy-heres-whyf](http://www.npr.org/2021/09/28/1041017591/getting-a-religious-exemption-to-a-vaccine-mandate-may-not-be-easy-heres-whyf)
- [www.foundingfreedomslaw.org/covid19](http://www.foundingfreedomslaw.org/covid19)
- [www.washingtonpost.com/religion/2021/09/15/pastor-donate-vaccine-religious-exemption/](http://www.washingtonpost.com/religion/2021/09/15/pastor-donate-vaccine-religious-exemption/)
- [www.nydailynews.com/news/politics/new-york-elections-government/ny-kevin-mccall-covid-vaccinations-religious-exemptions-de-blasio-20210827-antxihsn5fc3av7vy35cwp5wm-story.html](http://www.nydailynews.com/news/politics/new-york-elections-government/ny-kevin-mccall-covid-vaccinations-religious-exemptions-de-blasio-20210827-antxihsn5fc3av7vy35cwp5wm-story.html)
- [www.eeoc.gov/laws/guidance/section-12-religious-discrimination#h\\_79076346735821610749860135](http://www.eeoc.gov/laws/guidance/section-12-religious-discrimination#h_79076346735821610749860135)
- [covidvaccine.duke.edu/sites/default/files/Request%20for%20Religious%20Exemption%20from%20COVID-19%20Vaccine.pdf](http://covidvaccine.duke.edu/sites/default/files/Request%20for%20Religious%20Exemption%20from%20COVID-19%20Vaccine.pdf)
- [coronavirus.upenn.edu/sites/default/files/University%20of%20Pennsylvania%20Religious%20Exemption%20Request%20Form.pdf](http://coronavirus.upenn.edu/sites/default/files/University%20of%20Pennsylvania%20Religious%20Exemption%20Request%20Form.pdf)
- [www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws#K](http://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws#K)