



State of Connecticut COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES

Legal Division ~ 450 Columbus Boulevard, Suite 2, Hartford, CT 06103

Promoting Equality and Justice for all People

Commission on Human Rights & Opportunities Guidance on COVID-19 Vaccine Mandates

Key Points:

- **Employer vaccine mandates are generally legal.**
- **If an employee asks to be exempt from a vaccine mandate due to a religious belief or disability, an employer should explore whether a reasonable accommodation is available.**
- **The global pandemic has created a health care crisis which might make granting exemptions from vaccine mandates an undue hardship on many employers.**
- **Each employer will need to engage in the interactive process with employees making exemption request to determine what is feasible.**

I. Purpose

The purpose of this guidance is to help inform individuals and employers of their rights and responsibilities under Connecticut's anti-discrimination laws in the context of COVID-19 vaccine mandates.¹ This document does not constitute legal advice, nor does it address issues related to FMLA or collective bargaining agreements. While the CHRO

¹ See U.S. EQUAL EMP. OPPORTUNITY COMM'N, [Coronavirus and COVID-19 | U.S. Equal Employment Opportunity Commission \(eoc.gov\)](#), which is instructive as to federal law. We often look to federal law to interpret state law, See e.g., *Levy v. CHRO*, 236 Conn. 96, 671 A.2d 349 (1996) (Although the case involved only Connecticut's disability discrimination law, the Court noted that "we review federal precedent concerning employment discrimination for guidance in enforcing our own anti-discrimination statutes.").

is unable to predict future court decisions on this constantly evolving area of the law, this document puts forth this guidance based on the current state of the law in Connecticut.

Vaccine mandates by both public and private employers² are generally permissible under Connecticut and Federal law subject to reasonable accommodation based on the person's disability or religion.³ On September 9, 2021 President Biden has asked the Department of Labor's Occupational Safety and Health Administration to develop a rule to require employers of 100 or more employees to either require vaccination or produce negative weekly Covid tests.⁴

Generally, employers are required to accommodate qualified individuals with disabilities who are employees or applicants for employment, unless it would be an undue hardship to do so.⁵ A person is qualified for a position if they can perform the essential functions of the position with or without an accommodation.⁶ The obligation to accommodate a qualified person with disabilities includes the employer's obligation to engage in an "informal, interactive process" in order to determine whether the requested

² Executive Order 13D (August 19, 2021), [Executive-Order-No-13D.pdf \(ct.gov\)](#).

³ In a number of lawsuits, plaintiffs unsuccessfully argued that an employer could not mandate an emergency authorized vaccine. See e.g., [Bridges v. Houston Methodist Hospital](#), No. 4:21-CV-01774, 2021 WL 2221293 (Dist. Ct. S.D. Tex. June 1, 2021) (Appeal filed with the Fifth Cir. June 14, 2021); [Legaretta v. Macias](#), No. 2:21-CV-00179 (D.N.M. Feb. 28, 2021); [California Educators for Medical Freedom v. Los Angeles Unified School District](#) No. 21-CV-02388 (C.D. Cal. Mar. 17, 2021). However, that argument is no longer relevant given the fact that the FDA granted full authorization for the Pfizer COVID vaccine on August 23, 2021. See [FDA Approves First COVID-19 Vaccine | FDA](#). The EEOC and the CDC have both recognized that federal law does not prevent an employer vaccine mandate. See [What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws | U.S. Equal Employment Opportunity Commission \(eoc.gov\)](#) and [Workplace Vaccination Program | CDC](#).

⁴ [President Biden's COVID-19 Plan | The White House](#).

⁵ [Curry v. Allan S. Goodman, Inc.](#), 286 Conn. 390 (2008). See also U.S. EQUAL EMP. OPPORTUNITY COMM'N, [Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the ADA | U.S. Equal Employment Opportunity Commission \(eoc.gov\)](#).

⁶ [Curry](#), 286 Conn. at 415-416.

accommodation is feasible or whether an alternative accommodation may exist.⁷ Similarly, employees may also ask for reasonable accommodations based on their religious beliefs.⁸ Employers should reasonably accommodate an employee's religious beliefs unless doing so would constitute an undue hardship.⁹ The undue hardship standard for disability cases and religious accommodation cases is discussed in Parts IV and V of this document.

II. History of Vaccine Mandates

Compulsory vaccination has a long history of permissibility in both state and federal court. In 1894, the Connecticut Supreme Court upheld a statute that permitted school districts to mandate vaccines.¹⁰ The Court found that the statute did not violate either the state or federal constitutions.¹¹ In 1905, the United States Supreme Court weighed in on a similar statute in Massachusetts permitting the local health boards to require smallpox vaccinations.¹² The Court, in upholding the law, said, “[w]e do not perceive that this legislation has invaded any right secured by the Federal Constitution.”¹³ Both decisions rested on the state's police power.¹⁴

The power of the state and federal governments to limit or regulate one's religious practices for the protection of society has long been recognized. Section 3 of the First Article of the Connecticut Constitution explicitly provides such an exception: “the exercise

⁷ Id. at 416.

⁸ Williams v. Commission on Civil Rights, 28 Conn. Supp. 341 (1969), aff'd 158 Conn. 622 (1969). See also U.S. EQUAL EMP. OPPORTUNITY COMM'N, [What You Should Know: Workplace Religious Accommodation | U.S. Equal Employment Opportunity Commission \(eeoc.gov\)](https://www.eeoc.gov/what-you-should-know/workplace-religious-accommodation).

⁹ Knight v. Connecticut Dept. of Pub. Health, 275 F.3d 156, 167 (2d Cir. 2001).

¹⁰ Bissell v. Davison, 65 Conn. 183, 32 A. 348 (1894).

¹¹ Id. at 350.

¹² Jacobsen v. Commonwealth of Massachusetts, 197 U.S. 11 (1905).

¹³ Id. at 38.

¹⁴ Id. at 25; Bissell, 32 A. at 349.

and enjoyment of religious profession and worship, without discrimination, shall forever be free to all persons in the state; provided, that the right hereby declared and established, *shall not be so construed as . . . to justify practices inconsistent with the peace and safety of the state.*” (emphasis added). The U.S. Constitution has similarly been found to allow for government regulation. “The [First] Amendment [to the United States Constitution] embraces two concepts,—freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be. Conduct remains subject to regulation for the protection of society.”¹⁵

The power of the government to regulate religion, however, is limited. In 1993, Connecticut passed Conn. Gen. Stat. § 52-571b, known as the Connecticut Act Concerning Religious Freedom. This law prevents the government from burdening a person’s exercise of religion *unless* the government can show the burden is the least restrictive means of furthering a compelling government interest.¹⁶ The enactment of Conn. Gen. Stat. § 52-571b did not prohibit the government from burdening religious practices at all. Rather, § 52-571b “restor[ed] the strict scrutiny test for governmental burdens on religious practices.”¹⁷ Government vaccine mandates have historically passed that test.¹⁸ Protecting public health has consistently been upheld as a compelling

¹⁵ Cantwell v. State of Connecticut, 310 U.S. 296, 303-304, 60 S. Ct. 900 (1940).

¹⁶ Conn. Gen. Stat. § 52-571b

¹⁷ Trinity Christian School v. CHRO, 329 Conn. 684, 699 (2018).

¹⁸ Recent Covid-19 vaccine mandate litigation has followed that trend. See e.g., Wade v. University of Connecticut Board of Trustees, No. 3:21-cv-00924 (D. Conn. Jul. 6, 2021)(complaint dismissed); Mary Maxwell v. U.S. Sec’y of Def. Chris Miller., No. 20-CV-1193-PB, 2021 WL 1396634, at *2 (D.N.H. Jan. 14, 2021) (complaint dismissed), Bridges v. Methodist Hospital No. 4:21-CV-01774, 2021 WL 2221293 (Dist. Ct. S.D. Tex. June 1, 2021) (complaint dismissed, plaintiffs filed appeal to Fifth Circuit),

governmental interest as recently as August 27, 2021, when a Massachusetts court upheld vaccine mandates for students at the University of Massachusetts.¹⁹

Compulsory vaccination mandates from private employers are subject to a different standard of review, but the Connecticut Supreme Court has found that “employer[s] ought not to be forced to accommodate each of the varying beliefs and practices of his employees.”²⁰ However, Title VII of the Civil Rights Act has long required employers to make reasonable accommodations, short of undue hardship, for employees’ religious practices.²¹

III. Definition of Disability and Religious Beliefs

Requests for accommodation, such as a request for an exemption from a mandatory vaccine requirement, must generally be based on an individual’s disability or religion.²² In looking at whether an exemption is permissible, one must first demonstrate that their condition or belief qualifies under these two categories for protection.

Many medical conditions are protected as physical disabilities under our state’s antidiscrimination laws. Connecticut law defines disability more broadly than federal law and was meant to cover as many people as possible.²³ Connecticut defines physical disability as involving a chronic condition.²⁴ Courts have interpreted “chronic” to mean a

¹⁹ Hunter Harris & Cora Cluett, Plaintiffs v. University of Massachusetts, et al., No. 21-CV-11244-DJC, 2021 WL 3848012 (D. Mass. Aug. 27, 2021).

²⁰ Corey v. Avco-Lycoming Division, 163 Conn. 309, 322 (1972).

²¹ 42 U.S.C. § 2000e(j); See also Trans World Airlines, Inc. v. Hardison, 97 S.Ct. 2264, 432 U.S. 63 (1977).

²² U.S. EQUAL EMP. OPPORTUNITY COMM’N, [What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws | U.S. Equal Employment Opportunity Commission \(eoc.gov\)](#)

²³ Beason v. UTC, 337 F.3d 271, 276-280 (2003).

²⁴ Conn. Gen. Stat. § 46a-51(15).

condition with a long duration or that is recurring in nature, rather than an acute condition.²⁵ Chronic does not mean permanent.²⁶ Someone with a mental disability is defined under Connecticut law as “an individual who has a record of, or is regarded as having one or more mental disorders” as defined by the American Psychiatric Association’s DSM Manual.²⁷ Accommodations may be granted for either mental or physical disabilities.²⁸

While religious beliefs have a similarly expansive definition, not all beliefs are protected by statute or the Constitution as religious. Personal preferences, philosophical or moral beliefs, or non-religious ideologies are not protected belief systems and cannot form the basis for a request for religious accommodation.²⁹ For example, in Fallon v. Mercy Catholic Med. Ctr. of Se. Pa., an employee objected to the flu vaccine on the grounds that he believed “one should not harm their own body and the... the flu vaccine may do more harm than good.”³⁰ The court held that belief to be a personal belief rather than a religious one as it did not “address fundamental and ultimate questions” that could form the basis for an exemption request.³¹ Instead, it is only religious beliefs that are protected.³² What constitutes a religious belief can often be difficult to determine. There

²⁵ See e.g., Gilman Brothers Co. v. CHRO, No. CV-95-0536075, 1997 WL 275578 (Conn. Super. Ct. May 13, 1997).

²⁶ Caruso v. UTC, 393 F. 3d 66 (2d Cir. 2004).

²⁷ Conn. Gen. Stat. Sec. 46a-51(20).

²⁸ Curry, 286 Conn. at 408.

²⁹ Fallon v. Mercy Catholic Med. Ctr. of Se. Pa., 877 F.3d 487, 492 (3d Cir. 2017)

³⁰ Id.

³¹ Id.

³² Id.

are limits on what an individual can claim as a religious belief and employers are entitled to a certain degree of skepticism.³³

It is important to note that there is no requirement that religious beliefs be a part of a traditional religious system in order to be protected.³⁴ A belief is “religious” for purposes of anti-discrimination law as long as that belief “occupies a place in the life of its possessor parallel to that filled by... God.”³⁵ This does not require adherence to any sort of traditional, organized religion nor even that the beliefs be shared by any other individual.³⁶ The beliefs do not need to “be acceptable, logical, consistent, or comprehensible to others.”³⁷ Indeed, the belief does not even have to be theistic as atheism has also held to be protected as a religious belief system. If the beliefs concern the “ultimate ideas” about “life, purpose, and death,” courts will generally find that the beliefs in question are religious in nature and therefore warrant protection.³⁸

IV. Vaccine Exemption Request for Reasonable Accommodations

Should an employer decide to implement a COVID-19 vaccine mandate, they may encounter requests for medical or religious reasonable accommodation from employees who wish to be exempt from receiving the vaccine. The employer has an obligation to enter the interactive process and determine what, if any, reasonable accommodations

³³ See Adeyeye v. Heartland Sweeteners, LLC, 721 F.3d 444, 451 (7th Cir. 2013) (“If the managers who considered the request had questions about whether the request was religious, nothing would have prevented them from asking [the employee] to explain a little more about the nature of his request [The] law leaves ample room for dialogue on these matters.”)

³⁴ United States v. Seeger, 380 U.S. 163, 166, 176 (1965)

³⁵ Id.

³⁶ Thomas v. Rev. Bd., 450 U.S. 707, 714 (1981)

³⁷ Id.

³⁸ United States v. Meyers, 906 F. Supp. 1494, 1499 (D. Wyo. 1995)

can be made.³⁹ This does not mean that any request seeking a vaccine exemption accommodation must necessarily be granted, even if that request is accompanied by a medical note or a letter from a religious clergy person.⁴⁰

Employers only need to provide *reasonable* accommodations. An employee bears the initial burden to show that an accommodation is reasonable.⁴¹ Employers have an obligation to provide a safe working environment to all employees and need not bear an undue burden to accommodate a request for accommodation. Due to the transmissibility of COVID-19 and the virus's potentially deadly impact, some employers may justifiably decide that it is not reasonable to exempt an employee from a policy enacted to protect the safety of workers and the public during a global pandemic.⁴² That being said, reasonableness will be judged on the particular facts of a case. There may be instances where employees work in solitude or mitigation tools such as personal protective equipment (PPE), remote work, or alternative work schedules may make the accommodation reasonable.

V. Direct Threat and Undue Hardship

Even if an employee's request to be exempt from a vaccine mandate is deemed reasonable, the employer is still allowed to allege a defense of undue hardship. The COVID-19 vaccine poses a unique dilemma in the undue hardship

³⁹ Curry, 286 Conn. at 925 (2008); 42 U.S.C. § 2000e et seq (1964)

⁴⁰ Festa v. Bd. of Educ. of Town of E. Haven, 145 Conn. App. 103, 116, cert. denied sub nom. Festa v. Bd. of Educ. of Town E. Haven, 310 Conn. 934 (2013)(employer is allowed to ask for additional information when presented with a vague and non-specific medical note accompanying a request for accommodation.

⁴¹ Curry, 286 Conn. at 925.

⁴² See, Hurdle v. DOC, CV-20-5000647S, 2020 WL 5540600 (Aug. 17, 2020).

analysis. Employers are not required to accommodate individuals who pose a “direct threat” or “a significant risk to the health or safety of others that cannot be eliminated by the reasonable accommodation.”⁴³ People who are unvaccinated for COVID-19 may likely impose such a risk.⁴⁴ There are other reasons employers may decide to institute such a mandate, including but not limited to, avoiding unnecessary illness among employees, avoiding employees needing to quarantine due to COVID-19 exposure, providing employees a level of safety at work, avoiding disruptions or closures of the business, assuring customers of their safety, and/or being a good corporate citizen. Whether someone’s request for an accommodation poses an undue hardship on the employer can be both financial and health related.⁴⁵ As the virus spreads from person to person in close contact, an employer must necessarily evaluate how close in contact a non-vaccinated person will be to others. Other considerations include how many people are vaccinated, whether they work with an unknown population, the rate of transmission in the area, etc.⁴⁶

Even if the unvaccinated individual does not pose a direct threat due to mitigation efforts like wearing PPE, minimizing the person’s contact with other people and frequent COVID-19 testing, an employer is still entitled to determine whether granting the exemption from the COVID-19 vaccine mandate poses an undue burden on it. The analysis of whether a disability related accommodation poses an undue hardship is fact

⁴³ Knight v. CT Dept. of Public Health, 275 F. 3d 156 (2d Cir. 2001).

⁴⁴ CENTERS FOR DISEASE CONTROL AND PREVENTION, [Workplaces and Businesses | COVID-19 | CDC](#)

⁴⁵ See Williams, 28 Conn. Supp. at 341 (employer’s refusal to permit Sabbath observer to absent herself on Saturdays did not constitute religious discrimination under state law).

⁴⁶ U.S. EQUAL EMP. OPPORTUNITY COMM’N, [What You Should Know: Workplace Religious Accommodation | U.S. Equal Employment Opportunity Commission \(eoc.gov\)](#)

intensive, requiring an employer to show a significant difficulty or expense. The analysis should be based on an individualized assessment of whether the specific accommodation requested would pose a significant or extreme difficulty for the employer. Considerations an employer may take into account when making that decision include the nature and cost of the accommodation, the financial resources of the employer, its size, the type of facility, and the impact the accommodation would have on the operations of the facility.⁴⁷ In the case of a COVID-19 vaccine mandate, there are certainly times this undue hardship may be met given the nature of how unvaccinated employees may significantly impact a business as discussed above.

The law provides a different analysis for determining whether an accommodation request is an undue burden in the religious context. An employer need not provide an accommodation based on a religious belief if it would need to bear more than a *de minimis* cost or burden.⁴⁸ In the face of a global pandemic, many businesses can meet this low standard and deny a requested accommodation on the grounds that it poses an undue burden.

VI. Conclusion

Employer vaccine mandates are legal if they allow for disability-related and religious exemptions. Employers should engage in the interactive process to determine whether there is any feasible way to accommodate employees with these types of requests.

⁴⁷ Id.

⁴⁸ Id.