**Americans with Disabilities Act (ADA) and Title VII (Religious) Accommodations Interactive Process**

*Accommodations requests are very fact specific so please keep in mind this is just a general framework. Specific steps and language depend on the nature of the request and your individual company analysis of reasonable accommodation up to an undue hardship.*

1. The first step is to **Recognize the Request**.

This might sound obvious, but employees do not need to use any particular words, phrases or forms when requesting an accommodation. Managers and supervisors should understand how to recognize a request for accommodation and who to relay the information to within the company.

A request generally includes (1) a religious conviction or a medical issue – may be mental, which results in (2) an inability to perform the essential functions of their job. This could mean they need time out of work (leave), not just on the job accommodations.

1. This step initiates the **Interactive Process**.

This includes a conversation with the employee to gather information, such as doctor’s notes or religious documentation, if applicable. ADA request/approval forms and medical request for information forms are located in the [ADA toolkit](https://letscatapult.org/toolkits/americans-with-disabilities-act-toolkit/). Catapult offers religious and ADA accommodation request forms for vaccination in our [COVID toolkit](https://letscatapult.org/toolkits/covid-and-pandemic-toolkit/). There are **three** people involved in this process - the employee, his or her health care provider or religious leader (if applicable), and the employer.

They will share information about the nature of the disability or religious belief and the limitations on job duties (e.g. receiving an employer-required vaccination). The purpose of this discussion is to determine what (if any) accommodations may be needed. Once a supervisor has identified a request for accommodation, they should have HR connect with the employee. The supervisor does not need to know (for example) what religion or what condition is involved; however, they will be needed to discuss potential accommodations.

1. This entire process – the request, the information received, and the conversation(s) should be **Documented** – including the next phases of **Choosing and Implementing Accommodations**.
2. Once you’ve received all the relevant information and feel like you have a good handle on what is being requested and any supporting documentation you should begin your analysis by **Exploring Options**.

For example, with a vaccine exemption request, possible accommodations listed in the EEOC’s guidance include wearing a face mask, social distancing, working a modified shift, submitting to regular COVID testing, remote work, or reassignment to a vacant position for which the employee is qualified. Unpaid leave of absence might also be an option. Again, the employee should be involved in suggesting accommodations. The employer will need to determine which accommodation(s) satisfies their policies and procedures and then implement the accommodation, barring an undue hardship (see below)

1. Lastly (and especially in the fluid age of COVID) you will need to continually **Monitor** the accommodations process. This can be done by creating check in systems to make sure accommodations are still reasonable without presenting an undue hardship, and that employees given accommodations are still following them. It is also important to check in to ensure managers are still successful in implementing and monitoring accommodations as well.

**What is an Undue Hardship under the ADA?**

Undue hardship under the ADA is an incredibly high bar. It is evaluated on a case-by-case basis per employer and a lot of times comes down to finances. In addition to cost, the EEOC evaluates undue hardship relative to if an accommodation is “unduly extensive, substantial, or disruptive, or would fundamentally alter the nature or operation of the business.” Undue hardship for religious purposes will be discussed in the next session. If considering declining an accommodation, consult with Catapult or a legal advisor.

**Religious Accommodations**

While all accommodation cases are gray, the religious ones tend to give employers more trouble. Typically, with accommodations requests employers are not advised to spend too much effort on determining whether something is a disability or is a sincerely held religious belief. Rather, they should proceed directly to “Can we accommodate?” However, the COVID age has brought about questionable basis for religious accommodation requests to either not be vaccinated or tested.

Disabilities, or medical conditions, are rather easy to substantiate – either they are visible, or you receive a doctor’s certification. But an employee’s sincerely held religious belief might not necessarily be tied to an organization or a building. Sincerely held religious beliefs can also be different among same faiths, or subsets. For example, with the Catholic faith, Pope Francis approves of and encourages COVID vaccination, while Bishop Strickland supports everyone’s right to choose and is against vaccination mandates. Therefore, an employee’s religious conviction might not directly tie in with any particular religious leader.

Religious beliefs include theistic beliefs (for example those that include a belief in God) as well as non-theistic “moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views.” Religion typically concerns “ultimate ideas” about “life, purpose, and death.” Social, political, or economic philosophies, as well as mere personal preferences, are not “religious” beliefs protected by Title VII. If on the face the request is a religious or spiritual one, then there is no need to probe. If someone simply says they “don’t trust the politics behind it”, then that is not a religious request.

As with ADA accommodations, employers still must have a conversation with the employee requesting a religious accommodation to understand the request and determine what type of documentation may or may not be appropriate, and then a reasonable accommodation should be made, unless it is an undue hardship. Under Title VII, the undue hardship defense to providing religious accommodation requires a showing that the proposed accommodation in a particular case poses a “more than de minimis” cost or burden.

Prior to and during this conversation employers need to be incredibly mindful to not make any assumptions, or provide their own opinions, instead letting the employee do most of the talking.

This conversation is a chance to get a feel for this person’s sincerely held religious belief. The EEOC does have a four-factor test that can be used very carefully in analyzing employee’s religious beliefs. Consider:

1. Whether the employee has knowingly and objectively acted in a way that is inconsistent with the claimed belief;
2. Whether the employee is seeking a benefit or an exception that is likely to be sought for nonreligious reasons; (e.g. not working on Saturdays)
3. Whether the timing of the request is questionable (for example, because it follows closely on the heels of the same employee's request for the same benefit for different reasons); and
4. Whether the employer has other reasons to believe that the employee is seeking the benefit for secular reasons.

Once again, if considering rejecting a request altogether, contact legal counsel or a Catapult advisor.

The EEOC’s Questions and Answers site on Religious Discrimination in the Workplace can be found here.

<https://www.eeoc.gov/laws/guidance/questions-and-answers-religious-discrimination-workplace>