

## Questions and Answers regarding Approvals or Denials of CV-19 Vaccine Religious Exemptions:

The following information is being provided to you by an experienced Human Resources manager. It is not legal advice, but may be useful information to help you through the process of applying for – or dealing with a denial of – your religious exemption request from your employer.

What happens after you have requested a religious exemption accommodation?

### **Company approves your religious exemption:**

1. Get a copy of the approval in writing.
2. Understand what your accommodations are (masking, working remotely, periodic testing, etc.).

### **Company asks for additional information regarding your religious exemption:**

1. Under Title VII, your company is obligated to engage in an “interactive active” process with you to determine what a “reasonable accommodation” would be if you did not already request one that was already granted. You should engage in these discussions and document them on your end.
  - a. You need to decide for yourself what you are willing to do to be accommodated. Religious exemptions are not a “get out of doing anything” pass. Instead, it is an accommodation for what you cannot do because it is contrary to your deeply held religious beliefs. Some examples of accommodations offered might be:
    - i. Wearing a mask
    - ii. Working remotely
    - iii. Regular testing
    - iv. Moving your office
    - v. Distancing
    - vi. Extra hygiene practices
  - b. If you are not willing to do any of these accommodations, your exemption might be denied and you will likely be placed on a leave or potentially terminated.
2. The company can ask for clarification about your religious beliefs (e.g., if you did not convey what higher power you believe in or why your beliefs prevent you from getting the job, they can ask for those details. They **CANNOT** question if your beliefs are valid. If they start to question the validity of your beliefs:
  - a. Stop the conversation politely and firmly - if you have retained an attorney, this is when you will want to get them involved. Some examples of how to stop the conversation:
    - i. “Are you questioning the *validity* of my sincerely held religious beliefs?”
    - ii. “I have already provided you with information about my sincerely held religious beliefs/convictions; these are personal and private to me and do not feel comfortable speaking further about them at this time.”

- iii. “What is the reason you are questioning my sincerely held religious beliefs?”
  - iv. “I would prefer to focus on the **interactive process** to determine a reasonable accommodation for my sincerely held religious beliefs.”
- 3. The company cannot require additional information from a religious leader or ask if you belong or attend a church, temple, synagogue etc. You are NOT required to provide a supporting note from your pastor, priest, etc. If they ask for such a letter, and you do not want to provide one, tell them that the law does not require you to provide this.
- 4. If they still insist on more information, additional forms, or letters of clarification from a religious leader, it may be time to consult with an attorney. Feel free to tell them that too. “I would like to review your request with my legal counsel before providing the requested additional information.”

**What to do if your Company denies your Religious Exemption:**

*You will need to decide if you want to fight this and how far you will want to go to fight this - you will likely have to have an attorney to take legal action. Once a religious exemption request has been denied, it is difficult to give exact steps that you should take because each company will handle these situations differently. Here are some common ways companies have been handling these cases and some steps you may be able to take depending on the situation.*

- 1. DO NOT QUIT - if you quit you will not have as strong of a legal claim, and it will be harder to claim Unemployment.
- 2. Ask them to tell you in writing why your request for religious exemption is being denied. This could be useful for later legal action.
- 3. Ask them how to file an appeal – this should be offered but not all companies are going to.
  - a. The company may tell you that you can send your request to an appeal committee or management – Ask them if your original request can be sent – they may allow this or ask for additional details.
  - b. If they ask for additional information, ask them “What is the purpose for requesting additional information” and get very clear what information they want. If they want you to fill out a form - we recommend that you attach a letter with information instead. Again, you do not have to belong to an organized religion, nor do you have to produce a letter from your religious leader although you may do so if they are willing to write you one.
  - c. Same as writing your original request follow-up appeals may provide additional information / fill in the gaps by answering the following questions in more detail then perhaps your original request provided:
    - i. Who do you believe in? (in California you must believe in a “higher power”)
    - ii. What is your religious background – how were you raised, how have your beliefs evolved.?
    - iii. What do you do everyday/week/year to practice your religion? Ex:
      - 1. Go to church, temple synagogue etc.

2. Meditate
  3. Observe specific holidays
  4. Practice specific ceremonies
  5. Wear certain dress
- iv. How does getting the job go against your religious beliefs?
    1. Do not argue science;
    2. If talking about ingredients be broad "I can not knowingly use a product that uses \_\_\_\_\_ in the ingredients, manufacturing of or testing of"
    3. This is a good place to quote scripture or other religious text/teachings to tie specifically to your religious beliefs.
  - d. Ask them how long the appeal process takes, continue to perform your job unless they tell you they are placing you on a leave while they review your appeal (see leave steps in next section).
  - e. Document all communication and processes.
  - f. If appeal is denied ask for reason for denial in writing.
4. If you are unable to appeal or your appeal is denied, ask what next steps are.
    - a. They may place you on Leave (most likely unpaid). If this is the case:
      - i. Get this in writing;
      - ii. Request under what leave policy you are being placed on for your leave (get copy of your Company's handbook);
      - iii. Make sure you understand what your rights to ongoing health and other benefits are under this leave - they must show you the policy that governs your leave;
        1. If your job is being held for you to return from leave, then generally benefits must be continued; however, you will still be responsible for your portion of the health benefits payments - make sure these are made timely and that you know to whom you should remit payment;
        2. Some company policies allow them to convert you to COBRA after a certain amount of time. Find out what timeframe this is, they MUST offer you COBRA.
    - iv. Companies must notify you in writing that your status is being changed to leave and they must notify you of the benefits available to you while on leave (benefits may vary from company to company).
    - v. Ask them about unemployment insurance since your hours are being cut. They need to provide you with this information *\*See Unemployment section below for additional information.*
    - vi. If you are placed on leave, at least once a week email them;
      1. Asking if: they are now able to accommodate your sincerely held religious beliefs;
      2. Telling them: you are ready, willing and able to return to work and you would like to engage in the interactive process for accommodation.

- b. They may ask you to resign.
  - i. Decline and ask them: “Are you asking me to resign because of my sincerely held religious beliefs?” (do this in writing if possible)
  - ii. Tell them: “I would like to engage in the interactive process to determine a reasonable accommodation for my sincerely held religious beliefs. I am ready, willing and able to accept available work.”
- c. They may terminate you.
  - i. If this is the case you will need to retain an attorney for further action.
  - ii. Ask them for the reason for termination – get this in writing.
  - iii. Do not sign any termination documentation - it is required they give you many documents regarding your termination and benefits, but it is not required that you sign anything! Some documents that should be included are:
    - 1. Termination Notice Pursuant to Provisions of Section 1089 of the California Unemployment Insurance Code - this must be in writing;
    - 2. Information about continuation of health benefits (COBRA) - if offered by your company;
    - 3. HIPPA Notice from CA Department Health Care Services (DHCS) - DHCS 9061;
    - 4. Information about unemployment benefits:
      - a. EDD Benefits for the Unemployed Booklet - DE 2320
      - b. Unemployment Insurance General Information document - DE 2320M
    - 5. Information regarding your other benefits (if any) such as:
      - a. 401(k) (including how to withdraw or roll over funds and Summary Plan Description (SPD) document)
      - b. Section 125 Plan – Flexible Spending Account / Dependent Care Account (FSA/DCA)
      - c. Pension Plans
      - d. Life Insurance
      - e. Supplemental Insurance Plans
  - iv. You must be paid in full for all money owed on the day of your termination including: all unused PTO or Vacation Time (sick time does not have to be paid out), reimbursements for mileage or other business expenses, commissions earned and owed, bonuses earned and owed.
    - 1. Checks must be a LIVE check available to you on the day of termination at the location of termination.
    - 2. Checks can only be mailed to you with your written consent.
    - 3. Checks can only be direct deposited to you with your written consent and MUST be available to you in full on the day of your termination (i.e., you can go to the bank and withdraw the check amount in full).

- v. Make sure that you turn in all company owned property and repay any loans owed by you to the company in full so that you do not owe the company anything.
  - vi. File for unemployment *\*See additional information below.*
- 5. File a complaint of religious discrimination with your HR department - this will require them to investigate your complaint and document their findings even if you are not employed.
  - a. You can do this if they place you on leave, terminate you or even if you are harassed or discriminated against because of your sincerely held religious beliefs.
  - b. Cooperate with their investigation.
  - c. Tell them the resolution you want is to be reinstated to your position with a reasonable accommodation for your sincerely held religious beliefs in an environment free of harassment and discrimination.
  - d. Retain a copy of your company's Harassment and Discrimination Prevention Policy.
- 6. File an EEOC discrimination on the basis of religion claim:
  - a. Additional information and instructions can be found on the EEOC website
    - i. <https://www.eeoc.gov/federal-sector/filing-formal-complaint>
- 7. Retain an attorney: (CHD-CA may be able to provide you with a lead list of attorneys who may be willing to take on these types of cases – you must go through our Intake process on our CHD-CA website under School or Employer Mandates and speak to a member of our intake committee first):
- 8. Good things to have on hand for an attorney or claim:
  - a. Company policy and communication regarding vaccination mandate (the actual policy, not email communication about the policy);
  - b. All correspondence and documents regarding your religious exemption request;
  - c. Copies of your performance reviews;
  - d. Keep a written log/journal of any discriminatory practices your company has made to employees or customer/patients/clients;
    - i. If they have done anything illegal, consider reporting them to the appropriate authority - this will give you whistleblower status;
  - e. Pay Stubs and Timecards:
    - i. Many people will have the ability to add on a wage and hour claim to their discrimination claim, your attorney will review this with you to determine whether you have been paid correctly during your time of employment. Examples:
      - 1. Were you classified correctly in regards to the Fair Labor Standards Act (FLSA) (exempt vs non-exempt);
      - 2. Were you paid for all hours worked in accordance with your proper FLSA classification;
      - 3. Were you paid mileage for business travel (including going to take tests);
      - 4. Were you paid for your time to do any required testing;

5. Were you paid for missed lunch periods (meal period penalty);
6. Were you provided with proper breaks (if non-exempt);
7. Were you paid a stipend for your home office if you were working remotely;
8. Were you reimbursed for all business expenses;
9. Are your pay stubs correct (there are many things that are required by law to be on a paystub).

9. Filing for Unemployment:

*Please understand that eligibility for unemployment is a gray area in these unprecedented circumstances. Whether you are approved or not will rely on your responses and the response of your company. Depending on their official policy, and also whether they think it is advantageous or not to dispute your claim, will vary from company to company. Therefore, these steps are only suggestions – there is no guarantee that you will receive unemployment after a company terminates you or places you on an unpaid leave because they will not grant your religious exemption. However, generally:*

- a. You are eligible for unemployment benefits whenever your hours have been reduced by 25% or you have been let go for non-performance related reasons.
- b. To file or to get more information go to: <https://edd.ca.gov/unemployment/>
- c. When filing for unemployment after being placed on an unpaid leave or if terminated in this situation, we are recommending that people use the reason for unemployment as “COVID”
- d. If the EDD contacts you for more information about why you have had your hours reduced or been terminated due to covid, give a short answer. You may want to respond with a simple statement such as:
  - i. For a termination: Due to covid my position is no longer available;
  - ii. For an unpaid leave: I have been furloughed, my job is being held, but I have not been given a date to expect to return.
- e. If you have been terminated, the EDD will expect you to look for other employment. You can easily apply to any job to show that you are indeed looking - keep email confirmations of applications if you are applying online or a list of places you have applied if applying in person.
- f. If your claim is denied, you will have a chance to appeal but it is not clear how these cases will be handled on appeal yet.
- g. Note: The EDD is extremely backed up, expect to wait weeks or even a month + for a response. It is almost impossible to reach them by phone to follow-up on your claim, try for midweek days, mid-morning or midafternoon.
- h. If your claim is approved, they will send you a debit card and your money will be deposited weekly to the card.