


# EEOC UPDATE

American Society of Safety Professionals  
Middle Tennessee Chapter


November 8, 2021

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## EEOC

- ▶ The key federal agency responsible for ensuring equal employment opportunity by enforcing federal laws prohibiting employment discrimination against individuals based on certain protected categories.

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## Laws Enforced by EEOC

- ▶ Title VII of the Civil Rights Act of 1964 (Title VII)
- ▶ Equal Pay Act of 1963 (EPA)
- ▶ Age Discrimination in Employment Act of 1967 (ADEA)
- ▶ Americans with Disabilities Act of 1990 (ADA)
- ▶ ADA Amendments Act of 2008 (ADAAA)
- ▶ Ss. 501 & 505 of Rehabilitation Act
- ▶ Civil Rights Act of 1991
- ▶ Pregnancy Discrimination Act of 1978
- ▶ Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA)
- ▶ Lilly Ledbetter Fair Pay Act of 2009

## FY20 National Statistics

BASIS	TOTAL NUMBER OF CHARGES	PERCENTAGE OF TOTAL
TOTAL	67,448	
RACE	22,064	32.7
SEX	21,398	31.7
NATIONAL ORIGIN	6,377	9.5
RELIGION	2,404	3.6
COLOR	3,562	5.3
RETALIATION	37,362	55.8
AGE	14,183	21
DISABILITY	24,324	36.1
EQUAL PAY	980	1.5
GINA	440	0.7

## EEOC Resources on COVID-19

- ▶ Everything EEOC has issued related to COVID-19 can be found at [www.eeoc.gov/coronavirus](https://www.eeoc.gov/coronavirus), including:
  - *What You Should Know about COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws*  
(regularly updated)
  - <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>

## Federal EEO Laws & CDC Guidance

- ▶ EEO laws continue to apply during the time of the COVID-19 pandemic.
- ▶ But EEO laws do not interfere with or prevent employers from following the guidelines and suggestions made by Centers for Disease Control and Prevention (CDC) other public health authorities about steps employers should take regarding COVID-19.
- ▶ CDC Workplace/Business COVID-19 publications:  
<https://www.cdc.gov/coronavirus/2019-ncov/community/workplaces-businesses/index.html>

## EEO Laws & Individuals Who Do Not Have COVID-19 But May Be at Higher Risk of Severe Illness

- ▶ CDC has identified medical conditions placing individuals at higher risk of severe illness from COVID-19.
  - E.g., cancer, kidney disease, chronic lung disease, hypertension, diabetes, heart conditions, immunocompromised.
  - ADA/Rehab Act accommodation requests from employees with such conditions analyzed according to usual ADA/Rehab Act rules.



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## COVID as a Disability

- ▶ EEOC has not addressed in WYSK when COVID-19 itself may render someone an "individual with a disability" under the ADA/Rehab Act.
  - The EEOC agrees with the analysis of "long COVID" by the Departments of Health and Human Services and Justice in their Guidance on "Long COVID" as a Disability Under the ADA, Section 504, and Section 1557,
  - [https://www.ada.gov/long\\_covid\\_joint\\_guidance.pdf](https://www.ada.gov/long_covid_joint_guidance.pdf)



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## Workplace Infection Control Policies

- ▶ What if an employer has policies requiring employees to wear face masks or adhere to other infection control practices?
- ▶ Employer may need to accommodate employees who need modification or can't comply due to disability (ADA/Rehab Act) or religious belief/practice (Title VII of the Civil Rights Act), subject to undue hardship under each statute.
- ▶ Examples:
  - non-latex gloves
  - modified face masks for interpreters or others who communicate with an employee who uses lip reading
  - gowns designed for individuals who use wheelchairs
  - modified equipment due to religious garb



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## Vaccinations

- ▶ Federal EEO laws do not prevent employer from requiring all employees physically entering the workplace to be vaccinated for COVID-19, subject to the reasonable accommodation provisions of Title VII and the ADA/Rehab Act, and other EEO considerations.
- ▶ These principles apply whether employee gets vaccinated in the community or by the employer.
- ▶ EEOC's role in addressing vaccination is limited to application of the federal EEO laws.
- ▶ **Note: new requirements for mandatory vaccination applicable to certain employers: still subject to EEO requirements such as disability and religious accommodation requests.**



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## ADA/Rehab Act & Employees Who Cannot Be Vaccinated Due to Disability

- ▶ If a particular employee cannot meet the employer's vaccination requirement because of a disability, the employer may not require compliance for that employee unless it can demonstrate:
  - the individual would pose a "direct threat" to the health or safety of the employee or others in the workplace; and
  - there is no reasonable accommodation that would reduce or eliminate the threat.

## Title VII and Employees Who Cannot Be Vaccinated Due to Religion

- ▶ Once on notice a sincerely held religious belief, practice, or observance prevents employee from complying with employer vaccine requirement, Title VII requires employer to provide reasonable accommodation unless undue hardship.
  - Note: may include requests to wait until alternative version or specific brand of COVID-19 vaccine is available to employee.
- ▶ Undue hardship under Title VII is defined by courts as more than minimal cost or burden on employer, an easier standard for employer to meet than ADA/Rehab Act standard for disability accommodation.

## Updated Guidance on 102821 – Section L

- ▶ Title VII and Religious Objections to COVID-19 Vaccine Mandates
- ▶ Addresses
  - Need to inform employer
  - May employer ask for additional information
  - Showing Undue Hardship
  - Preferred accommodation or other effective accommodation

## Requests to Be Excused from COVID-19 Vaccination

- ▶ Where applicable, determine whether reasonable accommodation absent undue hardship could be provided with step(s) such as:
  - face mask
  - physical distancing from coworkers/non-employees
  - periodic tests for COVID-19
  - modified shift/hours
  - telework
  - transfer/reassignment
  - other

## Requests to Be Excused From Vaccination Requirement Due to Pregnancy

- ▶ Under Title VII, some employees may seek job adjustments or may request exemptions from a COVID-19 vaccination requirement due to pregnancy.
- ▶ If employee seeks exemption from vaccine requirement due to pregnancy, employer must ensure not discriminating compared to other employees similar in their ability or inability to work.
- ▶ Pregnant employee may be entitled to job modifications, including telework, changes to work schedules or assignments, and leave to the extent such modifications are provided for other employees who are similar in their ability or inability to work.
- ▶ Ensure that supervisors, managers, and human resources personnel know how to handle such requests to avoid disparate treatment in violation of Title VII.



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## ADA/Rehab Act Confidentiality & Vaccination

- ▶ ADA/Rehab Act requires employer to maintain confidentiality of employee medical information, such as documentation or other confirmation of COVID-19 vaccination.
- ▶ ADA/Rehab Act confidentiality requirement applies regardless of where the employee gets the vaccination.
- ▶ Under ADA/Rehab Act, this information, like all employee medical information, must be kept confidential and stored separately from the employee's personnel files.



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## Genetic Information Nondiscrimination Act (GINA) and Employer Vaccination Policies

- ▶ Administering a COVID-19 vaccination to employees or requiring employees to provide proof that they have received a COVID-19 vaccination does not implicate Title II of GINA.
  - It does not involve use of genetic information to make employment decisions, or acquisition or disclosure of genetic information as defined by GINA. This includes vaccinations that use messenger RNA (mRNA) technology.



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- ▶ 011521 – New Compliance Manual on Religious Discrimination
- ▶ [Section 12: Religious Discrimination | U.S. Equal Employment Opportunity Commission \(eEOC.gov\)](#)
- ▶ Replaces 2008 Manual
- ▶ Addresses recent legal developments and emerging issues
  - Updated discussion of Title VII claims involving employment decisions, harassment, reasonable accommodation, and retaliation
  - Expanded discussion of defenses that may be available to religious employers



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## ADA Reasonable Accommodation

- ▶ [Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the ADA | U.S. Equal Employment Opportunity Commission \(eeoc.gov\)](#)
- ▶ [Reasonable Accommodation Policy Tips | U.S. Equal Employment Opportunity Commission \(eeoc.gov\)](#)
- ▶ [Manager Responsibilities - Reasonable Accommodation Tips | U.S. Equal Employment Opportunity Commission \(eeoc.gov\)](#)



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## Information for Applicants and Employees

- ▶ [How to File a Charge of Employment Discrimination | U.S. Equal Employment Opportunity Commission \(eeoc.gov\)](#)
  - [US EEOC \(Charge Portal\)](#)
- ▶ [What You Can Expect After You File a Charge | U.S. Equal Employment Opportunity Commission \(eeoc.gov\)](#)
- ▶ [Mediation | U.S. Equal Employment Opportunity Commission \(eeoc.gov\)](#)
- ▶ [Checking the Status of Your Charge | U.S. Equal Employment Opportunity Commission \(eeoc.gov\)](#)
- ▶ [Filing a Lawsuit | U.S. Equal Employment Opportunity Commission \(eeoc.gov\)](#)



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# Supreme Court Considered 3 Cases

Bostock v. Clayton County, Georgia

Altitude Express, Inc. v. Zarda

R. G. & G. R. Harris Funeral Homes, Inc. v. EEOC

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## Supreme Court Ruled on 061520

- ▶ “When an employer fires an employee for being homosexual or transgender, it necessarily and intentionally discriminates against that individual in part because of sex.”
  - Court adopted a text-based argument, holding that the meaning of the statute’s terms is plain.
  - In reaching its holding, the Court did not adopt arguments based on impermissible “sex stereotyping” under *Price Waterhouse*.

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## EEOC Resources

- ▶ New landing page: [Sexual Orientation and Gender Identity \(SOGI\) Discrimination | U.S. Equal Employment Opportunity Commission \(eeoc.gov\)](https://www.eeoc.gov/sexual-orientation-gender-identity-discrimination)
- ▶ [Protections Against Employment Discrimination Based on Sexual Orientation or Gender Identity | U.S. Equal Employment Opportunity Commission \(eeoc.gov\)](https://www.eeoc.gov/sexual-orientation-gender-identity-discrimination)
- ▶ [Fact Sheet: Facility/Bathroom Access and Gender Identity | U.S. Equal Employment Opportunity Commission \(eeoc.gov\)](https://www.eeoc.gov/fact-sheet/facility-bathroom-access-gender-identity)



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## Small Business Resource Center

- ▶ [Small Business Resource Center | U.S. Equal Employment Opportunity Commission \(eeoc.gov\)](https://www.eeoc.gov/small-business-resource-center)
- ▶ Employer Requirements
- ▶ Tips for Small Businesses
- ▶ Resources
- ▶ Small Business Fact Sheet
- ▶ FAQ
- ▶ Making an employment decision
- ▶ Videos
- ▶ Small Business Assistance



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## Chair's Priorities FY22

- ▶ Racial Justice and Systemic Discrimination
- ▶ Pay Equity
- ▶ Civil Rights Impact of the Pandemic
- ▶ Strengthening the Agency



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## Questions?




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# Thank You!

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