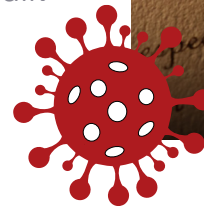




Waldorfwire

Religious Institution Risk Management: EEOC and COVID Exposures

Under the First Amendment of the Constitution, the U.S. government cannot make laws that interfere with the right to exercise religion. However, this does not mean that religious institutions have free rein to ignore laws. When navigating EEOC regulations, religious institutions must sometimes walk a fine line, and the COVID-19 pandemic has created additional complexities.



Title VII and Religious Institutions

Title VII of the Civil Rights Act bans discrimination on the basis of race, color, religion, sex, national origin, sexual orientation or gender identity.

However, according to the [EEOC](#), religious organizations whose purpose and character are primarily religious can give employment preferences to members of their own religion. It's important to note that this exception is very limited, and religious organization cannot discriminate based on other protected characteristics, such as race.

In cases of clergy, however, religious institutions may have more leeway. The ministerial exception, which says that clergy members generally cannot file discrimination claims under federal discrimination laws, stems from the idea that governmental regulation of church administration goes against the free exercise of religion.

EEOC and COVID-19

The coronavirus pandemic has forced many businesses and other organizations to close their doors. Those that remain open have a strong motivation to reduce the risk of an outbreak.

According to the [EEOC](#), ADA-covered employers are allowed to ask employees about COVID-related symptoms during the pandemic. They may also use temperature screens and tests for current infection, although antibody tests for previous infections are not permitted. Employers may also ask about possible exposure to the virus, but they should not ask specifically about whether any family members are sick. It may be permissible to single out employees for questioning or screening, but only if this is done based on objective evidence that suggests illness, and not on other reasons that could be considered discriminatory.



Following these guidelines while respecting the employee's right to privacy and a discrimination-free workplace requires some care. The situation may become even more complicated as a vaccine becomes readily available. Employers will likely want their workers to be vaccinated. Some may want to go a step further and make the vaccine mandatory.

The EEOC has said that employers must grant exemptions for employees who decline to receive flu vaccines on the grounds of their religious beliefs. In 2018, for example, [Mission Hospital](#) agreed to pay \$89,000 to settle a religious discrimination lawsuit after the hospital allegedly fired three employees who requested a religious exemption to the flu vaccine requirement after the hospital's deadline.

According to the [National Law Review](#), it seems likely that similar religious exemptions will be necessary for any future vaccine against COVID-19. Employers may also have to grant religious exemptions for workers who oppose COVID-19 testing on religious grounds or who request religious accommodations related to protective gear that must be worn.

Social Gatherings

Religious exemptions may also be provided to religious organizations that want to hold public gatherings during the pandemic.

In response to the pandemic, states issued guidelines and orders to encourage social distancing. However, these rules have not always applied to religious gatherings. According to [Pew Research Center](#), most states provided exceptions for religious gatherings, and only 10 states banned in-person religious gatherings of any form. California was one of the

states that banned religious gatherings, and a group of churches has filed a lawsuit over the alleged violation of their First Amendment right to the free exercise of religion.

Risk Management

Even when you're careful, and try to do everything right, you can be sued. That's why it's so important to carry insurance that is tailored for the specific exposures of religious organizations.

At Waldorf Risk Solutions, we provide critical services that help religious institutions take control of their risks.

The CDC has issued guidelines for communities of faith that are intended to keep people healthy without infringing of First Amendment rights. These in-depth guidelines encourage proper hygiene, cleaning, mask use and social distancing, as well as the establishment of plans for when an individual becomes sick.

We realize that this has been an extremely challenging year for religious institutions, and we want you to know that we are here for you. As you navigate changing circumstances, please [reach out](#) for risk management guidance. After all, we're in this together!



Stephen Waldorf