



Greater New York
Automobile Dealers
Association

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Contact Tim Minter 267-566-2139

DMV-DIRECT

FOR REGISTRATION, TITLING, & BEYOND...CALL 718.747.0400

GNVADA's vehicle registration and titling service, DMV-DIRECT, has been dealers go-to source for fast, convenient, and reliable DMV services.

DMV-DIRECT provides many DMV related services, including:

- Permanent Registration Issuance
- Duplicate Titles In 3 To 5 Days
- Out-of-State Registration & Title Processing for 42 States
- On-Site Connecticut Plates Issuance
- Dial-In Information Verification
- In-Transit Processing
- Duplicate Registrations
- Registration Renewals
- Title-Only Transactions
- Plate Surrenders
- Dealer Plate Renewals
- Rental Plate Renewals
- Repossessed Vehicles Processing
- MV-82 & Transmittal Forms Supplied
- Boat Registrations – Renewed and Duplicates
- Trailer Plates
- Commercial Plates
- Livery Plates



The flyer is for GNYADA's DMV-DIRECT RUSH DUPLICATE TITLE SERVICE. It features a yellow and blue color scheme. At the top left is the GNYADA logo with the text 'Greater New York Automobile Dealers Association'. To the right is the 'DMV DIRECT' logo with a yellow arrow. Below that, it says 'VEHICLE REGISTRATION & TITLE PROCESSING SERVICE'. The main heading is 'RUSH DUPLICATE TITLE SERVICE' in large white letters on a blue background. Below this, it says 'FAST, LOW COST SERVICE' and 'Have a title at your dealership in 3 days, easy as 1, 2, 3!'. A numbered list follows: 1. Fax Paperwork to 718.747.1237, 2. Receive title on 3rd day, 3. Submit payment. Then it says 'If you would like additional information on this express title service, please contact DMV DIRECT at 718.747.0400'. A section titled 'Required Paperwork includes:' lists: Duplicate title form, Authorization letter on dealership letterhead, Identification for the title holder, and Express title application cover sheet. At the bottom, it gives the address '18-10 Whitestone Expressway • Whitestone, New York 11357' and the phone number '(718) 747-0400'.

GNVADA
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DMV DIRECT
VEHICLE REGISTRATION &
TITLE PROCESSING SERVICE

GNVADA's **DMV DIRECT**

**RUSH DUPLICATE
TITLE SERVICE**

FAST, LOW COST SERVICE
Have a title at your dealership in 3 days, easy as 1, 2, 3!

1. Fax Paperwork to 718.747.1237
2. Receive title on 3rd day
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If you would like additional information on this express title service,
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Required Paperwork includes:

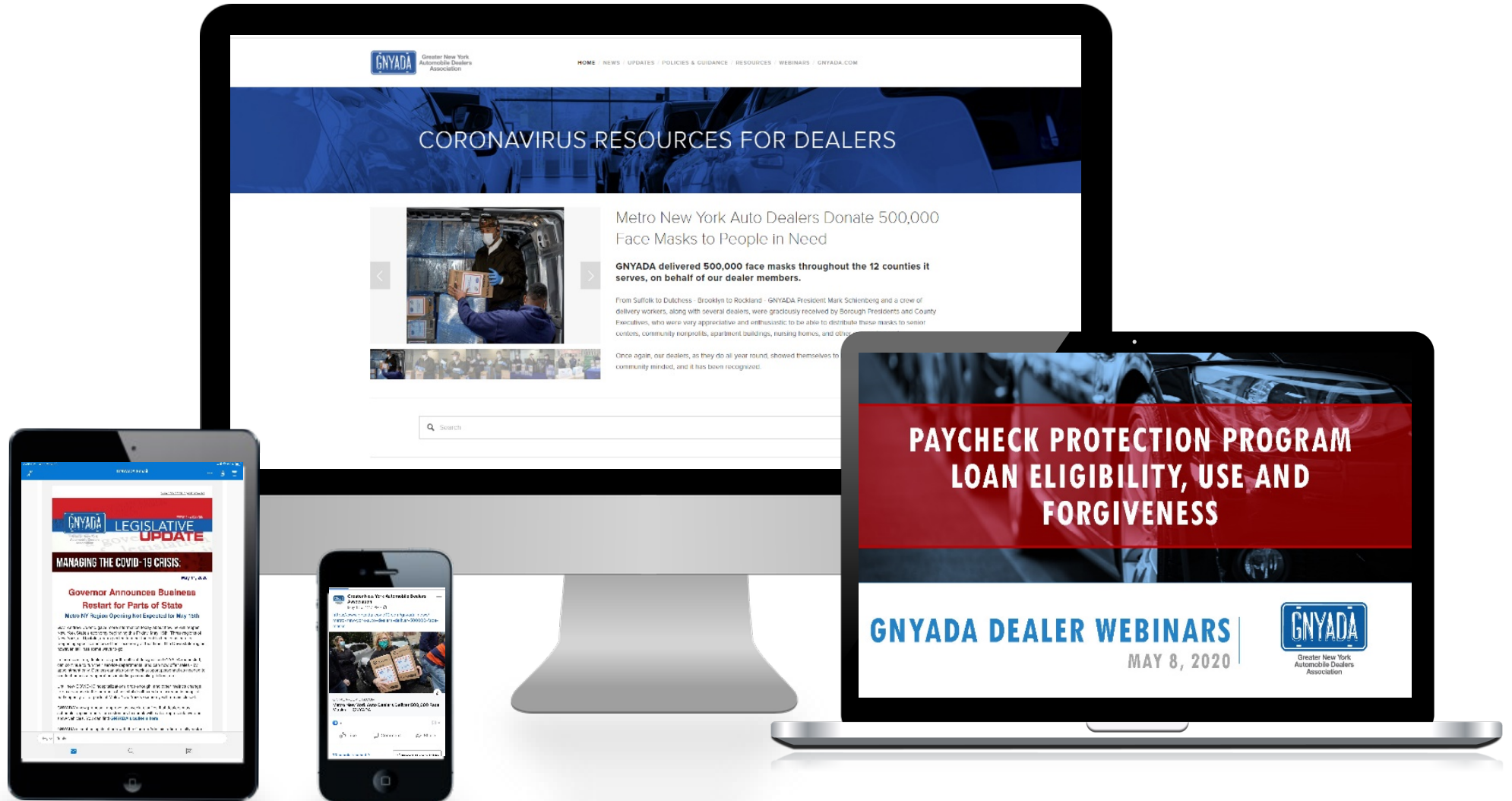
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18-10 Whitestone Expressway • Whitestone, New York 11357 • (718) 747-0400



Greater New York Automobile Dealers Association

WWW.GNYADA-COVID19.COM



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BAGELS WITH BIEBER SCHEDULE

November 23, 2021 - Paul Charles talks about what's happening with ongoing sales tax audits and year- end tax reminders.

November 25, 2021 - **Happy Thanksgiving!**

December 2, 2021 - Mark Lee, from HUB's Risk Services Team will be discussing best practice tips for minimizing dealership liability while having a safe holiday get together.

December 7, 2021 - Ed McWilliams, CPA of Cerini & Associates will discuss potential tax changes that may affect dealers in 2022.

December 9, 2021 - Tim Minter from Spectrum reach will join us to talk about successful sales plans using data while facing inventory challenges.

December 16, 2021 - A panel of legal experts will join us as we wrap up 2021 and look forward to what is coming for 2022.



Questions and Answers About the OSHA ETS

Andria L. Ryan | Atlanta | aryan@fisherphillips.com

November 18, 2021

Agenda

- **Brief Overview of the ETS**
- **Key Areas of Q&As**
 - **Litigation and the 5th Circuit Stay - What's Next?**
 - **Employee and Employer Coverage Issues**
 - **Testing - Logistical Issues**
 - **Testing - Cost Issues**
 - **Paid Time Off for Vaccines and Vaccine Recovery**
 - **Proof of Vaccination Status**
 - **Addressing Noncompliance**
 - **Accommodations**

Brief Overview of the ETS

Main Requirement of the ETS

- A covered employer must establish, implement, and enforce a written mandatory vaccination policy that requires each employee to be fully vaccinated against COVID-19

OR

- A covered employer must implement a policy that allows employees to choose between being fully vaccinated or both tested and wearing a face covering.

Brief Overview of the ETS

Other Main Requirements of the ETS

- Establish, implement, and enforce a written policy on vaccines, testing, and face coverings;
- Provide certain information to employees on vaccines and the requirements of the ETS
- Provide paid time off to employees to obtain the vaccine and reasonable time and paid sick leave to recover from side effects experienced following any primary vaccination series dose to each employee for each dose;
- Obtain and maintain records and roster of employee vaccination status; and
- Comply with certain notice requirements when there is a positive COVID-19 case and reporting to OSHA when there is an employee work-related COVID-19 fatality or hospitalization.

Key Deadlines

November 5, 2021: OSHA's COVID-19 Vaccine or Testing Emergency Temporary Standard (ETS) takes effect.

Effective December 6, 2021: All requirements of ETS come into effect, other than the COVID-19 testing requirements for those not fully vaccinated, including the requirement that unvaccinated employees wear masks.

Effective January 4, 2022: COVID-19 testing requirements for those not fully vaccinated come into effect.

You've Got Questions? We've Got Answers

- **OSHA FAQs**
 - <https://www.osha.gov/coronavirus/ets2/faqs>
- **Fisher Phillips Comprehensive FAQs**
 - <https://www.fisherphillips.com/services/emerging-issues/vaccine-resource-center/osa-ets-faqs.html>



Litigation and the 5th Circuit Stay - What's Next?

ETS Legal Challenges

- Over 15 cases filed in federal courts challenging the mandates
- Filed by states, businesses and religious institutions

Fifth Circuit Order

- Nov. 6 - Court issued an order blocking the ETS from taking effect on a nationwide basis.
- Order cites Statutory and Constitutional issues
- Nov. 12 - Court upholds stay after briefing from the parties
- Orders OSHA to stop Implementation of ETS



Litigation and the 5th Circuit Stay

What Comes Next?

- In response to order, OSHA announces it will stop implementing and enforcing the ETS until further resolution
- Multidistrict litigation (MDL) held lottery to determine which one District Court will hear all the various legal challenges on a consolidated basis – assigned to 6th Circuit
- That Court could keep or revoke the Fifth Circuit's stay
- The losing side will likely appeal directly to SCOTUS

Litigation and the 5th Circuit Stay

What About the Deadlines?

- Hard to tell at this point
- If the consolidated court revokes the stay, the 12/6/2021 and 1/4/2022 deadlines could be back on in short order
- Business groups and trade associations will likely be lobbying OSHA to extend the deadlines if this occurs (in light of the uncertainty and delay)
- We won't know for sure until further resolution of the litigation and clarification from OSHA

Litigation and the 5th Circuit Stay

What Should We Do Now?

- Outcome is uncertain, but need to prepare to act quickly if back on
- Good idea to begin process of inquiring about vaccine status (if you have not already done so)
- Prepare policies, communications, and documents **behind the scenes** as if the ETS were going to go into effect as planned
- Are you going to mandate vaccine or vaccine or testing if stay lifted? Do your work and drafting now and be prepared to deploy on short notice
- Wait to implement until the final judicial outcome is certain

Employee and Employer Coverage Issues

The 100-Employee Threshold

Who is counted in the 100?

- Employers must include all employees across all of their U.S. locations, regardless of employees' vaccination status or where they perform their work.
 - Part-time employees do count towards the company total, but independent contractors do not.
- For a single corporate entity with multiple locations, all employees at all locations are counted for purposes of the 100-employee threshold for coverage under this ETS.
- In other situations, two or more related entities may be regarded as a single employer for OSH Act purposes if they **handle safety matters as one company**, in which case the employees of all entities making up the integrated single employer must be counted.

The 100-Employee Threshold cont'd.

What about the change in the number of employees?

- If the employer has 100 or more employees on the effective date, the ETS applies for the duration of the standard.
- If the employer has fewer than 100 employees on the effective date, the standard would not apply to that employer as of the effective date.
 - If that same employer subsequently hires more workers and hits the 100-employee threshold for coverage, the employer would then be expected to come into compliance.
- Once an employer has come within the scope of the ETS, the standard continues to apply for the remainder of the time the standard is in effect, regardless of fluctuations in the size of the employer's workforce.

Testing - Logistical Issues

The Testing Alternative

The ETS requires employers to ensure that employees who are not fully vaccinated and who report at least once every seven days to a workplace where other individuals are present are:

- (1) tested for COVID-19 at least once every seven days; and
- (2) provide documentation of the most recent COVID-19 test result to the employer no later than the seventh day following the date the employee last provided a test result.

Employers must also ensure that employees who are not fully vaccinated and do not report during a period of seven or more days to a workplace where other individuals are present are:

- (1) tested for COVID-19 within seven days prior to returning to the workplace; and
- (2) provide documentation of that test result upon return to the workplace.

Types of Tests

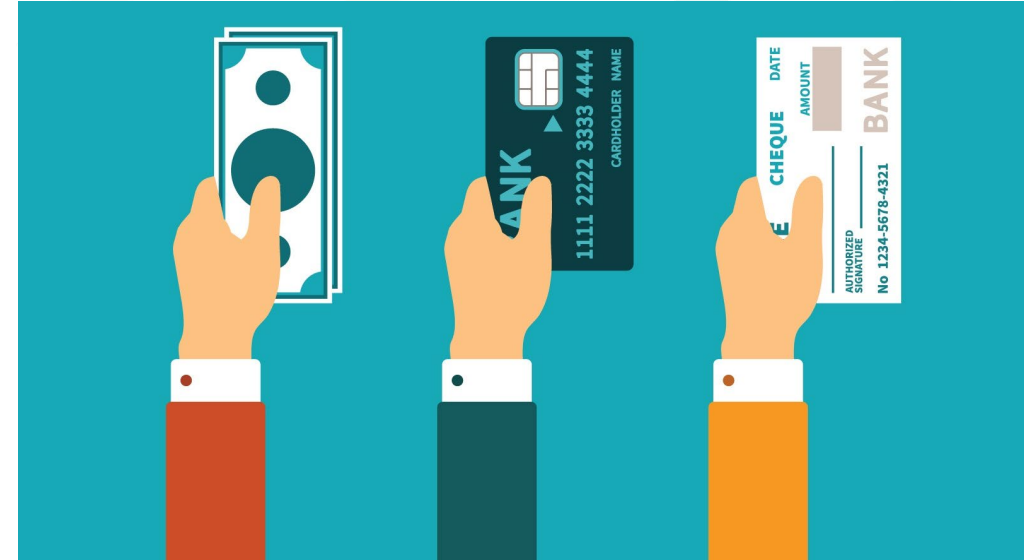
- Qualified tests must be:
 - cleared, approved, or authorized, including in an Emergency Use Authorization (EUA) by the U.S. Food and Drug Administration (FDA) to detect current infection with the SARS-CoV-2 virus (e.g. a viral test);
 - administered in accordance with the authorized instructions; and
 - not both self-administered and self-read unless observed by the employer or an authorized telehealth proctor.



Testing Cost Issues

Who pays for testing?

- ETS does not require employers to pay costs of testing for employees who “choose not to be vaccinated.”
- Some workers and/or their representatives will negotiate the terms of payment.
- Some employers may choose to pay for some or all of the costs of testing as an inducement to keep employees in a tight labor market.



Who pays for testing?

- Employers may choose to put the full cost of testing on employees in recognition of the employee's decision not to become fully vaccinated.
- Insurance may cover the cost of tests.
- New York state law requires employers to pay for mandatory medical tests or reimburse employees for any such testing.



Paid Time Off for Vaccines and Vaccine Recovery

Must employers pay employees for time spent getting vaccinated?

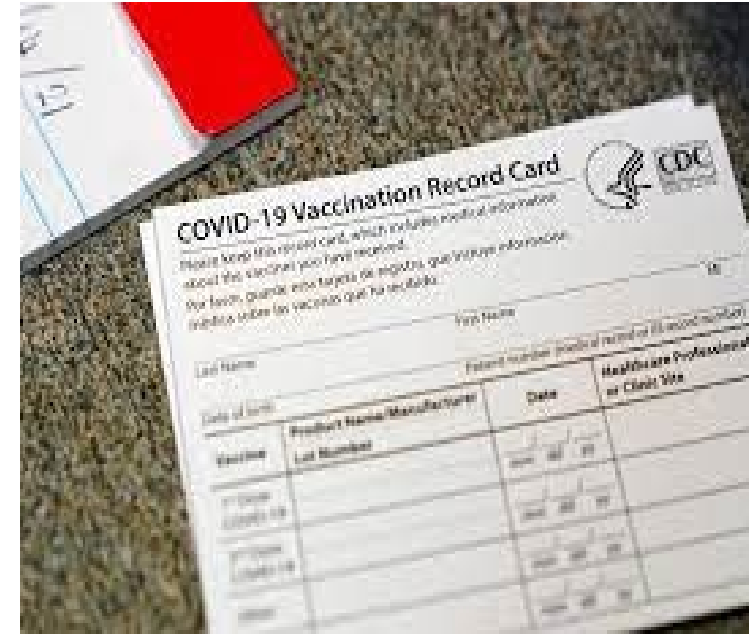
- The employer must:
 - (i) provide a reasonable amount of time to each employee for each of their primary vaccination dose(s); and
 - (ii) provide up to 4 hours paid time, including travel time, at the employee's regular rate of pay for this purpose.
- The employer must provide "reasonable time and paid sick leave" to recover from side effects experienced following any vaccination dose to each employee for each dose. (OSHA presumes that 2-days is a reasonable time for recovery).
- Employers can require that employees use existing accrued paid sick leave to recover from side effects, but cannot require that employees use vacation pay or future, unaccrued, paid sick leave.



Proof of Vaccination Status

Proof of Vaccination

Employers must require employees to provide an acceptable proof of vaccination status, including whether they are fully or partially vaccinated.



Proof of Vaccination

Acceptable proof of vaccination status is:

- the record of immunization from a health care provider or pharmacy;
- a copy of the COVID-19 Vaccination Record Card;
- a copy of medical records documenting the vaccination;
- a copy of immunization records from a public health, state, or tribal immunization information system; or
- a copy of any other official documentation that contains the type of vaccine administered, date(s) of administration, and the name of the health care professional(s) or clinic site(s) administering the vaccine(s).
- A signed and dated employee attestation is acceptable in instances when an employee is unable to produce proof of vaccination. Must state that their vaccination status and that they have lost and are otherwise unable to produce proof. Must require that employees declare that the statement of their vaccination status is true and that they understand providing false information may subject them to criminal penalties.

Addressing Noncompliance

What Should You Do?

- **Have a plan for addressing noncompliance by employees.**
 - What happens to an employee who does not get tested?
 - What happens to an employee who refuses to get vaccinated?

Accommodations

Vaccine Mandates- Accommodation Considerations

- An employee **may** be entitled to exemption from “required” vaccines:
 - due to an ADA-covered disability or other medical circumstances (e.g., those to whom a vaccine is contraindicated or those to whom medical necessity requires a delay in vaccination)
 - based on sincerely-held religious beliefs, practices, or observances
- “Interactive process” is critical
- Employer must consider reasonable accommodations
- Document communications with employee
- Employer’s rights to make medical and religious inquiries are limited
- Supervisor training is vital – avoid inadvertent medical inquiries
- Sample forms available at the FP Vaccine Resource Center

Vaccine Mandates- Accommodation Considerations

The Interactive Process

- (1) Review employee requests for exemption to determine if the request falls under the ADA (disability) or Title VII (religious) obligations for employers;
- (2) Consult with the employee with a disability or sincerely held religious belief to ascertain what, if any, accommodations may be needed;
- (3) If appropriate, consider consulting with health care provider or religious leader;
- (4) Determine whether the individual has a disability under the ADA or a sincerely held religious belief;
- (5) Determine if the accommodation poses a direct threat or creates an “undue hardship;”
- (6) Notify the employee and document process.



Vaccine Mandates- Potential Accommodations

- Remote Work
- Testing/masking protocols
- Providing additional protective equipment or taking other measures, like installing protective barriers
- Eliminating non-essential job functions or
- Making temporary work schedule modifications, such as, for example, implementing staggered start times to further reduce the number of employees onsite at one time.



Medical, Temporary or ADA Requests for Accommodation

- Medical conditions or disabilities that could exempt persons from COVID-19 vaccinations might include allergic reactions to vaccinations, pregnancy conditions, or certain chronic illnesses or other disabilities as determined by an employee's health care provider.
- There are some situations when a COVID vaccine may need to be temporarily deferred. For example, if employee has an acute illness.
 - This would usually be for a short period only and wouldn't require the employee to obtain a written temporary medical exemption.
- There are also some "acute major medical illnesses" where people may be able to get a temporary exemption form.
 - This needs to be assessed and given by a medical provider, and only temporarily exempts you from a COVID vaccine.

Religious Requests for Accommodation

Factors to Consider

The EEOC identified the following factors that might undermine the credibility of an employee's claim:

- The employee has acted inconsistently with the professed belief. However, the EEOC said, "employees need not be scrupulous in their observance."
- The employee is seeking a "particularly desirable" accommodation that is likely to be sought for nonreligious reasons.
- The timing of the request is suspicious. For example, the employee may have recently requested the same benefit for secular reasons and been denied.
- The employer otherwise has reason to believe the accommodation is not sought for religious reasons.
- While prior inconsistent conduct is relevant to determining the sincerity of an employee's beliefs, the EEOC cautioned that an employee's beliefs (and degree of adherence to such beliefs) may change over time.
- "An employer should not assume that an employee is insincere simply because some of the employee's practices deviate from the commonly followed tenets of the employee's religion, or because the employee adheres to some common practices but not others," the agency said.

Additional Questions?

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