

Vaccine Mandates and Religious Accommodations

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As 2021 turned into 2022, many employers in New York City were dealing with an onslaught of requests from employees for an exemption from the City's mandate, compelling employers to require their employees to get vaccinated against COVID-19. Most of these requests were based on a request for a religious accommodation.

Federal, state, and New York City law all require employers to reasonably accommodate an employee's sincerely held religious beliefs unless doing so would cause an undue hardship. The EEOC published [COVID-era guidelines](#) on the interaction of vaccine mandates and requests for religious exemptions:

Generally, under Title VII, an employer should proceed on the assumption that a request for religious accommodation is based on sincerely held religious beliefs, practices, or observances. However, if an employer has an objective basis for questioning either the religious nature or the sincerity of a particular belief, the employer would be justified in making a limited factual inquiry and seeking additional supporting information....

The definition of "religion" under Title VII protects both traditional and nontraditional religious beliefs,

practices, or observances, including those that may be unfamiliar to employers. While the employer should not assume that a request is invalid simply because it is based on unfamiliar religious beliefs, practices, or observances, employees may be asked to explain the religious nature of their belief, practice, or observance and should not assume that the employer already knows or understands it.

Title VII does not protect social, political, or economic views or personal preferences. Thus, objections to a COVID-19 vaccination requirement that are purely based on social, political, or economic views or personal preferences, or any other non-religious concerns (including about the possible effects of the vaccine), do not qualify as religious beliefs, practices, or observances under Title VII. However, overlap between a religious and political view does not place it outside the scope of Title VII's religious protections, as long as the view is part of a comprehensive religious belief system and is not simply an isolated teaching.

The sincerity of an employee's stated religious beliefs, practices, or observances is usually not in dispute. The employee's sincerity in holding a religious belief is "largely a matter of individual credibility." Factors that—either alone or in combination—might undermine an employee's



credibility include: whether the employee has acted in a manner inconsistent with the professed belief (although employees need not be scrupulous in their observance); whether the accommodation sought is a particularly desirable benefit that is likely to be sought for non-religious reasons; whether the timing of the request renders it suspect (for example, it follows an earlier request by the employee for the same benefit for secular reasons); and whether the employer otherwise has reason to believe the accommodation is not sought for religious reasons.

New York City also published its own [guidance](#):

Employees who are seeking reasonable accommodations because of their religious beliefs should not be required to submit supporting documentation unless their employer has an objective basis to question the sincerity of the religious basis for the employee's inability to show proof of vaccination. However, employees may be asked to explain

the religious nature of their belief. Note that the NYCHRL protects not only employees who belong to organized religions, such as Buddhism, Christianity, Hinduism, Islam, and Judaism, but also employees who have religious, ethical, or moral beliefs that are sincerely held with the strength of religious views. The law does not protect social, political, or economic views, or personal preferences.

The balancing of asserted religious beliefs against health concerns requires a tight-rope walk through the legal landscape, and cases challenging an employer's alleged failure to accommodate claimed religious objections to the COVID vaccine are in their early stage. But a recent decision from the Eastern District of Pennsylvania, involving an employee's refusal to comply with the hospital employer's requirement to get the flu vaccine, gives some insight into how these cases may evolve.

In *Aukamp-Corcoran v. Lancaster General Hospital*, 2022 WL 507479 (E.D. Pa. Feb. 18, 2022), plaintiff was a licensed practical nurse whose primary duties involved direct patient care. In 2012, the hospital began requiring all employees to get the flu vaccine. Plaintiff got the vaccine for several years without requesting an exemption. In the intervening period, defendant granted 81 medical and 24 religious exemptions to the requirement. In 2017, plaintiff became pregnant and was concerned that the vaccine could increase her risk of miscarriage. She asked her midwife and her obstetrician to certify her for a medical exemption from the vaccine, but they both declined. Plaintiff then posted to the Vaccine Re-education Discussion Forum, a secular Facebook group, asking: "Any recommendation on how to prepare for the flu shot and how to

detox while pregnant?" Several people suggested she seek a religious accommodation.

Plaintiff heeded that advice, requesting a religious accommodation, claiming that her religion "requires her to keep her body pure from everything that contaminates the body and spirit." Retired Chief U.S. District Judge for the Eastern District of Pennsylvania Edward Cahn was tasked with reviewing all religious exemption requests from hospital employees. He determined that plaintiff did not have a sincerely held religious objection, so he denied the requested exemption. After plaintiff refused to take the vaccine, defendant terminated her.

She sued, claiming failure to accommodate her sincerely held religious belief. The *Aukamp-Corcoran* court granted summary judgment to the employer, stating: "To establish a *prima facie* case of religious discrimination, the employee must show: (1) she holds a sincere religious belief that conflicts with a job requirement; (2) she informed her employer of the conflict; and (3) she was disciplined for failing to comply with the conflicting requirement. The burden then shifts to the employer to show either (1) it made a good-faith effort to reasonably accommodate the religious belief, or (2) such an accommodation would work an undue hardship upon the employer and its business." *Id.* at *3 (citations omitted).

Bona-Fide Belief Necessary

The court found plaintiff did not have a sincerely held religious belief:

[B]oth the circumstances and timing surrounding Plaintiff's request for a religious-based exemption to Defendant's vaccine requirement are suspicious. In terms of the timing, Plaintiff admitted that she only requested her religious-based exemption after she had researched

vaccines "from a medical perspective." She did not request a religious exemption until after she unsuccessfully petitioned her midwife and her medical doctor for a medical-based exemption from the vaccination requirement....

Obviously, an employee's longstanding religious practice is much less likely to be disingenuous than if the employee only adopted the religious belief a short time before requesting an accommodation. In this case, most of the evidence points to the fact that Plaintiff's alleged religious objection to vaccination developed shortly before her exemption request was submitted. Plaintiff's argument that her beliefs began to evolve in the spring of 2017 as a "natural progression from medical to religious" is unpersuasive, as she testified that she began researching vaccines in April of 2017 "from a medical perspective," not from a religious perspective.... Accordingly, [the court] find[s] the timing of Plaintiff's development of religious issues with vaccination to be suspicious and find that this timing points to a lack of sincerity in her religious beliefs....

There is no dispute that Plaintiff had routinely undergone vaccination for many years after Defendant made it mandatory prior to submitting her exemption request. It is also undisputed that Plaintiff had multiple tattoos and piercings, and Defendant alleges that these things do not align with Plaintiff's claim that the Bible compelled her to keep her blood "pure under all circumstances and free from contaminates." As the EEOC permits an employer to consider "whether the employee has behaved in a manner markedly inconsistent with the professed belief" in evaluating the employee's sincerity, I find this evidence also does not

support the sincerity of Plaintiff's claimed religious beliefs.

This evidence leads to the inescapable conclusion that Plaintiff did not hold a sincerely-held religious belief opposing vaccination. Rather, Plaintiff had a medical objection to vaccination and claimed a religious-based objection in an attempt to circumvent Defendant's mandatory vaccination policy.

Id. at ** 4-5 (cleaned up).

Undue Hardship

The *Aukamp-Corcoran* court also held that the requested accommodation would pose an undue hardship to the employer based on the increased health risk to patients. Plaintiff had argued that defendant had already granted numerous exemptions to its vaccine policy (those who were exempted were required to wear a mask), and that granting an additional exemption would not cause an undue burden.

The court disagreed:

Any exemption, for whatever reason granted, weakens Defendant's ability to protect patients from influenza, and Plaintiff presents no evidence to the contrary. Clearly, some employees should not undergo vaccination due to medical complications and must be exempt from the vaccine requirement. However, contrary to Plaintiff's argument, these necessary medical exemptions make it even more important for Defendant to limit the number of additional exemptions to only those individuals who demonstrate an actual established right to a religious exemption. If exemptions are extended to employees who have not demonstrated a legal right to exemption, that could weaken immunity amongst Defendant's employees as a group, which in turn can lead to the spread of influenza at Defendant's facilities. Granting Plaintiff's religious

exemption request, therefore, even though 24 such requests had already been granted, could have put the health of vulnerable patients at risk, with the potential for increased hospitalization and death as result....

The fact that other employees have been permitted to wear a mask instead of undergoing vaccination increases the danger posed by an additional employee such as Plaintiff receiving an exemption and being permitted to wear a mask. That danger would result in an undue burden to Defendant.

Id. at ** 7-8 (cleaned up).

The court cited *Robinson v. Children's Hospital Boston*, 2016 WL 1337255 (D. Mass. April 5, 2016), in which the defendant hospital terminated plaintiff after she refused a flu vaccine because of her religious beliefs. The *Robinson* court granted the hospital summary judgment because it found allowing her an exemption from the vaccine requirement would pose an undue hardship.

An accommodation constitutes an undue hardship if it would impose more than a *de minimis* cost on the employer. Undue hardship can be both "economic costs, such as lost business or having to hire additional employees to accommodate a Sabbath observer," and "non-economic costs, such as compromising the integrity of a seniority system" or loosening a company's dress code. Undue hardship can also exist if the proposed accommodation would either cause or increase safety risks or the risk of legal liability for the employer....

The Hospital contends that granting Robinson's request would have been an undue hardship because it would have increased the risk of transmitting influenza to its already vulnerable patient population. On this record, the Court agrees. Health care employees are at high risk

for influenza exposure and can be source of the fatal disease because of their job. Numerous medical organizations support mandatory influenza vaccination for health care workers. The medical evidence in this record demonstrates that the single most effective way to prevent the transmission of influenza is vaccination....

Robinson worked in a patient-care area. She worked closely with patients, regularly sitting near or touching them as she worked on their admission to the Hospital. Had the Hospital permitted her to forgo the vaccine but keep her patient-care job, the Hospital could have put the health of vulnerable patients at risk. To allow Robinson to avoid relatively more vulnerable patients and not others would have been unworkable as well. It would have forced the Hospital to arrange its work flow around uncertain factors. [A]ccommodating Robinson's desire to be vaccine-free in her role would have been an undue hardship because it would have imposed more than a *de minimis* cost.

Id. at **8-10 (cleaned up).

Conclusion

Notably, these cases both involved health care employees, which present somewhat unique circumstances. When faced with a request for an accommodation, whether on medical or religious grounds, proceed cautiously and if any questions arise, consult with an experienced attorney.

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