

Mandatory Flu Vaccination: Hospital Was Not Guilty Of Religious Discrimination.

The administrative associate involved in this case was one of the first persons to interact with patients and family members when they arrived in the hospital's emergency department.

She handled intake and registration and put on patient identification bracelets, tasks that involve sitting in close physical proximity to patients and touching them.

After the hospital decided that all employees working in patient-care areas, except those exempt for medical reasons, would be required to be vaccinated for influenza, the administrative associate, a member of the Nation of Islam, requested a note from an official of that organization asking the hospital to exempt her from mandatory flu vaccination due to her religion's proscription against pork and pork byproducts. The official told her to check whether the vaccine in question was actually derived from pork byproducts.

The employee herself requested from the hospital's occupational health department an exemption on religious grounds, because her Islamic faith proscribed her from using pork or pork byproducts.

The hospital's occupational health department offered her a non-pork-product vaccine and a printed brochure explaining that its production did not involve the use of pork or pork byproducts.

As the deadline approached to be vaccinated or face termination, the employee informed the occupational health nurse that she had had an adverse reaction to a flu vaccination four years earlier. The occupational health nurse offered to look at any medical documentation she could get, but no such documentation was forthcoming.

Finally the employee asked for transfer to a job in a non-patient-care area of the hospital like medical records.

She was allowed to use her accrued vacation time starting the day of the deadline to be vaccinated, rather than being terminated, while she applied for another position at the hospital. She interviewed for a clerk position in medical records but was not selected. That was the only non-direct-care position publicly posted within the hospital's personnel system at the time for which she was potentially qualified.

A religious exemption from mandatory flu vaccination for a patient-care worker would be an undue hardship for the hospital.

Undue hardship for the employer is legal terminology which translates to the fact that the accommodation requested by an employee is not a reasonable accommodation.

The definition goes beyond economic cost and includes things that could compromise the integrity of the employer's mission.

An exemption from the mandatory flu vaccination requirement for a patient-care worker could put patients at risk, including very vulnerable sick children.

Altering the customary work flow to let this employee work around contact with particularly vulnerable pediatric patients coming into the emergency department would also present a financially costly undue hardship to the employer.

The hospital offered a non-pork alternative vaccine, offered to review medical documentation of a prior reaction and considered her for the only available suitable non-patient-care job, sufficient reasonable accommodation.

UNITED STATES DISTRICT COURT
MASSACHUSETTS
April 5, 2016

When her vacation time was used up she was given two more weeks leave of absence. After that she was considered to have voluntarily resigned.

She filed suit against the hospital alleging religious discrimination in violation of US Federal and Massachusetts state antidiscrimination laws.

The US District Court for the District of Massachusetts dismissed her case.

Employee Was Offered

Reasonable Accommodation

The Court ruled that the hospital fulfilled its duty of reasonable accommodation for this employee's religious beliefs by offering a non-pork alternative vaccine, by offering to look at any evidence justifying a medical exemption and by fairly considering her for an available non-patient-care job for which she was qualified.

Religious Exemption

Not a Reasonable Accommodation

The Court ruled that an exemption on religious grounds for a direct-care employee who did not qualify on medical grounds for exemption from mandatory flu vaccination would be an undue hardship to the employer, that is, not something the hospital was required to do to avoid a charge of religious discrimination.

The Court pointed to standards promulgated by the American Academy of Pediatrics, US Centers for Disease Control and Prevention, American Academy of Family Physicians, American Hospital Association, Society for Hospital Epidemiology of America, Infectious Diseases Society of America, Pediatric Infectious Disease Society and others which all state unequivocally that mandatory immunization of healthcare workers is ethical and necessary to protect patients, other employees and community members.

The Massachusetts Department of Public Health strongly encourages flu vaccination for all hospital personnel and requires hospitals to offer employees free flu vaccinations and to track and report personnel flu vaccination statistics.

The hospital was not required to put its vulnerable patients at risk to accommodate this employee. **Robinson v. Children's**, 2016 WL 1337255 (D. Mass., April 5, 2016).