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CAN EMPLOYEES REFUSE VACCINATIONS BECAUSE OF RELIGIOUS BELIEFS?

On April 5, 2016, a district court in Massachusetts dismissed a Title VII case against a hospital where the employee was terminated for refusing vaccinations on religious grounds. *Robinson v. Children's Hospital Boston*, 2016 WL 1337255. While this order is not binding precedent, we wanted to report on this case because vaccination refusal is an issue facing a number of our clients at the start of each new flu season. Also, there is little case law from which employers can assess the relevant legal risks.

Title VII protects employees from employment discrimination based on their sincerely held religious beliefs, observances and practices. The religious beliefs do not have to be mainstream or recognized by any organized religion. This law requires reasonable accommodation when requested unless accommodation would impose an undue hardship on business operations. Undue hardship under Title VII is a lower standard than the Americans with Disabilities Act defense of the same name. An employer does not have to implement an accommodation that imposes on the business a "more than de minimis" cost or burden.

Robinson was an administrative employee who had contact with patients in the hospital's emergency department. Her duties included attaching the identification bracelets. The hospital required a flu vaccine for all employees in patient care areas. Robinson refused the vaccine primarily because she believed her faith had a mandate against vaccines.

In response, the hospital offered a pork-free version of the vaccine and helped her seek a non-patient care area job. Robinson continued to refuse the vaccine but did unsuccessfully apply for another position. The hospital gave her a leave to find another position. When the leave ended and no other position was found, Robinson was terminated, but the hospital characterized the termination as a resignation to allow her to remain eligible for other positions. During this accommodation process, Robinson also claimed a medical exemption, which the hospital considered, that was not substantiated by Robinson's medical records.

In the order, the judge noted there are no cases that "squarely" confront the issue of how to apply Title VII's religious belief protections to mandatory flu vaccinations. The judge also reviewed EEOC guidance but only found an informal EEOC legal counsel letter. The EEOC letter stated public health risks and alternative infection control methods, such as masks, are both appropriate factors when assessing an employer's undue hardship defense to an employee vaccination request.

The court gave two reasons for granting the dismissal of Robinson's claims. First, the court found the hospital had met its duty to reasonably accommodate Robinson and therefore was not liable for religious discrimination. Emphasizing the limits on an employer's duty to accommodate, the judge found the hospital's efforts to help Robinson were reasonable.

As its second reason for dismissal, the court held it was an undue hardship for the hospital to grant Robinson's request to work in a patient area without being vaccinated. The judge, while pointing out the decision was specific to the facts in this case record, agreed it was an undue hardship for the hospital to increase the risk of influenza transmission to a vulnerable population. Persuasive to the court were research and health authority statements stating hospital employees are at high risk for influenza exposure, the fact that many medical organizations support mandatory vaccinations and medical evidence on the record that vaccination is the "single most effective way to prevent the transmission of influenza." Importantly, the judge also held the hospital did not have to rearrange its work flow around "uncertain factors" to find a way to reduce Robinson's exposure to more vulnerable patients.

Again, this order is not legal authority that other courts have to follow, so employers cannot rely on this judge's conclusions. However, the opinion is a reminder that employers need to carefully consider how to respond to a religious objection to vaccinations and other safety measures. Employers cannot outright refuse religious accommodation requests without legal risk, but employers also do not have to unduly burden operations or risk patient safety to comply with this law. A well-founded and reasonable response to a religious accommodation request may save your organization from the significant expense and burden of a Title VII trial.

If you have any questions, please contact Sevilla Rhoads at srhoads@hallrender.com or your regular Hall Render attorney.