



Reconsidering Religious Accommodations In Light Of The Pandemic

Insights

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With all of the uncertainty facing the healthcare community in light of the current pandemic, the ability of hospitals and other healthcare facilities to be flexible when managing employees is of the utmost importance. To that end, the 11th Circuit Court of Appeals has recently opened the door for hospitals and other healthcare providers to revisit previously approved religious accommodations based on their rapidly and ever-changing needs.

Hospital Alters Worker's Religious Accommodation

Naples Community Hospital, based in Florida, hired Wilner Jean-Pierre as a clinical technician in 2007. The unit into which Mr. Jean-Pierre was hired required each employee to work every other weekend. As a Seventh-day Adventist, however, Mr. Jean-Pierre's religious beliefs prohibit him from working on the sabbath – sundown Friday through sundown on Saturday. Prior to beginning his employment, Mr. Jean-Pierre requested and was granted an accommodation that he would not have to work on Saturdays.

In 2010, Mr. Jean-Pierre applied for and was granted a transfer to a new unit, the Outpatient Infusion Services Department, which provides medical care to a variety of patients including those needing antibiotics or going through chemotherapy. In his new unit, Mr. Jean-Pierre was one of only four clinical technicians, and, again, clinical technicians in Mr. Jean-Pierre's new unit were expected to work every other weekend. Upon his transfer, Mr. Jean-Pierre reiterated his request for a religious accommodation that he not work on Saturdays. Despite operational challenges presented by his accommodation request, his new unit continued Mr. Jean-Pierre's accommodation of not working on Saturdays for another two years.

In 2012, however, two of the clinical technicians working in Mr. Jean-Pierre's unit resigned, leaving only two clinical technicians available for the entire unit. As a result, the hospital was no longer able to accommodate Mr. Jean-Pierre's request not to work on Saturdays. It instructed Mr. Jean-Pierre to come to work on an upcoming Saturday if he was unable to get someone to switch the shift with him. Mr. Jean-Pierre failed to report to work as instructed and failed to find someone to cover his shift. As a result, the hospital assessed Mr. Jean-Pierre three points under its disciplinary policy, which mandated termination after the accumulation of 12 points. Meanwhile, Mr. Jean-Pierre had already been issued four points under the policy for an unrelated issue earlier that year.

Following this discipline, the Human Resources Director of the hospital met with Mr. Jean-Pierre and suggested that he transfer to a *per diem* role, that he transfer to a different department, or that he find someone else to cover his next scheduled Saturday shift that was coming up in a few weeks. To that end, the Human Resources Director sat with Mr. Jean-Pierre and helped him look up open positions, of which there were several *per diem* roles, but the Human Resources Director did not otherwise help Mr. Jean-Pierre apply for any particular positions.

Mr. Jean-Pierre did not find another position, nor did he find someone else to cover his next Saturday shift. He failed to report to work and, as a result, was issued five points under the disciplinary policy for his repeat violation. That brought his total point accumulation to 12 and resulted in the termination of his employment.

Mr. Jean-Pierre's Claims Rejected By Appeals Court

Following his termination, Mr. Jean-Pierre filed a suit alleging religious discrimination, failure to accommodate his religious beliefs, and retaliation. A lower federal court ruled in favor of the hospital, limiting its analysis to a review of the alleged failure to accommodate. It concluded that the hospital offered Mr. Jean-Pierre a reasonable accommodation, including the ability to swap shifts or transfer positions, and that requiring the hospital to continue the accommodation would impose an undue hardship. Mr. Jean-Pierre filed an appeal with the 11th Circuit Court of Appeals, which recently upheld the dismissal of his claim and once again ruled in favor of the hospital.

In deciding in favor of the hospital, the appeals court held that the hospital had, in fact, accommodated Mr. Jean-Pierre's religion even after it eliminated his exemption from working on Saturdays. The court noted that the hospital offered him two accommodations: allowing him to switch shifts with other employees; and offering to help him apply for a new position.

Despite Mr. Jean-Pierre's claims that switching shifts was not realistic because there was only one other clinical technologist in his department and that he could not have obtained a transfer before his next Saturday shift, the 11th Circuit noted that the provision of *any* reasonable accommodation was sufficient to fulfill the hospital's obligation. Thus, appeals court concluded that the hospital had fulfilled its obligation to accommodate Mr. Jean-Pierre's religious beliefs.

Although the appeals court declined to decide whether accommodating Mr. Jean-Pierre's request not to work Saturdays posed an undue hardship, it noted, importantly, that "where, as here, the employer's business involves the protection of lives, we are reluctant to restructure its employment practices." The appeals court also noted that the hospital was not required to force the other clinical technologist to work Mr. Jean-Pierre's shifts in order to accommodate his religious needs.

Main Takeaway From Court Holding

The 11th Circuit's holding should give healthcare providers some comfort during these unpredictable times. It stands for the premise that alteration to or replacement of a religious accommodation is an appropriate step to take if warranted by your ever-changing needs – especially, as pointed out by the 11th Circuit, where that need arises in relation to patient care

especially, as pointed out by the Third Circuit, where that need arises in relation to patient care.

Thus, if you determine that the needs of your patients are best served by revising or altering an employee's religious accommodation, such an alteration may be appropriate by following the rationale of the *Jean-Pierre v. Naples Community Hospital* decision. Of course, when considering alterations to previously approved religious accommodations, you should make sure to touch base with your legal counsel before enacting any such changes.

For more information, [contact the author here](#).

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