

# CALIFORNIA APPEALS COURT PROVIDES ROADMAP FOR HEALTHCARE EMPLOYERS TO DEFEAT DISCRIMINATION CLAIMS OVER VACCINE MANDATES

Insights  
Jul 13, 2023

A California Court of Appeal recently delivered valuable guidance for healthcare employers who had or continue to have vaccination mandates. In *Hodges v. Cedars-Sinai Medical Center*, the court concluded that a hospital did not discriminate against an employee when it fired her for refusing to get the flu vaccine, providing a roadmap for success for other employers facing similar challenges. What does this decision mean for employers in the healthcare industry, both in California and across the country?

## Mandatory Vaccination Policies in the Spotlight

For decades, vaccination mandates have raised issues regarding medical and religious accommodations and rights to privacy. COVID-19 has brought these issues to the forefront – but they are by no means a new development for those in the healthcare field.

Throughout the pandemic, healthcare industry employers asked employees to vaccinate to protect each other and patients, both voluntarily and in response to state and federal orders (for recent updates on these mandates, see our [six-step plan](#)). In the absence of published opinions outlining the current contours of this area of law, many employers are left wondering how to enforce vaccination policies. This decision about a pre-pandemic flu vaccination mandate offers highly awaited guidance on how California courts are likely to approach upcoming cases relating to vaccination policies and exemptions.

## Employee Faces Termination After Refusing Flu Vaccine

## Related People



**David E. Amaya**

Partner

[858.597.9631](tel:858.597.9631)



**Jason A. Fischbein**

Partner

[858.666.3307](tel:858.666.3307)

Deanna Hodges worked in an administrative building a mile away from the main medical campus and had no patient care responsibilities, though many Cedars employees traveled between the two sites on a daily basis and Hodges occasionally visited the medical campus. After being diagnosed with cancer, Hodges missed over a year of work to undergo treatment. Her treatment was effective but left her with unspecified allergies, a weakened immune system, and neuropathy. When she returned to work, none of these side effects limited her ability to perform her job functions. She was not required to get a flu vaccine when she was first hired in 2000 or when she returned from cancer treatments.

In 2017, the hospital implemented a new policy requiring employees in all positions to get the flu vaccine as part of continued efforts to reduce transmission among employees and patients. The expanded policy adhered to the Center for Disease Control (CDC)'s 2016 recommendation that all healthcare workers get vaccinated annually against the flu, regardless of their involvement in patient care. It made exceptions only for employees with a valid medical or religious exemption.

In alignment with the CDC, the hospital's policy permitted medical exemptions only for the two recognized contraindications: severe allergic reaction to the flu vaccine or Guillan-Barre Syndrome following a previous dose. Employees with mild related conditions, including moderate allergy to the flu vaccine, did not qualify for an exemption.

The exemption request form included space for doctors to state "other" reasons their patient should not receive the flu vaccine but cautioned that such "other" reasons would be reviewed on a case by-case basis, and it advised to "provide all supporting documentation."

Fearing needles and side effects, Hodges refused to get the vaccine. She explained her concerns to her doctor, and he agreed to help her apply for an exemption. The request form cited Hodges's history of cancer and resulting allergies, her "extreme unwell state" resulting from injections and other vaccinations, and her lack of patient contact.

The hospital denied Hodges's request for exemption and asked her to reconsider. When she still refused to get vaccinated, the hospital terminated her employment.

## **Service Focus**

**Litigation and Trials**

---

## **Industry Focus**

**Healthcare**

---

## **Related Offices**

**Irvine**

**Los Angeles**

**Sacramento**

**San Diego**

**San Francisco**

**Woodland Hills**

Hodges sued the hospital for disability discrimination, among other claims, under California's main employment discrimination statute, the Fair Employment and Housing Act (FEHA). The trial court dismissed the case.

The court of appeal recently affirmed the dismissal. It concluded that the hospital objectively applied its nondiscriminatory policy and that no reasonable fact finder could conclude it had singled out the employee for termination based on a physical disability or medical condition.

### **Court Ruling: Refusing Vaccine is Legitimate Non-Discriminatory Reason for Termination**

The court concluded that Hodges failed to make out a case because she did not provide sufficient evidence that she had a disability or was perceived to be disabled. In fact, direct evidence showed that the hospital viewed her as *not* disabled and fully capable of safely receiving the flu vaccine, notwithstanding her doctor's recommendation that she should not.

The court found the reasons stated in the request for exemption insufficient to establish a disability. Critically, Hodges's doctor failed to specify how the risks of the vaccine could manifest as a disability for her. That is, she could not show how her possible symptoms would seriously limit a major life activity (e.g., working).

There was also no evidence that her existing neuropathy amounted to a disability. Her doctor testified that none of the conditions in her request were medically recognized contraindications.

Additionally, there was evidence Hodges's doctor later advised her to reconsider getting vaccinated due to her history of cancer. The court noted that even if she had shown evidence of disability discrimination, the hospital presented a legitimate nondiscriminatory reason for terminating Hodges's employment, and she did not argue pretext. Rather, she conceded that she was terminated because she declined to get the flu vaccine, a condition of her continued employment.

The opinion provides important insight into how courts will analyze vaccination requirements in the workplace. Three holdings stand out:

- Vaccination mandates may be enforced on employees who have no direct contact with patients.
- Minor reactions to a vaccine do not amount to a disability.
- An employer is not bound to accept an employee's subjective belief that she is disabled.

## Significance for Healthcare Employers

In the wake of the COVID-19 pandemic and heightened concern for limiting the spread of disease, the outcome in *Hodges* suggests the following takeaways for healthcare employers:

- **Vaccination Mandates Must Comply with the FEHA.** The court confirmed a key point for California employers: the FEHA does not prohibit implementing a vaccination policy recommended by the CDC. Healthcare employers may require that their employees get vaccinated, even if they have no contact with patients. However, the court emphasized employers' obligation to comply with the FEHA when implementing a vaccine mandate. This includes reasonably accommodating employees and applicants with disabilities or religious beliefs. Employers must also consider employees' constitutional rights to privacy and federal protections of the Americans with Disabilities Act and Title VII of the Civil Rights Act of 1964.
- **Reliance on CDC Guidance Helps Safeguard Policies.** Another takeaway is that when considering exemption requests, an employer is entitled to rely on other medical information other than an employee's subjective belief that she is disabled (here, CDC guidelines). Even medical information communicated through an employee's physician may be subjective. Accordingly, employers should review their policies for alignment with agency guidelines in formulating policy exceptions. This case demonstrates that reliance on CDC guidance can help an employer ensure the enforceability of its policy, so long as it is applied consistently and objectively. At a minimum, employers can expect that courts will defer to the CDC on matters of medically recognized contraindications for getting vaccinated.
- **Prepare to Engage in the Interactive Process.** Notably, the hospital in *Hodges* was not obligated to engage in the interactive process in this case because there was no

disability to accommodate and no perception of one. But ordinarily, a request to accommodate a nonobvious disability supported by reasonable medical documentation will suffice to trigger an employer's interactive process duty under the FEHA. Employers should prepare to engage in discussions with exempted employees to identify appropriate accommodations like the use of personal protective equipment or reasonable modification of duties.

■ **Healthcare Environments Present Special Concerns.**

While vaccination as a condition of employment presents challenges, employers with no vaccination policy may face patient tort claims or employee claims for failing to provide a safe and healthy work environment. Additionally, employers in the healthcare industry are susceptible to increased financial risk or operational shutdown in the event of a sizable outbreak impacting their workforce.

**Conclusion**

With multiple COVID vaccination cases queued up for appellate review, *Hodges* will play a key role in how the California courts consider the convergence of vaccine mandates and anti-discrimination laws.

We will continue to monitor developments related to this evolving area of law. Make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information directly to your inbox. If you have questions about your workplace vaccination policy or how this case affects your business, please contact your Fisher Phillips attorney, the authors of this Insight, any attorney in [our California offices](#), or any attorney in our [Healthcare Industry Practice Group](#).