



Court Tosses Flu Shot Lawsuit

EMPLOYEE'S RELIGIOUS DISCRIMINATION CLAIM FALLS FLAT

Insights

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In our [last edition of the Healthcare Update](#), we reported that the Equal Employment Opportunity Commission (EEOC) had filed a June 2016 lawsuit against that Baystate Medical Center in Massachusetts, claiming that the employer did not reasonably accommodate the sincerely held religious beliefs of an employee who refused to take a flu shot.

In a seemingly contradictory August 2016 decision, however, a federal judge in Pennsylvania ruled that a former psychiatric crisis intake worker at Mercy Fitzgerald Hospital had no religious discrimination claim when he was terminated for refusing a flu shot. Other than “take two aspirin and call me in the morning,” what prescription can hospitals take away from these two apparently conflicting situations?

Can The Two Cases Be Reconciled?

Despite the differing conclusions (so far), these two scenarios are not irreconcilable. In fact, they illustrate the importance of conducting detailed evaluations of requests for accommodation.

In the Baystate case from Massachusetts, the controversy centers upon whether the hospital did enough to accommodate the employee. There may also be a dispute over the effectiveness of Baystate's policy requiring employees to wear a face mask at work if they refuse a flu shot.

In the Mercy case from Pennsylvania, the court dismissed Paul Fallon's claim because he did not establish that his objection to taking a flu shot should actually be protected as a religious belief under Title VII.

Employee's Downfall: Lack Of “Religious” Belief

In two prior years, Mercy had excused Fallon from its flu shot requirement after Fallon submitted a religious exemption form that explained why he objected. Fallon was terminated in 2015, however, based upon the information contained (or “not” contained) in a 22-page essay that he wrote supporting his latest request to be excused from taking a flu shot.

The hospital concluded, and Judge Gearld J. Pappert agreed, that while Fallon's beliefs against mandatory flu shots may have been sincere, they could not be deemed “religious.” In fact, the court found his beliefs to be secular in nature. Described as “a lengthy editorial” on social issues, Fallon's

explanation was not tied to any sort “spiritual or other-worldly mandate.” Although he quoted Buddha, Fallon is admittedly not Buddhist and he claimed no affiliation with any religious congregation.

The court concluded that his lengthy explanation included none of the necessary signs that the federal 3rd Circuit Court of Appeals has identified as indicating that an individual’s beliefs are entitled to legal protection as a religion. The appeals court, with jurisdiction over Pennsylvania, New Jersey, and Delaware, has said that a religion “addresses fundamental and ultimate questions” regarding “deep and imponderable matters,” is “comprehensive in nature,” and consists of a belief system rather than some “isolated teaching.”

Ultimately, the district court found that Fallon’s arguments were based “merely on a personal moral code” and did not rise to the level of protected religious beliefs. In sum, it concluded that employee beliefs are not protected simply because they are strongly held.

As these and similar controversies continue to emerge, healthcare employers will be well-served to continue to evaluate the details of each situation under applicable law, recognizing that solutions for such conundrums will not be found in neat, “one-size-fits-all” packages. We recently provided [a helpful summary of issues](#) that healthcare employers should keep in mind when managing the risk of mandatory flu shots, which should be especially vital as flu season approaches.

For more information, visit our website at www.fisherphillips.com or contact your Fisher Phillips attorney or any member of our [Healthcare Practice Group](#).

This Legal Alert provides an overview of a specific federal decision. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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