

Employer Vaccine Programs: A Case Where Religion is NOT a Factor

Barbara E. Hoey

January 25, 2018

This year flu season came early and with a vengeance. As we mentioned in our October post, [The Rise of Employee Religious Discrimination Claims](#), mandatory flu vaccines present a common pitfall for employers. As employers seek to avoid flu outbreaks in the workplace, they may unknowingly head toward a flu case in the courtroom. Issues arise when employees present sincerely held religious beliefs, or medical issues, that may preclude their flu vaccine. This is a particular challenge in hospitals.

A recent Third Circuit decision should be heartening to employers who are trying to manage vaccination programs. In *Fallon v. Mercy Catholic Medical Center of Southeastern Pennsylvania*, No. 16-3573, LINK the Third Circuit affirmed the dismissal of a complaint by an employee who was fired for refusing a vaccine, concluding that an employee did not have a valid religious objection and could be lawfully fired.

The plaintiff, Paul Fallon, had worked at Mercy Catholic since 1994. It was only in 2012 that Mercy Catholic began requiring employee vaccinations. In both 2012 and 2013, Fallon submitted requests for exemption that were approved. Each time Fallon submitted his exemption request, attaching a **twenty-two page** essay outlining his “sincerely held beliefs” that the vaccine was harmful. However, in 2014, Fallon submitted his same request and received a denial in response, along with an explanation that Mercy Catholic had changed its standards for the exemption. Mercy Catholic requested a letter from a clergyperson supporting his exemption request. Fallon was unable to provide a letter and was ultimately terminated.

Following termination, Fallon filed suit in federal court alleging disparate treatment, religious discrimination and failure to accommodate his religion. After the District Court granted Mercy Catholic’s motion to dismiss, Fallon appealed the decision to the Third Circuit which affirmed the dismissal. In doing so, the Third Circuit undertook an examination of whether Fallon’s beliefs were “religious,” ultimately concluding they were not.

The court held that Fallon’s alleged “religious” beliefs were that “one should not harm their own body” and “that the flu vaccine may do more harm than good” were not a ‘religion’ under the law. Using the definition of “religion” developed in *Africa v. Commonwealth of Pennsylvania*, 662 F. 2d 1025, the court looked to see whether Fallon’s “religion” (1) “address[ed] fundamental and ultimate questions having to do with deep and imponderable matters,” (2) was “comprehensive in nature... consists of a belief-system as opposed to an isolated teaching,” and (3) “often can be recognized by the presence of certain formal and external signs.”

Noting that “[g]enerally, he simply worries about the health effects of the flu vaccine, disbelieves the

scientifically accepted view that it is harmless to most people, and wishes to avoid this vaccine,” the court found Fallon failed on the first two factors. Fallon also could not establish the third factor, according to the court. The court summarized its view, concluding “because Fallon’s beliefs do not satisfy any of the Africa factors, Fallon’s beliefs do not occupy a place in his life similar to that occupied by a more traditional faith. His objection to vaccination is therefore not religious and not protected by Title VII.”

What Should Employers Do?

Employers should note that this decision is only that of one court, applying one test. Because employers across the country, often in the healthcare field, implement flu vaccine programs, employers must be aware of the state of the law where they operate.

In addition, employers should also be careful about what proof they require from employees to qualify for an exemption. In fact, the court in *Fallon* noted that a letter from a clergyperson is not the only way to demonstrate a religious belief, stating “[t]o the extent that Mercy Catholic may have believed that it could not be discriminating on the basis of religion if it fired an employee who could not produce a letter from a clergyperson, it was mistaken.”

In sum, this remains an evolving area of the law.