

The Accommodation Process Requires More Than Lip Service

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Employers implementing mandatory COVID-19 vaccination programs are no doubt starting to feel the pressure resulting from an influx of religious and disability accommodation requests. In all the internal commotion (and resulting strain on human resources departments), employers must remember that failing to implement an adequate process for evaluating and responding to accommodation requests can have real legal consequences.

An action just filed in the U.S. District Court for the District of Massachusetts illustrates just this point. See, *Together Employees et al. v. Mass General Brigham Inc.*, case number 1:21-cv-11686. Mass General, the hospital network employer in that case, implemented a mandatory vaccination program, announcing that employees who failed to receive the vaccination would be placed on unpaid leave and, ultimately, could be terminated. The hospital network, as the EEOC recommends, invited employees to apply for medical and/or religious exemptions.

According to the complaint, the lawsuit arises from the hospital's decision to deny the exemption requests of 229 employees. The plaintiff Together Employees, an unincorporated association of the impacted employees, seeks injunctive relief, claiming that the hospital did not really analyze their requests, and engaged in a wholesale denial of accommodations without any showing of undue hardship by Mass General. The employees allege that the hospital network's accommodations process was designed to hinder employees from adequately supporting their requests for an accommodation, resulting in denials for almost all who applied. Among other issues with the process, the employees claim that the forms did not give them space to explain the need for the exemption, or allow them to attach supporting documentation.

This case was just filed and the employer has not responded. So, there is no way to know whether these allegations are true. That said, the complaint highlights the fact that simply paying lip service to the accommodations process will leave employers wide open to legal challenges. Employers should avoid taking a mechanized approach to accommodation requests, and should instead, meaningfully evaluate each request based upon the employee's individual circumstances. Even in the face of a deluge of accommodation requests, it is always the employer's obligation to determine whether the requested accommodation truly poses a direct threat or undue burden to the business, and whether an alternative accommodation exists.

This does not mean that accommodation requests cannot be denied based upon an individual's job duties, the amount that they interact with patients and the public, or other factors which demonstrate that their remaining unvaccinated will pose an unreasonable risk. However, the denials

must be fact-based and objective. And, if there are employees who can do their jobs without those interactions, and thus can be accommodated, then exemptions may have to be granted.

In other words, the employer needs to evaluate each request individually, and have a record of the reasons the accommodation was denied.

Update

In a preliminary hearing held on Wednesday, October 21, 2021, Chief U.S. District Judge F. Dennis Saylor IV declined to enjoin Mass General's plan to suspend unvaccinated workers. The denial was without prejudice, and a follow-up hearing was set for November 2, 2021, in order to review the details of the hospital's accommodation process and the workers' various claims. The next hearing comes just three days before the suspended unvaccinated workers will be terminated under the hospital's policy. During the proceeding the judge commented that the workers would be faced with the cost of "the consequences of living with one's choices." And so it would appear the Court has no patience for the workers' challenge, however, whether the Court will reverse course at the November 2nd hearing remains to be seen.

As always, Kelley Drye will continue to monitor the progress this case and provide updates related to any further developments. In the interim, if you have any questions about mandatory vaccination programs or accommodations, please reach out to Kelley Drye & Warren LLP.