



# MEMORANDUM

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## **Title VII and Employer Vaccination Policies**

Many employees hold sincere religious beliefs that prevent them from complying with employers' vaccination policies. As more employers implement compulsory vaccination and immunization policies as a condition of employment, more individuals have begun to seek exemptions where the policies conflict with their religious beliefs. An employee's objection to an employer's mandatory vaccination policy is one protected by federal law, specifically, Title VII of the Civil Rights Act ("Title VII"). Title VII makes it unlawful for an employer:

- (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's . . . religion, sex, or national origin; or
- (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's . . . religion, sex or national origin.

*Id.* at § 2000e-2 (emphasis added). Title VII defines an employer as "a person engaged in an industry affecting commerce who has fifteen or more employees..." *Id.* Thus, Title VII applies to virtually all employers in this country.

In order for an employee to be protected under Title VII, he must show that:

- (1) He holds a sincere religious belief that conflicts with an employment requirement<sup>1</sup>;

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<sup>1</sup> The first requirement is usually not an issue since religion under Title VII is broadly defined as including "all

- (2) He has informed the employer about the conflict<sup>2</sup>; and
- (3) He was discharged, disciplined or subjected to discriminatory treatment for failing to comply with the conflicting employment requirement.<sup>3</sup>

See *Baker v. Home Depot*, 445 F.3d 541, 546 (2d Cir. 2006); *Heller v. EBB Auto Co.*, 8 F.3d 1433, 1438 (9th Cir. 1993); *Turpen v. Missouri-Kansas-Texas R.R. Co.*, 736 F.2d 1022, 1026 (5th Cir. 1984).

The EEOC has reiterated that Title VII’s mandate applies to an employer’s seasonal flu vaccination requirements:

While Title VII does not prohibit health care employers from adopting seasonal flu vaccination requirements for their workers, those requirements, like any other employment rules, are subject to the employer's Title VII duty to provide reasonable accommodation for religion. . . In that context, reasonable accommodation means granting religious exemptions to employees with sincerely held religious beliefs against vaccination when such exemptions do not create an undue hardship on the employer's operations.

EEOC, *Saint Vincent Health Center To Pay \$300,000 To Settle EEOC Religious Accommodation Lawsuit*, <https://www.eeoc.gov/eeoc/newsroom/release/12-23-16.cfm> (hereinafter “EEOC Press Release”).

In *EEOC v. Saint Vincent Health Care*, the EEOC brought suit against Saint Vincent for refusing to grant employees religious belief-based exemptions from flu vaccination requirements and firing them for noncompliance. *U.S. EEOC v. Saint Vincent Health Center*, Civil Action No. 1:16-cv-234 (W.D. Penn. Sept. 22, 2016). The former employees of Saint Vincent had submitted requests for religious exemptions which were denied by Saint Vincent. Under Saint Vincent’s policy, all employees were required to receive an annual flu shot as a condition of continued employment. Employees were entitled to seek exemptions based on medical or religious grounds. Any employee who did not receive a flu shot and had not obtained approval for an exemption was discharged. Saint Vincent granted at least 14 requests for medical exemptions, but denied the

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aspects of religious observance and practice, as well as belief. . . .” 42U.S.C. § 2000e(j). As the Supreme Court clarified in the recent case, *EEOC v. Abercrombie & Fitch Stores, Inc.*, 135 S. Ct. 2028, 2032 (2015), Title VII protects both religious *belief* and *practice*. Religious beliefs can include both theistic and non-theistic moral or ethical beliefs as to what is right and wrong, if they are sincerely held in the same manner as traditional religious beliefs.

<sup>2</sup> The requirement can be satisfied by ensuring that the employer has sufficient notice of an employee’s religious belief in order to permit him to “understand the existence of a conflict between employee’s religious practices and the employer’s job requirements.” *Heller*, 8 F.3d at 1439.

<sup>3</sup> In general, an employer is required to accommodate an employee's adherence to the principles of his religion unless such accommodation will actually interfere with the operations of the employer. See *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63, 73–74 (1977); *EEOC v. READS, Inc.*, 759 F. Supp. 1150, 1155 (E.D. Pa. 1991); 29 C.F.R. § 1605.2(c). “Accommodation” requires more than implementation and application of neutral policies. See *Riley v. Bendix Corp.*, 464 F.2d 1113, 1115 (5th Cir. 1972); *Reid v. Memphis Publ’g Co.*, 468 F.2d 346, 350-51 (6th Cir. 1972) (the fact that a particular policy is applied uniformly to all employees does not lessen the discriminatory effect upon a particular employee’s religious beliefs). “Discrimination” includes demotion, layoff, transfer, failure to promote, discharge, harassment, or intimidation, or the threat of these adverse employment actions. See Gregory Sarno, *Harassment or Termination of Employee Due to Religious Beliefs or Practices*, 35 Am. Jur. P.O.F. 2d 209, 222 (1983); *EEOC v. Townley Eng’g and Mfg.*, 859 F.2d 610, 614 n.5 (9th Cir. 1988), cert. den., 489 U.S. 1077 (1989).

religious exemptions. The employees who were denied requests for religious exemptions represented several different religions and belief systems.

For example, one employee of Baptist faith asserted that this religious belief prohibited him defiling his body. In support of his request for exemption, he cited several scriptures from the Bible and explained that receiving the vaccination would constitute a defiling of his body. Another employee of non-denominational Christian faith submitted a similar requests and explained her belief that God wants her to live a healthy lifestyle and use alternative medicine. She submitted a note from her primary care provider further explaining her “personal religious and moral beliefs.” Two other employees of Russian Orthodox faith also applied for the exemption and explained that their beliefs required them to keep their body and spirit pure and that vaccinations would constitute a contaminant. In all of these cases, Saint Vincent denied the requests for failure to “provide proof of religious doctrine.” Notably, no undue hardship was established even where the employees had direct contact with patients.

Ultimately, Saint Vincent was required to pay monetary relief to all six employees and to offer reinstatement to all six employees. In addition, the consent decree specifically provided that Saint Vincent would adhere “to the definition of ‘religion’ established by Title VII and controlling federal court decisions.” The consent decree made clear that Title VII’s “definition [of religion] forbids employers from rejecting accommodation requests based on their disagreement with an employee's belief; their opinion that the belief is unfounded, illogical, or inconsistent in some way; or their conclusion that an employee's belief is not an official tenet or endorsed teaching of any particular religion or denomination.” EEOC Press Release *supra* (emphasis added).

To find out more about religious discrimination and religious accommodations or to file a Complaint, visit the U.S. Equal Employer Opportunity Commission’s website at <https://www.eeoc.gov/religious-discrimination>. Note that there are time limits for filing a charge or complaint. The time limits differ depending upon whether you are a federal employee.