HOSPITAL EMPLOYEE LAWFULLY TERMINATED FOR REFUSING FLU SHOT

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Useful guidance for employers on how to handle employee objections to required immunizations

IN LAST YEAR'S *ROBINSON V. CHILDREN'S HOSPITAL BOSTON,* Leontine K. Robinson alleged that Children's Hospital Boston violated the law when it terminated her after she refused a flu vaccination because of her religious beliefs.

THE POLICY

The nonprofit teaching hospital is affiliated with Harvard Medical School, and its patients include some of the most critically ill infants, children and adolescents in the world. Even in healthy infants and children, the influenza virus can be fatal—and the risk of infection and fatality is higher within the hospital's patient population.

The hospital decided in 2011 to require all persons who work in or access patient-care areas to be vaccinated against the influenza virus to achieve the safest possible environment and ensure the highest possible care for its patients. The goal was to get as close to 100 percent as possible. The policy applied not only to employees, but to anyone affiliated with the hospital who accessed patient areas, including volunteers, contractors and healthcare providers with hospital treating privileges.

Under this policy, the only persons exempt from vaccination were those for whom the influenza vaccine posed a serious health risk. The hospital did not exempt those who objected on religious grounds because it concluded that additional exemptions would increase the risk of transmission, but it did accommodate individual requests based on religious concerns to receive a pork-free (gelatin-free) vaccine.

THE TIMELINE

Robinson handled intake and registration and affixed patient identification bracelets. She was typically one of the first hospital employees to interact with patients and their family members when they arrived in the emergency department. These duties required her to touch and sit in close proximity to patients. Robinson contacted Kevin Muhammed, who is associated with the Nation of Islam's Ministry of Health, requesting a vaccination exemption letter. He sent forms for her use, stated that some vaccines contained pork byproduct, and suggested that Robinson get a list of the ingredients in the specific vaccine administered.

Robinson's supervisor, Jason Dupuis, reminded her and others that the deadline to receive the influenza vaccine was December 1, 2011. Robinson spoke with the hospital's Director of Occupational Health, who offered her a non-gelatin influenza vaccine, which she declined. On November 21st, Dupuis again reminded Robinson and others of the December 1st deadline. Robinson responded that she was declining the influenza vaccine because of her religious beliefs. She was also looking to transfer to another position outside of patient care and encouraged him to contact her if he knew of any positions.

There were no publicly posted positions outside of patient care for which Robinson was qualified. Because she was unable to find another position by the end of her leave of absence, the hospital offered her an additional two weeks of leave. When the two-week period ended, it treated Robinson's termination as a voluntary resignation.

THE JUDGMENT

Robinson filed a lawsuit asserting two claims against the hospital: (1) religious discrimination under 42 U.S.C. § 2000e-2 (Title VII), and (2) religious discrimination under Mass. Gen. L. c. 151B. The hospital moved for summary judgment.

The court observed that Title VII requires employers to accommodate, within reasonable limits, the bona fide religious beliefs and practices of employees. Claims under Chapter 151B have been interpreted largely to mirror Title VII claims. Courts have held that encouraging a plaintiff to transfer to another position within the company and offering her assistance toward that effort constitute a reasonable accommodation.

Here, hospital employees worked with Robinson several times to address her objection to the vaccine. First, when Robinson told the hospital that she allegedly had an allergic reaction to a flu shot in 2007, she was encouraged to seek a medical exemption and granted a temporary medical exemption while it reviewed her medical records. Second, the hospital met with Robinson and permitted her to attempt to find a non-patient-area position so she would remain employed by the hospital, but be relieved of the mandatory vaccination policy. Third, when Robinson was unable to find another job by the end of her leave, the hospital offered her an additional two weeks, which she accepted.

The hospital argued that Robinson's claim failed for a separate reason: because granting her request—no vaccination while keeping her patient-care position—would have created an undue hardship, because it would have increased the risk of transmitting influenza to its already vulnerable patient population. The court agreed and dismissed Robinson's suit.

Here, it appears the hospital did virtually everything right. This case provides useful guidance for employers—particularly healthcare employers—on how to handle employee objections to required immunizations. **iBi**