

A stethoscope with a silver chest piece and a black tube is positioned diagonally across the page. A wooden gavel with a dark handle and a light-colored head is placed over the stethoscope's tube. The background is white.

# **Mandatory Flu Vaccinations?**

## **Immunize Yourself Against Religious Discrimination Claims**

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# **Mandatory Flu Vaccinations? Immunize Yourself Against Religious Discrimination Claims**

*Posted by John S. Lord Jr. – 1-23-17*

You are an HR generalist at a 300-bed community hospital. Your boss has instructed you to make sure that all personnel files document that the employee received the hospital's annual mandatory flu vaccination. However, you notice that seven employees still have not gotten their vaccinations, two weeks after the deadline. When you email them to ask why, they respond they cannot get the vaccine due to their religion. What do you do next?

A good idea would be to chat with the hospital's labor and employment lawyers. That is because in the past several years, both the EEOC and plaintiff's attorneys have brought lawsuits claiming Title VII violations when employees refused to be vaccinated due to their religious beliefs. In one case we reported on in 2013, a court ruled that the practice of veganism — not consuming any animal products — might be considered a religion. In that case, the employer hospital required employees to receive flu vaccines. However, a vegan employee refused to be inoculated, arguing that because the flu vaccine is grown in chicken eggs, it was an animal product. After the court allowed the employee's case to go forward with the ruling that veganism may potentially be a religious practice, the hospital confidentially settled with the employee.

More recently, in another flu vaccine refusal case, the EEOC sued a Pennsylvania hospital, for allegedly denying a religious accommodation under Title VII. That case settled much more publicly, with the hospital agreeing to enter into a consent decree and agreeing to pay \$300,000 and offer six employees reinstatement.

The hospital denied any violation of Title VII in the consent decree. But, in the underlying lawsuit the EEOC alleged that the hospital denied religious accommodations to employees who did not wish to take a mandatory flu vaccine for sincerely held religious beliefs. The EEOC claimed that during a specific time period, the hospital granted fourteen vaccination exemption requests based on medical reasons, while denying every single religion-based exemption request.

The consent decree states the hospital cannot deny an employee's exemption request just because it disagrees with an employee's belief or because it feels the claimed religion is unreasonable, inaccurate, unfounded, illogical, or inconsistent with the hospital's views. The consent decree is not a court ruling and is not binding law. However, it does show how aggressive the EEOC will be on this topic and shows how hard the EEOC will push employers that terminate employees who request religious exemptions for vaccinations.

If you are in the position of having to determine whether your organization should give an exemption to a mandatory vaccination, be careful about denying an exemption because the request is not based on a "standard religion." Additionally, you will want to think about possible other accommodations in lieu of a vaccination that would help eliminate

the risk of the transmission of disease to others. For example, some health care employers consider requiring non-vaccinated employees to wear face masks around certain patients.

Finally, remember that even though patient and other employee safety is paramount, other employee rights and employer obligations must be considered.



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