

Court Says Mandatory Flu Vaccine For Hospital Worker Does Not Violate Title VII

April 18, 2016 | [Employment Discrimination, Currents - Employment Law](#)



**Norma W.
Zeitler**
Partner

A federal court in Massachusetts recently [issued an opinion](#) that provides much needed guidance to hospitals and other healthcare institutions on whether it is permissible - under Title VII - to require mandatory influenza vaccinations for healthcare workers who object to receiving the vaccination on religious grounds. The case started in 2011, when Children's Hospital Boston announced that all persons who worked in or accessed patient care areas would be required to be vaccinated against the influenza virus. The requirement applied to employees, volunteers, contractors and non-employed healthcare providers with treating privileges (such as doctors). Although the hospital granted medical exemptions to certain individuals, the hospital did not allow exemptions for religious reasons because it concluded that granting additional exemptions would increase the risk of transmission of influenza. Leontine Robinson, a Muslim employee who worked as an administrative associate in the emergency department, objected to receiving the vaccine because it contained a pork byproduct and because she believed many vaccines were contaminated. The hospital offered Robinson a non-gelatin influenza, which had no pork byproduct, but Robinson still refused to be vaccinated, even though she recently had received a tetanus shot. When the hospital explained to Robinson that receiving the influenza vaccination was mandatory just like receiving the tetanus shot, and that she could be terminated if she refused to be vaccinated by the impending deadline, Robinson still refused the influenza vaccination. The day of the deadline, Robinson disclosed to the hospital that she had experienced a bad allergic reaction to the influenza vaccine in 2007. The hospital encouraged Robinson to seek a medical exemption and gave her two weeks to do so. Ultimately, Robinson's request for a medical exemption was denied. The hospital's director of employee relations then met with Robinson, and assigned an employee who worked with her to assist Robinson with trying to find an open position for which she was qualified in a non-patient care area. In addition, rather than terminate her for failing to be vaccinated by the deadline, the hospital allowed Robinson to use her accrued leave to look for a new position. When her accrued leave was up, the hospital gave Robinson an additional two weeks of leave to continue her search. When Robinson still hadn't found a non-patient care position by the end of her leave, the hospital terminated Robinson's employment but coded her termination as a voluntary resignation so she was eligible to re-apply for other hospital positions in the future. Robinson sued under Title VII and Massachusetts state law, claiming the hospital discriminated against her because of her religion. In analyzing Robinson's claims, the court avoided addressing the hospital's argument that no reasonable jury could find that Robinson had a bona fide religious belief that precluded vaccination – explaining that “assessing the bona fides of an

RELATED PRACTICE AREAS

Arbitration and Grievances
EEO Compliance
Labor and Employment
Workplace Culture 2.0

RELATED TOPICS

Discrimination
Title VII

employee's religious belief is a delicate business" and is a "quintessential question of fact." Nevertheless, the court granted summary judgment to the hospital after concluding that the hospital met its burden to offer a reasonable accommodation by encouraging Robinson to apply for a non-patient care position, by allowing her to use her accrued leave to look for a position, by granting her additional leave to look for a position and by terminating her employment in a way that left her eligible for rehire. The court also found that granting Robinson's exemption request – while allowing her to keep her patient care position – would have created an undue hardship because it was more than a *de minimis* burden. Although the subject of mandatory vaccinations for healthcare workers is not a new one, this case is important because it is the first time a court has rendered a written opinion that thoroughly analyzes the issues under Title VII.