

## More Flu Vaccine News: EEOC Once Again Alleges Hospital's Mandatory Flu Vaccine Policy Violates Title VII

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For years, the Equal Employment Opportunity Commission (EEOC) has been silent over whether a hospital's mandatory flu vaccine program violates Title VII's prohibition against religious discrimination. The courts also generally have been silent (or have not reached decision) on the issue, with the notable exception of *Robinson v. Children's Hospital Boston*, issued by the U.S. District Court for the District of Massachusetts earlier this year, which found that the hospital's mandatory [flu vaccine program did not violate Title VII](#). That seems to be changing.

Earlier this year, the EEOC filed suit against Mission Hospital, Inc., alleging that its version of a mandatory flu vaccine program violated Title VII. Although that lawsuit (which included class allegations) remains pending, the complaint provides insight into [what the EEOC finds unlawful](#).

In another lawsuit, also before the U.S. District Court in Massachusetts, the EEOC claims Baystate Medical Center, Inc., violated Title VII when the only accommodation it allegedly offered to the employee – wearing a mask over her nose and mouth at all times while at work – reportedly was not effective. According to Jeffrey Burstein, regional attorney for EEOC's New York's District Office (which covers Massachusetts): "For an accommodation to be meaningful under Title VII, it both must respect the employee's religious beliefs and permit her to do her job effectively." The EEOC's view on the lawsuit appeared in the [National Law Journal](#).

The EEOC's latest lawsuit does not contain class allegations; instead, it is brought on behalf of a single individual, which is somewhat unusual but could have been prompted by the court's decision in *Robinson*. There are several key differences that, if the allegations are proven to be true, would distinguish the employee who filed suit in *Robinson* and Stephanie Clarke, the employee on behalf of whom the EEOC has sued in its most recent lawsuit: Robinson worked in a patient care area; Clarke did not (and in fact worked as a recruiter in an "administration building.") Robinson was offered leave as an accommodation and when she was unable to secure a position in a non-patient care area, she was terminated and coded as eligible for rehire. Clarke, who wore the mask as instructed and allegedly talked to her supervisor when she received complaints that she was hard to understand, allegedly was suspended without pay when she was caught not wearing the mask, and then terminated and coded as ineligible for rehire.

For its part, Baystate denies in [its answer](#) that the accommodation was not effective, and also denies that Clarke was suspended and terminated,

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explaining instead that Clarke was placed on administrative leave, and that her termination was coded as a resignation because it was understood from Clarke's correspondence that she was refusing to return to work from leave. Baystate also pointed out that while Clarke's duties did not require her to interact directly with patients, it did require her to interact with others who were in direct patient contact positions and her duties could require her to be present in areas where patients might be seen or encountered.

It remains to be seen how the District Court will rule in this most recent lawsuit or in the lawsuit involving Mission Hospital. In the meantime, however, these lawsuits reiterate for healthcare employers the importance of analyzing their duty to accommodate under Title VII based on the particular facts and circumstances.