Friday, February 7, 2020

We have written extensively on mandatory vaccination policies and employers’ obligations to accommodate requests for exemption based on religious or disability grounds. The Fifth Circuit Court of Appeals has issued a recent decision that provides helpful guidance to employers who mandate vaccinations. In Horvath v. City of Leander, No. 18-51011 (5th Cir. Jan. 9, 2020), the Fifth Circuit held that the defendant City of Leander did not violate a firefighter’s religious freedom when it discharged the firefighter after he refused to choose either of two accommodations to the municipality’s vaccination requirement.

In 2016, the City mandated that all personnel be vaccinated against tetanus,
diphtheria, and whooping cough (TDAP). Plaintiff, an ordained Baptist minister, objected on religious grounds, claiming the vaccination violated his beliefs in the sanctity of life and his conscience. In response, the municipality offered two different accommodations: (1) transfer to a code enforcement position that did not require vaccination; or (2) wear a respirator and other equipment while on duty, submit to testing for possible disease when warranted, and monitor and record his temperature. Plaintiff refused both accommodations, rejecting the first accommodation outright and saying he would accept the second accommodations only upon certain conditions. As a result, the City fired him.

Plaintiff pursued federal and state law religious discrimination claims, among others. On summary judgment, the Court found in favor of the City, holding that the proposed transfer to a code enforcement job constituted a reasonable accommodation. The Fifth Circuit affirmed. The Court was unpersuaded by plaintiff’s argument that the proposed transfer was not a reasonable accommodation because the duties were less desirable and the shift would have prevented him from working his second job. While plaintiff may have preferred the duties and hours of the firefighting position, such preference did not make the transfer offer unreasonable nor did the reduction in income due to loss of an outside job. Instead, plaintiffs are entitled only to a reasonable accommodation, not their preferred accommodation. Because the transfer offer was reasonable, the Court declined to analyze the second offer.

Employers who have, or are considering implementing, a mandatory vaccination policy of any kind should take note of the City’s actions in this case. The City properly responded to Plaintiff’s religious objection by offering multiple accommodations and engaging in the interactive process. As the Fifth Circuit’s decision suggests, only one reasonable accommodation is necessary to meet an employer’s obligation. If, thereafter, an employee refuses to accept a reasonable accommodation, an employer may take adverse action – including termination of employment – against the noncompliant employee.

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