“Vaccinate” Your Mandatory Flu Shot Policies Against Litigation

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As we have just survived one of the worst flu seasons in recent memory, now is a good time to consider whether you should implement or revise a mandatory flu shot policy for 2018. The Center for Disease Control and Prevention recommends all United States healthcare workers obtain annual flu vaccines. While many healthcare employers implement flu vaccine policies for their employees, it is important that these policies account for employee objections based upon religious beliefs. Federal and many state laws require employers to reasonably accommodate an employee’s religious beliefs or practices unless it causes undue hardship to the employer’s operation of its business.

Last month, the U.S. Department of Justice, Civil Rights Division, filed a lawsuit against a Wisconsin nursing home, alleging that the employer failed to accommodate an employee’s religious beliefs when she requested a religious exemption from the flu-shot requirement. The Title VII lawsuit claims an employee sincerely held a religious belief “stemming from her interpretation of the Bible that prohibited her from putting certain foreign substances, including vaccinations, in her body because it was a ‘Holy Temple.’” The complaint alleges that while the employer’s policy allowed for religious exemptions (employees could wear protective masks during the flu season instead of receiving the shot), it required employees to produce a “written statement from their clergy leader supporting the exemption with a clear reason and explanation” of the religious objection to the vaccination. Employees who did not receive the shot or produce the clergy letter were considered to have voluntarily resigned employment.

The employee in this case explained she could not provide a letter “because she had no affiliation with any church or organized religion and therefore had no clergy leader to write the letter,” and offered to write a letter herself “that explained the Bible-grounded basis for her religious objection and cited specific Biblical passages in support,” and have family and friends “personally attest to the sincerity of her religious faith and practices.” According to the allegations in the lawsuit, when the employer refused to accept this alternative to a clergy leader letter, the employee submitted to the flu shot and now reports “severe emotional distress” including “fear of ‘going to Hell’ because she had disobeyed the Bible by receiving the shot.” The DOJ argues that requiring a letter from a clergy leader to support the exemption constitutes religious discrimination and an unlawful failure to accommodate the employee’s sincerely held religious belief.

In addition to religious-accommodation issues, unionized employers may face other hurdles to implementing or changing a flu vaccine policy. Depending on the language contained in the collective-bargaining agreement, there may be an obligation to bargain with the union over flu shots before making them a new condition of employment.

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