

Kentucky Federal Court Allows Hospital to Proceed with Vaccination Policy for Employees

By Michael Brohman

In what is likely to be just the first of many court challenges to private employer COVID-19 vaccination requirements, a United States District Court judge in Kentucky refused to stop a hospital from requiring its employees to receive the COVID-19 vaccination in response to the pandemic.

At issue in *Beckerich v. St. Elizabeth Medical Center* was a policy requiring hospital employees either to receive the vaccine or submit a request for either a medical or religious exemption. The policy stated that employees who failed to get vaccinated without an accepted exemption could be terminated from their jobs. The employees seeking to stop the hospital from enforcing this policy argued that the policy infringed upon their constitutional rights and that the hospital had failed to approve religious and medical exemptions in accord with the Americans with Disabilities Act (“ADA”) and Title VII of the Civil Rights Act of 1964 (“Title VII”). The judge rejected each of these arguments.

Private Hospital’s Vaccination Policy Does Not Violate Constitutional Rights

Without addressing whether or not the employees actually had any constitutional right to oppose the vaccination policy, the judge first ruled the employees could not pursue such a claim against a private entity like the hospital, finding that “without establishing that Defendants are state actors, Plaintiffs’ constitutional claims cannot stand.” In so ruling, the judge denied the employees’ claim that the hospital’s receipt of federal funding made it a “state actor”. According to the judge, “private hospitals, no matter how much federal funding they may receive, are generally not state actors for purposes of constitutional questions.”

Policy Offering Medical Exemption Does Not Violate ADA

The judge next rejected the employees’ claim that the hospital’s policy violated the ADA. The judge noted that the ADA requires employers to provide a process by which a disabled employee can seek a medical exemption to a COVID-19 vaccine requirement. The judge found that the hospital’s policy established a mechanism by which employees could apply for medical exemptions. In reviewing the hospital’s application of its policy, the judge noted further that the hospital either granted full exemptions or granted deferments to 75% of the 232 employees who submitted requests medical exemptions. The judge also found that no single plaintiff employee had suffered an adverse employment decision because of a disability, meaning that the plaintiffs had failed to establish a violation of the ADA.

Policy Offering Religious Exemption Does Not Violate Title VII

The judge similarly rejected the employees claim that that the hospital’s policy, as applied to religious exemptions, violated Title VII. Again, the court took note of the fact that the hospital policy included a process by which employees could apply for exemptions based on sincerely held religious beliefs. Reviewing the manner in which the hospital had implemented that policy, the judge noted that the hospital had granted 57.51% of the religious exemption requests received and had denied only 5.28% of those requests. The judge also noted that not one of the named plaintiffs in the suit had been denied a religious exemption.

Based on this evidence, the judge ruled the plaintiffs would not likely succeed with a claim for religious discrimination, thus necessitating a denial of the plaintiffs' request for relief.

Injunction Not Appropriate Since Money Damages Are Available Termination Is Unlawful

The judge next justified his denial of injunctive relief based upon the plaintiffs' failure to show any irreparable harm due to the policy. The judge stated that injunctive relief is only appropriate when a plaintiff cannot be fully compensated by monetary damages. Even though the plaintiff employees risked losing their jobs if they did not comply with the hospital's vaccination policy, the judge held that "loss of employment is not irreparable because it is fully compensated by monetary damages." So, if the plaintiffs could actually demonstrate that they lost their jobs in violation of either the ADA or Title VII, they were not foreclosed from seeking monetary relief. As the court explained:

"[T]hese plaintiffs are choosing whether to comply with a condition of employment, or to deal with the potential consequences of that choice. Even if they believe the condition or the consequences are wrong, the law affords them an avenue of recourse—and the avenue is not injunctive relief on this record."

Lawful Vaccination Requirement Overrides Claims of Individual Liberty Violation

Lastly, and perhaps most significantly, the judge ruled that the plaintiffs' claim of an individual right to be employed by a private hospital without having to get vaccinated, did not outweigh the hospital's interest in taking reasonable measures to combat the pandemic. Citing a United States Supreme Court decision that upheld a vaccine mandate to combat the smallpox pandemic of the early 1900s, the judge held that "vaccination mandates, both public and private, are permissible with appropriate exceptions." Since the hospital's policy was less restrictive than the policy upheld by the Court in the smallpox case, the judge found that the "policy is well within the confines of the law, and it appropriately balances the public interests with individual liberties." The judge stated that the hospital was well within its rights to include a vaccination requirement among its conditions of employment. According to the judge, "if an employee believes his or her individual liberties are more important than legally permissible conditions on his or her employment, that employee can and should choose to exercise another individual liberty, no less significant—the right to seek other employment."

Significance of Decision for Your Business

While the *Beckerich* decision will undoubtedly not be the last decision on the subject of mandatory vaccinations, the decision gives private employers guidance on this important issue. So long as employers establish policies that include their consideration of medical and religious exemptions, they will likely be able to require vaccinations and to terminate employees who do not follow their vaccination policies.

The attorneys in Roetzel's employment law group provide advice on employment and post-employment issues. **We can help you navigate through these important issues.** If you have any questions regarding this area of the law, please do not hesitate in contacting us.

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