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Hospital Fined \$74k in Flu Shot Religious Exemption Case

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Full text

Abstract/Details

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Accommodate Patients, Protect Workers In light of such cases, healthcare facilities should carefully consider exemption policies and seek legal advice in developing a mandated flu shot program. The EEOC cited the case as a violation of Title VII of the Civil Rights Act of 1964, which requires employers to “provide reasonable accommodations for religious observances and beliefs, absent undue hardship.” Douglas Opel, MD, assistant professor of pediatrics at the University of Washington School of Medicine in Seattle, outlined legal strategies in a review article on flu vaccine mandates and exemptions.² “In our analysis, we found that hospitals prevailed in lawsuits when they developed ways to accommodate their employee’s religious views and still protect patients,” he says.

Full Text

As more facilities go to mandatory vaccination policies, infection preventionists must clarify what exceptions are allowed and under what conditions.

Some facilities require influenza vaccination as a condition of employment, while others allow specified exemptions. Medical exemptions may include allergies to vaccine components or a history of Guillain-Barré syndrome.

One key to these policies appears to be consistency in making equitable arrangements, as workers denied religious exemptions have successfully sued through the federal Equal Employment Opportunity Commission (EEOC).

Memorial Healthcare in Owosso, MI, recently paid \$74,418 to settle a lawsuit brought by the EEOC on behalf of a newly hired medical transcriptionist who claimed religious exemption to vaccines.

“Memorial refused to accommodate the sincerely held religious requirement of the transcriptionist, whose Christian beliefs require her to forgo inoculations,” the EEOC stated.¹ “The transcriptionist offered to wear a mask during flu season. This was an acceptable alternative under hospital policy for those with medical problems with the flu shot, but Memorial refused to extend it to her. It then rescinded her offer of employment.”

Under the consent decree settling the suit, Memorial will permit those with religious objections to wear masks in lieu of having a flu vaccine, the EEOC reported.

“The hospital will also train managerial staff participating in the accommodation process on the religious accommodation policy,” the EEOC stated. “In addition, the transcriptionist will receive \$34,418 in back pay, along with \$20,000 in compensatory damages and \$20,000 in punitive damages.”

Accommodate Patients, Protect Workers

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Douglas Opel, MD, assistant professor of pediatrics at the University of Washington School of Medicine in Seattle, outlined legal strategies in a review article on flu vaccine mandates and exemptions.²

“In our analysis, we found that hospitals prevailed in lawsuits when they developed ways to accommodate their employee’s religious views and still protect patients,” he says.

It makes sense for hospitals to tailor this accommodation based on where in the hospital employees do their work, he adds.

"For example, for employees with patient contact, reasonably accommodating them might mean having them wear a mask to prevent them spreading influenza to their patients," Opel says. "But for an employee without patient contact, it might be reasonable to simply require her to stay home if she had symptoms."

In general, avoid the appearance of arbitrary or inconsistent vaccination policies that could be perceived as discriminatory by a healthcare worker seeking an exemption, he recommends.

"Influenza-vaccination mandates for healthcare workers represent good policy, but heavy-handed, context-free implementation does not," Opel and colleagues concluded in the paper.

The EEOC's definition of the word "religion" includes "moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views." Although the courts are not bound by the EEOC's definition, it is broad enough to create uncertainty about the line between religious and philosophical objections, Opel notes.

In the paper, Opel cites a case involving an employee who sued after being denied a vaccination exemption on the basis of strongly held beliefs in a vegan diet. The hospital filed to dismiss the suit, but agreed to settle after a court ruled it would allow the plaintiff "to try to show that veganism constituted a religious belief."

"Though the belief need not be theistic, it must relate to ultimate questions, not just vaccines," Opel and colleagues state. "At a minimum, hospitals should feel fairly confident in rejecting mere anxieties about vaccine safety. Providing a religious-belief definition in vaccination policies and explaining what does and doesn't qualify should also help reduce misguided requests and lawsuits."

Some hospitals require signoff by clergy regarding a religious exemption, though there have still been legal challenges in some of these cases. The issue is complicated on several levels, including the fact that the flu vaccine changes every year and has varying levels of efficacy. Regarding the religious exemption issue, it is also fair to reiterate the moral imperative of protecting frail patients.

"My own opinion is that religious exemptions are rarely justified by scripture," says Amy Behrman, MD, FACP, FACOEM, director of occupational medicine at the Hospital of the University of Pennsylvania in Philadelphia. "I am perfectly comfortable managing medical exemptions and certainly think it is crucial to be as evidence-based as possible. Religious exemptions are much more challenging."

In any case, there is considerable work involved in exemption reviews to make sure they are done fairly and to ensure that any administrative policies, like wearing a mask, are put in place and enforced.

"Effective mandates should take you close to 100% [flu vaccination rates]," she says. "In our institution, we have just over a 98% vaccination rate every year, with about a 1.5% exemption rate."

Mandatory flu vaccination policies nationally vary across a spectrum, going from work reassignment for the non-immunized, formal declination forms, masking, and immunization simply as a condition of employment. "My own reading of the literature, primarily in acute care, is that any requirement - any mandate - is a huge and powerful tool for improving immunization rates, and in my view, normalizing them," Behrman says.

References

1. EEOC. Memorial healthcare to pay \$74,418 to settle EEOC religious discrimination lawsuit. June 25, 2019. Available at: <https://bit.ly/2kAFhHm>. Accessed Oct. 17, 2019.
2. Opel DJ, Sonne JA, Mello MM. Vaccination without litigation – Addressing religious objections to hospital influenza-vaccination mandates. *N Engl J Med* 2018;378:785-788. doi:10.1056/NEJMp1716147.

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