

Lessons Learned: As Flu Shot Season Approaches, Inflexible Rules Can Cause Accommodation Headaches

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It's the end of summer. Our children are returning to school, the evenings are turning a bit cool and hospitals are educating their workforces on mandatory flu vaccination programs. Each year at about this time, we look to recent court decisions for guidance on how best to balance a hospital's interest in protecting its patients (among other things) with a healthcare worker's sincerely held religious belief that conflicts with the hospital's requirement that its employees get the flu vaccine. Last summer, [I reported](#) that the EEOC had filed suit against Mission Hospital, Inc., alleging the hospital had violated Title VII by terminating three employees after they failed to request a religious exemption by the Sept. 1 deadline set by the hospital and then failed to be vaccinated by the Dec. 1 vaccination deadline (or within the grace period allowed for those individuals who failed to meet the Dec. 1 deadline). I told you then that the lesson learned from the complaint filed by the EEOC was that "similar to what is required under the Americans with Disabilities Act, employers should consider analyzing their duty to accommodate under Title VII based on the facts and circumstances of the particular case, as opposed to applying an (allegedly) inflexible rule without regard to the circumstances of the particular case." I also told you that employers should consider basing this kind of employment decision on more than one reason -- a missed deadline plus determining whether granting the exemption would be an undue burden (and why). This week, not surprisingly, the U.S. District Court for the Western District of North Carolina denied Mission Hospital's motion for summary judgment, explaining that while a reasonable jury could conclude that Mission Hospital's enforcement of its exemption procedures protected the hospital's patients, a reasonable jury also could conclude that it violated Title VII by the manner in which it enforced its exemption procedures. [The decision can be found here](#). In reaching this conclusion, the court seemed most bothered (1) that the hospital "rejected requests for religious accommodations because they did not meet a prescribed deadline" and (2) that the employees who missed the deadline to request religious exemptions (some of whom claimed they were unaware of the deadline) were treated differently than employees who missed the deadline to be vaccinated, because the latter were afforded a grace period to comply and the former were not. The lessons learned here are pretty simple: Inflexible rules, standing alone, may have little sway (either with the EEOC or with courts) when there is an affirmative obligation to accommodate an employee regardless of whether that obligation arises under the ADA or Title VII. Instead, employment decisions should be based on the facts and

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circumstances of the situation at the time the request is made (or at the time the need for an accommodation becomes apparent). And, if you still decide to terminate based on the rule, make sure you can establish that the employee was aware of the rule upon which the termination decision is based.