



Kim Stanger

Partner
208.383.3913
Boise
kcstanger@hollandhart.com

Hospital Faces Religious Discrimination Claims for Firing Vegan Employee Who Refused a Flu Shot

Hospital Faces Religious Discrimination Claims for Firing Vegan Employee Who Refused a Flu Shot

Insight — 1/14/2013

Cincinnati Children's Hospital, like many others around the nation, has adopted a policy requiring employees to get a flu shot. A federal court in Ohio just decided that the religious discrimination lawsuit brought by a vegan employee should go forward, at least for now. The ruling allows former employee, Sakile Chenzira, to proceed with her case against the Hospital alleging that the Hospital discriminated against her based on her religious beliefs when it discharged her for refusing a flu vaccination. *Chenzira v. Cincinnati Children's Hosp. Med. Ctr.*, No. 1:11-CV-00917 (S.D. Ohio Dec. 27, 2012).

Refusing vaccine leads to termination. Chenzira had worked as a customer service representative for the Hospital for more than ten years. As a practicing vegan, Chenzira does not ingest any animal or animal by-products. Chenzira claims that prior to 2010, the Hospital accommodated her request not to receive flu vaccinations because they contained animal by-products. In December of 2010, however, the Hospital terminated Chenzira for refusing the flu vaccine.

Vegan Files Lawsuit Alleging Religious Discrimination and Wrongful Discharge. Chenzira alleges that the Hospital discharged her based on her religious and philosophical convictions as a vegan. She filed a lawsuit in federal court in Ohio asserting three claims, including religious discrimination in violation of Title VII of the Civil Rights Act of 1964.

Hospital Argues Veganism is Not a Protected Religion. The Hospital asked the Court to dismiss Chenzira's claims in their entirety. As to the religious discrimination claims, the Hospital argued that veganism is not a religion and therefore, cannot be the basis for a discrimination claim. In the Hospital's view, veganism is a dietary preference or social philosophy. In fact, it found no other cases in which veganism was the basis for a religious discrimination claim. Chenzira, however, argued that her vegan practice constituted a moral and ethical belief that she sincerely held with the strength of traditional religious views. On a motion to dismiss, Chenzira was not required to "prove" her case, but only allege a claim that was plausible on its face. The Court ruled that it was plausible that Chenzira could believe in veganism to the extent necessary to equate to a traditional religious belief. The Court denied the Hospital's request to throw out the

religious discrimination claims.

Defense of Religious Discrimination Claims Will Proceed. The Hospital may have lost the first battle on the religious discrimination claims but it hasn't lost the war. Chenzira must actually establish that her belief in vegan practices rises to the level of a traditional religious belief. In addition, as the Court pointed out, the Hospital may justify its termination of Chenzira based on patient safety or other overriding reasons. The Court's ruling, however, keeps Chenzira's religious discrimination claims based on her veganism alive – at least for now. Hospitals and other health care employers have regularly defeated employee lawsuits challenging mandatory immunization policies, primarily because the employers have carefully crafted those policies to recognize religious and disability-based exceptions. We will continue to watch the Cincinnati Children's case and let you know if veganism gets a shot in the arm from this federal court.

For questions regarding this update, please contact

Kim C. Stanger

Holland & Hart, U.S. Bank Plaza, 101 S. Capitol Boulevard, Suite 1400,
Boise, ID 83702-7714

email: kcstanger@hollandhart.com, phone: 208-383-3913

This news update is designed to provide general information on pertinent legal topics. The statements made are provided for educational purposes only. They do not constitute legal advice nor do they necessarily reflect the views of Holland & Hart LLP or any of its attorneys other than the author. This news update is not intended to create an attorney-client relationship between you and Holland & Hart LLP. If you have specific questions as to the application of the law to your activities, you should seek the advice of your legal counsel.

Subscribe to get our Insights delivered to your inbox.

This publication is designed to provide general information on pertinent legal topics. The statements made are provided for educational purposes only. They do not constitute legal or financial advice nor do they necessarily reflect the views of Holland & Hart LLP or any of its attorneys other than the author(s). This publication is not intended to create an attorney-client relationship between you and Holland & Hart LLP. Substantive changes in the law subsequent to the date of this publication might affect the analysis or commentary. Similarly, the analysis may differ depending on the jurisdiction or circumstances. If you have specific questions as to the application of the law to your activities, you should seek the advice of your legal counsel.