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PERSPECTIVE

Proceed with caution handling religious exemption requests

By Jamaar M. Boyd-Weatherby

This summer brought about a sharp increase in vaccination mandates by federal, state and local authorities, primarily for school staff, health care workers, and public safety. In addition, a number of private sector employers announced that they were mandating vaccines for their employees. Almost immediately after these vaccination mandates were issued, some employees evinced an intention to avoid the mandate by claiming medical or religious exemptions. This article addresses issues associated with claims of religious exemption.

Some employees seeking religious exemption appear to have obtained form letters from the internet and religious organizations they use to assert religious exemption from vaccination. The content and quality of these letters vary depending on the source, including letters which claim that religion prohibits employees from being told what to do. Regardless of the form or content, these letters raise the question of whether they suffice for religious exemption from mandatory vaccination.

Employers are understandably skeptical of some of these letters. They question whether the employee actually holds a belief when he or she appears to have just printed a form off of the internet. Title VII of the Civil Rights Act of 1964 allows for religious exemptions for workers who have “sincerely held” religious beliefs that conflict with vaccination. As

Justice Kathryn Mickle Werdegar of California Supreme Court noted in *Smith v. Fair Employment & Housing Com.*, 12 Cal. 4th 1143 (1996), “Religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit . . . protection.” Neither state nor federal law requires that the claimed belief comes directly from any particular religious institution or be supported by any particular teaching. A Catholic believer does not have to wait for the pope (or any church leader) to give direction prior to forming a belief. The belief can come from the employee’s interpretation of religion. The test is whether the employee “sincerely holds” the belief.

Can an employee sincerely hold a belief that is expressed on a form letter from the internet? Yes. The more difficult question is whether the employee actually does. While some organizations may decide to challenge whether the employee actually believes what is represented on the form letter, this should be done with caution.

While there will be employees who are improperly utilizing the religious exemptions to get around the vaccination requirements due to political or safety concerns, it is equally true that there are going to be those who believe every word that is articulated on the form letter. I have encountered employees who used the form letter because they were just trying to make sure that the letter was written “right.” There is a belief/perception the form letters were prepared by legal counsel for the church/religious

organization. As such, the letters may be serving as legal “advice” regarding the religious exemptions.

While a number of employers will seek to distinguish between the groups, it must be asked how one proves the existence (or lack thereof) of “sincerely held” belief. Employers seeking to deny an exemption request essentially must disprove that an employee believes a particular thing that he or she claims to believe. This can be problematic in that a sincerely held belief does not need to be grounded in official church teaching. It does not even require membership in a church. And past religious affiliations, statements and/or prior vaccinations do not necessarily provide evidence as to the employee’s current perspective. It is very difficult to say if/when an employee has acquired the asserted belief.” While I’m sure that there are scenarios that would allow for the letter to be demonstrated to be a false, it would be incredibly hard to prove.

Nonetheless, religious exemptions, legitimate or not, remain subject to whether the employer can accommodate the request. The accommodation (if any) will be determined by the interactive process and a determination of the health and safety needs of the organization. In Los Angeles, the Department of Public Health allows all those who are utilizing the religious exemption from the recent health order impacting medical workers and firefighters to continue to work as long as they are tested weekly and wear N95 masks while working.

There are also organizations that have determined that they are unable to accommodate the unvaccinated employees. United Airlines, for example, recently determined that it was placing all employees claiming religious exemptions on unpaid administrative leave. Ultimately, the ability to accommodate and the level of the restrictions depend on the health and safety needs of the organization. The United Airlines position is thus far the exception, and it remains to be seen whether it will survive challenge.

Government agencies should proceed with caution when accessing how to handle religious exemption requests. Some employers may find themselves sharing the view of United as to at least some positions and employees; others will not. The fact that an employee uses a form letter from the internet should not preclude serious consideration of the exemption request and potential accommodation. Reasonable accommodation for a religious exemption from vaccination involves a fair balancing of the interest of the employee in the claimed belief against the interest of the employer in a safe, healthy and well-ordered workplace accomplishing the public service mission of that agency. If an employer’s approach is to think first in terms of determining whether the claimed belief can be accommodated, then the outcome — whatever it may be — will stand a much better chance of surviving legal challenge. ■

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