

Covid-19 Vaccine Mandate Hypotheticals

Scenario 1 – School District Mandate

In August 2021, the School District of Big City, Delaware, adopted a policy mandating that all of its employees, including teachers, be fully vaccinated against Covid-19 by October 1, 2021. The District's policy allowed employees to request exemptions based on bona fide medical grounds and sincerely held religious beliefs. The District developed forms that it requires employees to complete as part of the application process for either the medical or the religious exemption, and – with respect to religious exemption requests – the District allows applicants to submit a letter in support from a religious leader.

Hannah W., a history teacher at a District high school, applied for a religious exemption based on her Jewish faith. She was raised in a Hasidic community but now attends a mainstream Orthodox synagogue. On her application form, Hannah explained the religious basis for her exemption request as follows: "I believe Torah law does not permit me to be injected with a vaccine that offers no significant curative benefit to the patient." Hannah also submitted a letter written by a Hasidic rabbi in California supporting her exemption request.

Rachel P., a reading teacher at a District elementary school, also applied for a religious exemption based on her Jewish faith. Growing up Rachel attended a Reform synagogue where she celebrated her bat mitzvah. In college, she was active in Hillel and studied for a semester in Israel. In her adult life, however, Rachel has not attended services or been involved with any synagogue or any other form of organized Jewish life. On her application form, Rachel explained the religious basis for her exemption request as follows: "I decided not to be vaccinated after much prayer. I have a deeply held religious objection to vaccination. I believe this goes against my faith." She did not submit a letter from a rabbi in support of her exemption request.

The District denied both Hannah's and Rachel's requests for religious exemptions and suspended them pending a *Loudermill* hearing on their proposed terminations. After conducting the *Loudermill* hearings, the District fired Hannah, Rachel, and over 100 other employees based on their refusals to get vaccinated. The Union submitted all of the religious exemption cases to arbitration in a consolidated hearing.

At the arbitration hearing, the Administration introduced evidence showing that the vast majority of Orthodox rabbis, including the rabbis in Hannah's congregation, have endorsed vaccination. The Administration also introduced evidence showing that the California rabbi who wrote the letter in support of Hannah's request had been fired by his congregation because of his anti-vaccination activities. Finally, the Administration introduced an article by a well-known Hasidic rabbi who wrote that "Torah requires individuals to take life-saving measures, like vaccines, in times of plague." In her testimony, Hannah never mentioned her religious beliefs. Instead, she testified that she was nervous about getting vaccinated while pregnant, that she had had Covid-19 in April 2021 and thus had antibodies to the virus that protected her, and that she believed the government has no business telling people what to do with their bodies. On cross-examination, Hannah testified that she had received District-mandated flu vaccines in past school years and that she had always received all required vaccines to attend public school when she was a child.

At the hearing, Rachel refused to answer questions about her religious beliefs, testifying as follows: "I don't feel like I should have to justify my religious practices in front of a panel of arbitrators. I have my First Amendment rights."

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Scenario 2 – Airline Mandate

As a result of negotiations with its Unions, TWA adopted a mandatory vaccination policy covering all of its employees, including flight crews, ground crews, and office staff. The negotiated policy offered incentive pay and extra vacation time for employees who were vaccinated before the end of August, but the policy also required that all employees must be fully vaccinated against Covid-19 by October 1, 2021. TWA's policy allowed employees to request exemptions based on bona fide medical grounds and sincerely held religious beliefs. As part of the application process for the religious exemption, TWA required employees to submit a form explaining the basis of the employee's request and encouraged applicants to submit a letter of support from a religious advisor.

Dan Weatherman, a Senior Aviation Meteorologist, submitted an application for a religious exemption from TWA's vaccine mandate. On his form, Dan indicated as follows: "My Catholic faith compels me to oppose abortion in all its forms. My own Internet research has shown me that the Pfizer, Moderna, and Johnson & Johnson Covid vaccines were all developed using human cells derived from an aborted human fetus. Scripture teaches me that I cannot take any vaccine or medicine developed using cells from aborted fetuses." Dan also submitted a letter written by an evangelical Christian pastor from Tulsa, Oklahoma.

TWA denied Dan's request for a religious exemption and fired him for refusing to get vaccinated. In the discharge letter, TWA explained that, because Dan worked around other TWA meteorologists and staffers, there was no reasonable accommodation available and, in the alternative, that any accommodation, such as frequent testing or mask wearing, would present an undue burden on the airline.

The Aviation Technicians Union grieved Dan's discharge and ultimately submitted the dispute to arbitration before the System Board of Adjustment. At the hearing, management presented evidence showing that Pope Francis has endorsed Covid-19 vaccines and that the Vatican's doctrinal office, the Congregation for the Doctrine of the Faith, has determined that it is "morally acceptable" for Catholics to take these vaccines because, even though the vaccines may have been tested using compromised cell lines, that fact does not establish a connection between the vaccine recipient and the abortion. On cross-examination by TWA's attorney, Dan testified that, in May 2021, he had contracted Covid-19 and received Regeneron's monoclonal antibody treatment. Dan also testified that he had received the Zostavax vaccine to prevent shingles. He further reviewed a list of over-the-counter and prescription medications tendered by TWA's attorney and admitted that he had taken many of them, including Motrin, Tylenol, Tums, and Pepto Bismol. TWA's lawyer then called an expert witness who testified that the Regeneron's monoclonal antibody treatment, the Zostavax vaccine, and all of the medications on the list have used the same fetal cell lines in their testing, research, and development as were used in testing the Covid-19 vaccines approved for use in the United States. Finally, TWA introduced evidence showing that the evangelical pastor who wrote the letter in support of Dan's exemption request offered to provide such letters in exchange for an on-line donation to his church.