

The ADA and Mandatory Vaccine Policies: How Far Must an Employer Go to Accommodate?

PUBLISHED ON
June 28, 2018

Employers that require vaccinations as a condition of employment might need to change how they determine and handle exemptions to the rule after a federal court decision in June.

A nurse fired from the Mount Nittany Medical Center for refusing to take a company-mandatory vaccination originally lost her case in a lower court, but the appeals court [believed her rights under the Americans with Disabilities Act \(ADA\) had been violated](#).

The court said the State College-based health system should have allowed for an accommodation for Aleka Ruggiero, who cited health concerns due to the possible side effects of the tetanus, diphtheria and pertussis (TDAP) vaccine as it related to her underlying conditions of esophagitis and food allergies. The U.S. Equal Employment Opportunity Commission believed the same thing, and [filed a 2017 brief supporting Ruggiero's appeal](#).

The case appears to make it easier for employees to seek exemption from mandatory vaccine policies. It is now critical for employers mandating vaccines to engage in a good faith interactive process with an employee seeking an exemption from a vaccine for medical reasons. This includes verification that the individual has an actual disability and determining whether a reasonable accommodation can be provided based on an individualized assessment of the case. The appeals court appears to hold in *Ruggiero* that the actual disability does not per se need to be connected to the vaccine, such as being identified as a factor of why a patient could be harmed by the vaccine in the medical literature.

Rather, in *Ruggiero*, the plaintiff claimed that she had anxiety over the side effects which she personally believed could impact her underlying medical conditions. Employers seeking to deny an accommodation to a mandatory vaccine policy would be well served to consult legal counsel before taking action.

Ruggiero claimed to have suffered from esophagitis and anxiety which she alleged limited her ability to eat, sleep and engage in social interactions. Her employer implemented a policy making the TDAP vaccine mandatory for her employment and set a deadline to receive the vaccine. Ruggiero produced a note from her doctor nearly one month after the deadline stating that she was "medically exempt" from receiving the vaccine "for medical concerns." She asked to be exempt from the policy or to be permitted to wear a mask like those employees exempt from the flu vaccine. Her employer provided information to her doctor from the TDAP's manufacturer concerning medical factors of why she could be harmed by the vaccine and requested additional information on any medical reason Ruggiero could not receive the vaccine. Her physician responded that Ruggiero had severe anxiety with some side effects she read with the injection given her history of food allergies and her esophagitis. The doctor noted she was "terrified" to receive the vaccine because of the risks. However, the doctor's note did not meet the definition of medical

contraindication as outlined in the manufacturer's literature. Ruggiero was subsequently terminated for her failure to receive the vaccine.

She filed suit against her employer alleging an ADA violation. Ruggiero argued that she could have been accommodated by wearing a mask or being exempted from the vaccine all together. The lower court granted Mount Nittany's motion to dismiss the claim, finding that Ruggiero's health conditions were unrelated to the vaccine and that her request for accommodation was merely a personal preference which her employer did not have to grant. Ruggiero appealed the decision, and her appeal included the EEOC brief supporting her appeal. The EEOC took the position that her employer should have accommodated her request.

The appeals court reversed the lower court's decision and ruled that Ruggiero could proceed with her ADA case. The court found she had pled an actual disability and that she had sought accommodation in the form of an exemption from the vaccine all together, or an exemption coupled with the requirement that she wear a mask. The court noted that her employer prematurely ceased the interactive process without considering her request for accommodation.

If anyone has questions about this case or their own mandatory vaccine policies, please [contact me](#) or any of the attorneys in the [Barley Snyder Employment Law Group](#).

:



Jennifer Craighead Carey

Managing Partner

Tel: (717) 399-1523

Email: jcraighead@barley.com