



Federal Policy Developments and their Impacts on Public Employers in 2021

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Our Team

Fishel Downey Albrecht & Riepenhoff LLP (FDAR) is a mid-sized Columbus, Ohio, based law firm with a statewide practice. FDAR represents hundreds of clients, with facilities in nearly three-fourths of Ohio's 88 counties, as well as out-of-state and international clients with an Ohio presence.



Requiring Employees to be Vaccinated

- In general, public employers can require employees to be vaccinated.
 - Direct threat to others. Can treat employees different than others
 - Based on legitimate business reasons
- Considerations
 - Availability of vaccine
 - Religious objection
 - ADA
 - Collective bargaining



Religious Objection

- Title VII and Chapter 4112
- Elements of claim
 1. Sincere religious belief that conflicts with an employment requirement
 2. Informed the employer about the conflicts
 3. Discharged or disciplined for failing to comply with the conflicting employment requirement

Tepper v. Potter, 505 F.3d 508, 514 (6th Cir. 2007).

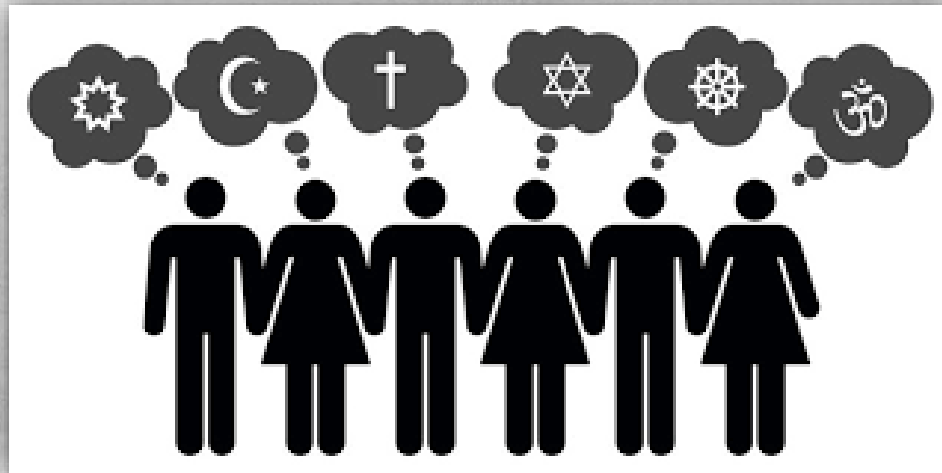
Religious Objection

- Employer response
 1. Reasonable accommodation
 2. Undue hardship
 - An undue hardship requires a burden greater than a de minimis cost to the employer.



Religious Objection

- Medical beliefs about vaccines likely cannot form the basis of a valid medical objection to vaccination.
- Can ask employees reasons they are declining vaccine; consistent application



Americans with Disabilities Act

- Cannot discriminate against a qualified individual with a disability
- Disability – physical or mental impairment that substantially limits a major life activity
- Raised by employee – entitled to documentation

Americans with Disabilities Act

- Determine whether employee can perform essential functions of the job with or without reasonable accommodation.
- Engage in the interactive process.



Americans with Disabilities Act

- Potential accommodations:
 - Don't require vaccine
 - Telework if possible
 - Reassignment to another position
 - Paid or unpaid leave



Americans with Disabilities Act

- Vaccination is not medical exam under ADA
 - EEOC guidance and case law
 - Not seeking information about employee's impairment of health status
- No accommodation if it would create undue hardship
- Direct threat to others

Collective Bargaining Agreement

- Mandatory subject of bargaining
- Sufficient notice of requirement
- Engage in good faith discussions
 - Financial incentives for vaccine
 - Who will provide vaccine
 - Paid time off to get vaccine



FFCRA

- Expired on 12/31/2020
- Tax credits for private employers was extended
- County's authority to extend benefits
 - Authority to set compensation
 - ORC § 124.388(A) - Administrative leave with pay

FFCRA

- County's decision to extend benefits
 - Application of FMLA
 - What reasons will be approved?
 - Does prior use of leave apply against time in 2021?
 - Is it considered administrative leave with pay?
 - Collective bargaining issues - MOU

Unemployment Benefits

- Extended until April 5, 2021
- Must apply by March 14, 2021
- Additional \$300 per week paid by federal government



Thank You!

**IF YOU HAVE ANY QUESTIONS,
PLEASE ASK!**

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