

CLAIMING YOUR EXEMPTION FROM VACCINATION

THE SPEAKER



Mitchell Marczewski has been a practicing attorney in Zanesville Ohio for over 20 years. In addition to his private practice, he recently founded the Ohio Medical Freedom Coalition in response to the government’s coercive vaccination mandates. In Oct 2021, he testified before the Ohio House of Representatives Commerce and Labor Committee regarding the unfairness and negative consequences that have resulted. His recent focus has been to conduct legal seminars on vaccination exemptions for laypersons and the general public. He formerly taught constitutional law at Ohio Christian University in Circleville Ohio and contract law at Zane State College in Zanesville Ohio. He is past president of the Muskingum County Bar Association (2020) and he has been married for 37 years with 4 adult children and 3 grandchildren.

GENERAL OUTLINE

1. TYPES OF EXEMPTIONS

- a. Medical exemption under the *Americans with Disabilities Act*
- b. Religious exemption for employees under *Title VII of the Civil Rights Act of 1964*
- c. Religious exemption for college students under *Title IV of the Civil Rights Act of 1964*

2. KEY LEGAL TERMS

- a. sincerely held religious belief
- b. reasonable accommodation
- c. undue hardship to the employer
- d. interactive process

3. THE INTERACTIVE PROCESS BETWEEN EMPLOYER & EMPLOYEE (STUDENT & SCHOOL)

- a. Straightforward and open – employer acting in good faith
- b. Restrictive and entrapping – employer not acting in good faith (legal assistance may be needed)

4. ENFORCEMENT OF YOUR RIGHTS

- a. “Demand to Comply with the Law” letter from an attorney (Demand Letter)
- b. US Equal Employment Opportunity Commission complaint
www.eeoc.gov/federal-sector/filing-formal-complaint
- c. Ohio Civil Rights Commission www.crc.ohio.gov/FilingCharge/ChargeFilingProcedure.aspx
- d. US Attorney General https://www.ada.gov/fact_on_complaint.htm
- e. US Dept of Education <https://www2.ed.gov/about/offices/list/ocr/docs/howto.html>

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A. SINCERELY HELD RELIGIOUS BELIEF

1. Includes traditional religions such as Catholic, Methodist, Baptist, etc,
2. Religions that are uncommon, unreasonable, illogical, lack formal organization or unrecognized by other religions,
3. Non-theistic beliefs that address ethics, morality and what is right and wrong.
4. Belief in God is not necessary. Nontheistic beliefs can also be religious for purposes of the Title VII exemption as long as they “occupy in the life of that individual “a place parallel to that filled by . . . God” in traditionally religious persons.”
5. Courts have held that the test under Title VII’s definition of religion is whether the beliefs are, in the individual’s “own scheme of things, religious.”
6. Some Courts have held that recognized beliefs that are purely moral or ethical as long as they are held with the strength of religious convictions.
7. Although the employee’s religious belief must be sincerely held, courts are extremely reluctant to question the reasonableness of the belief. *Frazer v Illinois Dept of Employment Services*, 489 US 829, US Supreme Court (1989)

B. REASONABLE ACCOMMODATION AND UNDUE HARDSHIP

8. It is illegal to recognize medical exemptions but not religious exemptions.
9. For religious exemptions, you are not requesting a religious exemption because you already own that. Rather, you are requesting a “reasonable accommodation” which must be provided by the employer as long as it does not create an “undue hardship” which means “more than a de minimus cost” (trivial or minimal).
10. For medical exemptions, “undue hardship” means an “action requiring significant difficulty or expense” determined on a “case-by-case basis” weighing the nature and cost in relation to the size, resources, nature, and structure of the employer's operation.

C. THE INTERACTIVE PROCESS

1. The employee/student must participate in the interactive process whereby limited additional information can be requested about the facts and circumstances that support the request for a reasonable accommodation if there is an objective basis to doubt the **nature or sincerity** of the belief, observance or practice (not its **reasonableness**).
2. Upon request you must provide:
 - a. Statements and explanations that explain the nature of their beliefs
 - b. Information about how, when and where the belief is practiced
 - c. Written materials, if they exist, that describe the belief or religious practice
 - d. Written statements from third parties such as friends, religious leaders only if they agree to provide them. The employer cannot force a third party to do this.
 - e. When the person first acquired their belief
 - f. Immunization history

D. SINCERITY OF YOUR RELIGIOUS BELIEF

1. Lack of agreement with all tenants of a religion does not negate sincerity
2. One whose beliefs have changed does not negate sincerity
3. One who does not practice their belief as often as they would like or publicly in an organized gathering of similar believers does not negate sincerity
4. Inability to provide a letter from a pastor does not negate sincerity
5. Receiving a vaccine in the past (or receiving certain vaccines) does not negate sincerity
Recent conversion to a religion does not negate sincerity
6. Inconsistent past practice of one's belief does not necessarily negate sincerity

E. FORCED RESIGNATION, RETALIATION AND FALSE CHOICES

1. "Don't quit your job—make them fire you" is the stance that preserves all legal rights.
2. The employer or educational institution must exercise consistency in their review process to avoid claims of bias or discrimination.
3. It is false for an employer to state that "failure to vaccinate is the same as resigning".
4. Do not sign anything without review by an attorney including "notices" that notify you of company policies. These "notices" usually contain "agreements".
5. If you already resigned involuntarily, you should immediately file for unemployment compensation because you are a victim of a forced resignation and may still qualify for benefits. You also should file a complaint with the EEOC or Ohio Civil Rights Commission who has the authority to reinstate your job and order back pay.
6. It is unlawful to attempt to persuade an employee to abandon some or all of their sincerely held religious beliefs. This often occurs in the interactive process.
11. It is unlawful to refuse to hire someone who has a religious or medical exemption.
12. Modifying an existing reasonable accommodation to more restrictive may be retaliation.
13. Leave without pay is not a reasonable accommodation—it is retaliation.
14. Forcing an exempted employee to eat lunch in a separate area away from other employees is not a reasonable accommodation—it is retaliation.

F. WILDCARDS IN THE DECK

1. Employer may argue that a religious exemption creates an undue hardship due to allegedly increased costs borne by the employer such as masks & testing, alleged safety risks to other employees and customers. The employer might claim that the "reasonable accommodation" creates more than *de minimus* cost.
2. A hard-hearted employer or educational institution might decide to disregard the law and terminate the employee or student and take their chances with the EEOC or in court. They might have lots of money to pay their lawyers.
3. Each person needs to make their own decision or consult with an attorney.

G. AVOIDING ROOKIE MISTAKES

1. You must play offense and get ahead of the curve. Defense only wins games when you are up by 10 points with 2 minutes left in the game.
2. You cannot dwell on “the unfairness of it all” because you’ll stay in a state of disbelief, hurt feelings and inaction. Don’t be a deer in the headlights. It is what it is—deal with it.
3. You must command respect by demonstrating that you are well informed and that you are carefully watching everything. Use certified letters, a journal book and keep paper copies of everything including “print screens”. This makes the employer or college respect you much more and it communicates that they will have a formidable opponent if they deny your reasonable accommodation.
4. You must recognize “when you are in over your head” and need to talk to a lawyer. Examples include: denial of a reasonable accommodation, unreasonable deadlines, inconsistent information from employer, restrictive questionnaires or retaliation.

H. ACTION PLAN / PARALLEL PLAN

1. In addition to timely notifying of your exemption using the employer or college’s procedures, the parallel plan (Plan A and Plan B executed simultaneously) is to mail your notice to 2 separate addresses by 2 methods (4 letters will be mailed).
 - a. Mail to first address by certified mail (USPS Form 3800)
 - b. Mail to first address by regular mail (USPS Form 3817)
 - c. Mail to second address by certified mail (USPS Form 3800)
 - d. Mail to second address by regular mail (USPS Form 3817)

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SAMPLE LETTER TO EMPLOYER

EMPLOYEE NOTICE OF EXEMPTION FROM COVID-19 VACCINATION

Date: _____

Via certified mail (USPS Form 3800)

Via regular mail (USPS Form 3817)

Dear _____:

I am an employee of _____ and I am informing/notifying you of my religious exemption from vaccination pursuant to *Title VII of the Civil Rights Act of 1964* which is enforced by the U.S. Equal Employment Opportunity Commission, and pursuant to the *Ohio Civil Rights Act* which is enforced by the Ohio Civil Rights Commission as applied to employers with fifteen (15) or more employees. Attached is a personal statement and other information that explains why I have a religious exemption.

Further, I am informing/notifying you of my medical exemption from vaccination pursuant to the Americans with Disabilities Act which is enforced by the U.S. Equal Opportunity Employment Commission. Attached is a letter from my healthcare provider.

Please be advised that upon notifying you of my exemption, you are now required to provide for a reasonable accommodation and I am happy to work with you to accomplish this.

Please note that due to the restrictive and “one size fits all” nature of the online and computer forms, the information I submitted may conflict with the information contained in this letter. The information contained in this letter shall supersede any and all conflicting information that may have been submitted by other means including but not limited to online or electronic forms. The online form is restrictive and does not permit me to fully and accurately notify you of the basis of my exemption.

All information submitted is truthful and accurate to the best of my knowledge.

Sincerely,

SAMPLE LETTER TO SCHOOL, COLLEGE OR UNIVERSITY

STUDENT NOTICE OF EXEMPTION FROM COVID-19 VACCINATION

Date: _____

Via certified mail (USPS Form 3800)

Via regular mail (USPS Form 3817)

Dear _____:

I am a student who attends _____ and I am informing/notifying you of my religious exemption from vaccination pursuant to *Title IV of the Civil Rights Act of 1964* which is enforced by the US Dept of Education's Office for Civil Rights and the US Dept of Justice. Attached is a personal statement and other information that explains why I have a religious exemption.

Please be advised that upon notifying you of my exemption, you are now required to provide for a reasonable accommodation and I am happy to work with you to accomplish this.

Please note that due to the restrictive and "one size fits all" nature of the online and computer forms, the information I submitted may conflict with the information contained in this letter. The information contained in this letter shall supersede any and all conflicting information that may have been submitted by other means including but not limited to online or electronic forms. The online form is restrictive and does not permit me to fully and accurately notify you of the basis of my exemption.

All information submitted is truthful and accurate to the best of my knowledge.

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