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Court Gives Immunization Policy Shot In The Arm

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Earlier this month, the Appellate Division in *Brown v. Our Lady of Lourdes Medical Center* upheld a hospital's mandatory flu shot policy that included a religious exemption. While an employee (who was not an atheist) challenged the policy because it favored religious believers over non-believers, the Court dismissed this claim, finding that the employee was not a member of a protected class. Notably, however, the Court left open the door for an atheist to claim protection under the New Jersey Law Against Discrimination ("NJLAD").

BACKGROUND

Plaintiff worked for Our Lady of Lourdes Medical Center as a community health educator. In 2012, the hospital implemented an Influenza Vaccination Policy that required all employees to receive an annual flu shot. Employees who violated this policy were first suspended, and then terminated. However, the policy allowed employees to seek exemptions for religious or medical reasons. Plaintiff first requested a medical exemption, which was denied, and then was subsequently fired for refusing to get a flu shot.

Plaintiff's original complaint alleged that the hospital violated the NJLAD by failing to provide a medical accommodation and by terminating her for exercising her rights. After the hospital filed an answer, Plaintiff moved to amend her complaint to add a religious discrimination claim, which was denied because "plaintiff did not allege a sincerely held religious belief." Further, the trial court held that a healthcare employer's requirement that its employees receive immunization is reasonable and that a religious exemption to this policy was required by law.

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APPELLATE DIVISION'S DECISION

Plaintiff argued on appeal that the hospital's immunization policy was "discriminatory on its face" because it "confers a benefit on religious believers that is not available to non-believers." In denying this argument, the Appellate Division held that Plaintiff must set forth allegations that meet the four prongs of a *prima facie* religious discrimination case, namely that: (1) Plaintiff belongs to a protected class; (2) Plaintiff performed her job satisfactorily; (3) Plaintiff suffered an adverse employment action; and (4) others not within the protected class did not suffer similar adverse employment actions.

In upholding the dismissal of the discrimination claim, the Appellate Division found that Plaintiff failed to allege that she was a member of a protected class. Notably, the Court did not limit the definition of a protected class to a recognized religious affiliation. Instead, it held that Plaintiff was not a member of a protected class because her complaint failed to allege "her association with a particular religion or no religion at all." The Court further explained in a critical footnote: "Plaintiff did not claim to be an atheist or allege that she was being discriminated against because she was an atheist or other member of a class of people who did not believe in any deity. As a result, we do not address whether members of that class would be members of a protected class under the LAD."

In addition, to satisfy her religious discrimination claim, the Court held that Plaintiff needed to allege that: (1) members of certain religions were granted the religious exemption while members of other religions were denied the same relief; (2) she had a religious objection to being vaccinated; or (3) a requested religious accommodation was denied.

Therefore, in light of the NJLAD's requirement that employers offer reasonable accommodations for employees' religious beliefs, and Plaintiff's failure to establish a *prima facie* cause of action under the NJLAD, the Appellate Division upheld the trial court's denial of Plaintiff's religious discrimination claim.

At the present time, Plaintiff has not filed a petition to the New Jersey Supreme Court to appeal the Appellate Division's decision.

TAKE AWAY

The NJLAD requires that employers ensure their employees do not experience discrimination based on their religious beliefs. Religious exemptions to policies will be upheld against challenges by non-religious employees so long as the policies are reasonable and applied uniformly. However, it remains unclear whether atheism is a protected class under the NJLAD. Therefore, when applying a religious exemption to a policy, employers should be aware that their conduct may be discriminatory if adverse employment action is taken against an employee due to his/her sincerely held atheist belief.

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