

Religious Discrimination: Court Says Veganism Not A Religion, Healthcare Employee Must Consent To Mumps Vaccination.

An individual who worked for a hospital corporation as a computer operator through a temporary agency was offered permanent employment, provided he would consent to being vaccinated for mumps as required of all employees, office or patient-care, by corporate policies.

He refused to be vaccinated and was not hired. His refusal was based on his strict vegan beliefs.

The mumps vaccine was derived from chicken embryos. His strict vegan beliefs were that all living things were to be valued equally and that it is wrong for humans to kill or exploit animals, even for food, clothing or to test product safety for humans.

He would not eat meat, dairy products, eggs, honey or any food that derived ingredients from animals, wear leather, silk or other material that came from animals or use products such as cleansers or toothpaste that had been tested on animals.

The Court of Appeal of California threw out his religious discrimination claim against the hospital.

Religion versus Code of Ethics

The court acknowledged the law protects non-conventional religious beliefs the same as conventional religious beliefs.

However, according to the court, veganism is not a religion. It is a personal code of ethical conduct.

The laws against religious discrimination protect only against religious discrimination, not against discrimination based on a person's personal code of ethics that runs counter to the employer's judgment as to what is necessary and appropriate for its employees.

A healthcare employer can require employees to be vaccinated against communicable diseases, even if it goes against their personal code of ethics, as a condition for gaining or keeping employment, the court ruled. Friedman v. Southern California Permanente Medical Group, ___ Cal. Rptr. 2d ___, 2002 WL 31043819 (Cal. App., September 13, 2002).

Veganism is not a religion. It is a personal code of ethical conduct.

Veganism does not speak to the meaning or purpose of life or its ultimate place in the universe and has no other-worldly component.

For purposes of religious discrimination in employment, religion includes traditionally recognized religions as well as beliefs, observances or practices which an individual sincerely holds and which occupy a place of importance in the individual's life parallel to that of traditionally recognized religions.

A personal moral or ethical code of conduct is not a religion.

Religious discrimination cases usually involve non-traditional Sabbaths or other holy days.

A court can find religious discrimination when an employee or prospective employee had a bona fide religious belief, the employer was aware of the belief and the belief conflicted with a requirement of employment as defined by the employer.

CALIFORNIA COURT OF APPEAL
CERTIFIED FOR PARTIAL PUBLICATION
September 13, 2002

Labor Relations: State Faulted For Anticipatory Strike-Related Subsidies To Nursing Homes.

In 2001 the US District Court for the District of Connecticut ruled that the State of Connecticut did not violate the National Labor Relations Act (NLRA) through its response to a strike threat from the union representing seven thousand employees at seventy-one privately owned nursing homes in the state.

See *Labor Relations: Medicaid Reimbursement To Nursing Homes For Strike-Related Expenses Does Not Violate NLRA, Court Says*, Legal Eagle Eye Newsletter for the Nursing Profession (10)2 Feb '02 p.5.

However, in a detailed opinion handed down September 13, 2002 the same District Court ruled the State *did* illegally intrude upon the private-sector collective-bargaining process.

Anticipatory Medicaid Subsidies Declared Illegal

The court pointed out its ruling applies only to the specific and very complicated facts of this particular case.

The court did not categorically rule out discretionary use of Medicaid funding prior to and during labor disputes.

According to the court's most recent ruling in this case, the State, without an adequate basis to conclude the subsidies were necessary to avoid an immediate negative impact upon the health and safety of the nursing-home residents, provided subsidies to the nursing homes to prepare for the strike by hiring replacement workers and by arranging to transfer certain residents to other facilities.

In essence it was an attempt by the State to shift the balance of power to management in the labor dispute, and that is a violation of Federal labor law, the court ruled. New England Health Care, Employees Union, Dist. 1199, SEIU/AFL-CIO v. Rowland, ___ F. Supp. 2d ___, 2002 WL 31050733 (D. Conn., September 13, 2002).