

CLAIMING YOUR EXEMPTION FROM VACCINATION

Presented October 25, 2021 to the Mid Ohio Valley Citizen's Action Coalition (MOVAC)
Freedom Gate Church, 104 Tennis Center Drive, Marietta Ohio

THE SPEAKER



Mitchell Marzewski 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. His qualifications include formerly teaching constitutional law at Ohio Christian University in Circleville OH and contract law at Zane State College in Zanesville OH. He is past president of the Muskingum County Bar Association (2020) and an affiliate attorney with Liberty Counsel in Lynchburg VA. He has been married for 37 years with 4 adult children and 3 grandchildren.

OUTLINE

1. Properly notifying your employer or college of your exemption from vaccination
2. 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*
3. Key legal terms:
 - a. sincerely held religious belief
 - b. reasonable accommodation
 - c. undue hardship to the employer
 - d. interactive process
4. The interactive process between employer and employee or student and college:
 - a. Straightforward and open – employer acting in good faith
 - b. Restrictive and entrapping – employer not acting in good faith
 - c. Identifying when you may need legal assistance
5. Distinguishing “retaliation” from a “reasonable accommodation”
6. Enforcement mechanisms:
 - a. US Equal Employment Opportunity Commission, Ohio Civil Rights Commission, West Virginia Human Rights Commission, Pennsylvania Human Relations Commission
 - b. US Attorney General & US Dept of Education
 - c. Attorney to send a “demand letter” prior to filing a lawsuit

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 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 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,

SINCERELY HELD RELIGIOUS BELIEFS INCLUDE THE FOLLOWING:

1. Traditional organized religions such as Catholic, Methodist, Baptist or Mormon
2. Religions that are uncommon, unreasonable, illogical or lack formal organization
3. Religions that are unrecognized by other organized religions
4. Non-theistic beliefs that address ethics, morality, and what is right and wrong

EMPLOYERS MAY REASONABLY INQUIRE INTO THE NATURE & SINCERITY OF THE RELIGION:

Based on the interactive process, the employer or educational institution may request limited additional information about the facts and circumstances that support the request for an accommodation if they have an objective basis for doubting either the nature or sincerity of your belief, observance or practice (but not its truthfulness or reasonableness):

1. statements and explanations that explain the nature of their beliefs
2. Information about how, when and where the belief is practiced
3. Written materials that describe the religious belief or religious practice
4. Written statements from third parties such as friends, religious leaders
5. When the person first acquired their belief
6. immunization history,

NOTES ON RELIGIOUS BELIEFS:

1. A person who does not agree with all of the tenants of a religion does not mean that their belief is not sincere
2. A person whose religious beliefs have changed does not mean that their belief is not sincere
3. A person who does not practice their belief as often as they would like does not mean that their belief is not sincere
4. A person who is unable to provide a letter from a pastor does not mean that their belief is not sincere
5. Receiving a vaccine in the past (or only certain vaccines) does not mean that the person's religious belief is not sincere
6. Just because you recently converted to a religion does not mean that your religious belief is not sincere
7. A person who does not practice or express their belief publicly or in an organized gathering of similar believers does not mean that their belief is not sincere
8. Consistent past practicing of one's belief tends to strengthen the assertion that the belief is sincere but the lack of consistency does not necessarily mean that the belief is not sincere
9. 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."
10. The test under Title VII's definition of religion is whether the beliefs are, in the individual's "own scheme of things, religious."

11. 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*, US Supreme Court 489 US 829 (1989)
12. Some Courts have recognized beliefs that are purely moral or ethical as long as they are held with the strength of religious convictions.
13. The employer or educational institution must exercise consistency in their review process to avoid claims of bias or discrimination.

REASONABLE ACCOMMODATION:

1. Please note that you are not requesting a "religious exemption" because you already own that. You are requesting a "reasonable accommodation" which must be provided by the employer as long as it does not create an "undue hardship" to the employer.
2. Modifying a prior reasonable accommodation without cause may be retaliation.
3. "Leave without pay" is not a reasonable accommodation. It is retaliation.
4. Making an exempted employee eat lunch in a separate area away from other employees is not a reasonable accommodation. It is retaliation.
5. It is illegal for the employer to accept exemptions for medical but not religious.
6. You must file a complaint with EEOC or Ohio Civil Rights Commission before filing suit.

DEALING WITH FORCED RESIGNATION, RETALIATION AND FALSE DOCHOTOMIES:

1. The basic rule is "don't quit your job – make them fire you". This preserves your legal rights to the fullest extent.
2. It is false for an employer to state that "failure to vaccinate is the same as resigning".
3. Do not sign anything without review by an attorney including "notices" that notify you of company policies. These "notices" usually contain "agreements".
4. If you have 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.
5. It is unlawful to attempt to persuade an employee to abandon some or all of their sincerely held religious beliefs.
6. It is unlawful for an employer to refuse to hire someone because the applicant has a religious exemption.
7. Punitive damages are available if the employer engaged in a discriminatory practice with malice or reckless disregard for the employee's rights.

THERE MAY BE WILDCARDS IN THE DECK:

1. Employer may argue that lack of vaccination creates an undue hardship due to allegedly increased insurance costs borne by the employer, alleged increased safety risks to other employees, alleged increased business liability risk to customers. It allegedly 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 that they are willing to pay their lawyers.
3. Each person should examine their options and make their own decision or consult an attorney if they are unsure.

ACTION PLAN:

1. Follow all procedures and meet all deadlines set forth by the school or employer
2. In addition to notifying of your exemption using the employer or college's online forms, the parallel plan (Plan A and Plan B executed simultaneously) is to mail your notice to at least two separate addresses by two methods (total of four 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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