

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

DR. PAUL HALCZENKO,
JENNIFER JIMENEZ,
ERIN NICOLE GILLESPIE,
VALERIE FRALIC, and
KRISTIN EVANS, on behalf of
Themselves and all those
similarly situated,

Plaintiffs,

vs.

ASCENSION HEALTH, INC., and
ST. VINCENT HOSPITAL AND
HEALTH CARE CENTER, INC.,
D/B/A ASCENSION ST. VINCENT
HOSPITAL,

Defendants.

Cause No. 1:21-cv-2816

JURY TRIAL REQUESTED

**CLASS ACTION COMPLAINT FOR TEMPORARY RESTRAINING ORDER,
PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF AND DAMAGES**

“Title VII does not contemplate asking employees to sacrifice their jobs to observe their religious practices.”

Adeyeye v. Heartland Sweeteners, LLC, 721 F.3d 444, 456 (7th Cir. 2013)

INTRODUCTION

1. This is a class action brought to remedy a pattern of discrimination by Ascension Health, Inc. (“Ascension”) against employees who requested religious accommodations from Ascension’s mandate that its employees receive the COVID-

19 vaccine and to seek a temporary restraining order (TRO) and preliminary and permanent injunctive relief before Plaintiffs are suspended without pay on November 12, 2021, and then terminated on January 4, 2022.

2. Rather than complying with its obligations under Title VII of the Civil Rights Act of 1964, (Pub. L. 88-352), codified at 42 U.S.C. § 2000e *et seq.* (“Title VII”), Ascension informed the requesting employees that their requests for exemptions were denied, that they will be suspended without pay on November 12, 2021, and they will be considered to have “voluntarily resigned” (*i.e.*, they will be terminated) on January 4, 2022.

3. In every case, Ascension’s sole explanation for its denial of religious exemptions was a single sentence emailed to each requester:

Due to the nature of your role, approving this accommodation poses undue hardship to the organization *due to increased risk to the workplace and patient safety.*¹

4. Ascension’s actions have left Plaintiffs with the impossible choice of either taking the COVID-19 vaccine, at the expense of their religious beliefs or losing their livelihoods. In doing so, Ascension has violated Title VII by failing to

¹ See, e.g., 10.1.2021 Email from **Service Desk** <ascensionprod@service-now.com to PHALCZEN@ascension.org, Subject: The Religious Exemption for COVID-19 Vaccine request is denied for Halczenko, Paul W. (**App. 20**) (Indiana). (Plaintiffs’ Exhibits referenced in this Complaint are submitted in the contemporaneously filed Appendix and cited to herein as (**App. #**). See also Picchiottino Decl. ¶ 36, (**App. 81**) (Wisconsin); Brezillac Aff. ¶ 36, (**App. 77**) (Oklahoma); “Catholic Hospital Rejects 650 Workers’ Religious Exemptions from the COVID Vaccine Mandate,” *Christianity Daily* (Oct. 13, 2021) (**App. 23**) (reflecting Michigan associates were given the same justification for denials of their exemptions as associates in Indiana, Oklahoma and Wisconsin).

provide reasonable accommodations, and by refusing to follow federal law in assessing religious exemptions to its vaccine mandate.

5. As explained below, the robotic explanation given by Ascension to applicants for religious exemption and the failure to consider reasonable accommodations or to properly assess and establish “undue hardship” as required by Title VII, require immediate intervention by this Court to prevent irreparable harm to Plaintiffs and the class they represent.

BRIEF OVERVIEW OF PLAINTIFFS’ KEY CLAIMS AND CONTENTIONS

6. The named Plaintiffs are five healthcare heroes, a doctor, a nurse practitioner, and three registered nurses, who served their patients bravely, risking their lives throughout the early phase of the COVID-19 pandemic when little was known about the SARS-CoV-2 virus.

7. Plaintiffs now face imminent termination from their jobs based solely upon their sincerely held religious beliefs which compel them to resist forced vaccination. Ironically, the very religious faith that undergirded their resolve to risk their lives, if necessary, for their patients will be the reason that – without court intervention – Ascension will strip their employment, sever them from their life’s work, and remove their income in just a few days’ time.

8. The development of the COVID-19 vaccines was a groundbreaking scientific, medical, and logistical wonder. It is therefore a tragic irony that one of the groundbreaking scientific breakthroughs of all time is being mistakenly relied upon by Ascension – one of the nation’s largest healthcare employers – to justify a

sweeping disregard of long-standing statutory commands regarding how employers are to balance health and safety concerns with the rights of their employees.

9. Simply, under Title VII if an employee seeks a religious accommodation American employers cannot summarily impose employer-preferred workplace rules which abridge an employee's sincerely held religious beliefs without genuine and good-faith dialogue and consideration of proposed accommodations and objective evidence.

10. Here, Ascension has upended Title VII's requirements and seeks to capitalize on the COVID-19 vaccines' existence as justification to run rough-shod over its legal obligations and summarily suspend without pay, and ultimately terminate, scores of employees.

11. The paucity of evidence and reasoning Ascension has offered to justify trammeling its employees' religious rights is appalling. Ascension, like many healthcare employers, hailed its employees as "healthcare heroes"² throughout the early pandemic period because they risked their lives to fill a critical need; yet overnight they became expendable without Ascension providing them any explanation, data or metrics that could justify such an about-face.

12. Ascension's one-sentence justification that granting religious objections to the COVID-19 vaccines would create "increased risk to the workplace and patient safety" is pretextual, unsupported by Plaintiffs' experiences, and is believed to be

² See, e.g., Ascension TV commercial entitled, "Healthcare Heroes," available at: <https://www.ispot.tv/ad/nAo4/ascension-health-healthcare-heroes>; Ascension produced video describing its employees as "Healthcare Heroes." available at: <https://healthcare.ascension.org/blog/2020/04/COVID-1919-healthcare-heroes>.

inconsistent with Ascension’s own experience and whatever data it may have from its healthcare facilities over the course of the pandemic (which Ascension has unfortunately not shared with its employees).

13. But, even more fundamentally, the idea that employees seeking religious accommodation may be terminated merely upon a claim of “increased risk” is flawed as a matter of law.

14. Title VII does not permit an employer to deny a requested accommodation because of “increased risk.” Rather, under Title VII the employer’s burden is to show “undue hardship”—and merely “increased” does not without more equal “undue.” *See, e.g., Adeyeye v. Heartland Sweeteners, LLC*, 721 F.3d 444, 455 (7th Cir. 2013) (“Title VII requires proof . . .of hardship, and ‘undue’ hardship at that.”); *Anderson v. Gen. Dynamics Convair Aerospace Div.*, 589 F.2d 397, 402 (9th Cir. 1978) (“Undue hardship means something greater than hardship.”).³

15. Thus, merely incanting the abstract notion of “increased risk” is not equivalent to showing “undue” hardship and is therefore insufficient to satisfy Ascension’s statutory responsibility to identify undue hardship.

16. Ascension’s reliance on “increased risk” is an attempt to import a wholly new legal standard, not countenanced by any statute, rule, regulation or case, to justify summarily discharging employees seeking religious exemptions.

17. To the contrary, the law sensibly imposes a qualitative/quantitative, evidence-based standard. *See, e.g., Nottelson v. Smith Steel Workers D.A.L.U. 19806*,

³ To be clear, Plaintiffs do not concede they pose any increased risk whatsoever.

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