

# THE RUTHERFORD INSTITUTE

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January 27, 2012

Dr. Karl Ulrich, President  
Marshfield Clinic  
1000 North Oak Ave.  
Marshfield, WI 54449

Dear Dr. Ulrich:

The Rutherford Institute<sup>1</sup> has been contacted by Rebecca Tomas, whose employment at Lakeview Medical Center was recently terminated as a result of her refusal to receive certain “mandatory” vaccinations. Ms. Tomas has requested an exemption from this condition of employment based on her sincerely-held religious beliefs, and the Center’s denial of this exemption is in violation of Title VII of the Civil Rights Act of 1964.<sup>2</sup>

As you probably know, Title VII requires employers to make reasonable accommodations to general employment requirements when requested by an employee for religious reasons.<sup>3</sup> On Thursday, September 29, 2011, Ms. Tomas submitted via e-mail an electronically signed “Request for Exemption From Seasonal Influenza Vaccination.” Her stated reason for requesting the exemption was “Religious Belief.” She further explained that she believes that God designed the human body with sufficient mechanisms for fighting potential infections. Ms. Tomas has likewise requested an exemption from the Clinic Immunization Policy as it relates to the Tetanus, Diphtheria, Acellular Pertussis (Tdap) vaccination. On January 11, 2012, Ms. Tomas was notified by letter from David G. Keefe, Director of Human Resources at Marshfield Clinic, that her requests for exemptions had been denied.

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<sup>1</sup> The Rutherford Institute is a non-profit civil liberties organization that provides free legal representation to those whose civil rights are threatened or infringed.

<sup>2</sup> 42 U.S.C. §2000e *et seq.*

<sup>3</sup> 42 U.S.C. §2000e(j).

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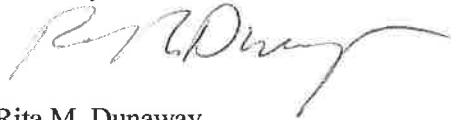
While it is understandable that your organization seeks to avoid illness among its employees, the Equal Employment Opportunity Commission (EEOC) has explicitly recognized that an employer may not use a blanket requirement to compel its employees to receive a vaccination.<sup>4</sup> The EEOC recommends instead that the employer simply encourage employees to be vaccinated. Where this type of voluntary policy has been implemented by other hospitals, the vast majority of employees have chosen to receive the vaccinations.<sup>5</sup>

Under Title VII, once an employee shows that his or her religious beliefs are in conflict with an employer's requirement, the employer must attempt to accommodate those religious beliefs unless it can show that it cannot do so without incurring an undue hardship.<sup>6</sup> In light of the fact that the vast majority of your employees likely have no objection to receiving the required vaccination, and the fact that your organization will certainly be required, in any event, to make some exceptions to this policy for medical reasons, it is unlikely that you will be able to demonstrate that an "undue hardship" would result from accommodating Ms. Tomas' request for an accommodation.

Moreover, surely you could, at the very least, provide an accommodation for Ms. Tomas by allowing her to transfer to a position in which she would continue to enjoy the same flexible work schedule, but where her duties would involve contact with patients who may be less vulnerable to contracting the infections the vaccines are meant to prevent. This type of lateral transfer is among the reasonable accommodations contemplated by Title VII.<sup>7</sup> On the other hand, Mr. Keefe's outright rejection of Ms. Tomas' request for a religious accommodation and corresponding termination of her employment appears to directly conflict with both the letter and the spirit of the law.

At this time, we demand that you immediately reinstate Ms. Tomas as an employee, issue back pay for the period of her unlawful termination, and provide her with written acceptance of her request for a religious accommodation from the mandatory vaccination policy. If you fail or refuse to comply with this demand by February 3, 2012, we will be forced to assist Ms. Tomas in pursuing all available legal remedies.

Sincerely Yours,



Rita M. Dunaway

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<sup>4</sup> "Pandemic Preparedness in the Workplace and the Americans With Disabilities Act" at III(13), E.E.O.C., [http://eeoc.gov/facts/pandemic\\_flu.html](http://eeoc.gov/facts/pandemic_flu.html).

<sup>5</sup> *Service Employees International Union, Local 121RN v. Los Robles Regional Medical Center*, No. C 09-5065 JF(RS), slip op. at 1 (N.D. Cal. Nov. 17, 2009).

<sup>6</sup> *Balint v. Carson City, Nev.*, 180 F.3d 1047, 1050-51 (9th Cir. 1999).

<sup>7</sup> 29 C.F.R. § 1605.2(d)(1)(iii).

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Cc: Michael Dean, Affiliate Attorney  
Rebecca Tomas  
David G. Keefe