



REBECCA BOYETTE
Assistant General Counsel
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VIA EEOC PORTAL

April 1, 2022

Mr. Ronald Lanning
Enforcement Supervisor
U.S. Equal Employment Opportunity Commission
909 First Avenue, Suite 400
Seattle, WA 98104

Subject: Charging Party: Jamie Zimmerman
Respondent: PeaceHealth
Charge No. 551-2021-03845

Dear Mr. Lanning:

I write to provide the response of PeaceHealth to the above-referenced charge.

PeaceHealth is a not-for-profit Catholic health system, which offers healthcare services in communities in Washington, Oregon, and Alaska. PeaceHealth operates 10 medical centers and several medical clinics. Effective August 31, 2021, PeaceHealth required all of its caregivers to be fully vaccinated against COVID-19.¹ PeaceHealth considered caregiver requests for accommodations based on medical condition, disability, and religious beliefs. Where a caregiver requested an accommodation for disability or religious reasons, unless the request was facially invalid, PeaceHealth determined whether and how the caregiver could be accommodated. These considerations included, among other things, the risk to patients, coworkers, and others in PeaceHealth facilities; the availability and effectiveness of other methods to lessen the risk of transmission; and current rates of COVID-19 transmission in the community.

PeaceHealth received a request for medical and religious exemption from its COVID-19 vaccination policy from Ms. Zimmerman on August 16, 2021. *See* Exhibit A. Ms. Zimmerman's request for medical exemption was denied for lack of supporting documentation.² As to Ms. Zimmerman's request for a religious exemption—while PeaceHealth reserves the right to contest whether that request stems from genuine religious conviction, PeaceHealth accepted the request and determined whether it could be accommodated.

¹ To emphasize the centrality of patient care to PeaceHealth's operations, PeaceHealth refers to all of its employees as "caregivers."

² Even if Ms. Zimmerman had provided documentation to support her request for medical exemption and it had been accepted, the outcome would have been the same – i.e., Ms. Zimmerman would have been placed on unpaid leave as a reasonable accommodation, until such a time when the physical presence of an unvaccinated employee no longer imposes a direct threat to patient and caregiver safety, or until maintaining her unpaid leave presents an undue hardship.

Under Title VII, PeaceHealth's duty to reasonably accommodate an employee's religious beliefs and practices does not require PeaceHealth to take actions that impose an undue hardship on its operations. *See* 42 U.S.C. § 2000e(j). An accommodation that would require PeaceHealth "to bear more than a de minimis cost" imposes an undue hardship. *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63, 84 (1977); *see also* 29 C.F.R. § 1605.2(e)(1).³ Allowing an unvaccinated employee to work in-person presents more than a de minimus cost to PeaceHealth. The potential spread of COVID-19 to PeaceHealth's employees imposes a non-trivial financial cost on PeaceHealth, as those employees cannot work while quarantining and recovering from COVID-19. Additionally, many of PeaceHealth's employees work in direct contact with patients, some of whom are particularly vulnerable to severe and potentially fatal COVID-19 symptoms. In recognition of these risks, the Centers for Medicare & Medicaid Services (CMS) issued a rule requiring all employees of healthcare facilities participating in Medicare and Medicaid to be fully vaccinated by January 4, 2022. *See Medicare and Medicaid Programs; Omnibus COVID-19 Health Care Staff Vaccination*, 86 FR 61555, 61573 (Nov. 5, 2021). State governments in the states where PeaceHealth operates have also mandated vaccination against COVID-19 to prevent its spread in the workplace. *See* OAR 333-019-1010 (Oregon vaccination mandate for healthcare providers and staff); Proclamation of Washington Gov. Jay Inslee No. 21-14.1 (Washington vaccination mandate for healthcare employees, contractors, and volunteers).

In addition to the costs related to the infection of employees, the potential reputational costs related to infection of patients by employees at PeaceHealth is substantial. The risk of patient infections linked to an unvaccinated employee exists whenever an unvaccinated employee is present in a PeaceHealth facility or comes in contact with other PeaceHealth employees. An unvaccinated employee could transmit COVID-19 directly to a patient. Additionally, an unvaccinated employee who transmits COVID-19 to another employee could indirectly cause the infection of a patient. In either event, that avoidable transmission, if contact traced to PeaceHealth, would impose a substantial reputational cost on PeaceHealth.

Within this framework, PeaceHealth's reasonable-accommodation analysis first considers whether an unvaccinated employee can work remotely, without any direct contact with patients or other employees. If an employee cannot perform the employee's job remotely, PeaceHealth offers unpaid leave as an accommodation, until such a time when the physical presence of an unvaccinated employee no longer imposes the costs detailed above on PeaceHealth or until maintaining the employee's unpaid leave presents an undue hardship. PeaceHealth also offers the employee the ability to use the employee's available paid time off (PTO) during the leave. Because Ms. Zimmerman cannot work remotely, the only accommodation available was an unpaid leave of absence with the ability to use her PTO.

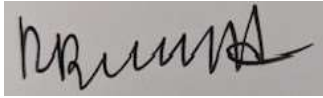
These accommodations fulfill PeaceHealth's duties under Title VII.⁴ Accordingly, the Commission should dismiss the charge

³ Washington courts have long equated the WLAD's prohibition of discrimination on the basis of "creed" with Title VII's prohibition of discrimination based on religion, and look to federal rules for guidance in applying the WLAD. *Kumar v. Gate Gourmet, Inc.*, 180 Wn.2d 481, 325 P.3d 193 (2014).

⁴ These accommodations would likewise fulfill PeaceHealth's duties under the ADA and its Washington state analogue had Ms. Zimmerman provided documentation to support a medical exemption from PeaceHealth's vaccination policy.

If you need any additional information, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Rebecca Boyette", is displayed within a grey rectangular box.

Rebecca Boyette
Assistant General Counsel

Attachment