



January 20, 2022

Andrea L. Turner, J.D.
Vice President, Human Resources & Inclusion
Deputy Director Office of Minority & Women Inclusion
Federal Reserve Bank of Minneapolis
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VIA EMAIL ONLY

Amy Kramer Brenegen
Assistant Vice President, Human Resources & Inclusion
Federal Reserve Bank of Minneapolis
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RE: The Federal Reserve Bank of Minneapolis' Illegal Threat to Terminate Officer Rodney Maki Based on His Religious Beliefs

Dear Ms. Turner:

We represent Officer Rodney Maki related to the Federal Reserve Bank of Minneapolis' (the "Fed") attempt to place him on leave and then terminate his employment based on his religious objection to receiving a COVID-19 vaccination produced or tested using fetal cells. In short, if the Fed does not reverse its religious discrimination, our client has authorized us to file a charge with the EEOC and pursue legal action against the Fed for its discrimination.

Relevant Summary

Officer Maki has been a police officer with the Fed since June 1, 1998—almost 24 years. In his lengthy tenure at the Fed, he has been an outstanding employee and received nothing less than exemplary remarks related to his work.

Officer Maki is a Christian and believes that receiving the COVID-19 vaccine would make him complicit in the abortion of the children who were killed to create the fetal cells lines used in the development and testing of the COVID-19 vaccines available in the United States. Officer Maki believes that the vaccine is thus a violation of God's order created in His Creation, and taking the vaccine would make him complicit in that act, in violation of his religious beliefs.

In July 2021, the Fed announced that it would be requiring employees to receive one of the available vaccines against COVID-19 as a condition of continuing employment (the "Policy"). Around the same time, the Fed announced that it would grant religious exemptions from that Policy.

As part of its religious exemption process, the Fed created a form Request for Accommodation. Upon being made aware of the Policy, Officer Maki filled out that form and sought a religious exemption from the Policy. Officer Maki indicated the basis for his religious objection to the COVID-19 vaccine. He sincerely objects to the COVID-19 vaccine based on his religious beliefs.

Initially, on August 6, 2021, the Fed granted Officer Maki a “temporary accommodation,” allowing him to mask, test, and remain socially distant instead of being vaccinated. The Fed presumably extended this same accommodation to other employees. However, on December 16, 2021, the Fed suddenly claimed that it would cause it an “undue hardship” to continue to accommodate Officer Maki.

As part of its reasoning, the Fed claimed that “[a]s more employees return to the Bank’s premises, your business need to have close contact with a significant number of individuals will increase,” that “[y]our current role will require you to return to the Bank’s premises on a regular, ongoing basis,” and that “[y]our role requires you to be in small-enclosed [sic] spaces with others, including the law enforcement posts, to conduct physical screenings and escorts, and provide EMT services.” The Fed concluded that it would be an undue hardship to allow Officer Maki to test and mask because “you cannot consistently maintain physical distancing while performing the essential functions of your role.” Finally, the Fed stated, “[y]ou are welcome to consider applying for other available positions that are listed on the job opportunity page . . . please contact us right away to discuss whether an accommodation from the Bank’s COVID-19 Vaccination Policy would be possible in that position.”

The next day, December 17, 2021, Officer Maki asked Andrea Turner whether an accommodation would be possible for a “Treasury Services Call Center Representative” or a “Technical Customer Service Representative.” Ms. Turner replied the same day to state that the Treasury Services Call Center Representative position would have a workspace-configuration problem because of “low cubicle walls and inability to maintain 6 feet of physical distance.” On December 29, 2021, Ms. Turner further stated that the Technical Customer Service Representative position also would not work, without specifically stating why. Ms. Turner stated that “it may be possible for the IT Help Desk Technician to be performed with an accommodation,” also without stating why.

On January 3, 2022, the Fed announced that it would be delaying the return to the office for many employees. The return to the office had, according to the Fed, been the catalyst for revoking accommodations like Officer Maki’s. So, Officer Maki pointed this out and asked if his accommodation would be extended in a January 4, 2022 email. Officer Maki also pointed out that his regular position involves him working solo at his post without others within 6 feet of him on a regular basis. Further, Officer Maki noted that he performed far more individual screenings during the time the Fed did not have regular employees working at the office, with hundreds of construction workers working within the Fed on a daily basis. Throughout that entire time, he masked and tested dutifully, with no problems.

Officer Maki also noted the Fed’s lackluster attempts to work with him in the interactive process to help accommodate his religious objection. While Officer Maki was proactive in reaching out to the Fed to offer potential alternatives, the Fed’s answer at every turn was “no,” with vague

reasoning. The Fed never offered Officer Maki the opportunity to change his work schedule as an accommodation, including evening or overnight shifts, which he is willing to take. Officer Maki pointed out that this is in sharp contrast to the example of another officer for whom the Fed changed entire schedules and shifts to create an accommodation.

In response, on January 6, 2022, Andrea Turner gave a brief, vague response that failed to address any of Officer Maki's points.

On January 7, 2022, the Fed put Officer Maki on unpaid leave and now threatens to terminate his employment on January 22, 2022.

Title VII of the Civil Rights Act Requires Employers to Provide "Reasonable" Accommodations When Granting Exemptions to a Policy

The Civil Rights Act of 1964 (Title VII), 42 U.S.C. § 2000e, prohibits employers from adverse actions against an employee because of his or her religion. Religion is defined under the statute to include "all aspects of religious observance and practice, as well as belief." 42 U.S.C. §2000e(j). Further, as part of a request for exemption from a policy, employers may not require employees to "prove up" the sincerity of their religious beliefs.¹

An employee establishes a prima facie case of religious discrimination when he or she "has shown (1) a bona fide religious belief that conflicts with an employment requirement, (2) informed the employer of such conflict, and (3) suffered an adverse employment action." *Mohamed v. 1st Class Staffing, LLC*, 286 F.Supp.3d 884, 901 (S.D. Ohio 2017). Once the employee has attested to the sincerity of his or her religious beliefs, the burden of proof then shifts to the employer to prove that granting the request for accommodation would create an undue hardship on the employer. *Id.*

Whether an employer can demonstrate an undue burden is a fact-intensive analysis that cannot be resolved until discovery is complete. *Villareal v. Rocky Knoll Health Ctr.*, No. 21-CV-729, 2021 U.S. Dist. LEXIS 221690, at *4 (E.D. Wis. Nov. 17, 2021) ("An employer's argument that accommodating an employee's religious practice would result in undue hardship may be a proper basis for a motion for summary judgment, but not for a motion to dismiss."). Moreover, an employer cannot demonstrate an undue hardship where it suddenly and arbitrarily changes its policy to require religious objectors to get a vaccine which has been available for over a year, during which time masking and testing was deemed sufficient for an accommodation. *Doe v. NorthShore Univ. Healthsystem*, No. 21-cv-05683, 2021 U.S. Dist. LEXIS 228371, at *14 (N.D. Ill. Nov. 30, 2021).

In addition, an employer has a duty to engage in an interactive process with an employee to find potential alternative positions which could accommodate the employee's religious objections to a company practice. *See, e.g., Garrison v. Dolgencorp, LLC*, 939 F.3d 937, 942 (8th Cir. 2019) (employer "had an obligation to 'take some initiative' and identify a reasonable accommodation")

¹ See EEOC, Compliance Manual on Religious Discrimination, https://www.eeoc.gov/laws/guidance/section-12-religious-discrimination#h_9546543277761610748655186. (Internal citations omitted) (last visited November 5, 2021).

in the ADA context); *Barrington v. United Airlines*, Civil Action No. 21-cv-2602-RMR-STV, 2021 U.S. Dist. LEXIS 201633, at *12-13 (D. Colo. Oct. 14, 2021) (“The Tenth Circuit has explained that ‘[a]ll the interactive process requires is that employers make a good-faith effort to seek accommodations’ . . . ‘A party that obstructs or delays the interactive process is not acting in good faith. A party that fails to communicate, by way of initiation or response, may also be acting in bad faith.’”).

Finally, both the Minnesota Human Rights Act and Title VII protect employees from discrimination based on, among other things, their religion or creed. Specifically, the Minnesota Human Rights Act, Minn. Stat. § 363A.08 subd. 2 forbids employers from discriminating against an employee because of his or her “creed or religion,” barring “unfair employment practices...[that] discriminate against a person with respect to hiring, tenure, compensation, terms, upgrading, conditions, facilities, or privileges of employment.” The Minnesota Constitution also explicitly protects Minnesotans’ free exercise of religion. *See* Minn. Const. art. 1, sec. 16 (“The right of every man to worship God according to the dictates of his own conscience shall never be infringed.”). In fact, Minnesotans are “afforded greater protections for religious liberties...under the state constitution than under the first amendment of the federal constitution.” *State v. Hershberger*, 462 N.W.2d 393, 397 (Minn. 1990).

The Fed Must Reverse Course and Accommodate Officer Maki

As noted above, Officer Maki has explained his religious objections to the COVID-19 vaccine. The Fed ostensibly seems to agree that Officer Maki has a sincere religious belief here because it claims to have offered an accommodation.

Nonetheless, the Fed’s placing Officer Maki on unpaid leave and threatening his termination is a *prima facie* violation of Title VII. Further, while the Fed’s correspondence with Officer Maki describes the in-person work which he does as a law enforcement officer, Officer Maki has indicated his willingness to undergo routine testing and wear a mask indoors, consistent with the Fed’s requirements for unvaccinated employees over the entire last year, during which time a vaccine was available. The Fed’s abrupt and arbitrary policy change will not survive a legal challenge.

In addition, as I understand it, the Fed does not impose a vaccination requirement on third parties entering the Bank, creating the absurd result that Officer Maki would not be allowed to work for the Fed, but would be allowed to visit as a member of the public or as a third-party contractor.

Officer Maki has been a loyal servant of the Fed for nearly 24 years. It is disgraceful that the Fed would even consider terminating such a faithful employee despite recognizing his sincere religious objection to taking the COVID-19 vaccine.

For these reasons, we ask that the Fed reverse course and grant Officer Maki’s reasonable accommodation request. If the Fed fails to do so, Officer Maki has authorized us to file a charge with the EEOC and engage in further litigation in federal court.

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Sincerely,

A handwritten signature in blue ink, appearing to read "J. Dickey", is centered on the page. The signature is fluid and cursive, with a large initial "J" and "D".

James V. F. Dickey

Senior Trial Counsel
Upper Midwest Law Center

cc: Douglas P. Seaton, Esq.
Client