

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

MITCHEL BENISH,

Plaintiff,

v.

BERKLEY RISK ADMINISTRATORS
COMPANY, LLC,

Defendant.

Court File No. _____

**COMPLAINT
JURY TRIAL DEMANDED**

INTRODUCTION

1. Plaintiff Mitchel Benish was hired by Defendant Berkley Risk Administrators Company, LLC (“Defendant” or “Berkley”) as a property and casualty adjuster to handle claims exclusively for the League of Minnesota Cities Insurance Trust—a client of the Defendant—and worked successfully in that position for seven years before Berkley fired him because of his religious objections to the COVID-19 vaccine.

2. From the onset of the pandemic, Plaintiff continued to do his job with very little change. Plaintiff did nearly all his work from his home office, only going into the field on rare occasions; on those occasions he wore a mask. On or about September 21, 2021, Berkley instituted a mandatory COVID-19 vaccination policy (“Vaccine Policy”) for all its employees. The Plaintiff was given until February 1, 2022, to be vaccinated or else face termination. The Plaintiff applied for a religious exemption from the policy.

3. The Defendant notified the Plaintiff that his exemption had been approved; however, it also informed him that it could not accommodate his exemption because his

job entailed essential duties that had to be performed in-person. Specifically, Mr. Benish was informed that Berkley could not allow him to put others "at risk" due to his unvaccinated status.

4. Then, after he had made several attempts to communicate with the Defendant to resolve the issue short of his termination and receiving little-to-no meaningful interaction with the Defendant, he was terminated on February 4, 2022.

5. Defendant terminated Mr. Benish's employment even though he never went to any Berkley facility as a regular part of his employment, rarely interacted with individuals in person when performing his daily duties, worked almost exclusively from home, and exclusively worked for and reported remotely to his supervisor. Moreover, he was willing to mask, undergo non-intrusive testing, and social distance while in the presence of other individuals.

6. There was and is no undue hardship for the Defendant to keep the Plaintiff employed while accommodating his exemption.

7. To make matters worse, the Defendant failed to make any meaningful effort, as part of the interactive process, to provide Plaintiff an opportunity to work a different job within the company in order to accommodate his religious objection. Berkley made no effort to help him, despite its obligation to do so.

8. Because Plaintiff's sincerely held religious beliefs prevent him from becoming vaccinated with the COVID-19 vaccine, and Berkley fired him because of that belief, he is entitled to relief under Title VII of the Civil Rights Act and other statutes as described below.

THE PARTIES

9. Plaintiff Mitchel Benish resides in Onalaska, Wisconsin.
10. Defendant Berkley's corporate office is located at 222 S 9th St #2700, Minneapolis, Minnesota 55402, within the District of Minnesota.

JURISDICTION AND VENUE

11. The Court has subject-matter jurisdiction under 28 U.S.C. §§ 1331, 42 U.S.C. §§ 2000e-(j) and 2000e-2 ("Title VII"). Plaintiff alleges federal questions arising under the laws of the United States under Title VII.
12. This Court has authority to award the requested relief pursuant to Title VII of the Civil Rights Act; and costs and attorneys' fees pursuant to Title VII and 42 U.S.C. § 1988(b).
13. This Court has both general and specific jurisdiction over Berkley, which is located within the District of Minnesota, and its acts and omission alleged herein took place in the District of Minnesota.
14. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(1), (b)(2) and (e) and because Berkley is doing business in the District, and a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this judicial District.

FACTUAL ALLEGATIONS

15. Mr. Benish began his employment with Berkley in 2015. He served as a property and casualty adjuster working directly for the League of Minnesota Cities Insurance Trust ("LMCIT"), a contracted client of Berkley. Mr. Benish was assigned by Berkley to handle LMCIT's claims.

16. In his role as a liability claims adjustor, he evaluated liability. Most of his work hours were spent talking on the phone to city contacts, claimants, witnesses, contractors, body shops or other vendors as well as reviewing documents such as: policies, ordinances, contracts, maintenance records, police reports, accident reports, estimates, invoices, photos, or other evidence.

17. Mr. Benish worked exclusively from his home office. He lived approximately 3 hours from the Berkley office and had not once visited the office since the day he was hired in 2015. Moreover, his job did not require him to enter the LMCIT office building either. The last time he had entered that building was for a Christmas party in 2019. His job was truly a remote job.

18. Even prior to the pandemic, Mr. Benish's field work never amounted to more than 3% of his total hours worked in any given year. And this field work did not always include "in-person or face-to-face" interaction with people. Most of this field work did not require him to meet physically with anyone. It mostly consisted of documenting, evaluating, and photographing vehicle, sidewalks, potholes, utility covers in the street, boulevard trees, etc. His field work rarely required him to enter a building.

19. Throughout the COVID-19 pandemic, Mr. Benish continued to do his job from his home office without needing to go into the field.

20. Beginning in March 2021, COVID-19 vaccinations became widely available to adults in the United States.

21. On or about September 21, 2021, Berkley informed its workforce, including Mr. Benish, that it was implementing a mandatory Vaccine Policy.

Plaintiff's Sincerely Held Religious Beliefs

22. Mr. Benish is a Christian. He believes that his body is a temple. Accordingly, he believes it is his God-given responsibility to protect his body from unnecessary, unclean, unnatural, and immoral injections. **Exhibit 1 at Benish 001.**

23. Mr. Benish believes—based on religious teachings—that he is obligated to adhere to his conscience as an image bearer of God and therefore cannot subject his body to the COVID-19 vaccines.

24. Mr. Benish believes the COVID-19 vaccines contain material that violate his conscience and jeopardize the integrity of his body as the temple of God.

25. Mr. Benish's religious objection to the COVID-19 vaccine is sincere, as demonstrated in part by his willingness to adhere to it despite Berkley's threats and completion of adverse employment action against him because of it.

Berkley's Vaccine Policy and Benish's Request for Accommodation

26. On or about September 21, Berkley informed its employees of its Vaccine Policy requiring all employees to receive a COVID-19 vaccination or else submit a request for religious or medical accommodation, as applicable.

27. Berkley's Vaccine Policy conflicts with Mr. Benish's sincerely held religious beliefs because Benish believes the COVID-19 vaccines violate his bodily integrity and would desecrate the temple of the Holy Spirit.

28. On January 6, 2022, Mr. Benish requested a religious exemption from Berkley based on his sincerely held religious beliefs. In his request he notified Berkley's Human Resource

Department that he is a Christian and that he declined to receive a COVID-19 vaccination because to do so would violate his sincerely held religious conviction. **Exhibit 1 at Benish 001.**

29. On January 10, 2022, Berkley informed Mr. Benish that, although it approved his exemption from the Vaccine Policy, thus admitting the sincerity of his religious beliefs, it would not accommodate those religious beliefs. Berkley claimed that Mr. Benish's essential job duties required him to have too much personal contact, thereby putting individuals at risk if he remained unvaccinated. **Exhibit 1 at Benish 014-015.**

30. On January 18, 2022, Mr. Benish provided a letter in which he attempted to appeal the decision made by Berkley to refuse him an accommodation. In this letter he pointed out that Berkley's premise that his "essential job duties" required him to have "in person contact" was not accurate.

31. And on January 21, 2022, at the request of Berkley, Mr. Benish provided his calculations that resulted in demonstrating that he spent less than 3% of his annual work hours outside of his own house. **Exhibit 1 at Benish 031-032.**

Berkley Fails to Engage in the Interactive Process, Fails to Accommodate Benish, and Terminates Him Because of His Religious Beliefs.

32. Despite this information, on January 28, 2022, Berkley notified Mr. Benish that it would not accommodate him. Furthermore, it doubled down on its position that allowing Mr. Benish to continue the work he had been doing for 2 years during the pandemic would pose an undue hardship on the company because he was a safety risk due to his unvaccinated status. **Exhibit 1 at Benish 030-031.**

33. Berkley did not meaningfully engage in an interactive process with Mr. Benish and claimed that it would be more than a de minimis cost to it if he were to continue in his employment unvaccinated.

34. On February 1, 2022, Berkley sent Mr. Benish a formal termination letter. **Exhibit 1 at Benish 007-009.**

35. Berkley terminated Mr. Benish for not complying with its mandatory Vaccine Policy.

36. By refusing to accommodate Mr. Benish's sincerely held religious beliefs that served as the basis for his objection to its mandatory vaccination policy, Berkley unlawfully discriminated against him.

37. Berkley's failure to accommodate Benish in any way, while claiming to grant his "exemption," renders Berkley's "exemption" illusory and not a legitimate attempt to accommodate religious beliefs.

38. Berkley unlawfully compelled Mr. Benish to choose between keeping his employment and violating his sincerely held religious beliefs.

The Defects of Berkley's Vaccination Mandate

39. At the time Berkley refused Mr. Benish a religious accommodation and forced its employees to get vaccinated or be fired, evidence was publicly available to Berkley that demonstrated that the COVID-19 vaccines available to Americans do not reduce transmission of the COVID-19 virus but rather only protect the individual recipients of the vaccine from serious infection. *E.g.*, Jennifer Frazer, "The Risk of Vaccinated COVID Transmission Is Not Low," *Scientific American*, Dec. 16, 2021, available at

<https://www.scientificamerican.com/article/the-risk-of-vaccinated-covid-transmission-is-not-low/> (last visited Dec. 3, 2022); Carlos Franco-Paredes, “Transmissibility of SARS-CoV-2 among fully vaccinated individuals,” *The Lancet*, Jan. 1, 2022, available at [https://www.thelancet.com/journals/laninf/article/PIIS1473-3099\(21\)00768-4/fulltext](https://www.thelancet.com/journals/laninf/article/PIIS1473-3099(21)00768-4/fulltext) (last visited Dec. 3, 2022).

40. Further, measures other than mandatory vaccination or a combination of them, such as temperature checks, mask-wearing, social distancing, and quarantining of infected individuals, all of which Mr. Benish was willing to do, are as effective, if not more effective, at controlling the spread of COVID-19 than mass-vaccinating the population.

41. Given that the “safety risks” posed by Mr. Benish have been the only interest identified by Berkley, and given that safety is advanced little or not at all by the vaccination mandate imposed by it, Berkley cannot demonstrate that an undue hardship existed.

42. Berkley’s decision to deny Mr. Benish an accommodation cannot be rationally supported by the evidence and was in violation of his rights.

43. Berkley’s termination of Mr. Benish was intentional discrimination, with malice and reckless indifference to Mr. Benish’s rights under Title VII, as demonstrated by the allegations herein.

Mr. Benish Exhausted All Administrative Remedies

44. After he was terminated, he filed a Charge of Discrimination in the EEOC on August 15, 2022. **Exhibit 2.**

45. On November 18, 2022, the EEOC issued Benish a right-to-sue notice. **Exhibit 3.**

CAUSE OF ACTION

Count One
42 U.S.C. §§ 2000e, et. seq.

Title VII Religious Discrimination

46. Plaintiff reincorporates the foregoing as if fully written herein.

47. Title VII of the Civil Rights Act of 1964 prohibits Berkley from discriminating against its employees on the basis of their sincerely held religious beliefs. See 42 U.S.C. § 2000e-2(a).

48. As alleged herein, Mr. Benish holds sincere religious beliefs that preclude him from receiving a COVID-19 vaccine.

49. Mr. Benish informed Berkley of those beliefs and requested a religious exemption and reasonable accommodation from the Policy.

50. Berkley impermissibly failed and refused to accommodate Mr. Benish by falsely declaring that to do so would impose an undue hardship on Berkley. In doing so, it also failed to initiate the interactive process regarding Mr. Benish's accommodation request.

51. Despite Mr. Benish's best efforts to initiate an interactive process, Berkley made no effort to meaningfully engage in that process or to accommodate Mr. Benish's sincerely held religious beliefs.

52. Besides the absence of an interactive process, Berkley failed to provide Plaintiff with a reasonable accommodation, and instead terminated his employment because of his religious beliefs, thereby discriminating against Benish because of his religious beliefs.

53. Berkley's failure to accommodate the Plaintiff has harmed and will continue to harm him.

54. By failing to engage in the interactive process or offer any reasonable accommodation, Berkley's discriminatory actions were intentional and/or reckless and in violation of Title VII.

55. Mr. Benish filed charges with the EEOC complaining of these discriminatory actions on August 15, 2022, and the EEOC issued a right-to-sue letter on November 18, 2022.

56. By the acts, policies, and practices set forth in more detail above, Defendant has discriminated against Plaintiff in the terms and conditions of his employment on the basis of his religion, in violation of Title VII of the Civil Rights Act of 1964.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Mitchel Benish respectfully requests that the Court enter judgment against Defendant and provide him with the following relief:

- A. A declaratory judgment that Berkley violated Mr. Benish's rights under Title VII;
- B. An award of actual, nominal, and general damages in favor of Plaintiff because of Berkley's violations of Title VII, in an amount to be proven at trial;
- C. An award of compensatory damages under Title VII in an amount to be proven at trial;
- D. An award of back pay, front pay, treble damages and statutory penalties, interest, emotional distress and pain and suffering, damages to compensate

for dignitary harm to Plaintiff, and any other damages or penalties available at law;

- E. Reinstatement to Mr. Benish's former position at Berkley, with credit for years of work service during the time he was illegally terminated, and wage and benefit increases consistent with what an employee in his position would have received during his illegal termination.
- F. An award of punitive damages because of Berkley's intentional discrimination against Mr. Benish with malice and reckless indifference to his rights under Title VII.
- G. Reasonable attorneys' fees, costs, and other costs and disbursements in this action pursuant to 42 U.S.C. § 1988, upon Plaintiff prevailing and appropriate motion for the same;
- H. All and any further relief to which Plaintiff may be entitled; and
- I. A trial by jury of all such matters properly tried as such is requested.

UPPER MIDWEST LAW CENTER

Dated: February 13, 2023

/s/ James V. F. Dickey
Douglas P. Seaton (#127759)
James V. F. Dickey (#393613)
8421 Wayzata Blvd., Suite 300
Golden Valley, Minnesota 55426
Doug.Seaton@umlc.org
James.Dickey@umlc.org
(612) 428-7000

Attorneys for Plaintiff