



UNIVERSITY OF CALIFORNIA
HASTINGS SCHOOL OF LAW

Influenza Mandates Go to Court

Dorit R. Reiss



Conflict of Interest Statement:

- **The family owns stock (regular) in GSK.**



Presentation Plan

- Starting Point: At Will Employment
- Religious Discrimination?
 - First Amendment? Not likely a barrier.
 - Civil Rights Act of 1964.
- Americans with Disabilities Act?
- Collective Bargaining:
 - Avoiding.
 - Litigation.

Healthcare Personnel!

Are your vaccinations up-to-date?

You should be immune to:

- ▶ **INFLUENZA**
- ▶ **HEPATITIS B**
- ▶ **MEASLES/MUMPS/RUBELLA**
- ▶ **TETANUS/DIPHTHERIA/PERTUSSIS**
- ▶ **VARICELLA (CHICKENPOX)**



SAFER • HEALTHIER • PEOPLE™

**Protect your patients.
Protect your family.
Protect yourself.**

Get Vaccinated!

HEALTH CARE WORKERS VACCINATIONS



Requiring influenza vaccines from HCW:

- State Law
- Executive orders
- Private employer action



Employment:

- Generally at-will.
- Title VII of the Civil Rights Act of 1964:
 - No religious discrimination.
 - Accommodation unless:
 - Undue burden.
- Americans with Disability Act:
 - Accommodation unless:
 - Undue burden.



First Amendment?

- Only applies to public employers.
- Emp't Div., Dep't of Human Res. of Oregon v. Smith, 494 U.S. 872, 890 (1990).





Civil Rights Act, 1964:

- Undue burden: De minimis.
- Sincere religious belief.
 - *Fallon: Three part test:*
 - Religion addresses fundamental and ultimate questions.
 - Religion is a comprehensive belief system, not an isolated teaching.
 - Religion is often recognized by formal and external signs.



Civil Rights Act, 1964:

- Sincere religious belief cont:
 - *Saint Vincent*:
 - Organized Religion?
 - Irrational belief?
 - *Fallon*:
 - Require spelling out



Civil Rights Act, 1964:

- Reasonable accommodation?
 - *Robinson*
 - *Masks? Baystate.*
- Disparate Treatment?
 - *Mission hospital*
 - [EEOC v. Memorial Healthcare](#), E.D. Mich.,
No. 2:18-cv-10523, 2/13/18.



New HHS rule?





American With Disabilities Act

- Disability here?
- Undue burden?
- Direct threat?



Collective Bargaining:

- Interpretation of agreement –
 - Arbitrator
 - Courts

- NLRB process.



Thank you!

Questions? Comments?

reissd@uchastings.edu

415-5654844



EXTRA SLIDES

The Federal Framework:

Jacobson v.
Mass.

1905

Schloendorff v.
Soc'y of NY
Hospital

1914

Zucht v.
King

1922

The Federal Framework:

Cantwell v.
Conn.

1940

Prince v.
Mass.

1944