

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS

NEELIE PANOZZO, et al.,

Plaintiffs,

v.

RIVERSIDE HEALTHCARE,

Defendant.

Case No. 2:21-cv-02292-CSB-EIL

Third Amended Complaint

Plaintiffs, Neelie Panozzo and 29 others, by and through their undersigned attorneys, sue Defendant Riverside Healthcare, and state:

1. This is an action for declaratory relief and damages arising from Defendant's mandate that Plaintiffs be vaccinated against COVID-19, in violation of their sincerely held religious beliefs in derogation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq. ("Title VII"). As a result of Defendant's mandate, Defendant terminated the employment of 29 Plaintiffs for not receiving the COVID-19 vaccine despite those employees having a sincerely held religious belief against obtaining that vaccine. In addition, at least one Plaintiff obtained the COVID-19 vaccine in violation of her sincerely held religious beliefs due to Defendant's mandate that forced her to choose between her religious beliefs and her employment and financial security of her family.

Parties

2. Plaintiff Neelie Panozzo was an employee of Riverside Healthcare. She requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request.

3. Plaintiff Judy Busato was an employee of Riverside Healthcare. She requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request.

4. Plaintiff Amy Memenga was an employee of Riverside Healthcare. She requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request.

5. Plaintiff Allison Berard was an employee of Riverside Healthcare. She requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request.

6. Plaintiff Amber Marcotte was an employee of Riverside Healthcare. She requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request.

7. Plaintiff Beth Norwick was an employee of Riverside Healthcare. She requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request.

8. Plaintiff Bonnie Gross was an employee of Riverside Healthcare. She requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request.

9. Plaintiff Bonnie Rykiel was an employee of Riverside Healthcare. She requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request.

10. Plaintiff Cassidy Gerdes was an employee of Riverside Healthcare. She requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request.

11. Plaintiff Dakota Gable was an employee of Riverside Healthcare. She requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request.

12. Plaintiff Desneiges Hansen was an employee of Riverside Healthcare. She requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request.

13. Plaintiff Holly Gade was an employee of Riverside Healthcare. She requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request.

14. Plaintiff Janet Stryzik was an employee of Riverside Healthcare. She requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request.

15. Plaintiff Jeanne James was an employee of Riverside Healthcare. She requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request.

16. Plaintiff Kathryn Vana was an employee of Riverside Healthcare. She requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request.

17. Plaintiff Kendra Outsen was an employee of Riverside Healthcare. She requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request.

18. Plaintiff Laura Wendt was an employee of Riverside Healthcare. She requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request.

19. Plaintiff Linda Kendziorek was an employee of Riverside Healthcare. She requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request.

20. Plaintiff Merissa Hubert was an employee of Riverside Healthcare. She requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request.

21. Plaintiff Michael Raef was an employee of Riverside Healthcare. She requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request.

22. Plaintiff Molly Snyder was an employee of Riverside Healthcare. She requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request.

23. Plaintiff Nadya Payne was an employee of Riverside Healthcare. She requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request.

24. Plaintiff Rebecca O'Connor was an employee of Riverside Healthcare. She requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request.

25. Plaintiff Sherrie Robertson was an employee of Riverside Healthcare. She requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request.

26. Plaintiff Tenise Irvin was an employee of Riverside Healthcare. She requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request.

27. Melissa Harms was an employee of Riverside Healthcare. She requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request.

28. Nicole Boersma was an employee of Riverside Healthcare. She requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request.

29. Nichole Bednarz was an employee of Riverside Healthcare. She requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request.

30. Valerie Keitzman was an employee of Riverside Healthcare. She requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request.

31. Plaintiff Nicole Brewer is an employee of Riverside Healthcare. She requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request. She was forced to choose between following her religious beliefs or her employment and financial security of her family. She chose to get the COVID-19 vaccine in violation of her religious beliefs in order to keep her job and continue to provide for her children.

32. Defendant Riverside Healthcare (“Riverside”) is a not-for-profit corporation existing under the laws of the State of Illinois, with its principal place of business located at 350 N. Wall Street, Kankakee, Illinois.

Jurisdiction

33. This Court has jurisdiction of Plaintiffs’ Title VII claims pursuant to 28 U.S.C. §§ 1331 and 1343.

34. Venue is proper under 28 U.S.C. § 1391 because all the conduct complained of occurred within this District.

Factual Allegations

35. Title VII prohibits employers from failing or refusing to hire or to discharge any individual, or to otherwise discriminate with respect to an employee’s compensation, terms, conditions, or privileges of employment, because of the employee’s race, color, religion, sex, or national origin. 42 U.S.C. § 2000e-2(a)(1).

36. On August 26, 2021, Illinois Governor J.B. Pritzker issued an executive order mandating health care workers be vaccinated against COVID-19. His order included an option for weekly testing if vaccination would require a health care worker to “violate or forgo a sincerely held religious belief, practice, or observance.”

37. On August 27, 2021, Riverside circulated a memorandum and policy to all employees announcing it was implementing the Governor’s order and offering a process and form by which Riverside employees could secure a religious exemption.

38. All Plaintiffs, as part of their deeply held religious faith, oppose abortion and the use of aborted fetal tissue or hold other sincere religious objections to the current vaccines.

39. Because all the currently available COVID-19 vaccines were developed with the use of aborted fetal tissue, receiving any COVID-19 vaccine would go against Plaintiffs’ sincerely held religious beliefs.

40. All plaintiffs promptly submitted a letter or form to Riverside Healthcare requesting a religious exemption from their COVID-19 vaccine mandate.

41. On September 10, 2021, after President Biden’s speech to the nation, Riverside circulated another memorandum to employees, stating that “Until we receive the [Emergency Temporary Standard from the federal Occupational Safety and Health Administration (OSHA)] and can review its contents in light of the existing emergency order issued by Governor Pritzker, Riverside will be temporarily suspending the decisions on pending religious and medical exemption requests . . .”

42. Nevertheless, after pledging to suspend all decisions on pending religious exemption requests until the OSHA Rule was published (which was issued on November 4, 2021), on September 17, 2021, Riverside denied all religious exemption requests for all patient-facing employees, including those of Plaintiffs.

43. Riverside has implemented a policy to deny any religious accommodation request by any employee it deemed to be in a patient-facing position.

44. Plaintiffs who filed appeals of their exemption denials with Riverside also received denials of those appeals.

45. On September 21, 2021, Plaintiff Memenga received a letter, dated September 20, 2021, terminating her employment with Riverside Healthcare effective that day for refusing to comply with Riverside's vaccination mandate after being placed on a two-week administrative leave for not meeting the original September 6, 2021, deadline for vaccination.

46. On September 24, 2021, previous counsel for Plaintiffs sent a demand letter to Riverside outlining the Plaintiffs' rights under Illinois Health Care Right of Conscience Act, 745 ILCS § 70/1, et seq. (the "HCRCA")¹ and federal Title VII.

47. On September 30, 2021, Riverside sent Neelie Panozzo a letter threatening to place her on unpaid leave or terminate her if she did not become vaccinated by October 31.

¹ Plaintiffs originally brought this action in state court alleging violations of the HCRCA. This Third Amended Complaint drops Plaintiffs' HCRCA count and simply alleges a violation under Title VII.

48. On or about October 4, 2021, Riverside denied all exemption appeals by Plaintiffs.

49. On October 8, 2021, Riverside's attorney replied to Plaintiffs' demand letter by defending Riverside's position.

50. On October 8, 2021, Riverside sent a letter to Plaintiff Neelie Panozzo informing her that the Medical Executive Committee would be meeting on October 25, 2021, to revoke her clinical privileges and credentials as a necessary step towards termination. The letter recommended resigning, because revocation would become a permanent part of Panozzo's personnel file that would follow her to future medical jobs. A follow-up email indicated all unvaccinated staff would have their credentials revoked that day.

51. On October 8, 2021, Riverside posted a video to YouTube for employees from Riverside president Kambic "to answer questions," and "to explain the why of why we're doing some things." In the video, Kambic says that for employees to choose to refuse to be vaccinated is to say, "I'm going to have to leave" Riverside. Kambic also explained the scope of his definition of "patient-facing," saying, "The vast, vast majority of all of our employees touch a patient somehow. They simply do. Whether they come over to the hospital or to an outpatient setting and walk through, they are coming into contact with patients. That is why everybody has to get vaccinated. There are very few people who don't come to a hospital setting or a care setting."

52. Plaintiffs were discriminated against because of their religious beliefs in violation of Title VII when Defendant terminated Plaintiffs' employment based on

their refusal to accept administration of the COVID-19 vaccines in violation of their religious faith.

Procedural History

53. This case began on October 13, 2021, when six plaintiff nurses employed by Riverside Healthcare filed a complaint in the State of Illinois' Circuit Court for the 21st Circuit, Kankakee County, against the hospital and its CEO, Philip Kambic, alleging violations of the Illinois Health Care Right of Conscience Act, 745 ILCS § 70/1, et seq. The complaint alleged that Riverside was forcing Plaintiffs to choose between compromising their sincerely held religious beliefs by obtaining the COVID-19 vaccine in accordance with Riverside's COVID-19 vaccine mandate and termination for failing to obtain the COVID-19 vaccine.

54. On October 25, 2021, the state court entered a temporary restraining order, preventing Defendant from terminating employment of four Plaintiffs.

55. The state court then granted Plaintiffs leave to file their First Amended Complaint adding 56 additional Riverside employees to the case. The state court also extended the TRO to 53 additional Riverside employees, which Defendant, without conceding that the TRO was properly entered, did not oppose.

56. The federal Centers for Medicaid & Medicare Services (CMS) then issued a rule requiring vaccination of employees of Medicaid/Medicare-participating employers like Riverside, with an initial deadline for the first dose of vaccination on December 5, 2021. Medicare and Medicaid Programs; Omnibus COVID-19 Health Care Staff Vaccination, 86 Fed. Reg. 61,555, 61,583 (Nov. 5, 2021). Defendant

promptly moved to dissolve the stay based on this federal preemption. The Court held a hearing, and the parties agreed to set the stay to dissolve on December 5, 2021, the final day before the CMS Rule required employees to receive the first dose of a vaccine. The Court also granted Plaintiffs leave to amend their complaint.

57. Plaintiffs filed a Second Amended Complaint, adding ten additional Plaintiffs and a second count that alleged that Defendant was not complying with the religious nondiscrimination requirements of Title VII of the federal Civil Rights Act of 1964, which was not preempted by the CMS Rule.

58. With the introduction of a federal claim into the case, Defendant removed the case to this Court on November 29, 2021.

59. On November 30, 2021, the U.S. District Court for the Western District of Louisiana issued a nationwide preliminary injunction against the CMS Rule. *Louisiana v. Becerra*, 3:21-CV-03970, ECF No. 28 (Nov. 30, 2021).

60. With the issuance of a nationwide preliminary injunction against the CMS Rule, the parties agreed to observe the terms of the then-existing TRO while they briefed, and this Court heard, Plaintiffs' motions for a TRO and preliminary injunction. Defendant informed Plaintiffs that it would end their voluntary continuation of the TRO on January 3, 2022, and would fire Plaintiffs at that time.

61. This Court denied Plaintiffs motions for TRO and preliminary injunction on January 2, 2022.

62. Defendant terminated the employment of Plaintiffs who had not already been terminated or who had not obtained the COVID-19 vaccine on January 3, 2022.

63. Defendant filed a motion to dismiss, asserting, among other things, that Plaintiffs' HCRCA state claim should be dismissed as preempted by federal law, that Defendant Kambic should be dismissed, and that Plaintiffs must file a charge before the U.S. Equal Employment Opportunity Commission (EEOC) and obtain a Notice of Right to Sue letter.

64. Plaintiffs did not oppose dismissing their HCRCA claim and Defendant Kambic without prejudice and proposed that the Court stay this matter until Plaintiffs could obtain Notice of Right to Sue letters.

65. The Court dismissed the HCRCA claim and Defendant Kambic and entered a stay as to Plaintiffs' remaining Title VII claim.

66. Thirty of the Plaintiffs received Notice of Right to Sue letters from the EEOC, which were filed with the Court.

Count I
Violation of Title VII of the Civil Rights Act of 1964, 42 USC § 2000e, et seq.

67. Plaintiffs reallege the foregoing paragraphs of this Complaint as though fully set forth herein.

68. Title VII of the Civil Rights Act of 1964 prohibits Defendant from discriminating against their employees because of their sincerely held religious beliefs. *See* 42 U.S.C. § 2000e-2(a).

69. Plaintiffs, former and existing employees of Defendant, hold sincere religious beliefs that preclude them from receiving a COVID-19 vaccine.

70. Plaintiffs informed Defendant of those beliefs and requested religious exemptions and reasonable accommodations from the vaccine mandate.

71. Defendant failed to engage in the interactive process with Plaintiffs regarding their religious accommodation requests. Instead, Defendant denied *all* religious accommodation requests with a blanket email.

72. Irrespective of the interactive process, Defendant failed to provide Plaintiffs with religious exemptions and reasonable accommodations, thereby discriminating against Plaintiffs because of their religious beliefs.

73. Defendant's failure to provide religious exemptions or offer any reasonable accommodation and terminated Plaintiffs' employment because they did not obtain the COVID-19 vaccine against their religious beliefs. Defendant's actions have harmed Plaintiffs.

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

75. As a direct and proximate result of Defendant's actions, Plaintiffs suffered lost wages, emotional distress, and other consequential damages.

Prayer for Relief

WHEREFORE, the Plaintiffs respectfully pray that the Court grant the following relief:

A. Enter a declaratory judgment finding that Defendant's actions constituted unlawful discrimination based on Plaintiffs' religious beliefs;

B. Award Plaintiffs compensatory damages, including, but not limited to, lost wages and benefits, in such amount as will reasonably compensate her for her losses, and damages for emotional distress;

C. Award Plaintiffs punitive damages in such amount as the Court deems proper;

D. Award Plaintiffs their costs, attorneys' fees, and non-taxable expenses in this action; and

E. Award Plaintiffs any additional relief the Court deems just and proper.

Dated: November 15, 2023

Respectfully Submitted,

NEELIE PANOZZO, et al.

By: /s/ Jeffrey M. Schwab
One of their attorneys

Jeffrey M. Schwab
James McQuaid
Liberty Justice Center
440 North Wells Street, Suite 200
Chicago, Illinois 60654
Phone: 312-637-2280
jschwab@libertyjusticecenter.org
jmcquaid@libertyjusticecenter.org

Attorneys for Plaintiffs