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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
URBANA DIVISION

NEELIE PANOZZO, *et al.*,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	**Case No. 21-CV-2292**
	)	
RIVERSIDE HEALTHCARE, *et al.*,	)	
	)	
Defendants.	)	

ORDER

Pending before the court are a Motion for Preliminary Injunction (#6) and Motion for Temporary Restraining Order (#8) filed by Plaintiffs, to which Defendants filed a Response in Opposition (#11). Plaintiffs subsequently filed a Reply (#12) in support of their Motion for Temporary Restraining Order. For the following reasons, the Motion for Preliminary Injunction (#6) is DENIED as MOOT and the Motion for Temporary Restraining Order (#8) is DENIED on the merits.

BACKGROUND

COVID-19 Pandemic and Vaccines

In early 2021, vaccines were released to the public to combat the COVID-19 pandemic that had swept over the globe since late 2019/early 2020. In the summer of 2021, the highly contagious Delta variant caused a significant increase in COVID-19

infections. In November 2021, the emergence of the Omicron variant caused case counts to rise even higher.

On August 26, 2021, Illinois Governor J.B. Pritzker issued Executive Order 2021-20 related to the vaccination of healthcare workers. Alongside Executive Orders 2021-22 and 2021-23, Governor Pritzker's orders required that by September 19, 2021, all healthcare workers must receive at least their first dose of a COVID-19 vaccination and receive their second dose of a two-dose series at least 30 days thereafter, or be subject to at least weekly COVID-19 testing. The Illinois Department of Public Health also issued requirements for hospitals and employers which align with Governor Pritzker's Executive Orders, requiring vaccinations or testing for Defendants' patient-facing employees and affirming the ability of employers to exclude from their facilities individuals who do not consent to vaccination or testing.

On November 4, 2021, the Centers for Medicare and Medicaid Services ("CMS") issued an interim final rule ("the CMS Rule") which required healthcare providers such as Defendants to ensure that all of their employees are fully vaccinated, without a testing alternative and irrespective of employee job requirements. Defendants state that if they had not developed a policy ensuring all employees were vaccinated by January 4, 2022, Defendants risked federal fines and loss of Medicare and Medicaid contracts which would be catastrophic to their business.

Defendants and the Factors Leading into Defendants' Vaccination Policy

Defendant Riverside is a fully integrated healthcare system based in Kankakee, Illinois, which has 300 hospital beds in its medical center alone and treats hundreds of

outpatients daily. Defendant Riverside's CEO is Defendant Philip M. Kambic. Defendants[1], like many other hospitals, have been impacted by COVID-19. Defendants treat many patients who are elderly, immunocompromised, have underlying health conditions, or are otherwise vulnerable to severe infection and complications from contracting COVID-19. Defendants also treat patients who are unvaccinated and more susceptible to contracting COVID-19 from Defendants' employees who may be carrying the virus.

Throughout the pandemic, Defendants have required employees to adhere to stringent COVID-19 safety protocols, including protocols on wearing personal protective equipment ("PPE") regardless of their COVID-19 vaccination status when interacting with patients, testing in certain circumstances, and adhering to leave and isolation protocols when appropriate and in accordance with applicable laws.

Following government approval of the COVID-19 vaccines, as well as the rise of the more transmissible Delta variant, Defendants began surveying other healthcare facilities, who reported reductions in staff and patient COVID-19 positivity rates as vaccination rates increased. Defendants concluded that an employee who is both vaccinated and utilizing PPE as required is less likely to contract or spread COVID-19 to patients and employees alike than an unvaccinated staff member, something that is an especially important concern for Defendants, as Defendants serve a patient population

[1] In the rest of this order, for the sake of simplicity and convenience, the court will refer to Defendants simply as "Defendants," while referring almost exclusively to Riverside.

which includes persons who are particularly vulnerable to severe illness or death if they contract COVID-19.

Defendants also surveyed other healthcare facilities related to mandatory vaccination policies and found that, by the summer of 2021, many Illinois facilities were implementing mandatory staff vaccination policies. Defendants found that due to patient and employee safety concerns, several facilities were denying all requests for exemption, while others were granting religious exemption requests only for non-patient-facing employees. Defendants began informally monitoring its own employees' COVID-19 vaccination rates and encouraging and incentivizing employees to become vaccinated throughout 2021. However, by August 27, 2021, 40% of Defendants' staff had still not received a COVID-19 vaccination.

These low vaccination rates caused Defendants to become concerned for the upcoming winter, when Defendants tended to have the heaviest hospital caseloads. Based on employees being out for illness, and CDC requirements for isolation and quarantining, Defendants began to have concerns for their staffing levels during the time when need for staff was highest. Thus, during the summer of 2021 Defendants' leadership concluded that requiring COVID-19 vaccinations would reduce the risk of a staff member contracting COVID-19 and being unable to report to work for an extended period or spreading the virus to other patients or staff members. Defendants discussed the global pandemic and the severity of COVID-19, concluding that requiring the COVID-19 vaccine was just as, if not more, important than requiring the influenza

vaccine, which Defendants had required for many years, largely without employee objection.

As a result of their staffing concerns, surveys of other healthcare facilities in Illinois, and legal obligations, Defendants conducted internal leadership meetings to discuss whether a mandatory COVID-19 vaccination policy was the most prudent approach to ensure the highest degree of patient safety, staff safety, and standards of care. Defendants considered whether some employees would be unwilling to obtain the COVID-19 vaccine due to religious, medical, or other reasons. Ultimately, in August 2021, Defendants' leadership team decided, based on all the considerations discussed above, that a mandatory vaccination policy for all staff was necessary to best protect Defendants' patients, staff, and visitors from COVID-19, to meet Defendants' patients' expectations that all staff be vaccinated, and to best serve the health needs of the Kankakee community.

Defendants' Vaccination Policy

On August 27, 2021, Defendants instituted a policy requiring all employees to receive a complete dosage of one of the new FDA-approved COVID-19 vaccines or an approved medical or religious declination (declination essentially means exemption). Employees were provided at least 8 weeks to obtain their complete vaccinations series or an approved medical or religious declination, with the latest vaccination or declination approval deadline being October 31, 2021. The policy required all affected employees to provide Defendants will proof of full vaccination by October 31, 2021.

The policy permitted employees to apply for medical or religious declinations of the COVID-19 vaccine. Under the policy, the deadline for submitting religious declination forms was September 21, 2021, which was later extended to October 15, 2021, to provide employees with more time to submit requests. The religious declination forms are taken very seriously by Defendants. Each declination is entered into a spreadsheet and hard copies are maintained in a file in employee health. Each religious declination is reviewed by a religious exemption committee, which is comprised of Defendants' director of pastoral care, chief operating officer, vice president of human resources, and general counsel. The committee reviews each request alongside Defendants' policy before a determination is made as to the outcome of that request. Defendant have responded to each religious declination form that they have received by either approving or denying the request for exemption using a standard approval or denial form.

Per the declaration of Dr. Keith Moss, Defendants' chief medical officer, employees who are in patient-facing roles and are not vaccinated against COVID-19 present an increased safety and financial risk to Defendants' patients, employees, and, correspondingly, business. To that end, Defendants determined in September 2021, after receiving approximately 207 religious exemption requests, that they would face a number of potentially irreparable harms and hardships, including loss of patient confidence and goodwill, the possibility of spreading infectious disease to vulnerable patients and other community members, inability to properly staff its hospital and other facilities, and inability to provide proper patient care, if they were to allow over 100

patient-facing employees who submitted religious declination requests to continue treating patients while being unvaccinated.

Accordingly, on September 9, 2021, Defendants revised the policy to state that they reserved the right to deny a religious accommodation request where safety risks and legal liability create an undue hardship and increased risk for COVID-19 transmission among patients, staff, and community members. Defendants also determined and charted which positions were patient-facing in order to assist with the declination review process.

On September 10, 2021, after learning of President Biden's announcement regarding the forthcoming federal regulations requiring healthcare workers to be vaccinated, Defendants temporarily paused their assessment of declination requests. However, because it would be some time before the President's federal mandate would be issued, Defendants recommenced their declination assessment process and enforcement of their policy a short while later.

Defendants maintain they have never made blanket determinations as to all religious/strongly held belief-based declination requests, and that they have granted 38 such requests for employees in non-patient-facing roles. Defendants state that the declination request assessment process is personalized and detailed and allows for an appeal and employee accommodations if a request is denied. Defendants state that this is true even for employees who submit religious declination requests and are charted to be in a patient-facing position.

By way of example, a patient-facing employee whose religious declination request is denied may appeal and state that they believe their role is not patient-facing. An individualized assessment as to the employee's duties would be conducted as to the employee's duties and responsibilities to determine if their role is indeed patient-facing. If they are not patient-facing, Defendants would grant their religious declination request, which has happened with at least three employees to date. For employees whose religious declination denials are upheld, Defendants maintain that they offer reasonable accommodation, such as taking unpaid leave while the employee contemplates whether they will obtain the COVID-19 vaccine. Prior to the CMS Rule, Defendants also provided the opportunity for these employees to remain unvaccinated but apply for non-patient-facing positions.

Defendants state that none of the Plaintiffs in this case have availed themselves of Defendants' accommodations to allow them to apply for non-patient-facing roles, electing to remain non-compliant with the policy and risking termination of employment.

Plaintiffs

Plaintiffs are current employees or interns of Defendants. They have a sincere religious objection to accepting the COVID-19 vaccines.[2] They have a sincere religious belief that their job with Defendants is an exercise of their faith. Plaintiffs also believe

[2] Although Plaintiffs do not elaborate on their religious objection to the vaccines beyond the statement that "God has called them to love and protect unborn babies," Defendants do not appear to challenge the sincerity of Plaintiffs' religious beliefs on this matter.

that their work in healthcare reflects "a calling from God to love and serve their patients." Each of them filed a timely request for a religious exemption. Defendants denied the religious exemption applications of Plaintiffs. Defendants, barring an order from the court, will fire Plaintiffs for their non-vaccinated status. Defendants will also, barring an order from the court, revoke the staff privileges and credentials of any licensed providers among Plaintiffs.

Litigation

Plaintiffs filed a complaint on October 13, 2021, in the Circuit Court of Kankakee County, Illinois, alleging that Defendants' vaccine policy violated the Illinois Health Care Right of Conscience Act ("HCRCA"), 745 Ill. Comp. Stat. § 70/1, *et seq*. The complaint alleged that Defendants were forcing Plaintiffs to choose between either compromising their sincerely held religious beliefs by obtaining the COVID-19 vaccine in accordance with Defendants' COVID-19 vaccine mandate or termination for failing to get vaccinated. Plaintiffs filed for a temporary restraining order ("TRO"), which the state court granted. Plaintiffs filed an amended complaint adding more employees to the case, and sought to extend the TRO to those employees, which Defendants did not oppose. The state court duly extended the TRO.

On November 4, 2021, CMS issued the CMS Rule requiring employers like Defendants to vaccinate their employees, with a first-dose deadline of December 5, 2021. Defendants promptly moved to dissolve the stay issued by the court in the TRO, based on federal preemption of the HCRCA claim by the CMS Rule. The court adopted

an agreement of the parties to set the stay to dissolve on December 5, 2021, and granted Plaintiffs leave to amend their complaint.

Plaintiffs then filed a second amended complaint, retaining the allegations under the HCRCA, but additionally alleging that Defendants were not complying with the religious non-discrimination requirements of Title VII of the Civil Rights Act of 1964, which was not preempted by the CMS Rule.

With the introduction of the federal claim in this case, Defendants removed the case to this court on November 29, 2021. The parties have agreed to observe the terms of the existing TRO imposed by the state court to give them time to brief, and for the court to hear, the requests for injunctive relief in this court. Defendants have informed Plaintiffs and opposing counsel that they will end their voluntary continuation of the TRO on January 3, 2022, and will fire all Plaintiffs at that time.

Plaintiffs filed a Motion for a Preliminary Injunction (#6) on December 14, 2021, which relies on the HCRCA, and a Motion for a Temporary Restraining Order (#8) on December 17, 2021, which relies on Title VII. Those motions are fully briefed as of December 23, 2021.

ANALYSIS

I. Legal Standard for Temporary Restraining Orders and Preliminary Injunctions

When considering either a motion for temporary restraining order or a motion for preliminary injunction, the same standard applies: a plaintiff must demonstrate (1) a likelihood of success on the merits; (2) a likelihood of irreparable harm in the absence of injunctive relief; and (3) that the balance of equities and the public interest favor

emergency relief. *Troogstad v. City of Chicago*, 2021 WL 5505542, at *2 (N.D. Ill. Nov. 24, 2021), citing *Winter v. Natural Resource Defense Counsel, Inc.*, 555 U.S. 7, 22 (2008).

The Supreme Court has characterized preliminary injunctive relief as an "extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion." *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997). In each case, the district court "must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief." *Amoco Production Co. v. Gambell*, 480 U.S. 531, 542 (1987). And the court "should pay particular regard [to] the public consequences in employing the extraordinary remedy of injunction." *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982).

II. Plaintiffs' Motion for a Preliminary Injunction (#6)

Plaintiffs' Motion for Preliminary Injunction (#6) relies on the Illinois Health Care Right of Conscience Act. When Plaintiffs' Motion (#6) was filed, a nationwide injunction blocked a rule of the federal Centers for Medicaid & Medicare Services which contains a vaccination mandate. See *Louisiana v. Becerra*, 20 F.4th 260 (5th Cir. 2021). Presently, that injunction no longer covers Illinois. *Becerra*, 20 F.4th at 260. So, Plaintiffs concede that the HCRCA is preempted by the CMS Rule at this time. See Memorandum (#9) at 1. Plaintiffs' Motion (#6) is therefore DENIED as MOOT.

III. Plaintiff's Motion for a Temporary Restraining Order (#8): Likelihood of Success on the Merits

Title VII prohibits employers from discriminating against employees and job applicants based on their religion. See 42 U.S.C. § 2002e-2(a).

> The statutory definition of "religion" in Title VII is drafted as an unusual blend. It combines a broad substantive definition of religion with an implied duty to accommodate employees' religions and an explicit affirmative defense for failure-to-accommodate claims if the accommodation would impose an undue hardship on the employer. The statutory definition reads: "The term 'religion' includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to [sic] an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business." 42 U.S.C. § 2000e(j).

Adeyeye v. Heartland Sweeteners, LLC, 721 F.3d 444, 448 (7th Cir. 2013).

Therefore, to establish a prima facie Title VII violation based on religion, a plaintiff must show that: (1) their religious belief or practice conflicts with an employment requirement, (2) they brought that religious belief or practice to their employer's attention, and (3) their religious belief or practice was the basis for their discharge or other adverse employment action. See *EEOC v. Ilona of Hungary, Inc.*, 108 F.3d 1569, 1575 (7th Cir. 1996).

Once a plaintiff has established a prima facie Title VII violation, "[t]he employer may respond to the prima facie case either by proving that it was unable to provide a reasonable accommodation without undue hardship or that it offered a reasonable accommodation which was not accepted by the employee." *EEOC v. United Parcel Service*, 94 F.3d 314, 318 (7th Cir. 1996).

In the instant matter, Plaintiffs have established a prima facie Title VII violation. Defendants do not challenge that Plaintiffs' religious beliefs conflict with the requirement that they receive the COVID-19 vaccine. It is also uncontested that Plaintiffs brought this belief to Defendants' attention when they completed religious exemption requests under Defendants' vaccine policy. Finally, it is also clear from the record that Plaintiffs' refusal to vaccinate due to their religious beliefs is the basis for their anticipated termination by Defendants.

Therefore, the likelihood of Plaintiffs' success on the merits turns on whether Defendants either offered Plaintiffs a reasonable accommodation or whether Defendants were "unable to reasonably accommodate [Plaintiff] employee's … religious observance or practice without undue hardship on the conduct of [Defendant] employer's business." 42 U.S.C. § 2000e(j).

Defendants argue that they offered a reasonable accommodation by offering Plaintiffs the opportunity to apply for non-patient-facing positions which would allow them to continue working at Riverside while unvaccinated under Defendants' policy. According to Defendants, none of the Plaintiffs availed themselves of that opportunity to apply for those positions.

Plaintiffs argue that this opportunity to apply for other positions at Riverside did not constitute a reasonable accommodation because Defendants have not offered any proof that the non-patient-facing positions were of comparable pay and benefits to their current positions, nor that they would have involved the same skillset that Plaintiffs utilize as patient-facing healthcare workers. See *Wright v. Runyon*, 2 F.3d 214, 217 (7th

Cir. 1993) (opining on the necessity of a "much more searching inquiry" as to the reasonableness of an accommodation if an employee "had to accept a reduction in pay or some other loss of benefit" or accept an "unskilled position" due to their religious beliefs).

Moreover, Plaintiffs argue that it is unclear whether this accommodation was even available to them all. They assert that the number of non-patient-facing positions for which applications were being accepted was far below the number of Plaintiffs seeking an exemption from vaccination in this case. Plaintiffs argue that an opportunity to apply for a limited number of positions is not the same as a guaranteed transfer. See *Rodriguez v. City of Chicago*, 156 F.3d 771, 775 (7th Cir. 1998) (holding that "a transfer … is a paradigm of reasonable accommodation").

In response, Defendants state that no Plaintiffs even applied for the non-patient-facing positions. However, Defendants indicate that the one patient-facing employee who had completed a religious exemption request and then applied for a non-patient-facing position was accepted for the position and continues to work for Riverside while unvaccinated. The suggestion, therefore, is that this was a reasonable accommodation that was available to Plaintiffs in practice.

However, on the record currently before the court, Plaintiffs are correct that Defendants have not established that they offered a reasonable accommodation when inviting Plaintiffs to apply for non-patient-facing positions. There is nothing in the record regarding the comparability of the pay, benefits, or skills involved in the alternate positions. And, Defendants have not refuted Plaintiffs' contention that there

are, at most, 17 open non-patient facing positions for which the 57 Plaintiffs in this case could apply. Therefore, based upon the current record, there is no indication that this accommodation (even if reasonably comparable to their current positions) could be available to all Plaintiffs.

However, Defendants nevertheless appear likely to prevail on the merits, under the alternative in which they are "unable to reasonably accommodate [Plaintiff] employee's … religious observance or practice without undue hardship on the conduct of [Defendant] employer's business." 42 U.S.C. § 2000e(j).

"Undue hardship"[3] is not defined within the language of Title VII and "must be determined on a case-by-case basis." *Beadle v. Hillsborough County Sheriff's Department*, 29 F.3d 589, 592 (11th Cir. 1994), *cert. denied* 514 U.S. 1128 (1995). "To require [an employer] to bear more than a *de minimis* cost … is an undue hardship." *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63, 84 (1977). Interpreting the meaning of "*de minimis* cost," the Seventh Circuit has indicated that, for example, "regular payment of premium wages (such as overtime or holiday wage rates) for substitutes would impose an undue hardship, while administrative costs such as those incurred in rearranging schedules and recording substitutions for payroll purposes would not amount to an undue hardship." *Adeyeye*, 721 F.3d at 456; see also *Brown v. Polk County, Iowa*, 61 F.3d 650, 655 (8th Cir. 1995) (collecting cases holding that undue hardship includes, *inter alia*,

[3] Also referred to as "undue burden" by the parties and some courts.

the cost of hiring an additional employee, actual imposition on co-workers, or disruption of the work routine).

Moreover, it is "appropriate to consider aggregate effects when multiple employees are granted the same accommodation." *Together Employees v. Mass General Brigham Inc.*, -- F Supp.3d --, 2021 WL 5234394, at *13 (D. Mass. Nov. 10, 2021) ("defendant's undue hardship is not just accommodating one unvaccinated employee with a higher risk of spreading COVID-19, but potentially hundreds"), citing *Trans World Airlines*, 432 U.S. at 84 n.15.

Plaintiffs argue Defendants do not face an undue hardship in accommodating their exemption requests because: (1) Defendants have accommodated pregnant employees in patient-facing roles by allowing them to forego COVID-19 vaccination and instead partake in regular testing and wearing of face masks, (2) Defendants have accommodated patient-facing employees who sought religious exemption from Defendants' influenza vaccine mandate, requiring those employees to wear a mask, (3) pursuant to the EEOC's guidance on when exemption from a vaccination requirement poses an undue hardship on an employer, Defendants cannot show they face an undue burden, and (4) Defendants are outliers in their industry with respect to the COVID-19 vaccine policy.

Defendants argue that, in September 2021, after receiving 207 religious exemption requests, they believed they would face loss of patient confidence, loss of goodwill, an increased possibility of spreading infectious disease to vulnerable patients and other community members, inability to properly staff their hospital and other

facilities, and inability to provide proper patient care. Of the 207 religious exemption requests, Defendants determined that 169 were made by employees in patient-facing roles. Defendants argue their assessment of the undue hardship they would face in this public health context is wholly appropriate and necessary to protect patient, staff, and community health and safety.

The court finds Defendants would face an undue hardship in accommodating Plaintiffs' COVID-19 vaccine exemption requests.

To the extent Plaintiffs' argument highlights Defendants' COVID-19 vaccination exemptions for pregnant employees, that argument largely focuses on the fact that such exemptions run counter to CDC guidelines. But Plaintiffs have not connected that fact to any useful assessment of the hardship to Defendants caused by Plaintiffs' COVID-19 vaccine exemption requests. The court also does not find it readily apparent from the record how many pregnant employees have sought such exemptions, and over what timespan. The court finds this argument marginally relevant, and unpersuasive.

Plaintiffs' argument regarding Defendants' accommodation of employees who sought religious exemptions to its influenza vaccine requirement is likewise unpersuasive. Defendants have received only about 20 such requests annually – significantly fewer than the number of employees who have sought exemption from COVID-19 vaccination. And, while the diseases have some similarities, COVID-19 seems to cause more serious illness in some people, resulting in hospitalization and death even in otherwise healthy people. See, e.g., Centers for Disease Control and Prevention, Similarities and Differences between Flu and COVID-19,

https://www.cdc.gov/flu/symptoms/flu-vs-covid19.htm (last visited December 31, 2021).

As to the EEOC's suggested considerations in assessing undue hardship – which, the court notes, date back to 2012 – the court also finds Plaintiffs' argument unpersuasive. The EEOC's suggested considerations "would presumably include, among other things, the assessment of the public risk posed at a particular time, the availability of effective alternative means of infection control, and potentially the number of employees who actually request accommodation." EEOC, Informal Discussion Letter (Mar. 5, 2012), available at https://www.eeoc.gov/foia/eeoc-informal-discussion-letter-250 (last visited December 30, 2021).

Plaintiffs argue the court's assessment of public risk from COVID-19 "must be that it is declining." Perhaps, writ large, that is true, as vaccination rates edge upward and treatment improves. However, the ebbs and flows in infections, hospitalizations, and deaths in the ongoing pandemic show that there is still marked public risk posed by COVID-19. Indeed, infections are currently trending upward briskly. See generally, e.g., https://coronavirus.jhu.edu/us-map (last visited December 31, 2021); https://www.mayoclinic.org/coronavirus-covid-19/map/illinois (last visited December 30, 2021). As to alternative means of infection control, while masking and testing are certainly valuable, they do not provide the same protection against serious employee illness, or death, from COVID-19 that a vaccine does. And, these are not either-or propositions; masking, testing, *and vaccination* are more likely to successfully avoid widespread serious infections.

Whether Defendants are outliers in their industry is also unhelpful in the court's undue hardship determination. Because some, many, or most, other employers in the healthcare field choose to absorb or accept the hardship that unvaccinated patient-facing employees pose does not mean the hardship is *de minimis*. All it means is that those other employers have chosen to deal with the hardship differently than Defendants.

Here, solely for the purposes of this preliminary and hastily briefed ruling on Plaintiffs' request for injunctive relief, the court finds that Defendants would face an undue hardship in accommodating Plaintiffs' requested exemptions from COVID-19 vaccination.[4] During a public health crisis, the court in its considered judgment declines to substitute its own opinion for Defendants' assessment of how to avoid undue hardship and continue serving its patients. See, e.g., *Americana Healthcare Corp. v. Schweiker*, 688 F.2d 1072, 1086-87 (7th Cir. 1982) ("Deference to the expertise of professionals who are trained and experienced in evaluating the compliance of Medicare or Medicaid facilities with federal regulations is consistent with recent decisions of the United States Supreme Court cautioning against a substitution of a judge's opinion for that of a professional."). The court's ruling takes particular consideration of the aggregate effects of multiple employees seeking the same accommodation at the same time. See *Together Employees*, 2021 WL 5234394, at *13. The

[4] **Error! Main Document Only.**The record in this case is scarce due to the hasty nature and timing of this matter. The court is determined, as any court faced with a record similar to the record in this case should do, to not make any factual presumptions or inferences which are not supported by the record.

court finds Plaintiffs have failed to show they have a reasonable likelihood of success on the merits of their Title VII religious discrimination claim. See *Does 1-6 v. Mills*, 16 F.4th 20, 36 (1st Cir. 2021) ("The hospitals need not provide the exemption the appellants request because doing so would cause them to suffer undue hardship.").

Because Plaintiffs have failed to show a reasonable likelihood of success on the merits, their request for injunctive relief must be denied.

IV. Likelihood of Irreparable Harm

Defendants next argue that the court cannot issue a TRO or preliminary injunction because Plaintiffs have an adequate remedy at law and will not suffer irreparable harm.

Plaintiffs argue that they have established irreparable harm because the "impossible choice" is not, as Defendants have framed, it, between their job and their faith, but rather is between choosing which tenets of their faith they must follow and, thus, no matter which choice they make, they must violate their faith.

Under the second preliminary injunction factor, a plaintiff must demonstrate that it has no adequate remedy at law and will suffer irreparable harm if preliminary relief is denied. *Cassell v. Snyder*, 990 F.3d 539, 545 (7th Cir. 2021). Irreparable harm has been "defined as harm that 'cannot be repaired' and for which money compensation is inadequate." *Orr v. Shicker*, 953 F.3d 490, 502 (7th Cir. 2020).

Preliminary injunctive relief is uncommon in the context of employment discrimination actions under Title VII because, in the ordinary case, money damages are available as compensation for the loss of income and other employment-related harms. *Does 1-14 v. NorthShore University HealthSystem*, 2021 WL 5578790, at *6 (N.D. Ill. Nov. 30, 2021) ("*NorthShore*").

The United States Supreme Court set a high standard for obtaining preliminary injunctions restraining termination of employment in *Sampson v. Murray*, 415 U.S. 61, 94, (1974), and "[a]lthough it did not 'foreclose[ ] relief in the genuinely extraordinary situation,' the type of irreparable injury required must really depart from the harms common to most discharged employees." *Bedrossian v. Northwestern Memorial Hospital*, 409 F.3d 840, 845 (7th Cir. 2005), quoting *Sampson*, 415 U.S. at 92 n.68.

As an initial matter, the parties disagree on the "framing" of the irreparable harm issue. Defendants frame the issue as one of "jobs v. jabs," in that the choice being put to Plaintiffs is that they either violate their religious faith, or lose their jobs. Plaintiffs frame the issue differently, in what Defendants contend is a "creative but desperate" argument: their employment itself with Defendants, in the health care field and tending to patients, is a "vocation," akin to that of a priest or nun, in that they are "fulfilling a divine call to a place of service to others in accordance with the divine plan." Defendants argue that, while such an argument might have purchase under the HCRCA, which protects certain refusals contrary to an individual's "conscience," Title VII's protections are much more limited, because under that statute "only *religious*

beliefs, observances, and practices must be accommodated." *Adeyeye*, 721 F.3d at 451 (emphasis in original).

The court agrees with Defendants. Plaintiffs framing of their employment with Riverside as part of their religious "vocation" would stretch the definition of the word too wide, essentially arguing that their healthcare jobs *are* their religion, or an integral part of it, allowing anyone who works in a healthcare setting to claim that the job itself is part of their religion, and thus they would suffer irreparable harm if they were to lose it. Regardless, none of the Plaintiffs have alleged that they *need* to be employed by Defendants to practice their religion. If Plaintiffs have healthcare work as a tenet of their faith, they can honor that tenet by seeking employment elsewhere in a healthcare setting where they will not have to choose between vaccination and their job.

Despite their comparison, Plaintiffs' employment is not akin to the vocation of a priest or nun, whose daily life and work revolve almost exclusively around their religion and the practice of it. It is true that priests and nuns do sometimes work in healthcare settings, but in those instances the healthcare work is a part of, if not going hand-in-hand with, the practice of their religious vocation. To say nothing of the fact that priests and nuns have specific religious training and schooling for their vocations.

In contrast, Riverside is by all accounts a purely secular healthcare provider. It is not a hospital run by a church or religious group. Providing healthcare on Defendants' part is not part of any religious mission or calling. Plaintiffs cite to *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*, 565 U.S. 171 (2012), for the idea that a job living out a religiously motivated calling is not novel, but the jobs in question in

Hosanna-Tabor were "called" teachers, to whom the school issued a "diploma of vocation" according to their titles of "Minister of Religion, Commissioned[,]" and who were tasked with performing that office "according to the Word of God and the confessional standards of the Evangelical Lutheran Church as drawn from the Sacred Scriptures." *Hosanna-Tabor*, 565 U.S. at 191.

Finally, Plaintiffs have not cited to any authority supporting their framing of the issue in the context of Title VII claims concerning vaccinations and healthcare workers.

Thus, the court will frame the issue undergirding the irreparable harm analysis as it actually is: Plaintiffs being required to accept the COVID-19 vaccination, in violation of their religious beliefs, or face losing their employment. In this regard, the court finds illuminating, and persuasive, the recent decision of the district court in *NorthShore*. In that case, a group of hospital workers faced termination for their refusal, on religious grounds, to be vaccinated against COVID-19. The plaintiffs were employed by the defendant NorthShore University Health System, a conglomerate of local hospitals. The plaintiffs challenged NorthShore's policy requiring all its employees to receive one of the available coronavirus vaccines in an effort to stem COVID-19 cases. The plaintiffs cited religious objections to receiving any of the available COVID-19 vaccines, and offered NorthShore an alternative: in lieu of becoming vaccinated, they would instead submit to full-time masking and weekly COVID-19 testing. NorthShore insisted that the plaintiffs either get vaccinated or find work elsewhere. The plaintiffs sought a judicial order preventing NorthShore from firing them based on their unvaccinated status, arguing that the policy violated both Title VII and the HCRCA.

The district court began its analysis by noting that recent rulings from other courts facing similar arguments "strongly suggest Plaintiffs cannot demonstrate irreparable harm." *NorthShore*, 2021 WL 5578790, at *6, citing *Sambrano v. United Airlines, Inc.*, 2021 WL 5176691 (N.D. Tex. Nov. 8, 2021) and *Bilyeu v. UT-Battelle, LLC*, 2021 WL 4859932 (E.D. Tenn. Oct. 15, 2021). The court stated that the court in *Sambrano* "found that the 'Impossible Choice' theory pressed by the plaintiffs—the choice between getting vaccinated and enduring unpaid leave—did not constitute irreparable harm." *NorthShore*, 2021 WL 5578790, at *6, citing *Sambrano*, 2021 WL 5176691, at *4. As the plaintiffs did in *Sambrano*, the plaintiffs in *NorthShore* advanced a similar "Impossible Choice" theory of irreparable harm, arguing that NorthShore had conditioned their continued employment on violating their sincerely held religious beliefs, but the court found that it bore "emphasis that neither the defendant in *Sambrano* nor NorthShore are government actors; accordingly, the First Amendment is not implicated." *NorthShore*, 2021 WL 5578790, at *7.

Similarly, in *Bilyeu*, although the plaintiffs there cited the chilling effect that the denial of a preliminary injunction would have on their exercise of Title VII rights, and the concomitant loss of income and benefits, the court found the harms to be either too speculative to compel the extraordinary remedy of injunctive relief or quintessentially reparable. *NorthShore*, 2021 WL 5578790, at *7.

The *NorthShore* court also rejected the plaintiffs' argument under the HCRCA, noting that the HCRCA explicitly made available compensatory and statutory damages, which undermined the claim of irreparable harm, and thus if the plaintiffs succeeded on

the merits, they would be entitled to those damages. *NorthShore*, 2021 WL 5578790, at *7.

In sum, in rejecting the plaintiffs' request for injunctive relief under Title VII and the HCRCA, the court wrote that "[l]oss of employment 'is not irreparable because it is fully compensable by monetary damages[,]'"as "'permanent loss of employment, standing alone, does not equate to irreparable harm.'" *NorthShore*, 2021 WL 5578790, at *8 (citations omitted). The court concluded that "[b]ecause Plaintiffs complain about harms that are compensable through money damages, the Court cannot lawfully find that Plaintiffs face irreparable harm." *NorthShore*, 2021 WL 5578790, at *8.

The court finds that the analysis and conclusions reached by the court in *NorthShore* are sound, well-reasoned, and applicable to the instant case. For those same reasons, and "absent clearer authority authorizing preliminary injunctive relief in this context," the court finds that Plaintiffs in this case cannot show irreparable harm because the harm they complain of, permanent loss of employment, is compensable through money damages. See *NorthShore*, 2021 WL 5578790, at *8.

Because the court has determined that Plaintiffs have failed to demonstrate this threshold requirement for injunctive relief, it must deny the injunction. See *Abbott Laboratories v. Mead Johnson & Co.*, 971 F.2d 6, 11 (7th Cir. 1992); *East St. Louis Laborers' Local 100 v. Bellon Wrecking & Salvage Co.*, 414 F.3d 700, 703 (7th Cir. 2005); *NorthShore*, 2021 WL 5578790, at *8.

V. Balance of Equities and the Public Interest

Finally, even if the court were to find the first two threshold requirements had been met by Plaintiffs, it would find that the balance of the equities and the public interest do not favor a preliminary injunction. Here the court "must evaluate this factor by weighing the degree of harm the nonmoving party would suffer if the injunction is granted against the degree of harm to the moving party if the injunction is denied[,]" and "also should consider the public interest, or 'the consequences of granting or denying the injunction to non-parties.'" *Troogstad v. City of Chicago*, 2021 WL 6049975, at *8 (N.D. Ill. Dec. 21, 2021), quoting *Cassell*, 990 F.3d at 545.

The court finds informative the district court decision in *Troogstad*, concerning whether to issue injunctive relief against the government on behalf of over 100 government employees regarding a requirement to receive a COVID-19 vaccine by the end of 2021. The *Troogstad* court stated that:

> When an individual's behavior directly affects the health and welfare of others in the community, she cannot rely on the Supreme Court's longstanding protection of "intimate and personal choices," [*Planned Parenthood v. Casey*, 505 U.S. 833, 851 (1992)], to the utter exclusion of all other interests. See *Cassell v. Snyders*, 990 F.3d 539, 550 (7th Cir. 2021) (noting that while "[a] person's ability to make private choices affecting his or her own body and health is fundamental to the concept of individual liberty that our Constitution protects," plaintiffs who challenged capacity limits on religious services during the peak of the pandemic "[were] not asking to be allowed to make a self-contained choice to risk only their own health"); see also [*We the Patriots USA, Inc. v. Hochul*, 17 F.4th 266, 293 n.35 (2d Cir. 2021)] (rejecting plaintiffs' comparisons between refusing vaccination and the decisions in *Roe* and *Casey* because "[t]hese cases do not establish a broad fundamental privacy right for all medical decisions made by an individual—and particularly not for a decision with such broad community consequences as declining vaccination against a highly contagious disease").

Troogstad, --- F.Supp.3d ---, 2021 WL 5505542, at *5 (N.D. Ill. Nov. 24, 2021).

In a later decision denying a request for a preliminary injunction on the threshold question of balancing the equities, the *Troogstad* court concluded:

> Here, the Court finds, as have numerous other courts, that the public's interest in reducing the transmission of COVID-19 weighs heavily against granting an injunction. [Footnote citation omitted] See, e.g., *Does 1–6 v. Mills*, 16 F.4th 20, 37 (1st Cir. 2021), cert denied sub nom. *Does 1–3 v. Mills*, No. 21A90, 142 S. Ct. 17 (mem.) (Oct. 29, 2021); *We The Patriots USA, Inc. v. Hochul,* 17 F.4th 266, 295–96 (2d Cir. 2021); *Doe v. San Diego Unified Sch. Dist.*, [19 F.4th 1173, 1181-82 (9th Cir. 2021)]; *Garland* [*v. New York City Fire Department*], 2021 WL 5771687, at *9–10 [E.D.N.Y. Dec. 6, 2021] ; *Rydie* [*v. Biden*], 2021 WL 5416545, at *5–6 [D. Md. Nov. 19, 2021]. Conversely, Plaintiffs' interest in not being vaccinated is relatively weak, given the absence of a fundamental constitutional right to refuse vaccination during a pandemic such as the one facing us today. See *Klaassen* [*v. Trustees of Indiana University*], 7 F.4th [592, 593 (7th Cir. 2021)]. Indeed, when confronted with a widely contagious pandemic, "plaintiffs are not asking to be allowed to make a self-contained choice to risk only their own health," given that their refusal to be vaccinated "could sicken and even kill many others who did not consent" to their decisions. *Cassell*, 990 F.3d at 545. As a result, the Court finds that Plaintiffs have not shown that the balance of the equities favors the relief they seek.

Troogstad, 2021 WL 6049975, at *8.

For the same reasons articulated by the *Troogstad* court, the court finds that a balancing of the equities and the public interest favor denying Plaintiffs' request for a TRO.

For the foregoing reasons, Plaintiffs' Motion for a Temporary Restraining Order (#8) is DENIED.

IT IS THEREFORE ORDERED:

(1) Plaintiffs' Motion for a Preliminary Injunction (#6) is DENIED as MOOT and Plaintiffs' Motion for a Temporary Restraining Order (#8) is DENIED on the merits.

(2) This case is referred to the magistrate judge for further proceedings in accordance with this Order.

ENTERED this 2nd day of January, 2022.

s/ Colin Stirling Bruce
COLIN S. BRUCE
U.S. DISTRICT JUDGE