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Dear Chancellor Cortez, and the SDCCD Board of Trustees,

Please be advised that this law office represents SDCCD United for Civil Rights. We have been retained to protect the constitutional rights of our clients regarding your refusal to accept their religious exemption requests concerning the anticipated Covid vaccine mandate at SDCCD. Please understand that my clients are not asking you to defy the vaccine mandates, they are asking you to obey existing federal law. They are willing to accept reasonable accommodations to their religious exemption requests.

In general, employee vaccine religious exemption requests must be accommodated, where a reasonable accommodation exists without undue hardship to the employer, under Title VII of the Civil Rights Act of 1964. Many people hold sincere religious beliefs against taking any vaccines, or taking those derived from aborted fetal cell lines, or taking those sold by companies that profit from the sale of vaccines and other products derived from abortion. Title VII, as amended, prohibits two categories of employment practices. It is unlawful for an employer: “(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin; or (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual’s race, color, religion, sex, or national origin.” 42 U.S.C. § 2000e–2(a).

Virtually every employer in America has shown that reasonable accommodations and alternatives to vaccination exist for employees, and these have been required all along since the inception of COVID: self-screening with temperature checks, wearing personal protective equipment (PPE), and complying with other safety protocols until the number of COVID infections work their way down to acceptable levels. Logically, if these measures are and were effective at preventing the spread of COVID, they will continue to be effective. Thus, no employer can claim an undue hardship by allowing employees to do what they have been doing for over a year, in the alternative to a vaccine.

This interpretation of Title VII is also supported by press releases from the Equal Employment Opportunity Commission (EEOC) and the U.S. Department of Justice (US DOJ). It is unlawful for employers to force vaccinations on staff and employees holding religious convictions against a vaccine, and to refuse a reasonable accommodation. This applies to public education workers and students, despite the unconstitutional and illegal mandates that the State of California and the Federal Government have issued.

In interpreting the Americans With Disabilities Act (“ADA”), the EEOC has opined that it is improper to “ask only one employee—as opposed to asking all employees—questions designed to determine if [he/she] has COVID-19, or require that this employee alone have [his/her] temperature taken or undergo other screening or testing. “If an employer wishes to ask only a particular employee to answer such questions, or to have [his/her] temperature taken or undergo other screening or testing, the ADA requires the employer to have a reasonable belief based on objective evidence that this person might have the disease.” The EEOC has also stated that an employer may not “ask an employee who is physically coming into the workplace whether they have family members who have COVID-19 or symptoms associated with COVID-19,” as such is a violation of the Genetic Information Nondiscrimination Act (GINA). The Occupational Safety and Health Administration (OSHA) has also recognized that there is “not evidence that COVID-19 vaccines prevent transmission of the virus from person-to-person,” and reiterated that employers should not improperly distinguish between employees.

Finally, questioning employees (much less taking adverse employment action against them) on the basis of church membership or church attendance potentially violates not only the ADA, but also Title VII, which prohibits discrimination based on religious worship or religious practices engaged in by the employee outside the workplace.

You cannot scrutinize or question an employee's religious beliefs, as to do so would violate federal law. Once an employee has requested a religious exemption to the vaccine mandate, it must be honored.

In conclusion, there are strong protections under federal law for persons who wish to decline the current EUA-authorized COVID vaccines. Neither government nor private employers may force anyone to receive any of the COVID injections. Failure to comply with these protections could result in significant liability for your college district.

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