

September 11, 2021

Below is specific information directly from the Maine Human Rights Commission (MHRC) regarding **vaccine exemption** and **accommodation**.

Bottom line is this: To fire someone outright because of a physical disability that prevents them from complying with the vaccine mandate is subject to lawsuit based on discrimination.

It is advisable to collect written documentation of a denial of a medical exemption, and file a suit with the MHRC to begin fighting the discrimination there—this is free of charge. If the worker does not get a satisfactory answer from the MHRC, they may still bring a personal lawsuit, but the courts do take the MHRC ruling into consideration.

<https://www.maine.gov/mhrc/file>

· Many statutes requiring vaccinations have (or had) built-in processes that allow people to opt-out of the vaccination for certain delineated purposes. For example, up until a year or two ago, Maine's education statute requiring that children receive vaccinations to attend public school provided for an exemption in various situations (medical, philosophical, religious). If the vaccine requirement itself (whether arising out of an executive order, rule, or statute) has a **built-in option for people to request not to get vaccinated for various reasons, it's an exemption**.

\*\*\*It is important to note that the state mandate allows for medical exemptions. Individual employers have crafted stricter guidelines, requiring anaphylactic reaction be the only medical reason an exemption is allowed. Until someone pushes back on this, by bringing the issue to the MHRC to see what they would rule, they will continue with this practice. These same protections are in federal law also, so this will still apply no matter what happens with the latest federal mandates.

Any Maine resident can also ask for advice from the MHRC regarding the practice of employers to demand private healthcare information in order to grant the medical exemption. I don't know what the limits are there, but advice will be given by the MHRC.

- If a vaccine mandate does not contain an exemption option, a person who cannot comply with it because of some innate characteristic that falls into a "protected

class" under anti-discrimination law could ask whoever is imposing the requirement to alter how the requirement applies to them; this would be a **"reasonable accommodation"** under the Maine Human Rights Act or a parallel federal anti-discrimination law. The MHRA and its federal analogues allow a person who is in a statutorily-recognized protected class to **seek an adjustment in how a rule or policy applies to them if necessary due to the person's protected-class characteristic**.

This is not a new issue, and has come up for many years in health care and education settings. The most frequent protected-class reasons for seeking a reasonable accommodation from a vaccine requirement is that a person cannot get one due to their physical disability or their religion.

Here are some basics about this issue.

- Generally there is not an obligation from an employer (or provider of housing or education) to offer a reasonable accommodation, but an employee (or tenant or student) is entitled to ask for one.
- If there is a request, the employer/provider is generally expected to engage in an interactive dialogue with the person making the request.
- The purpose of the interactive dialogue is for the employer/provider to gather information about whether the request is necessary for the person to do their job/stay in housing or school, the reasons why it is necessary, the nexus between the request and the person's protected-class status, and alternatives to granting the request that might meet the employee's need.
- The employee is expected to answer reasonable questions as part of this interactive dialogue, though there can in many cases be overzealous inquiries that go too far into employee privacy.
- If there is a request made, and the employer engages in the interactive dialogue about it, the employer is entitled to decide whether or not to grant the reasonable accommodation and/or whether to offer another effective accommodation.
- The employer may deny the requested accommodation if the employer determines that it is not in fact reasonable, or would pose an undue burden on the employer. One aspect of the reasonableness inquiry is whether granting the request would be a "direct threat".

- Every case can be highly fact-specific. Depending on the precise circumstances, an individual employer or provider may (or may not) be able to accommodate an individual employee/tenant/student request, depending on the milieu, tasks, environment, or options involved.

From Maine Human Rights Commission: We did address some of these basics (related to masks and vaccines) on our website some time ago in a COVID "FAQ" section, and more recently in a COVID webinar. Both of those can be found on our website at <https://www.maine.gov/mhrc/about/Covid19>.

Our agency already has extensive rules that address the various concerns here, such as what might be considered a direct threat, or what would be an "undue hardship" or "undue burden" to a provider. You can see our employment rule at <https://www.maine.gov/mhrc/sites/maine.gov/mhrc/files/inline-files/348c003.doc>.