

No. 26-196

IN THE
Supreme Court of the United States

SHERRY DETWILER,

Petitioner,

v.

MID-COLUMBIA MEDICAL CENTER, ET AL.,

Respondents.

**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit**

BRIEF FOR RESPONDENTS

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QUESTION PRESENTED

Whether a Title VII religious-accommodation plaintiff must allege facts making it plausible that her religious belief conflicts with an employment requirement.

RULE 29.6 STATEMENT

Mid-Columbia Medical Center is an Oregon nonprofit public benefit corporation d/b/a Adventist Health Columbia Gorge. Mid-Columbia Medical Center has no parent corporation, and no publicly held company owns 10% or more of its stock.

Mid-Columbia Medical Center is wholly controlled by Stone Point Health, a California nonprofit public benefit corporation. Stone Point Health has no parent corporation, and no publicly held company owns 10% or more of its stock.

Stone Point Health is wholly controlled by Adventist Health System/West, a California nonprofit religious corporation d/b/a Adventist Health. Adventist Health System/West has no parent corporation, and no publicly held company owns 10% or more of its stock.

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INTRODUCTION

Respondents Adventist Health Columbia Gorge and Cheri McCall (collectively “Adventist Health” or the “Hospital”) are part of a healthcare network affiliated with the Seventh-day Adventist Church (the “Church”). As such, Adventist Health has a strong interest in defending religious freedom. At the same time, as a major healthcare provider, it owes a duty to its employees and patients. In this case, the Ninth Circuit reached the correct result, but by adopting a test that could be construed as insufficiently protective of religious freedom. And in doing so, it joined an acknowledged circuit split. In light of this, Adventist Health acquiesces in certiorari. The Court should grant the petition, clarify the proper Title VII analysis in this context, and affirm the judgment below.

STATEMENT OF THE CASE

A. Legal Background

Title VII of the Civil Rights Act of 1964 makes it unlawful for an employer to discriminate against any individual “because of ... religion.” 42 U.S.C. § 2000e-2(a)(1). Under Title VII, 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 an employee’s or prospective employee’s religious observance or practice without undue hardship on the conduct of the employer’s business.” § 2000e(j).

A religious-accommodation claim under Title VII depends on the existence of “a conflict between an [employee’s] religious practice and a work rule.” *E.E.O.C. v. Abercrombie & Fitch Stores, Inc.*, 575 U.S.

768, 774 (2015); *see, e.g., Bolden-Hardge v. Off. of Cal. State Controller*, 63 F.4th 1215, 1224 (9th Cir. 2023) (finding plaintiff “has adequately alleged that” the work duty at issue “poses a conflict with her religious beliefs”).

B. Factual Background

1. Respondents are Adventist Health Columbia Gorge, a hospital located in The Dalles, Oregon, and Cheri McCall, the Hospital’s Chief Human Resources Officer. While this litigation was pending, the Hospital was acquired by Adventist Health System/West. Resp. to Pet. for Reh’g 1–2, ECF No. 99.1 (9th Cir.) (“Reh’g Resp.”).¹ Adventist Health System/West is a California nonprofit religious corporation with over 400 clinics and hospitals serving more than 80 communities in California, Hawaii, Oregon, and Washington. *Id.* It is one of several regional healthcare systems founded by, and still affiliated with, the Seventh-day Adventist Church. As part of its religious mission, the Church has operated a wide array of hospitals dating back more than 150 years. *Id.* Correspondingly, the Church has always placed a unique emphasis on bodily health as a means of spiritual practice. *See infra* at 15. Adventist Health, in turn, incorporates those values in its practice, as reflected in its mission statement “to live God’s love by inspiring health, wholeness and hope.” *Mission, Vision, and Values*, Adventist Health (last visited Oct. 2, 2026), <https://perma.cc/D525-YFM5>.

¹ The Hospital’s legal name is Mid-Columbia Medical Center. Since the acquisition, it has conducted business as Adventist Health Columbia Gorge.

2. Petitioner Sherry Detwiler worked as a Privacy Officer and the Director of Health Information for the Hospital. Pet. App. 3a. Detwiler served in that capacity from September 2020 until her termination in December 2021. *Id.*

When the Hospital hired Detwiler in September 2020, the Covid-19 pandemic was sweeping the nation. In August 2021, the Oregon Health Authority promulgated a rule requiring healthcare workers like Detwiler to be vaccinated against Covid-19. Pet. App. 3a–4a, 45a. Oregon’s rule allowed approved exemptions so long as employers took “reasonable steps to ensure that unvaccinated healthcare providers and healthcare staff are protected from contracting and spreading Covid-19.” Pet. App. 3a–4a, 45a–46a (quoting Or. Admin. R. 333-019-1010(4)).

After the Hospital announced its policy requiring vaccination pursuant to Oregon’s rule, Detwiler sought a religious exemption under Title VII (and parallel state law). Pet. App. 4a. She asserted that she is a Christian who objected, among other reasons, to accepting a vaccine developed with abortion-derived fetal cells. Pet. App. 4a; *see* Resp. App. 28a–29a.

The Hospital granted Detwiler’s request for a religious accommodation from the vaccine policy on October 1, 2021. Pet. App. 4a. Its proposed accommodation required Detwiler to wear a mask while in the office and test for Covid-19 infection weekly. *Id.* The test involved swabbing the inside of her nose and testing the collected sample. *Id.* The swabs used in the testing had been sterilized with

ethylene oxide gas during the manufacturing process. *Id.*

In response, Detwiler sought a religious exemption from the nasal-swab-testing requirement as well. *Id.* She described her belief and objection in a letter to her employer, stating that “the Holy Spirit has moved on my heart and conscience that I must not participate in COVID testing that causes harm.” Pet. App. 5a. The testing the Hospital required, she asserted, fell into that “harm”-causing category because her own “research into the nasal swab test uncovered information from multiple sources indicating that [ethylene oxide] is a carcinogenic substance.” Resp. App. 7a. Her “research” consisted of a pair of studies, discussed below. *See infra* at 24–25. She concluded, “[a]s a Christian protecting my body from defilement according to God’s law, I invoke my religious right to refuse any testing which would alter my DNA and has been proven to cause cancer.” Pet. App. 5a. Detwiler instead proposed that her accommodation be either that: (i) she could work from home remotely or (ii) she would provide testing for Covid-19 using saliva rather than nasal swabs. Pet. App. 6a.

The Hospital denied Detwiler’s proposed alternative accommodations. It determined that saliva testing would be impractical because results would take 24 to 36 hours to secure, which would preclude it from calling Detwiler in for same-day in-person work. Pet. App. 6a. And Adventist Health determined that remote work was not a viable option due to complaints about Detwiler’s performance during previous periods of remote work. *Id.*

The Hospital provided Detwiler an October 30 deadline to accept its proposed accommodation and placed her on unpaid leave until then. *Id.* It later extended this deadline to December 20 and offered her a further alternative of reassignment to another position (with no vaccination requirement), instead of requiring her to undergo the nasal-swab testing. *Id.* When Detwiler declined to accept either alternative, her employment was terminated. *Id.*

C. Procedural Background

Detwiler sued the Hospital in August 2022, alleging violations of Title VII and state law. Pet. App. 7a, 49a. The Hospital moved to dismiss her amended complaint, and the magistrate judge agreed, reasoning that, as alleged, Detwiler’s objection to testing was based on her “secular, non-religious belief” “that nasal-swab testing contains hazardous materials.” Pet. App. 75a n.4. The district court accepted the recommendation and dismissed the suit without prejudice. Pet. App. 63a. The parties repeated the process after Detwiler filed a second amended complaint. *Id.* The magistrate judge again recommended dismissal, this time with prejudice. And the district court again accepted the recommendation. Pet. App. 42a, 44a.

Detwiler appealed to the Ninth Circuit, where a divided panel affirmed. The majority held that Detwiler failed to “connect [her] requested exemption with a truly religious principle.” Pet. App. 13a. To the court, Detwiler’s objection was secular because it depended on her scientific judgment that ethylene oxide is carcinogenic and thus harmful to her body. Pet. App. 15a. Without that judgment, there would be

“no conflict” between her belief and the requirement. *Id.* The majority further reasoned that Detwiler’s “[i]nvocation of prayer” did not “elevate” her medical judgment into a religious one. Pet. App. 18a. In reaching this conclusion, the majority acknowledged that “several circuits” had rejected the standard it adopted. Pet. App. 21a–23a.

Judge VanDyke dissented. He viewed the majority’s analysis as parsing a plaintiff’s objection “into separate ‘religious’ and ‘secular’ elements and then dismiss[ing] the complaint because the secular part is not religious.” Pet. App. 29a. And he noted that the majority had by its own admission split from other circuits. Pet. App. 31a–33a.

Detwiler sought panel rehearing and rehearing en banc. ECF No. 72 (9th Cir.). Adventist Health then filed a response supporting Detwiler’s petition for panel rehearing. *See* Reh’g Resp. As Adventist Health explained, the panel correctly found Detwiler’s allegations about carcinogens, DNA alteration, and cancer to be conclusory. *Id.* at 5–9. But it agreed with Detwiler that the panel erred in including broader statements suggesting that religious beliefs are unprotected when they encompass secular medical concerns and that prayer alone is insufficient to give a belief religious significance. *Id.* at 5, 9–11. It thus asked the panel to modify its decision and affirm the district court on an alternative basis, given Adventist Health’s concern with the Ninth Circuit’s restrictive view of what constitutes a protected religious belief or practice. Reh’g Resp. 1–5. The court denied Detwiler’s request for rehearing. *See* Pet. App. 80a.

Eight judges dissented from the denial of rehearing. Judge Tung, joined by Judges R. Nelson, Collins, Lee, Bress, Bumatay, and VanDyke, contended that the panel majority's exclusion of religious beliefs that "overlap" with secular concerns contradicts the capacious definition of "religion" in Title VII. Pet. App. 100a, 107a–108a. His dissent observed that Adventist Health had argued in its response to rehearing that the Ninth Circuit's rationale for affirming should be modified by the panel majority. Pet. App. 112a n.6. And his opinion explained that the Ninth Circuit's approach stood "in opposition to several other circuits." Pet. App. 113a.

Judge Forrest, joined by Judges R. Nelson, Bress, Bumatay, VanDyke, and Tung, focused on the panel's "rejection of individual communion with God as a basis for establishing bona fide religious belief" and pointed out the "contrast" between the Ninth and Third Circuits' skepticism, on the one hand, and "the broader pattern among the circuit courts respecting claims based on personal revelation," on the other. Pet. App. 80a, 92a, 97a.

Since then, a different panel of the Ninth Circuit has reiterated that "our decision in *Detwiler* explicitly created a circuit split." *Ridings v. PeaceHealth*, --- F.4th ---, 2026 WL 2871881, at *5 (9th Cir. Sept. 24, 2026). *Ridings* characterized *Detwiler* as holding "that a plaintiff cannot just cite a 'general religious principle' as cover for a purely 'personal, medical judgment'" when facts suggest "her objection to her employer's policy is likely based on 'purely secular' reasons." *Id.* As such, *Detwiler* did not control the case before it, which instead involved an employee's religious objection to taking a vaccine that was

derived from fetal cells made available through abortion. *Id.*; see also *Bird v. Alanson M. Randol DDS, PC*, 2026 WL 3026311, at *1–2 (9th Cir. Oct. 8, 2026) (applying *Detwiler* to hold that plaintiff’s statements that God would “shield [her] from this virus” and that she chose “to not live in fear” did not allege a conflict between her religion and Covid-19 vaccine requirement); *Morae v. Nike, Inc.*, 2026 WL 2958271, at *1–2 (9th Cir. Oct. 1, 2026) (holding, under *Detwiler*, that plaintiff’s “belief does not qualify as religious as a matter of law”); *Ledezma v. Optum Servs. Inc.*, 2026 WL 2350452, at *1–2 (9th Cir. Aug. 13, 2026) (relying on *Detwiler* to hold that plaintiff’s “invocations of Scripture” did not “establish that her objection is religious”).

ARGUMENT

This Court should grant the petition to address a circuit split acknowledged by the panel majority, the panel dissent, and the dissents from rehearing.

The Ninth Circuit's approach to religious beliefs that are intertwined with secular concerns accords with the Third Circuit, but conflicts with decisions of six other circuits. The issue is also an important and recurring one for employers and potential religious plaintiffs alike. And as explained below, Adventist Health believes the Ninth Circuit adopted an approach that could be construed in a way that is insufficiently protective of religious freedom.

Nevertheless, the Ninth Circuit correctly affirmed the judgment dismissing Detwiler's complaint. A viable claim under Title VII requires a conflict between a plaintiff's religious belief and an employment requirement. Consequently, if a religious belief is predicated on real-world, non-religious facts, the plaintiff must adequately allege facts that establish that those real-world, non-religious facts create a conflict with her religious beliefs. If, for example, a plaintiff alleges that her religious beliefs preclude her from ingesting carcinogens, and then claims that a particular employment practice requires her to ingest carcinogens, she must allege facts that establish that the employment practice does, in fact, require her to ingest carcinogens. This latter question is a secular one, albeit one upon which her religious beliefs are predicated. And it is one well within judicial competence to evaluate, including at the pleading stage.

Applying this standard, the Ninth Circuit’s judgment was correct. As Detwiler explained, her religious beliefs precluded her from “participat[ing] in Covid testing that causes harm,” and which “would alter my DNA and has been proven to cause cancer.” Pet. App. 5a. But she did not set forth facts adequate to plausibly allege the existence of those non-religious propositions upon which her religious beliefs rest. To the contrary, the studies incorporated into her complaint establish that the nasal swab to which she objected would not expose her to bodily harm. Accordingly, the Court should grant certiorari, announce the proper test for evaluating these aspects of a Title VII religious-accommodation claim, and affirm the judgment below.

I. Reasons for Granting the Petition

A. The Decision Below Entrenches a Circuit Split over Religious-Accommodation Claims Implicating Secular Concerns.

Adventist Health agrees the decision below cemented a circuit split. Pet. 8–20; *accord* States’ *Amicus* Br. 2; *Lorica Amicus* Br. 9. As the opinion below acknowledged, it was departing from the approach of other circuits. Pet. App. 21a–23a. The dissent and dissents from rehearing acknowledged a similar split. Pet. App. 31a–33a, 97a, 113a–114a. So, too, has a subsequent panel of the Ninth Circuit, explaining that “our decision in *Detwiler* explicitly created a circuit split.” *Ridings*, --- F.4th ----, 2026 WL 2871881, at *5.

Detwiler tallies the split as the Ninth and Third Circuits on the one hand, and the First, Fourth, Fifth,

Sixth, Seventh, and Eighth Circuits on the other. Pet. 13. Adventist Health agrees.

1. The Ninth Circuit’s decision below adopted the view that plaintiffs may not “couch’ their personal, secular beliefs in religious terms to claim Title VII protections.” Pet. App. 18a. Detwiler’s complaint failed under that test because her assertion that swabbing “is carcinogenic and therefore harmful” was a “secular judgment.” Pet. App. 15a. And the court reasoned that this secular judgment had “no relationship with her religious belief[]” that “her body [is] a temple.” Pet. App. 14a–15a. Nor could “prayer” bridge that gap; if the invocation of prayer could “elevate personal medical judgments to the level of religious significance,” then plaintiffs would have a “limitless excuse” to avoid work obligations, the court worried. Pet. App. 18a–19a.

For support, the court cited a pair of unpublished decisions from the Third Circuit, both of which adopted a similar approach. In *Gatto v. Johnson & Johnson Services, Inc.*, that court ruled that the plaintiff’s concern about the “negative impacts” of nasal testing and opposition to testing mandates were “fundamentally secular” preferences, which the court refused to allow the plaintiff to “cloak with religious significance.” 2025 WL 816732, at *3 (3d Cir. Mar. 14, 2025) (citation omitted). And in *McDowell v. Bayhealth Med. Ctr., Inc.*, the court rejected as insufficient the plaintiffs’ assertion that “taking the vaccine would violate scripture” on the view that “the vaccine is unsafe, toxic, or harmful.” 2024 WL 4799870, at *2–3 (3d Cir. Nov. 15, 2024). Nor did it sway the court, as the dissent noted, that plaintiffs’ “prayer, discernment, and Scriptural study informed

their decision.” *Id.* at *5 (Matey, J., dissenting). Both unpublished cases claimed support from the Third Circuit’s published decisions in *Africa v. Pennsylvania*, 662 F.2d 1025 (3d Cir. 1981), and *Fallon v. Mercy Catholic Medical Center of Southeastern Pennsylvania*, 877 F.3d 487 (3d Cir. 2017). *See McDowell*, 2024 WL 4799870, at *2 n.5; *Gatto*, 2025 WL 816732, at *2–3; *see also* Pet. App. 21a (explaining the Third Circuit test as rooted in *Fallon* and *Africa*).

2. In contrast to the Ninth and Third Circuits, six circuits permit failure-to-accommodate cases that are predicated on religious beliefs intertwined with secular objections such as medical health; five upheld such claims on motions to dismiss, and a sixth on a motion for summary judgment:

- First Circuit. *See, e.g., Bazinet v. Beth Israel Lahey Health, Inc.*, 113 F.4th 9, 17 (1st Cir. 2024) (holding “overlap” between religious and political views did not preclude plaintiff from invoking Title VII).
- Fourth Circuit. *See Wilkins-Bailey v. Essity Professional Hygiene N. Am., LLC*, 189 F.4th 400, 411 (4th Cir. 2026) (A “claimant’s secular motivations do not cancel out religious ones.”); *Barnett v. Inova Health Care Servs.*, 125 F.4th 465, 471 (4th Cir. 2025) (accepting allegation that plaintiff was “instructed by God to abstain from [Covid-19 vaccination]”).
- Fifth Circuit. *See Wright v. Honeywell Int’l, Inc.*, 148 F.4th 779, 781–83 (5th Cir. 2025) (holding, on summary judgment, that “a reasonable jury could find that [plaintiff] held at least a mixed motive for

his vaccine refusal: a bona fide religious belief alongside political beliefs and personal preference”).

- Sixth Circuit. *See Sturgill v. Am. Red Cross*, 114 F.4th 803, 810 (6th Cir. 2024) (“[T]hat there may be both religious and secular reasons for an act does not elevate the latter over the former, especially at the pleading stage.”); *Lucky v. Landmark Med. of Mich., P.C.*, 103 F.4th 1241, 1243 (6th Cir. 2024) (accepting allegation of belief based on “answer” to “prayer” as religious).
- Seventh Circuit. *See Passarella v. Aspirus, Inc.*, 108 F.4th 1005, 1010 (7th Cir. 2024) (holding that “secular considerations” on which plaintiffs’ beliefs turned did not “negate [their] religious nature”); *Bube v. Aspirus Hosp., Inc.*, 108 F.4th 1017, 1019–20 (7th Cir. 2024) (same). Even so, the Seventh Circuit recognizes that “[r]eligious accommodation requests rooting themselves entirely in safety considerations with no plain and express connection to religion will fall outside of the [Title VII] statute even at the pleading stage.” *Passarella*, 108 F.4th at 1011.
- Eighth Circuit. *See Ringhofer v. Mayo Clinic, Ambulance*, 102 F.4th 894, 901 (8th Cir. 2024) (rejecting idea that “overlap” between religious and secular concerns places belief beyond Title VII’s protection “as long as the view is part of a comprehensive religious belief system” (citation omitted)).

In addition, several circuit decisions, on both sides of the split, drew forceful dissents. *See McDowell*, 2024 WL 4799870, at *3 (Matey, J., dissenting);

Wilkins-Bailey, 189 F.4th at 419 (Floyd, J., dissenting); *Passarella*, 108 F.4th at 1012 (Rovner, J., dissenting); Pet. App. 26a (VanDyke, J., dissenting). And each arose from a case in which the district court found the complaint (or record) lacking.

It is therefore common ground that the circuits are deeply divided on this question.

B. This Case Presents an Important and Recurring Issue that These Parties Are Uniquely Well-Suited to Litigate.

Adventist Health also agrees this case presents an important question. A plaintiff's threshold obligation to state a Title VII claim for religious accommodation is an issue that recurs frequently, as evidenced by the numerous circuit courts and district courts that have weighed in. *See Passarella*, 108 F.4th at 1012 (Rovner, J., dissenting) (noting the "significant number of our colleagues on the district court [who] have dismissed comparable claims").

This Court's intervention to determine the proper standard governing that threshold obligation is also important because it influences how cases are resolved at later procedural stages, such as summary judgment. *See, e.g., Wilkins-Bailey*, 189 F.4th at 411 (citing cases above and following majority position at summary judgment); *Wright*, 148 F.4th at 783 (similar); *Bird*, 2026 WL 3026311, at *2 (applying *Detwiler* at summary judgment); *Morae*, 2026 WL 2958271, at *1–2 (same); *see also* Pet. App. 32a (VanDyke, J., dissenting) (identifying *Wright* as part of circuit split *Detwiler* entrenches).

Adventist Health is well-suited to litigate this important issue. As an affiliate of the Seventh-day

Adventist Church, it is well aware of the importance of issues of religious conscience. The Church and its adherents have a long history of meaningful participation in religious-liberty cases. Indeed, it was a Seventh-day Adventist who sought this Court’s protection to practice the “basic tenet[s] of [her] creed” in *Sherbert v. Verner*, 374 U.S. 398, 399–401 & n.1 (1963). And more broadly, the Seventh-day Adventist Church has long been an active participant in religion cases before this Court. *See, e.g., Murdock v. Pennsylvania*, 319 U.S. 105, 109 n.7 (1943) (citing amicus brief submitted by Seventh-day Adventists); *Groff v. DeJoy*, 600 U.S. 447, 457, 465–66 (2023) (same); *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 755 (2020) (same); *Obergefell v. Hodges*, 576 U.S. 644, 733 (2015) (Thomas, J., dissenting) (same). In this Court’s recent decision in *Groff*, for example, the Church not only participated as an *amicus*, but a church entity represented Groff at all stages of the litigation. *See Groff*, 600 U.S. at 452; *Groff v. DeJoy*, 35 F.4th 162, 164 (3d Cir. 2022); *Groff v. DeJoy*, 2021 WL 1264030 (E.D. Pa. Apr. 6, 2021).

The intersection of religious belief and bodily health is particularly significant to the Church. For example, the Church encourages adherents to follow a vegetarian diet and to avoid meats deemed “unclean” in the Bible, and also to avoid alcohol, tobacco, and illegal drugs. *See* Reh’g Resp. 4; *see also LaFevers v. Saffle*, 936 F.2d 1117, 1119 (10th Cir. 1991) (stating that many “Seventh [d]ay Adventists are vegetarians, and that a vegetarian diet is highly recommended by the Church”).

At the same time, Adventist Health is a healthcare provider and employer. Its religious principles thus

also charge it with responsibilities to protect the health and safety of patients, employees, and communities. And as an employer, it seeks to ensure that its legal obligations reflect the judgments made by Congress in Title VII and other laws. Adventist Health is well positioned to navigate these various issues, making this case an ideal vehicle to resolve the proper legal standard for a religious belief that conflicts with a workplace requirement under Title VII.

C. The Ninth Circuit’s Test Warrants Review by This Court.

Although it started and ended in the right place, the Ninth Circuit’s decision adopted two legal rules along the way that warrant review by this Court.

1. The Ninth Circuit started from the premise that a Title VII religious-accommodation plaintiff’s “complaint must connect the requested exemption” to a religious belief. Pet. App. 13a. Whether characterized as the need to “plead a sufficient *nexus*,” *id.* (emphasis added), or to plead a religious belief that “*conflicts* with an employment requirement,” *Ansonia Bd. of Educ. v. Philbrook*, 479 U.S. 60, 65 (1986) (emphasis added) (citation omitted), that core insight is correct. Title VII’s accommodation provision only concerns itself with beliefs that interfere with workplace duties. *See Ridings*, --- F.4th ----, 2026 WL 2871881, at *5 (discussing *Detwiler* and explaining that “[t]he central question remains whether an employee’s professed religious beliefs, taken at face value, conflict with the employer’s policy”).

2. But the Ninth Circuit’s opinion appears to veer off track in two critical respects that merit clarification by this Court.

First, the Ninth Circuit’s opinion could be construed as improperly focusing on how to define the contours of religious beliefs. It appears to draw a distinction between a religious belief based in “*truly* religious principle” (protected) and one based in “the secular implementation of high-level, religiously inspired goals” (unprotected). Pet. App. 13a, 23a. It thus arguably excluded from Title VII’s protection even sincere religious beliefs that could be viewed as having “personal and practical” rationales. *See* Pet. App. 23a (concluding that a believer could not validly justify their religious belief in one’s “body [as] a temple” as “a requirement to exercise daily”).

As Adventist Health explained when supporting Detwiler’s petition for panel rehearing, this reasoning would enable courts to “define what religious beliefs are.” Reh’g Resp. 11; *see also id.* (explaining concern that opinion will “allow courts to define a ‘truly religious’ belief”). But the validity (as opposed to the sincerity) of a litigant’s religious beliefs is “not within the judicial ken.” *Hernandez v. Comm’r*, 490 U.S. 680, 699 (1989). Indeed, if sincerely held, “religious beliefs need not be acceptable, logical, [or] consistent” to receive protection. *Thomas v. Rev. Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 714 (1981). Courts thus cannot examine “whether the religious belief asserted” is “reasonable,” or mine its substantive content to evaluate if it is “truly religious.” *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 724 (2014).

Second, the Ninth Circuit suggested that “[i]nvocation of prayer, without more, is ... insufficient” to ground a religious objection. Pet. App. 18a. This too would be mistaken. For example, the Seventh-day Adventist Church recognizes that “prayer is a two-way conversation” that allows believers “to listen for the voice of God.” *The Heart and Purpose of Prayer*, Seventh-day Adventist Church (last visited Sept. 28, 2026), <https://perma.cc/5FDC-Z7E3>; accord Joel Raveloharimisy, *Belief and Practice*, 79 J. Adventist Educ. 4, 6 (2017) (recognizing that prayer is “instruction from Christ”). Other religions are in accord. See, e.g., Alan Cooperman *et al.*, *When Americans Say They Believe in God, What Do They Mean?*, Pew Rsch. Ctr. 27 (2018) (reporting that a third of religious respondents believe that God or a higher power talks directly to them through prayer); States’ *Amicus* Br. 14 (documenting how “prayer has been a source of inspiration and discernment throughout our Nation’s history”). Adventist Health therefore believes that prayer can provide the basis for religiously motivated conduct protected by Title VII.

3. This, of course, does not mean that courts and juries play no role in adjudicating failure-to-accommodate claims under Title VII. As explained below, courts do play a role in ensuring that the non-religious aspects of a failure-to-accommodate claim meet the appropriate pleading standards. See *infra* at 21–25. In addition, a plaintiff bears the burden of establishing that an asserted religious belief is sincerely held—a fact-intensive issue largely hinging on the individual credibility of each plaintiff seeking

a religious accommodation.² As the States’ *amicus* brief and Judge Tung explain, “any suspicion that religion is being used as a mere pretext to evade a work requirement and that the asserted religious beliefs are not sincerely held could (and should) be tested at summary judgment or trial when evidence is presented.” Pet. App. 115a; States’ *Amicus* Br. 19; *see also Thomas*, 450 U.S. at 716 (courts must evaluate whether the petitioner held “an honest conviction that [a requirement] was forbidden by his religion”); *Cutter v. Wilkinson*, 544 U.S. 709, 725 n.13 (2005) (explaining permissibility of “inquiry into the sincerity of a [plaintiff’s] professed religiosity”). But those are very different propositions than suggesting that courts should assess whether a sincerely held religious belief is based on a “*truly* religious principle” or whether religiously motivated conduct can be inspired by “prayer, without more.” *See* States’ *Amicus* Br. 19–20 (explaining that inquiries into religious sincerity should be distinguished from the definition of what qualifies as a “religious belief”) (citing Nathan S. Chapman, *Adjudicating Religious Sincerity*, 92 Wash. L. Rev. 1185, 1215 (2017)).

II. Under the Correct Legal Test, the Judgment of Dismissal Should Be Affirmed.

1. Notwithstanding some of the Ninth Circuit’s apparent reasoning, its judgment in this case was correct. The ordinary pleading standards play an

² *See, e.g., Gardner-Alfred v. Fed. Res. Bank of N.Y.*, 143 F.4th 51, 63–65 (2d Cir. 2025); *Fox v. Washington*, 949 F.3d 270, 277–78 (6th Cir. 2020); *Davis v. Fort Bend Cnty.*, 765 F.3d 480, 485–86 (5th Cir. 2014); *E.E.O.C. v. Union Independiente de la Autoridad de Acueductos*, 279 F.3d 49, 56 (1st Cir. 2002).

important role in cases, like this one, where non-religious, real-world facts are intertwined with religious beliefs. After all, a viable Title VII claim requires more than a sincere religious belief. The practice of that belief must also “conflict” with an employment requirement. *Ansonia*, 479 U.S. at 70; *Abercrombie*, 575 U.S. at 774. Without facts supporting such a conflict, there cannot be workplace discrimination “because of ... religion.” 42 U.S.C. § 2000e-2(a)(1).

A necessary component of a “conflict” under a Title VII claim is therefore plausible facts supporting (and eventually proving) a conflicting workplace requirement. In many cases, the relevant “facts” about the job requirement are clear and how they conflict with the plaintiff’s sincere beliefs is self-evident. Conflict would be readily apparent, for example, in the case of a retailer who refuses to hire a Muslim woman unless she removes the headscarf that she wears “consistent with her understanding of her religion’s requirements.” *Abercrombie*, 575 U.S. at 770. So too when the postal service tells a Christian mail carrier he cannot take off work to “accommodat[e] his Sunday Sabbath practice.” *Groff*, 600 U.S. at 455–56.

These cases nonetheless require a conflict: For example, if the post office in *Groff* required the letter carrier to work on *Friday* (and gave him weekends off), then his claim would fail since his employer would not be imposing any work requirement in conflict with his religious belief. So too if the retailer in *Abercrombie* refused to hire a Muslim woman who insisted on wearing a competitor’s clothing (rather than a headscarf).

The conflict, however, will not always be so self-evident. And that is especially so in cases, like this one, where a “conflict” with a religious belief depends on the existence of real-world objective facts that are contestable and contested. In such cases, courts must ensure that they hold the plaintiff to the ordinary pleading standard for the existence of the factual predicates in order to establish that the employment practice actually does conflict with the plaintiff’s asserted religious beliefs.

To illustrate the point, suppose an employee asserts that his religion forbids being exposed to an infectious disease. Suppose further that he then seeks a religious accommodation from his employer’s requirement that he wear a uniform, on the ground that the cotton in the uniform causes infection. Apart from sincerity, courts should not question the religious belief—*viz.*, whether wearing infectious clothing is contrary to the employee’s religion. But surely it is within the judicial ken to examine whether a “conflict” exists—that is, whether the cotton in the uniform does, in fact, cause any infectious disease. And in evaluating that non-religious, real-world fact, the employee should be held to the same pleading standards as apply to the establishment of any other secular fact.

2. Because the existence of a workplace requirement that conflicts with a plaintiff’s sincere beliefs is a fact subject to proof at trial, the plaintiff must support that fact with “the manner and degree of evidence required at the successive stages of the litigation.” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992). At the pleading stage, then, the plaintiff must “plead[] factual content that allows the court to

draw the reasonable inference that the defendant is liable for the misconduct alleged,” providing a basis to “nudge[] his claims ... across the line from conceivable to plausible.” *Ashcroft v. Iqbal*, 556 U.S. 662, 680 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)); see Fed. R. Civ. P. 8(a). And unlike arbitrating spiritual beliefs, evaluating whether a complaint plausibly alleges real-world facts is well within the competency of courts.

Stated differently, a plaintiff at the pleading stage still must “connect his objection to [a workplace requirement] with his specific religious beliefs.” *Kale v. Aero Simulation, Inc.*, 139 F.4th 684, 689 (8th Cir. 2025). In *Kale*, for example, the plaintiff objected to a Covid-19 testing requirement based on his belief that it would “violate [his] God-given conscience to defile [himself] with unwanted intrusions into [his] body, which is a temple of the Holy Spirit.” *Id.* Recognizing the absence of “factual allegations about the nature of the Covid-19 test” that, by plaintiff’s lights, made it an “unwanted intrusion[],” the Eighth Circuit held that it was “not required to assume the test intruded into [the plaintiff’s] body in violation of his alleged religious beliefs.” *Id.* Instead, the plaintiff was required to plead facts sufficient to establish that violation.³

³ Requiring plausible allegations that a workplace requirement conflicts with religious belief presents no risk that courts will trench on theological commands—even as to minority or non-mainstream positions. If, as is the case for most Seventh-day Adventists, a plaintiff’s religious beliefs instructed that “Saturday Sabbath” meant “sundown on Friday to sundown on Saturday,” then that would be the relevant question (rather than the calendar day of Saturday). *Hobbie v. Unemployment Appeals*

3. Similarly here, the Ninth Circuit correctly concluded that Detwiler’s “concern about the harmful nature of” the Covid-19 test “has no relationship with her religious beliefs.” Pet. App. 15a.

Detwiler drew a clear line between her religious beliefs and the non-religious, objectively verifiable facts that, if present in a workplace requirement, created a conflict. As to her religious beliefs, Detwiler alleged that she is “a practicing Christian who believes her body is a ‘temple of the Holy Spirit’ [1 Corinthians 6:16–20],” and that she must “avoid defiling her ‘temple’ by taking in substances that the Bible explicitly condemns or which could *potentially cause physical harm to her body*.” Resp. App. 5a (emphasis added). She arrived at the same religious belief requiring real-world physical harm via prayer. See Resp. App. 34a–35a (“[T]he Holy Spirit has moved on my heart and conscience that I must not participate in COVID testing *that causes harm*.”) (emphasis added).

As to the workplace requirement, *i.e.*, the nasal-swab Covid-19 test, her assertion that the Covid-19 test was in fact harmful stemmed from her allegation that the test involved “inserting into one’s nose a cotton swab dipped in ethylene oxide (‘EtO’).” Resp. App. 7a. Detwiler’s understanding of the harm from EtO came from her own “research into the nasal swab test,” which “uncovered information from multiple

Comm’n of Fla., 480 U.S. 136, 138 (1987). Or if a Muslim plaintiff’s belief against eating “pork” included not consuming any food that has “touched pork,” then the question would be whether the defendant required him to consume food that touched pork (not whether that qualifies as “pork”).

sources indicating that EtO is a carcinogenic substance.” Resp. App. 7a.

In other words, whether the Covid-19 nasal-swab test, by virtue of its alleged contact with EtO, is in fact harmful is not part of Detwiler’s religious beliefs. *See* Pet. App. 15a (“Without Detwiler’s opinion that EtO is carcinogenic and therefore harmful, she has no conflict with MCMC’s Covid-19 testing requirement ...”). Instead, the physically harmful aspect of the Covid-19 test is a non-religious factual question, subject to ordinary standards of pleading and proof, including the need for factual content making that determination plausible. Because that determination is a necessary component of Detwiler’s claim, she has the burden to plausibly allege that the nasal-swab test required as part of her job *was in fact physically harmful*. *See, e.g., Iqbal*, 556 U.S. at 678.

Detwiler, however, did the opposite of plausibly alleging the harmfulness of her workplace nasal-swabbing requirement such that it would conflict with her articulation of her religious belief—she submitted information that negates that conclusion. Her “research” came from two sources, which are properly incorporated into her complaint by reference. *See* Resp. App. 35a–36a; *see also Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007). The first source was a study that measured the presence of EtO on testing swabs. That study found EtO could be detected on cotton swabs only within 21 days of the EtO treatment, and even during that period the EtO was only at trace levels below quantitation limits. *See* L. Wilson-Wilde *et al.*, *Investigation Into Ethylene Oxide Treatment and Residuals on DNA and Downstream DNA Analysis*, 57 *Sci. & Just.* 13, 13–14,

17 (2016). The second source was an EPA report on the carcinogenic implications of EtO, and it does not remotely support a cancer risk—even affording Detwiler all reasonable inferences—from the fleeting use of a testing swab with potential trace amounts of EtO from the sterilization process. Instead, the carcinogenic risk in the EPA report came from “chronic inhalation” across decades of “continuous exposure” in the workplace. Env’tl Prot. Agency, EPA/635/R-16/350Fa, *Evaluation of the Inhalation Carcinogenicity of Ethylene Oxide* 4-5, 4-14 (2016).⁴

In other words, Detwiler has not plausibly alleged that by requiring her to use the nasal-swab test Adventist Health imposed a job requirement that actually conflicted with her religious belief to avoid physical “harm” to her body. Pet. App. 5a; Resp. App. 5a. As such, the district court correctly dismissed her complaint under Rule 12(b)(6).

CONCLUSION

Adventist Health acquiesces in the grant of the petition for a writ of certiorari. This Court should grant the petition, clarify the appropriate standard for assessing failure-to-accommodate claims under Title VII, and affirm the judgment.

⁴ To the extent Detwiler also grounds her objection in the risk of altering her DNA, her pleading failure is even starker. Neither source suggests that a Covid-19 nasal swab would alter her DNA. The closest one comes is examining how effective EtO was in “eliminat[ing] DNA *on swabs*”—not in the human body. Wilson-Wilde, *supra*, at 13.

October 16, 2026

Respectfully submitted,

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APPENDIX

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APPENDIX A

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**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION**

SHERRY H.
DETWILER,

Plaintiff,

v.

MID-COLUMBIA
MEDICAL CENTER, A
Public Benefit
Corporation, CHERI
McCALL, An Individual,
and DOES 1 THROUGH
50, Inclusive,

Defendants.

Case No.: 3-22-CV-
01306-JR

**SECOND AMENDED
COMPLAINT FOR
DAMAGES FOR
RELIGIOUS
DISCRIMINATION IN
VIOLATION OF
TITLE VII [42 U.S.C.
§ 2000e-2] AND ORS
659A.030(1)(a), AND
AIDING AND
ABETTING
RELIGIOUS**

**DISCRIMINATION
[ORS 659A.030(1)(g)]**

**JURY TRIAL
REQUESTED**

Plaintiff SHERRY H. DETWILER hereby alleges as follows:

PARTIES

1. Plaintiff is, and at all times herein was, a former employee of Defendant MID-COLUMBIA MEDICAL CENTER (“MCMC” or the “Hospital”) and a practicing Christian who was placed on unpaid administrative leave on October 19, 2021 and fired on December 20, 2021 for refusing, on religious grounds, to receive a COVID-19 vaccine or, in the alternative, submit to weekly nasal swab tests to determine whether she had been infected with COVID-19.

2. Defendant MCMC is, and at all times herein was, a non-profit public benefit corporation that operates a hospital in The Dalles in the County of Wasco, Oregon and an employer within the definition of 42 U.S.C. § 2000e(b).

3. Defendant CHERI McCALL (“McCALL”) is, and at all times herein was, MCMC’s Chief Human Resources Officer, the person primarily responsible for making hiring, firing, and other personnel decisions for the Hospital, including ensuring compliance with federal and state law concerning accommodations of employees’ sincerely held religious beliefs.

4. The true names and capacities of Defendants DOES 1 THROUGH 50 (collectively the “DOES”), inclusive, are unknown to Plaintiff, who therefore sues

said Defendants under such fictitious names. Each Defendant designated herein as one of the DOES is legally responsible for the events and happenings herein referred to and proximately caused injuries and damages to Plaintiff thereby, as herein alleged. Plaintiff will seek leave of this Court to amend this Complaint to show the DOES' names and capacities once they have been ascertained.

JURISDICTION

5. Plaintiff refers to and hereby incorporates the foregoing paragraphs as though fully set forth herein.

6. This Court has jurisdiction over the Defendants pursuant to 28 U.S.C. § 1331 because Plaintiff's action arises under the laws of the United States.

VENUE

7. Plaintiff refers to and hereby incorporates the foregoing paragraphs as though fully set forth herein.

8. Venue is proper in the Court's Portland Division because the events giving rise to this Complaint occurred in the County of Wasco and all of the agents, employees, or other persons working for, or in concert with, Defendant MCMC with regard to the events giving rise to this case are located in, employed in, or residents of the County of Wasco.

GENERAL ALLEGATIONS

9. Plaintiff refers to and hereby incorporates the foregoing paragraphs as though fully set forth herein.

10. In August 2021, roughly 18 months after COVID-19 first arrived in Oregon, the Oregon Health Authority ("OHA") enacted an administrative rule (the "Vaccine Mandate" or the "Mandate") requiring healthcare workers to be vaccinated against COVID-

19 no later than October 18, 2021. See Or. Admin. R. 333-019-1010. However, the Vaccine Mandate allowed healthcare workers to seek, and hospitals, clinics, and healthcare employers to grant, medical and religious exemptions from the vaccination requirement. *Id.*, subsections (3)-(4).

11. Plaintiff worked for MCMC as a Privacy Officer and the Director of Health Information (“DHIM”) from September 14, 2020 through December 20, 2021. Her job, an executive-level position, was purely administrative and did not involve working with patients, directly or otherwise.

12. In addition to overseeing a staff of nine, Plaintiff’s duties included:

- a. Managing the operations of MCMC’s Health Information Management department;
- b. Maintaining patient records pursuant to HIPAA regulations;
- c. Documenting, investigating, and responding to patients’ complaints about violations of the Health Insurance Portability Accountability Act as well as MCMC’s own privacy policies and procedures;
- d. Serving on MCMC’s committees concerning forms and policies;
- e. Training employees and volunteers to ensure the security of patients’ protected health information;
- f. Working with, government authorities and privacy attorneys investigating breaches of MCMC’s patient health information systems,

including providing access to records when necessary; and

- g. Getting MCMC's health record system back online if the system was failing to operate or taking steps to ensure greater protection of health records if the system was compromised.

13. Plaintiff could perform most, if not all, of these duties remotely, via either telephone or her MCMC-issued laptop, and starting in November 2020 – two months after she was hired at MCMC – that is just what she did. Most of her staff and committee meetings, in fact, took place via videoconference.

14. Plaintiff had a private office in the Health Information Management department at MCMC's facility in The Dalles. When working in her office during the Pandemic, Plaintiff kept her door closed and had minimal contact with other employees. Plaintiff rarely came out of the office except to use the bathroom or obtain food or supplies. When interacting with employees, Plaintiff followed all Pandemic-related protocols, including wearing a mask and social distancing.

15. Starting in November 2020, Plaintiff worked remotely for stretches of varying lengths, none longer than ten days. MCMC issued her equipment and a virtual private network that included Internet access for precisely that purpose.

16. Even when she was on the Hospital's premises, much of her work was done from her office via her MCMC-issued laptop, including conducting meetings.

17. The Hospital also permitted at least two members of Plaintiff's staff to work remotely and

offered that privilege to at least three other staffers under Plaintiff's supervision.

18. Plaintiff is also a practicing Christian who believes her body is a "temple of the Holy Spirit" [1 Corinthians 6:19-20]. Based on the aforementioned verse, Plaintiff sincerely believes she has a religious duty to avoid defiling her "temple" by taking in substances that the Bible explicitly condemns or which could potentially cause physical harm to her body.

19. When researching the COVID-19 vaccines currently available in the United States when the OHA issued its Vaccine Mandate, Plaintiff discovered that the vaccines were created from cell lines taken from aborted fetuses. As a Christian, Plaintiff opposes abortion on religious grounds [see, e.g., Proverbs 6:16-17 (concerning hands that shed innocent blood being an "abomination" to God), Jeremiah 1:5 (concerning the idea that life begins in the womb), and Psalm 127:3 (concerning children being a blessing from the Lord)].

20. Plaintiff's research into the vaccines also uncovered information from the website for Center for Disease Control and Prevention ("CDC") indicating that the vaccines contained neurotoxins, attenuated viruses, carcinogens (i.e., cancer-causing agents), chemical wastes, and other potentially harmful substances.

21. After much prayer and consideration, Plaintiff determined that she could not, in good conscience in accordance with her faith's principles, defile her body by having injected into it a vaccine derived from the cells of babies whose lives were taken via abortion. Accordingly, on September 28, 2021, Plaintiff sought

from MCMC a religious exemption from Gov. Brown's Mandate. A copy of Plaintiff's religious exemption request is attached hereto as Exhibit "A."

22. MCMC approved Plaintiff's religious exemption request on October 1, 2021. A copy of MCMC's approval letter is attached hereto as Exhibit "B."

23. At no point during MCMC's interactions with Plaintiff concerning her desire for a religious exception from the Vaccine Mandate did MCMC call into question the sincerity of Plaintiff's asserted religious beliefs concerning her pro-life convictions or the biblical tenet against self-inflicted harm – nor did MCMC ever assert to Plaintiff that the latter belief was not religious in nature.

24. Among the accommodations that MCMC agreed to provide to Plaintiff were that Plaintiff had to (1) wear personal protective equipment ("PPE") – specifically, an N95 mask – at all times while in the office, and (2) submit to weekly antigen testing. See Ex. "B."

25. As of October 1, 2021, two types of tests for determining COVID-19 infections were available in the United States: One involved spitting saliva into a tube and submitting it to a lab for analysis. The other involved inserting into one's nose a cotton swab dipped in ethylene oxide ("EtO"). The person being tested was to press the EtO-dipped swab against the skin inside each of his or her nostrils multiple times, swirl the swab around in a circular motion to collect mucus from the person's nasal tissues, then submit the swab to a lab for testing.

26. Plaintiff's research into the nasal swab test uncovered information from multiple sources indicating that EtO is a carcinogenic substance.

27. Not wanting to take EtO into her body and run the risk of suffering from cancer, Plaintiff again invoked her Christian beliefs concerning her body being a temple of God, requesting an alternative accommodation from MCMC. A true and accurate copy of Plaintiff's request for an exemption from MCMC's COVID testing requirement is attached hereto as Exhibit "C."

28. While Plaintiff declined to submit to nasal swab testing, at least in part, due to medical and/or scientific judgment, she also exercised religious judgment: The law recognizes that "the 'exercise of religion' often involves not only the belief and profession but the performance of (or abstention from) physical acts," including refraining from the use or ingestion of certain substances. See, e.g., *Emp't Div., Dep't of Human Res. v. Smith*, 494 U.S. 872, 877 (1990). Furthermore, the judgment of whether an adherent of a particular faith is to refrain from engaging in a particular act, or using a particular substance, is left entirely to the adherent: Courts are not to second-guess a former employee's assertion that a job-related duty burdens her sincerely held religious beliefs, but must instead focus on whether the former employee has adequately alleged a conflict between her asserted beliefs and a job-related duty. *Bolden-Hardge v. Office of the Cal. State Controller*, 63 F.4th 1215, 1223 (9th Cir. 2023).

29. Consistent with the Ninth Circuit's recent reaffirmation that "the burden to allege a conflict with

religious beliefs is fairly minimal,” Plaintiff directly stated a conflict between MCMC’s requirement that she submit to nasal swab testing and her sincerely held religious beliefs. *Boldgen-Hardge*, 63 F.4th at 1223. Furthermore, it would have been inappropriate for MCMC to “interrogate the reasonableness” of Plaintiff’s beliefs. *Id.*

30. As an alternative to nasal swab testing, Plaintiff requested that she be allowed to submit to saliva testing through Oregon Health & Science University. Plaintiff also asked that she be allowed to work remotely full-time for the duration of The Vaccine Mandate. Plaintiff believed working remotely would be reasonable because she could attend and conduct meetings via videoconference – as she had frequently done since November 2020 – and most of her duties did not require her presence at MCMC’s facility.

31. While MCMC “considered” Plaintiff’s proposed accommodations, the deadline for compliance with the Vaccine Mandate – October 18, 2021 – came and went. As a result, MCMC placed Plaintiff on unpaid leave on October 19, 2021.

32. The same day MCMC placed her on unpaid leave, Plaintiff received an e-mail from McCALL stating that while MCMC had granted Plaintiff’s request for a religious exemption from the Vaccine Mandate, the Hospital was denying Plaintiff’s requested accommodations of saliva testing and full-time remote work. With regard to saliva testing, MCMC deemed it “impractical” because test results would not be available for 24 to 36 hours, and the

Hospital claimed that it needed Plaintiff to be available on occasion for same-day reporting.

33. As for full-time remote work, McCALL asserted that working remotely even part-time, as Plaintiff had done for the majority of her tenure at the Hospital, had created “a hardship on your department and team.” *See Attached Exhibit “D”* [a copy of McCALL’s e-mail to Plaintiff dated October 19, 2021]. McCALL asserted that although the Hospital “had approved of [Plaintiff] working intermittently by remote ... it has become clear that [she] worked beyond what was agreed to and your team has struggled.” *Id.* McCALL furthermore asserted that the Hospital had received “increased complaints and dissatisfaction from your team since you started to work remote [sic],” claiming that Plaintiff’s team “has struggled” due to her not being on site and “has lost confidence in [her] ability to lead and guide the team and question [sic] some of your decision making.” *Id.*

34. On information and belief, Plaintiff disputes the veracity of the Hospital’s assertions set forth in the preceding paragraph.

35. The Hospital also accused Plaintiff of the following [*see* Ex. “D”]:

- a. Hiring to work in her department an unqualified person from her church instead of a qualified internal candidate;
- b. Treating a worker under her supervision poorly, including failing to provide necessary guidance and support;
- c. Failing to provide timely responses, and in some cases any responses, to employees’ requests for assistance; and

- d. Asking employees to call Plaintiff on her cell phone, giving them the impression that she was not actually working from home.

36. On information and belief, Plaintiff not only questions the veracity of the accusations set forth in the preceding paragraph but asserts that MCMC used them as a pretext for firing her on the basis of her religion.

37. McCALL concluded her e-mail to Plaintiff by asserting that Plaintiff would be on leave until October 30, 2021, by which time she needed to do one of two things: Comply with The Vaccine Mandate by receiving a COVID-19 vaccine, or comply with the terms of the religious exemption that MCMC had granted to her. If she did neither, MCMC would terminate Plaintiff's employment.

38. Nine days before MCMC's compliance deadline, on October 21, 2021, the Hospital had an extra key made for the door to Plaintiff's private office. Before then, Plaintiff had the only key and was the only person who could access the private office. MCMC made the extra key without providing any notice to Plaintiff or giving her the opportunity to secure or remove personal items or documents, electronically stored information, or other items that, in her capacity as the Hospital's Privacy Officer, Plaintiff had a duty to keep under tight control.

39. In making it possible for persons besides Plaintiff to access the private office and thereby obtain access to documents, electronically stored information, and other items Plaintiff had a duty to keep under tight control, MCMC placed Plaintiff in a very

vulnerable position since she was on unpaid leave at the time.

40. Also on October 21, 2021, without notice, the Hospital locked Plaintiff out of access to her MCMC-issued laptop, making it impossible for Plaintiff to communicate via e-mail with her supervisor, her team members, and other Hospital staff. Coupled with the making of the additional key to her office, the decision to lock Plaintiff out of her MCMC-issued computer at best implies, and at worst outright indicates, that the Hospital had already decided to terminate Plaintiff's employment regardless of what decision she made.

41. Plaintiff neither received a COVID-19 vaccine – which she could not, in good conscience, do in accordance with her sincerely held religious beliefs – nor agreed to the terms of the religious exemption granted her by the Hospital, which she deemed unreasonable. Accordingly, Plaintiff was ultimately fired.

42. Before she was fired, but while still on unpaid leave, Plaintiff filed a charge of discrimination with the Equal Employment Opportunity Commission ("EEOC") on November 2, 2021. Plaintiff also attempted to resolve her dispute with her employer through MCMC's internal grievance process. The Hospital thus did not terminate Plaintiff's employment immediately, allowing her to remain on unpaid leave until the internal grievance process was complete.

43. In response to Plaintiff's grievance, MCMC reiterated to Plaintiff on or about December 17, 2021 that the Hospital could not accommodate her requests that she be allowed to submit to saliva testing or that

she be allowed to work 100% remotely. The Hospital also gave Plaintiff until December 20, 2021 to agree to the terms of the religious exemption MCMC had granted – i.e., nasal swab testing and wearing a mask inside the office – or accept reassignment to an open position.

44. When Plaintiff did neither, MCMC terminated her employment.

45. After firing Plaintiff, MCMC hired an interim DHIM. Not only did MCMC allow the interim DHIM – who is still employed at MCMC – to work part-time, the Hospital allowed the new DHIM to do so 100% remotely, thereby undermining the Hospital's position that it would impose an undue hardship on the Hospital, and on staff working under Plaintiff, to allow Plaintiff to do likewise.

46. Plaintiff has endured mental suffering and emotional distress due to Defendant MCMC's unlawful discrimination against her. This is especially true given that Plaintiff was the sole breadwinner for her household before the Hospital fired her. Plaintiff has struggled to make her mortgage and utility payments, sought the assistance of food banks to ensure that her family is fed – she's even had to resort to recycling cans and bottles to generate money to buy groceries – and relied on the assistance of her church family to get by.

47. Plaintiff has also suffered interference with normal and usual activities, as the financial woes caused by MCMC's discriminatory decision to fire her forced Plaintiff to pull her children out of the Christian school they were attending – something that was extremely important to Plaintiff, as she wishes for her

children to be educated in accordance with her Christian values. Her children were active in sports, band, and theater at that school, and had made friends there.

48. The EEOC issued a “right to sue” letter to Plaintiff on June 6, 2022. A copy of the letter is attached hereto as **Exhibit “E.”**

49. Pursuant to the “right to sue” letter, Plaintiff had ninety (90) days to file a lawsuit against her former employer, MCMC. See Ex. “E.” As the 90-day filing period is set to expire on September 4, 2022, the herein lawsuit is timely filed. See Attached **Exhibit “F”** [a printout from the website TimeandDate.com showing the calculation of the 90-day filing deadline].

FIRST CAUSE OF ACTION

Violation of Title VII [42 U.S.C. § 2000e-2] Against Defendant MCMC

50. Plaintiff refers to and hereby incorporates the foregoing paragraphs as though fully set forth herein.

51. Title VII of the 1964 Civil Rights Act prohibits employers from discriminating on the basis of religion. 42 U.S.C. § 2000e-2(a)(1).

52. For purposes of Title VII, “[t]he term ‘employer’ means a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year ...” 42 U.S.C. § 2000e(b).

53. Defendant MCMC qualifies as an employer under Title VII.

54. The term “religion,” for purposes of Title VII, “includes all aspects of religious observance and practice, as well as belief ...” 42 U.S.C. § 2000e(j).

55. As a practicing Christian, Plaintiff belongs to a class of persons protected under Title VII. 42 U.S.C. § 2000e-2(a)(1).

56. Plaintiff has a bona fide religious belief that her body is a temple of the Holy Spirit and, in accordance with that belief, cannot defile her body by taking into her body a substance that could potentially harm it. This belief, as Plaintiff informed her employer, rooted in religion, as it is based on a biblical passage – namely, 1 Corinthians 6:19-20. See Ex. “B.”

57. Plaintiff’s bona fide religious belief against taking vaccines whose manufacturers used cells from aborted babies in researching and developing the vaccines conflicted with her employment-related duty to receive a COVID-19 vaccine in accordance with The Vaccine Mandate, as the COVID-19 vaccines available on the market in 2021 were all made by manufacturers who used cells from aborted fetuses in the vaccines’ testing and development.

58. Plaintiff’s bona fide religious belief against putting potentially harmful substances into her body conflicted with her employment-related duty, in lieu of taking a COVID-19 vaccine, to submit to nasal swab testing, as Plaintiff would have had to take into her body a potentially cancer-causing substance, EtO.

59. Plaintiff informed her employer, MCMC, of the conflicts between her religious beliefs and her employment-related duties. See Exs. “A” and “C.”

60. Defendant MCMC subjected Plaintiff to discriminatory treatment by demanding, under threat

of placing her on unpaid leave and ultimately terminating her employment, that Plaintiff either receive a COVID-19 vaccine or, in the alternative, submit to nasal swab testing as a condition of receiving a religious exemption from The Vaccine Mandate.

61. Although Defendant MCMC approved Plaintiff's request for a religious exemption from The Vaccine Mandate, the accommodation that MCMC offered – nasal swab testing – was unreasonable in light of Plaintiff's sincerely held religious belief that she cannot defile her body by taking a harmful substance into it. Plaintiff informed MCMC multiple times that the solution into which nasal swabs are inserted prior to placement against the skin inside one's nostrils contains a potentially cancer-causing substance, EtO, and yet MCMC repeatedly insisted that Plaintiff submit to such testing in the alternative to being unvaccinated.

62. Plaintiff proposed reasonable alternatives that would not have required her to put harmful or biblically forbidden substances inside her body – namely, saliva testing and working remotely – but Defendant MCMC refused to agree to those alternatives. Accordingly, the Hospital did not make good-faith efforts to reasonably accommodate Plaintiff's bona fide religious beliefs.

63. Defendant MCMC would have incurred no undue hardship by accommodating Plaintiff's religious beliefs in the manner she had proposed: Starting in November 2020, Plaintiff worked remotely for stretches of varying lengths, both from inside and outside her private office – in fact, MCMC issued her

equipment and a virtual private network that included Internet access for precisely that purpose. At least two members of Plaintiff's staff were also permitted by MCMC to work remotely, and MCMC offered that privilege to at least three of Plaintiff's other staffers.

64. Based on the foregoing, Defendant MCMC has no legitimate, nondiscriminatory reason for its actions.

65. Defendant MCMC's asserted reasons for denying Plaintiff her requested accommodations, and ultimately firing her, are pretextual: The fact that MCMC let the DHIM who replaced Plaintiff work 100 percent remotely indicates that allowing a director-level employee to work from home did not, in fact, cause hardship to employees working under the DHIM or cause the MCMC's Health Information Management team to struggle, as the Hospital asserts.

66. Religious discrimination is truly what motivated Defendant MCMC to get rid of Plaintiff: Although the Hospital did grant Plaintiff a religious exemption from receiving a COVID-19 vaccine, the Hospital insisted that Plaintiff submit to weekly nasal swab testing as a condition of that exemption, completely ignoring that Plaintiff's Christian faith prohibits her from defiling her body by taking harmful substances into it. Plaintiff provided the Hospital with evidence from multiple sources that EtO, the chemical in which nasal swabs are dipped prior to being swirled around inside one's nostrils, is a cancer-causing substance. The Hospital's insistence that Plaintiff submit to nasal swab testing compelled her to choose between violating her sincerely held religious

beliefs and remaining employed – a choice that Title VII aims to protect employees from having to make.

67. Based on the foregoing, Defendant MCMC has discriminated against Plaintiff in violation of Title VII.

SECOND CAUSE OF ACTION

Violation of ORS 659A.030(1)(a) Against Defendant MCMC

68. Plaintiff refers to and hereby incorporates the foregoing paragraphs as though fully set forth herein.

69. Like Title VII, ORS 659A.030(1)(a) prohibits employers from discharging individuals from employment on the basis of the individuals' religion, as Defendant MCMC has done here.

70. Because Oregon's state law prohibiting employers from discriminating on the basis of religion is modeled after Title VII, and because the analysis for religious discrimination claims under both statutes is identical [see *Hedum v. Starbucks Corp.*, 546 F. Supp. 2d 1017, 1022 (D. Or. 2008)], Plaintiff declines to restate the facts as set forth in their first cause of action, as those facts are already incorporated as though fully set forth herein.

71. Under 42 U.S.C. § 2000e-7, nothing in 42 U.S.C. § 1981a(b)(3), which caps the amount of non-pecuniary and punitive damages that can be awarded to Plaintiffs, "shall be deemed to exempt or relieve any person from liability, duty, penalty, or punishment provided by any present or future law of any State[.]" An Oregon jury is thus free to exceed the federally imposed dollar limit.

72. Under Oregon law, a jury may award up to \$500,000 in noneconomic damages. See ORS 31.710(1). Oregon law defines “noneconomic damages” to include “subjective, nonmonetary losses, including but not limited to ... mental suffering [and] emotional distress ... and interference with normal and usual activities apart from gainful employment.” ORS 31.705(2)(b) (emphasis added).

73. Plaintiff has endured mental suffering and emotional distress due to Defendant MCMC’s unlawful discrimination against her. This is especially true given that Plaintiff was the sole breadwinner for her household before the Hospital fired her. Plaintiff has struggled to make her mortgage payments, sought the assistance of food banks to ensure that her family is fed, and relied on the assistance of her church family to get by.

74. Plaintiff has also suffered interference with normal and usual activities, as the financial woes caused by her unemployment forced her to pull her children out of the Christian school they were attending – something that was extremely important to Plaintiff, as she wishes for her children to be educated in accordance with her Christian values. Her children were active in sports, band, and theater at that school, and had made friends there.

75. ORS 659A.885(3) allows for punitive damages against employers such as Defendant MCMC who violate ORS 659A.030(1)(a). Oregon law places no cap on punitive damages.

76. Based on the foregoing, in addition to violating Title VII, Defendant MCMC has violated ORS 659A.030(1)(a).

THIRD CAUSE OF ACTION

Violation of ORS 659A.030(1)(g)

Against Defendants McCALL and DOES 1-50

77. Plaintiff refers to and hereby incorporates the foregoing paragraphs as though fully set forth herein.

78. ORS 659A.030(1)(g) prohibits any person from aiding and abetting an employer from engaging in employment discrimination.

79. In her role as Defendant MCMC's Chief Human Resources Officer, Defendant McCALL acted in concert with, or gave substantial assistance to, MCMC to unlawfully discriminate against Plaintiff on account of Plaintiff's religion. McCALL did this knowing that it was unlawful for the Hospital, as Plaintiff's employer, to engage in religious discrimination against Plaintiff.

80. Because Defendant MCMC carried out its religious discrimination against Plaintiff with Defendant McCALL's assistance, McCALL should be held individually and personally liable for her conduct. The same goes for any yet-to-be-identified persons whom Plaintiff later learns aided and abetted the Hospital's religious discrimination against Plaintiff – hence, the inclusion of DOES 1-50 as defendants in the herein proceeding.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendant MCMC as follows:

ON ALL CAUSES OF ACTION:

1. For economic damages in an amount according to proof at trial;

2. For non-economic damages in an amount according to proof at trial;

3. For punitive damages in an amount according to proof at trial;

4. For attorney's fees and costs associated with bringing and maintaining this action in accordance with the law; and

5. For such other and further relief as the Court may deem proper.

Dated: July 13, 2023

PACIFIC JUSTICE INSTITUTE

/s/ RAY D. HACHE

Ray D. Hacke

Attorney for Plaintiff

SHERRY H. DETWILER

PROOF OF SERVICE

I am employed in the County of Marion, State of Oregon. I am over the age of eighteen and not a party to the within action; my business address is 1850 45th Ave., Suite 33, Salem, OR 97305.

On or about July 13, 2023, I served the following documents on the interested parties by placing a true copy thereof enclosed in sealed envelope(s) addressed to said parties:

SECOND AMENDED COMPLAINT FOR DAMAGES FOR RELIGIOUS DISCRIMINATION IN VIOLATION OF TITLE VII [42 U.S.C. § 2000e-2] AND ORS 659A.030(1)(a), AND AIDING AND ABETTING RELIGIOUS DISCRIMINATION [ORS 659A.030(1)(g)]

PLEASE SEE ATTACHED SERVICE LIST

____BY MAIL: I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice, it would be deposited with the U.S. postal service on that same date with postage thereon fully prepaid at Salem, Oregon in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

____BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the office of the addressee(s).

 X BY ELECTRONIC MAIL: I caused such documents to be served on the interested parties via electronic mail and through the court's ECF website.

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_____(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

_____X (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on July 13, 2023, at Salem, Oregon.

/s/ LAUREN PEFFERLE

Lauren Pfefferle

SERVICE LIST

Via Electronic Mail:

Christopher Hawk

E-mail: chawk@grsm.com

Diane R. Lenkowsky

E-mail: dlenkowsky@grsm.com

Attorney For Defendants

Gordon Rees Scully Mansukhani LLP

1300 SW 5th Ave., Suite 2000

Portland, OR 97201

25a

EXHIBIT “A”

OFFICE OF THE DIRECTOR
Office of the State Public Health Director

Oregon Health
Authority

COVID-19 Vaccine Religious Exception Request Form

I am requesting an exception from the COVID-19 vaccination on the basis of a sincerely held religious belief.

Individual's name: Sherry Detwiler	Date of birth: 01/03/1976
Phone number: 541-631-1532	
Employer/Organization: Mid Columbia Medical Center	Job Title/Position: Director HIM/Privacy Officer

Please check the boxes below as appropriate and complete related questions:

☒ Receiving the COVID-19 vaccination conflicts with my religious observances, practices or beliefs as described below.

Please describe your religious belief and how it affects your ability to receive a COVID-19 vaccination

See exemption request

I certify the above information to be true and accurate and that I sincerely hold the religious beliefs described above.

Signature: s/ Sherry Detwiler, RHIA	Date: 9/30/2021
--	--------------------

Please note that if your exception request is approved, you may be required by your employer or other

responsible party to take additional steps to protect you and others from contracting and spreading COVID-19. Workplaces are not required to provide this exception accommodation if doing so would pose a direct threat to the excepted individual or others in the workplace or would create an undue hardship.

Document accessibility: For individuals with disabilities or individuals who speak a language other than English, OHA can provide information in alternate formats such as translations, large print, or braille. Contact the Health Information Center at 1-971-673-2411, 711 TTY or COVID19.LanguageAccess@dhsoha.state.or.us.

9/28/2021

Sherry Detwiler
3454 Royal Crest Dr. E.
The Dalles, OR 97058

Mid-Columbia Medical Center
1700 E. 19th St.
The Dalles, OR 97058

To Whom It May Concern,

I am a Christian seeking religious exemption from the
“Covid-19 Vaccination Requirement”.

I am requesting a religious accommodation under
federal law: Title VII of the Civil Rights Act of 1964
[Title VII].

My religious beliefs are sincerely held.

It is against my faith and my conscience to commit sin.
Sin is anything that violates the will of God, as set
forth in the Bible, and as impressed upon the heart of
the believer by the Holy Spirit. In order to keep myself
from sin, and receive God’s direction in my life, I pray
and ask God for wisdom and direction daily. As part
of my prayers, I have asked God for direction
regarding the current COVID shot requirement. As I
have prayed about what I should do, the Holy Spirit
has moved on my heart and conscience that I must not
accept the COVID shot. If I were to go against the
moving of the Holy Spirit, I would be sinning and
jeopardizing my relationship with God and violating
my conscience.

Because the body is the temple of the Holy Spirit, we
are compelled by Scripture to follow God’s law when
choosing what to put into it. “Do you not know that
you are God’s temple and that God’s Spirit dwells in

you? If anyone destroys God's temple, God will destroy him. For God's temple is holy, and you are that temple." 1 Corinthians 3:16-17 ESV

As a Christian protecting my body from defilement according to God's law, I invoke my religious right to refuse any vaccine which utilized abortion-derived cell lines at any stage of the creation of the vaccine. Further, insofar as the vaccines also contain neurotoxins, hazardous substances, attenuated viruses, animal parts, foreign DNA, albumin from human blood, carcinogens and chemical wastes that are proven harmful to the human body, I find injection of the same to be in direct conflict with my Christian duty to protect my body as the temple of the Holy Spirit. Source:

<https://www.cdc.gov/vaccines/pubs/pinkbook/downloads/appendices/b/excipient-table-2.pdf>

(last visited 9/28/2021)

I am therefore asking for an exemption from the COVID shot directive so that my conscience can remain clear before God. Thank you for your consideration.

s/ Sherry Detwiler, RHIA

Sherry Detwiler, RHIA

30a

EXHIBIT “B”

MCMC
MID-COLUMBIA MEDICAL CENTER

October 1, 2021

Sherry Dewtiler
3454 Royal Crest Drive, East
The Dalles, OR 97058

Dear Sherry,

This letter is in response to your request for religious accommodation received on September 30, 2021 regarding receiving the COVID-19 vaccine as mandated by OAR 333-019-1010. The following decisions are based on your OHA 3870 or OHA 3871 form submitted to our organization.

Based on the information supplied we are ☒ **Approving** ☒ **Denying** your request for accommodation based on the following: The religious exception is approved, however, you are not willing to meet the testing condition, so it is declined and moved to a medical accommodation request. Medical packet has been sent to Employee Health for review

Approved Accommodations:

- Weekly antigen testing
- Wearing personal protective equipment (PPE) at all times, unless eating or drinking

Declining Reason

- Weekly antigen testing – moving into medical request

If you have further questions or additional information, please reach out to Human Resources and we are happy to assist you.

If your request for accommodations were denied, you will need to comply with the mandate by October 18,

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2021, or it will be considered a resignation of your position with Mid-Columbia Medical Center.

Respectfully,

s/ Cheri McCall

Cheri McCall,
Director, Human Resources

cc: confidential health file (personnel)

33a

EXHIBIT “C”

To Whom It May Concern,

I am a Christian seeking religious exemption from the “Covid-19 Testing Requirement”. This requirement by Mid-Columbia Medical Center for any staff that have been approved for religious exemption.

I am requesting a religious accommodation under federal law: Title VII of the Civil Rights Act of 1964 [Title VII].

My religious beliefs are sincerely held.

It is against my faith and my conscience to commit sin. Sin is anything that violates the will of God, as set forth in the Bible, and as impressed upon the heart of the believer by the Holy Spirit. In order to keep myself from sin, and receive God’s direction in my life, I pray and ask God for wisdom and direction daily. As part of my prayers, I have asked God for direction regarding the current COVID testing requirement. As I have prayed about what I should do, the Holy Spirit has moved on my heart and conscience that I must not participate in COVID testing that causes harm. If I were to go against the moving of the Holy Spirit, I would be sinning and jeopardizing my relationship with God and violating my conscience.

According to 1 Corinthians 6:19-20 Do you not know that your bodies are temples of the Holy Spirit, who is in you, whom you have received from God? You are not your own; you were bought at a price. Therefore honor God with your bodies. (NIV)

According to U.S. Environmental Protection Agency’s (EPA’s) 2005 *Guidelines for Carcinogen Risk Assessment* https://cfpub.epa.gov/ncea/iris/iris_documents/documents/toxreviews/1025.pdf (last visited 9/30/2021)

Ethylene Oxide (EtO) is carcinogenic to humans. There is clear evidence that EtO is genotoxic and evidence supports a mutagenic mode of action, key precursor events are anticipated to occur in humans and progress to tumors, including evidence of chromosome damage in humans exposed to EtO.

This is important to note, because medical equipment is sterilized by a direct oxidation process which is predominantly EtO, exposure in the chlorohydrin process, this EtO is mixed with other chemicals.

The same EPA document states some of the cancers have a 15-year delay, however the multiplication of morphed DNA results in multiple cancerous states.

The nasal swabs used for testing COVID-19 are commonly referred to as "Ethylene Oxide Swabs".

According to the NIH, The Residual levels of EtO recovered from cotton swabs have adverse effects on DNA profiles. <https://pubmed.ncbi.nlm.nih.gov/28063580/> (last visited 9/29/2021)

As a Christian protecting my body from defilement according to God's law, I invoke my religious right to refuse any testing which would alter my DNA and has been proven to cause cancer. I find testing with carcinogens and chemical waste to be in direct conflict with my Christian duty to protect my body as the temple of the Holy Spirit.

I am therefore asking for an exemption from the COVID testing directive so that my conscience can remain clear before God. Thank you for your consideration.

Sherry Detwiler, RHIA

s/ Sherry Detwiler, RHIA

OFFICE OF THE DIRECTOR
Office of the State Public Health
Director

Oregon
Health
Authority

**COVID-19 ~~Vaccine~~ Medical Testing Medical
Exception Request Form**

I am requesting an exception from the COVID-19 vaccination requirement on the basis of a diagnosed physical or mental condition that limits my ability to receive the COVID-19 vaccination, as certified by my medical provider below.

Individual's name: Sherry Detwiler	Date of birth: 1-3-1976
Phone number: 541.631.1532	
Signature: s/ Sherry Detwiler, RHIA	Date: 9-29-21
Employer/Organization: Mid Columbia Medical Center	Job Title/Position: Privacy Officer Dir. of Health Info

Please note that if your exception request is approved, you may be required by your employer or other responsible party to take additional steps to protect you and others from contracting and spreading COVID-19. Workplaces are not required to provide this exception accommodation if doing so would pose a direct threat to the excepted individual or others in the workplace or would create an undue hardship.

Statement from Medical Provider

Your patient, named above, has requested an exception to the COVID-19 ~~vaccination~~ medical

testing requirement due to a medical condition. Please provide the information below.

Please check an option below and complete related questions:

- ☒ The patient should not receive the COVID-19 ~~vaccination~~ medical testing due to a medical condition.

What is the medical condition that prevents them from receiving the COVID-9 ~~vaccination~~? medical testing? Sherry has a tendency to often have nosebleeds. She also has chronic sinusitis. This would create a negative environment for her nosebleeds and sinusitis.

☒ Yes ☐ No Is the medical condition permanent?

☐ Yes ☐ No Is the medical condition temporary?

If yes, what is the expected duration?

Please describe how this medical condition impacts their ability to receive the COVID-19 ~~vaccination~~. Medical Testing. Not having medical testing would lessen nosebleeds and chronic sinusitis, keeping Sherry healthier and more focused on her job.

- ☐ The patient may not receive a certain type of COVID-19 vaccination. The patient may receive a vaccination manufactured by _____.
- ☐ The patient may receive a COVID-19 vaccination.

I certify the above information to be true and accurate.

Printed name of medical provider: Ronda Mattley, D.C.	Date: 9-29-21
Signature of medical provider: s/ Ronda Mattley, D.C.	Work address: 1064 13 th Ave S. Nampa ID 83651
	Work telephone number: 208.461.4227

Document accessibility: For individuals with disabilities or individuals who speak a language other than English, OHA can provide information in alternate formats such as translations, large print, or braille. Contact the Health Information Center at 1-971-673-2411, 711 TTY or COVID19.LanguageAccess@dhsosha.state.or.us.

9/30/2021

Sherry Detwiler
3454 Royal Crest Dr. E.
The Dalles, OR 97058

Mid-Columbia Medical Center
1700 E. 19th St.
The Dalles, OR 97058

Dear Dale, Cheri, and Dennis:

I understand that “Employers of healthcare providers or healthcare staff, contractors and responsible parties who grant an exception to the vaccination requirement should take reasonable steps to ensure that unvaccinated healthcare providers and healthcare staff are protected from contracting and spreading COVID-19.” Per page 6 of the Temporary Administrative Order PH38-2021, Chapter 333 OHA, Public Health Division, 8/25/2021.

Based on my religious belief, I am requesting reasonable accommodation under ADA, to perform my duties as Director of Health Information/Privacy Officer from a remote location, 100% of the time; during this time of vaccine mandate and/or testing mandate. Several employees of Mid-Columbia Medical Center (MCMC) have already been offered, taken the opportunity and had proven success; thus this accommodation does not create undue hardship for the employer.

Concerns addressed:

I can attend meetings via Zoom, as the precedent has been set for the last year. Even before COVID was declared a pandemic, we had and still have,

teleconference lines for those who could not/did not attend meetings in person.

Hotspots can be in place, in case of internet service being dropped.

Hours can be adjusted for power outages.

Many successful Health Information Management (HIM) teams run the entire department remotely, regular check-ins with staff, clear lines of communication will help the department be connected. This has been the direction of HIM for over sixteen years,

This accommodation is a reasonable step to ensure the unvaccinated staff are protected from contracting and spreading Covid-19 as required by OAR 333-019-1010.

Sincerely,

s/ Sherry Detwiler, RHIA

Sherry Detwiler, RHIA

From: Cheri McCall <CheriM@mcmc.net>

To: Dale Lepper <DaleL@mcmc.net>, Sherry Detwiler
<SherryD@mcmc.net>

Cc:

Bcc:

Date: Tue, 19 Oct 2021 15:22:28 -0700

Subject: Re: reasonable accommodation

Sherry,

I am sorry this has taken some time to respond to. I knew that you had applied for a medical exception based on one of the two conditions of your approved religious exceptions, referring to the "weekly antigen testing". I have been made aware that the medical exception has been denied. I do not know the details of that denial and you would need to speak with Employee Health regarding the details.

I can however confirm, you still have an approved religious exception, but based on the two conditions of weekly antigen testing and wearing of the PPE at all times based on the state mandate. You will need to reach out to Connie Jubitz to arrange the weekly antigen testing date and time. MCMC does not want to lose any staff due to this mandate and have worked hard to meet both the mandate and staff needs.

However, in my discussion with your supervisor Dale Lepper on the request of working 100% remote, he is not comfortable approving that request as it is a hardship on your department and team. We have had increased complaints and dissatisfaction from your team since you started to work remote. Dale had approved of your working intermittently remote,

however, it has become clear you worked beyond what was agreed to and your team has struggled.

Your team has lost confidence in your ability to lead and guide the team and question some of your recent decision making. Dale can go into detail of these areas for specifics.

- Recent hire. We became aware of your selecting an acquaintance from church with no HIM experience over an experienced current staff within HIM. You did not set up any interviewing process and were actually counseled by HR recruiter that this person did not have any experience and you had an internal candidate.
- Your team has shared their “observation” of your ill treatment of another co-worker. Also not responding to this co-worker on critical request for guidance on critical needs to the organization. The need for support is at the director level.
- Response to your team is often delayed or null
- Asking your team to call you on your “cell phone” leaving them with the perception that you are not working from home.

Although your perception is you are able to successfully work remote and support your team, the consistent feedback is that the department lacks support, structure and guidance during a time when leaders need to be focused on their teams and supporting them through the challenges facing healthcare.

Therefore, we are placing you on unpaid leave as outlined in the attached document, and you will not

have access to your PTO or EIH during this time. We will move you to an unpaid leave status through October 30, 2021 or until you fall into compliance with the mandate or approved religious exception. If you choose not to meet the expectations, your employment with MCMC will end on October 31, 2021.

We will be sending a letter to you via the mail outlining the above process. I have also attached the No Action document you received last week.

Please let me know if you have any further questions.

Respectfully,

Cheri

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EXHIBIT “E”

**U.S. EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION**

Seattle Field Office
909 First Avenue, Suite
400
Seattle, WA 98104
(206) 576-3000
Website: www.eeoc.gov

[US EEOC Logo]

DETERMINATION AND NOTICE OF RIGHTS

(This Notice replaces EEOC FORMS 161 & 161-A)

Issued On: 06/06/2022

To: Sherry Detwiler
3454 Royal Crest Dr. E.
THE DALLES, OR 97058

Charge No: 551-2022-00489

EEOC Representative and email: Bryne Moore
Investigator
bryne.moore@eeoc.gov

DETERMINATION OF CHARGE

The EEOC issues the following determination: The EEOC will not proceed further with its investigation and makes no determination about whether further investigation would establish violations of the statute. This does not mean the claims have no merit. This determination does not certify that the respondent is in compliance with the statutes. The EEOC makes no finding as to the merits of any other issues that might be construed as having been raised by this charge.

NOTICE OF YOUR RIGHT TO SUE

This is official notice from the EEOC of the dismissal of your charge and of your right to sue. If you choose to file a lawsuit against the respondent(s) on this charge under federal law in federal or state court, **your lawsuit must be filed WITHIN 90 DAYS of your receipt of this notice.** Receipt generally occurs on the date that you (or your representative) view this document. You should keep a record of the date you received this notice. Your right to sue based on this charge will be lost if you do not file a lawsuit in court within 90 days. (The time limit for filing a lawsuit based on a claim under state law may be different.)

If you file a lawsuit based on this charge, please sign-in to the EEOC Public Portal and upload the court complaint to charge 551-2022-00489.

On Behalf of the Commission:

June 6, 2022

Date

s/ Bryne Moore

Elizabeth Cannon

Director

For

47a

Cc:

Caroline Janzen
Janzen Legal Services, LLC - Rugged Law
caroline@ruggedlaw.com

James M Barrett
Ogletree Deakins Law Firm
james.barrett@ogletreedeakins.com

Florence Z Mao
OGLETREE, DEAKINS, NASH, SMOAK &
STWEART, P.C.
florence.mao@ogletree.com

Please retain this notice for your records.

Enclosure with EEOC Notice of Closure and Rights
(01/22)

**INFORMATION RELATED TO FILING SUIT
UNDER THE LAWS ENFORCED BY THE EEOC**

*(This information relates to filing suit in Federal or State court **under Federal law**. If you also plan to sue claiming violations of State law, please be aware that time limits may be shorter and other provisions of State law may be different than those described below.)*

**IMPORTANT TIME LIMITS — 90 DAYS TO FILE A
LAWSUIT**

If you choose to file a lawsuit against the respondent(s) named in the charge of discrimination, you must file a complaint in court **within 90 days of the date you receive this Notice**. Receipt generally means the date when you (or your representative) opened this email or mail. You should **keep a record of the date you received this notice**. Once this 90-day period has passed, your right to sue based on the charge referred to in this Notice will be lost. If you intend to consult an attorney, you should do so promptly. Give your attorney a copy of this Notice, and the record of your receiving it (email or envelope).

If your lawsuit includes a claim under the Equal Pay Act (EPA), you must file your complaint in court within 2 years (3 years for willful violations) of the date you did not receive equal pay. This time limit for filing an EPA lawsuit is separate from the 90-day filing period under Title VII, the ADA, GINA or the ADEA referred to above. Therefore, if you also plan to sue under Title VII, the ADA, GINA or the ADEA, in addition to suing on the EPA claim, your lawsuit must

be filed within 90 days of this Notice **and** within the 2- or 3-year EPA period.

Your lawsuit may be filed in U.S. District Court or a State court of competent jurisdiction. Whether you file in Federal or State court is a matter for you to decide after talking to your attorney. You must file a “complaint” that contains a short statement of the facts of your case which shows that you are entitled to relief. Filing this Notice is not enough. For more information about filing a lawsuit, go to <https://www.eeoc.gov/employees/lawsuit.cfm>.

ATTORNEY REPRESENTATION

For information about locating an attorney to represent you, go to: <https://www.eeoc.gov/employees/lawsuit.cfm>.

In very limited circumstances, a U.S. District Court may appoint an attorney to represent individuals who demonstrate that they are financially unable to afford an attorney.

HOW TO REQUEST YOUR CHARGE FILE AND 90-DAY TIME LIMIT FOR REQUESTS

There are two ways to request a charge file: 1) a FOIA Request or 2) a Section 83 request. You may request your charge file under either or both procedures. EEOC can generally respond to Section 83 requests more promptly than FOIA requests.

Since a lawsuit must be filed within 90 days of this notice, please submit your request for the charge file promptly to allow sufficient time for EEOC to respond and for your review. Submit a signed written request stating it is a “FOIA Request” or a “Section 83 Request” for Charge Number 551-2022-00489 to the

District Director at Nancy Sienko, 450 Golden Gate Avenue 5 West PO Box 36025
San Francisco, CA 94102.

You can also make a FOIA request online at <https://eeoc.arkcase.com/foia/portal/login>.

You may request the charge file up to 90 days after receiving this Notice of Right to Sue. After the 90 days have passed, you may request the charge file only if you have filed a lawsuit in court and provide a copy of the court complaint to EEOC.

For more information on submitting FOIA Requests and Section 83 Requests, go to: <https://www.eeoc.gov/eeoc/foia/index.cfm>.

NOTICE OF RIGHTS UNDER THE ADA AMENDMENTS ACT OF 2008 (ADAAA)

The ADA was amended, effective January 1, 2009, to broaden the definitions of disability to make it easier for individuals to be covered under the ADA/ADAAA. A disability is still defined as (1) a physical or mental impairment that substantially limits one or more major life activities (actual disability); (2) a record of a substantially limiting impairment; or (3) being regarded as having a disability. *However, these terms are redefined, and it is easier to be covered under the new law.*

If you plan to retain an attorney to assist you with your ADA claim, we recommend that you share this information with your attorney and suggest that he or she consult the amended regulations and appendix, and other ADA related publications, available at: http://www.eeoc.gov/laws/types/disability_regulations.cfm.

“Actual” disability or a “record of” a disability

If you are pursuing a failure to accommodate claim you must meet the standards for either “actual” or “record of a disability:

- ✓ **The limitations from the impairment no longer must be severe or significant** for the impairment to be considered substantially limiting.
- ✓ In addition to activities such as performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, thinking, concentrating, reading, bending, and communicating (more examples at 29 C.F.R. § 1630.2(i)), **“major life activities” now include the operation of major bodily functions**, such as: functions of the immune system, special sense organs and skin; normal cell growth; and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions; or the operation of an individual organ within a body system.
- ✓ **Only one** major life activity need be substantially limited.
- ✓ Except for ordinary eyeglasses or contact lenses, the beneficial effects of **“mitigating measures”** (e.g., hearing aid, prosthesis, medication, therapy, behavioral modifications) **are not considered** in determining if the impairment substantially limits a major life activity.

- ✓ An impairment that is **“episodic”** (e.g., epilepsy, depression, multiple sclerosis) or **“in remission”** (e.g., cancer) is a disability if it **would be substantially limiting when active.**
- ✓ An impairment **may be substantially limiting even though** it lasts or is expected to last **fewer than six months.**

“Regarded as” coverage

An individual can meet the definition of disability if an **employment action was taken because of an actual or perceived impairment** (e.g., refusal to hire, demotion, placement on involuntary leave, termination, exclusion for failure to meet a qualification standard, harassment, or denial of any other term, condition, or privilege of employment).

- ✓ “Regarded as” coverage under the ADAAA no longer requires that an impairment be substantially limiting, or that the employer perceives the impairment to be substantially limiting.
- ✓ The employer has a defense against a “regarded as” claim only when the impairment at issue is objectively **both** transitory (lasting or expected to last six months or less) **and** minor.
- ✓ A person is not able to bring a failure to accommodate claim **if** the individual is covered only under the “regarded as” definition of “disability”.

***Note:** Although the amended ADA states that the definition of disability “shall be construed broadly” and “should not demand extensive analysis,” some*

courts require specificity in the complaint explaining how an impairment substantially limits a major life activity or what facts indicate the challenged employment action was because of the impairment. Beyond the initial pleading stage, some courts will require specific evidence to establish disability. For more information, consult the amended regulations and appendix, as well as explanatory publications, available at http://www.eeoc.gov/laws/types/disability_regulations.cfm.

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EXHIBIT “F”

Date Calculator: Add to or Subtract From a Date

Enter a start date and add or subtract any number of days, months, or years.

Count Days **Add Days** Workdays Add Workdays Weekday Week Number

Advertising

From **Monday, June 6, 2022**

Added 90 days

Result: Sunday, September 4, 2022

Calendar showing period from June 6, 2022 to September 4, 2022

June 2022 24 days added							July 2022 31 days added							August 2022 31 days added							September 2022 4 days added						
Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat
			1	2	3	4						1	2		1	2	3	4	5	6					1	2	3
5	6	7	8	9	10	11	3	4	5	6	7	8	9	7	8	9	10	11	12	13	4	5	6	7	8	9	10
12	13	14	15	16	17	18	10	11	12	13	14	15	16	14	15	16	17	18	19	20	11	12	13	14	15	16	17
19	20	21	22	23	24	25	17	18	19	20	21	22	23	21	22	23	24	25	26	27	18	19	20	21	22	23	24
26	27	28	29	30			24	25	26	27	28	29	30	28	29	30	31				25	26	27	28	29	30	
							31																				

= Start date (Jun 6, 2022) = Final result date (Sep 4, 2022)

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Time & Date Calculator App for iOS

See how long remains before a
deadline or exactly when those 30
days are up.



© Time and Date AS 1995–2022

APPENDIX B

Ray D. Hacke, OSB #173647
PACIFIC JUSTICE INSTITUTE
317 Court St. NE, Ste. 202
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Attorneys for Plaintiff
SHERRY H. DETWILER

UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

SHERRY H.
DETWILER,

Plaintiff,

v.
MID-COLUMBIA
MEDICAL CENTER, A
Public Benefit
Corporation, CHERI
McCALL, An Individual,
and DOES 1 THROUGH
50, Inclusive,

Defendants.

Case No.: 3-22-CV-
01306

**FIRST AMENDED
COMPLAINT FOR
DAMAGES FOR
RELIGIOUS
DISCRIMINATION IN
VIOLATION OF
TITLE VII [42 U.S.C. §
2000e-2] AND ORS
659A.030(1)(a), AND
AIDING AND
ABETTING
RELIGIOUS**

DISCRIMINATION [ORS 659A.030(1)(g)] JURY TRIAL REQUESTED

Plaintiff SHERRY H. DETWILER hereby alleges as follows:

PARTIES

1. Plaintiff is, and at all times herein was, a former employee of Defendant MID-COLUMBIA MEDICAL CENTER (“MCMC” or the “Hospital”) and a practicing Christian who was placed on unpaid administrative leave on October 19, 2021 and fired on December 20, 2021 for refusing, on religious grounds, to receive a COVID-19 vaccine or, in the alternative, submit to weekly nasal swab tests to determine whether she had been infected with COVID-19.

2. Defendant MCMC is, and at all times herein was, a non-profit public benefit corporation that operates a hospital in The Dalles in the County of Wasco, Oregon and an employer within the definition of 42 U.S.C. § 2000e(b).

3. Defendant CHERI McCALL (“McCALL”) is, and at all times herein was, MCMC’s Chief Human Resources Officer, the person primarily responsible for making hiring, firing, and other personnel decisions for the Hospital, including ensuring compliance with federal and state law concerning accommodations of employees’ sincerely held religious beliefs.

4. The true names and capacities of Defendants DOES 1 THROUGH 50 (collectively the “DOES”), inclusive, are unknown to Plaintiff, who therefore sues said Defendants under such fictitious names. Each

Defendant designated herein as one of the DOES is legally responsible for the events and happenings herein referred to and proximately caused injuries and damages to Plaintiff thereby, as herein alleged. Plaintiff will seek leave of this Court to amend this Complaint to show the DOES' names and capacities once they have been ascertained.

JURISDICTION

5. Plaintiff refers to and hereby incorporates the foregoing paragraphs as though fully set forth herein.

6. This Court has jurisdiction over the Defendants pursuant to 28 U.S.C. §1331 because Plaintiffs action arises under the laws of the United States.

VENUE

7. Plaintiff refers to and hereby incorporates the foregoing paragraphs as though fully set forth herein.

8. Venue is proper in the Court's Portland Division because the events giving rise to this Complaint occurred in the County of Wasco and all of the agents, employees, or other persons working for, or in concert with, Defendant MCMC with regard to the events giving rise to this case are located in, employed in, or residents of the County of Wasco.

GENERAL ALLEGATIONS

9. Plaintiff refers to and hereby incorporates the foregoing paragraphs as though fully set forth herein.

10. In August 2021, at the height of the COVID-19 pandemic (the "Pandemic"), Oregon Governor Kate Brown ("Gov. Brown") sought to limit the spread of the potentially deadly coronavirus in the state's healthcare facilities by issuing an executive order (the "Mandate") requiring healthcare workers statewide to

be vaccinated against COVID-19 by October 18, 2021. *See* Or. Admin. R. 333019-1010. However, Gov. Brown's Mandate allowed healthcare workers to seek, and the healthcare providers who employed them to grant, exemptions from the vaccination requirement. *Id.*, subsections (3)-(4).

11. Plaintiff worked for MCMC as a Privacy Officer and the Director of Health Information ("DHIM") from September 14, 2020 through December 20, 2021. Her job, an executive-level position, was purely administrative and did not involve working with patients, directly or otherwise.

12. Plaintiff was responsible for ensuring MCMC's compliance with federal and state privacy laws concerning patients' protected health information, including the federal Health Insurance Portability Accountability Act ("HIPAA") of 1996. In addition to overseeing a staff of nine, Plaintiff's duties included:

- a. Managing the operations of MCMC's Health Information Management department;
- b. Maintaining patient records pursuant to HIPAA regulations;
- c. Documenting, investigating, and responding to patients' complaints concerning violations of HIPAA as well as MCMC's own privacy policies and procedures;
- d. Serving on MCMC's committees concerning forms and policies;
- e. Training employees and volunteers to ensure the security of patients' protected health information;
- f. Serving as a contact for, and cooperating with, government authorities and privacy attorneys

investigating breaches of MCMC's patient health information systems, including providing access to records when necessary; and

- g. Getting MCMC's health record system back online if the system was failing to operate or taking steps to ensure greater protection of health records if the system was compromised.

13. Plaintiff could perform most, if not all, of these duties remotely, via either telephone or her MCMC-issued laptop, and starting in November 2020 – two months after she was hired at MCMC – that is just what she did. Most of her staff and committee meetings, in fact, took place via videoconference.

14. Plaintiff had a private office in the Health Information Management department at MCMC's facility in The Dalles. When working in her office during the Pandemic, Plaintiff kept her door closed and had minimal contact with other employees. Plaintiff rarely came out of the office except to use the bathroom or obtain food or supplies. When interacting with employees, Plaintiff followed all Pandemic-related protocols, including wearing a mask and social distancing.

15. Starting in November 2020, Plaintiff worked remotely for stretches of varying lengths, none longer than ten days. MCMC issued her equipment and a virtual private network that included Internet access for precisely that purpose.

16. Even when she was on the Hospital's premises, much of her work was done from her office via her MCMC-issued laptop, including conducting meetings.

17. The Hospital also permitted at least two members of Plaintiff's staff to work remotely and

offered that privilege to at least three other staffers under Plaintiff's supervision.

18. Plaintiff is also a practicing Christian who believes her body is a "temple of the Holy Spirit" [1 Corinthians 6:19-20], which she is not to defile by taking in substances that the Bible explicitly condemns or which could potentially harm her body.

19. When researching the COVID-19 vaccines currently available in the United States when Gov. Brown issued her Mandate, Plaintiff discovered that the vaccines were created from cell lines taken from aborted fetuses. As a Christian, Plaintiff opposes abortion on religious grounds [*see, e.g.,* Proverbs 6:16-17 (concerning hands that shed innocent blood being an "abomination" to God), Jeremiah 1:5 (concerning the idea that life begins in the womb), and Psalm 127:3 (concerning children being a blessing from the Lord)]. Plaintiff's research into the vaccines also uncovered information from the website for Center for Disease Control and Prevention's ("CDC") indicating that the vaccines contained neurotoxins, attenuated viruses, carcinogens (i.e., cancer-causing agents), chemical wastes, and other potentially harmful substances.

20. After much prayer and consideration, Plaintiff determined that she could not, in good conscience in accordance with her faith's principles, defile her body by having injected into it a vaccine derived from the cells of babies whose lives were taken via abortion. Accordingly, on September 28, 2021, Plaintiff sought from MCMC a religious exemption from Gov. Brown's Mandate. A copy of Plaintiff's religious exemption request is attached hereto as **Exhibit "A."**

21. MCMC approved Plaintiffs religious exemption request on October 1, 2021. A copy of MCMC's approval letter is attached hereto as **Exhibit "B."**

22. Among the accommodations that MCMC agreed to provide to Plaintiff were that Plaintiff had to (1) wear personal protective equipment ("PPE") - specifically, an N95 mask - at all times while in the office, and (2) submit to weekly antigen testing. *See* Ex. "B."

23. As of October 1, 2021, two types of tests for determining COVID-19 infections were available in the United States: One involved spitting saliva into a tube and submitting it to a lab for analysis. The other involved inserting into one's nose a cotton swab dipped in ethylene oxide ("EtO"). The person being tested was to press the EtO-dipped swab against the skin inside each of his or her nostrils multiple times, swirl the swab around in a circular motion to collect mucus from the person's nasal tissues, then submit the swab to a lab for testing.

24. Plaintiffs research into the nasal swab test uncovered information from multiple sources indicating that EtO is a carcinogenic substance.

25. Not wanting to take EtO into her body and run the risk of suffering from cancer, Plaintiff again invoked her Christian beliefs concerning her body being a temple of God, requesting an alternative accommodation from MCMC. Plaintiffs request for an exemption from MCMC's COVID testing requirement is attached hereto as **Exhibit "C."**

26. As an alternative to nasal swab testing, Plaintiff requested that she be allowed to submit to saliva testing through Oregon Health & Science

University. Plaintiff also asked that she be allowed to work remotely full-time for the duration of Gov. Brown's Mandate. Plaintiff believed working remotely would be reasonable because she could attend and conduct meetings via videoconference - as she had frequently done since November 2020 - and most of her duties did not require her presence at MCMC's facility.

27. While the Hospital was "considering" Plaintiffs proposed accommodations, the deadline for compliance with Gov. Brown's Mandate - October 18, 2021 - came and went. As a result, MCMC placed Plaintiff on unpaid leave on October 19, 2021.

28. The same day MCMC placed her on unpaid leave, Plaintiff received an e-mail from McCALL stating that while MCMC had granted Plaintiffs request for a religious exemption from Gov. Brown's Mandate, the Hospital was denying Plaintiffs requested accommodations of saliva testing and full-time remote work. With regard to saliva testing, MCMC deemed it "impractical" because test results would not be available for 24 to 36 hours, and the Hospital claimed that it needed Plaintiff to be available on occasion for same-day reporting.

29. As for full-time remote work, McCALL asserted that working remotely even part-time, as Plaintiff had done for the majority of her tenure at the Hospital, had created "a hardship on your department and team." See Attached **Exhibit "D"** [a copy of McCALL's e-mail to Plaintiff dated October 19, 2021]. McCALL asserted that although the Hospital "had approved of [Plaintiff] working intermittently by remote ... it has become clear that [she] worked beyond what was agreed to and your team has struggled." *Id.* McCALL furthermore

asserted that the Hospital had received “increased complaints and dissatisfaction from your team since you started to work remote [sic],” claiming that Plaintiffs team “has struggled” due to her not being on site at MCMC’s facility and “has lost confidence in [her] ability to lead and guide the team and question [sic] some of your decision making.” *Id.*

30. On information and belief, Plaintiff disputes the veracity of the Hospital’s assertions set forth in the preceding paragraph.

31. The Hospital also accused Plaintiff of the following [*see* Ex. “D”] :

- a. Hiring to work in her department someone from her church who was not qualified for the position instead of a qualified internal candidate;
- b. Treating a worker under her supervision poorly, including failing to provide the worker with guidance and support necessary to carry out the worker’s duties;
- c. Failing to provide timely responses, and in some cases any responses, to employees’ requests for assistance; and
- d. Asking employees to call Plaintiff on her cell phone, giving them the impression that she was not actually working from home.

32. On information and belief, Plaintiff not only questions the veracity of the accusations set forth in the preceding paragraph but asserts that MCMC used them as a pretext for firing her on the basis of her religion.

33. McCALL concluded her e-mail to Plaintiff by asserting that Plaintiff would be on leave until

October 30, 2021, by which time she needed to do one of two things: Comply with Gov. Brown's Mandate by receiving a COVID-19 vaccine, or comply with the terms of the religious exemption that MCMC had granted to her. If she did neither, MCMC would terminate Plaintiffs employment.

34. Nine days before MCMC's compliance deadline, on October 21, 2021, the Hospital had an extra key made for the door to Plaintiffs private office. Before then, Plaintiff had the only key and was the only person who could access the private office. MCMC made the extra key without providing any notice to Plaintiff or giving her the opportunity to secure or remove personal items or documents, electronically stored information, or other items that, in her capacity as the Hospital's Privacy Officer, Plaintiff had a duty to keep under tight control.

35. In making it possible for persons other than Plaintiff to access the private office and thereby obtain access to documents, electronically stored information, and other items Plaintiff had a duty to keep under tight control, the Hospital placed Plaintiff in a very vulnerable position given that she was on unpaid leave at the time.

36. Also on October 21, 2021, without notice, the Hospital locked Plaintiff out of access to her MCMC-issued laptop, making it impossible for Plaintiff to communicate via e-mail with her supervisor, her team members, and other Hospital staff. Coupled with the making of the additional key to her office, the decision to lock Plaintiff out of her MCMC-issued computer at best implies, and at worst outright indicates, that the

Hospital had already decided to terminate Plaintiff's employment regardless of what decision she made.

37. Plaintiff neither received a COVID-19 vaccine - which she could not, in good conscience, do in accordance with her sincerely held religious beliefs - nor agreed to the terms of the religious exemption granted her by the Hospital, which she deemed unreasonable. Accordingly, Plaintiff was ultimately fired.

38. Before she was fired, but while still on unpaid leave, Plaintiff filed a charge of discrimination with the Equal Employment Opportunity Commission ("EEOC") on November 2, 2021. Plaintiff also attempted to resolve her dispute with her employer through MCMC's internal grievance process. The Hospital thus did not terminate Plaintiff's employment immediately, allowing her to remain on unpaid leave until the internal grievance process was complete.

39. In response to Plaintiff's grievance, MCMC reiterated to Plaintiff on or about December 17, 2021 that the Hospital could not accommodate her requests that she be allowed to submit to saliva testing or that she be allowed to work 100% remotely. The Hospital also gave Plaintiff until December 20, 2021 to agree to the terms of the religious exemption MCMC had granted - i.e., nasal swab testing and wearing a mask inside the office - or accept reassignment to an open position.

40. When Plaintiff did neither, MCMC terminated her employment.

41. After firing Plaintiff, MCMC hired an interim DHIM. Not only did MCMC allow the interim DHIM

- who is still employed at MCMC - to work part-time, the Hospital allowed the new DHIM to do so 100% remotely, thereby undermining the Hospital's position that it would impose an undue hardship on the Hospital, and on staff working under Plaintiff, to allow Plaintiff to do likewise.

42. Plaintiff has endured mental suffering and emotional distress due to Defendant MCMC's unlawful discrimination against her. This is especially true given that Plaintiff was the sole breadwinner for her household before the Hospital fired her. Plaintiff has struggled to make her mortgage and utility payments, sought the assistance of food banks to ensure that her family is fed – she's even had to resort to recycling cans and bottles to generate money to buy groceries – and relied on the assistance of her church family to get by.

43. Plaintiff has also suffered interference with normal and usual activities, as the financial woes caused by MCMC's discriminatory decision to fire her forced Plaintiff to pull her children out of the Christian school they were attending - something that was extremely important to Plaintiff, as she wishes for her children to be educated in accordance with her Christian values. Her children were active in sports, band, and theater at that school, and had made friends there.

44. The EEOC issued a "right to sue" letter to Plaintiff on June 6, 2022. A copy of the letter is attached hereto as **Exhibit "E."**

45. Pursuant to the "right to sue" letter, Plaintiff had ninety (90) days to file a lawsuit against her former employer, MCMC. *See* Ex. "E." As the 90-day

filing period is set to expire on September 4, 2022, the herein lawsuit is timely filed. *See* Attached **Exhibit “F”** [a printout from the website TimeandDate.com showing the calculation of the 90-day filing deadline].

FIRST CAUSE OF ACTION

VIOLATION OF TITLE VII [42 U.S.C. § 2000E-2]
AGAINST DEFENDANT MCMC

46. Plaintiff refers to and hereby incorporates the foregoing paragraphs as though fully set forth herein.

47. Title VII of the 1964 Civil Rights Act prohibits employers from discriminating on the basis of religion. 42 U.S.C. § 2000e-2(a)(1).

48. For purposes of Title VII, “[t]he term ‘employer’ means a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year ...” 42 U.S.C. § 2000e(b).

49. Defendant MCMC qualifies as an employer under Title VII.

50. The term “religion,” for purposes of Title VII, “includes all aspects of religious observance and practice, as well as belief...” 42 U.S.C. § 2000e(j).

51. As a practicing Christian, Plaintiff belongs to a class of persons protected under Title VII. 42 U.S.C. § 2000e-2(a)(1).

52. Plaintiff has a bona fide religious belief that her body is a temple of the Holy Spirit and, in accordance with that belief, cannot defile her body by taking into her body (1) a vaccine derived from the cells of babies whose lives were taken via abortion or whose manufacturer used cells from aborted fetuses in the

testing and development of the vaccine, or (2) a substance that could potentially harm her body.

53. Plaintiffs bona fide religious belief against taking vaccines whose manufacturers used cells from aborted babies in researching and developing the vaccines conflicted with her employment-related duty to receive a COVID-19 vaccine in accordance with Gov. Brown's Mandate, as the COVID-19 vaccines available on the market in 2021 were all made by manufacturers who used cells from aborted fetuses in the vaccines' testing and development.

54. Plaintiffs bona fide religious belief against putting potentially harmful substances into her body conflicted with her employment-related duty, in lieu of taking a COVID-19 vaccine, to submit to nasal swab testing, as doing so would have required Plaintiff to take into her body the potentially cancer-causing substance of EtO.

55. Plaintiff informed her employer, MCMC, of the conflicts between her religious beliefs and her employment-related duties. *See* Exs. "A" and "C."

56. Defendant MCMC subjected Plaintiff to discriminatory treatment by demanding, under threat of placing her on unpaid leave and ultimately terminating her employment, that Plaintiff either receive a COVID-19 vaccine or, in the alternative, submit to nasal swab testing as a condition of receiving a religious exemption from Gov. Brown's Mandate.

57. Although Defendant MCMC approved Plaintiffs request for a religious exemption from Gov. Brown's Mandate, the accommodation that MCMC offered – nasal swab testing – was unreasonable in light of

Plaintiff's sincerely held religious belief that she cannot defile her body by taking a harmful substance into it. Plaintiff informed MCMC multiple times that the solution into which nasal swabs are inserted prior to placement against the skin inside one's nostrils contains a potentially cancer-causing substance, EtO, and yet MCMC repeatedly insisted that Plaintiff submit to such testing in the alternative to being unvaccinated.

58. Plaintiff proposed reasonable alternatives that would not have required her to put harmful or biblically forbidden substances inside her body - namely, saliva testing and working remotely - but Defendant MCMC refused to agree to those alternatives. Accordingly, the Hospital did not make good-faith efforts to reasonably accommodate Plaintiff's bona fide religious beliefs.

59. Defendant MCMC would have incurred no undue hardship by accommodating Plaintiff's religious beliefs in the manner she had proposed: Starting in November 2020, Plaintiff worked remotely for stretches of varying lengths, both from inside and outside her private office - in fact, MCMC issued her equipment and a virtual private network that included Internet access for precisely that purpose. At least two members of Plaintiff's staff were also permitted by MCMC to work remotely, and MCMC offered that privilege to at least three of Plaintiff's other staffers.

60. Based on the foregoing, Defendant MCMC has no legitimate, nondiscriminatory reason for its actions.

61. The reasons Defendant MCMC gave for denying Plaintiff her requested accommodations, and

ultimately firing her, are pretextual: The fact that the DHIM whom the Hospital hired to replace Plaintiff was allowed to work 100 percent remotely – an indicator that allowing a director-level employee to work from home did not, in fact, cause hardship to employees working under the DHIM or cause the MCMC’s Health Information Management team to struggle, as the Hospital asserts.

62. Religious discrimination is truly what motivated Defendant MCMC to get rid of Plaintiff: Although the Hospital did grant Plaintiff a religious exemption from receiving a COVID-19 vaccine, the Hospital insisted that Plaintiff submit to weekly nasal swab testing as a condition of that exemption, completely ignoring that Plaintiffs Christian faith prohibits her from defiling her body by taking harmful substances into it. Plaintiff provided the Hospital with evidence from multiple sources that EtO, the chemical in which nasal swabs are dipped prior to being swirled around inside one’s nostrils, is a cancer-causing substance. The Hospital’s insistence that Plaintiff submit to nasal swab testing compelled her to choose between violating her sincerely held religious beliefs and remaining employed – a choice that Title VII aims to protect employees from having to make.

63. Based on the foregoing, Defendant MCMC has discriminated against Plaintiff in violation of Title VII.

SECOND CAUSE OF ACTION
VIOLATION OF ORS 659A.030(1)(A)
AGAINST DEFENDANT MCMC

64. Plaintiff refers to and hereby incorporates the foregoing paragraphs as though fully set forth herein.

65. Like Title VII, ORS 659A.030(l)(a) prohibits employers from discharging individuals from employment on the basis of the individuals' religion, as Defendant MCMC has done here.

66. Because Oregon's state law prohibiting employers from discriminating on the basis of religion is modeled after Title VII, and because the analysis for religious discrimination claims under both statutes is identical [*see Hedum v. Starbucks Corp.*, 546 F. Supp. 2d 1017, 1022 (D. Or. 2008)], Plaintiff declines to restate the facts as set forth in their first cause of action, as those facts are already incorporated as though fully set forth herein via the preceding paragraph.

67. Under 42 U.S.C. § 2000e-7, nothing in 42 U.S.C. § 1981a(b)(3), which caps the amount of non-pecuniary and punitive damages that can be awarded to Plaintiffs, "shall be deemed to exempt or relieve any person from liability, duty, penalty, or punishment provided by any present or future law of any State[.]" In other words, an Oregon jury is free to exceed a federal dollar limit in accordance with Oregon law.

68. Under Oregon law, a jury may award up to \$500,000 in noneconomic damages. *See* ORS 31.710(1). Oregon law defines "noneconomic damages" to include "subjective, nonmonetary losses, including but not limited to ... ***mental suffering*** [and] ***emotional distress*** ... and interference with normal and usual activities apart from gainful employment." ORS 31.705(2)(b) (emphasis added).

69. Plaintiff has endured mental suffering and emotional distress due to Defendant MCMC's unlawful discrimination against her. This is

especially true given that Plaintiff was the sole breadwinner for her household before the Hospital fired her. Plaintiff has struggled to make her mortgage payments, sought the assistance of food banks to ensure that her family is fed, and relied on the assistance of her church family to get by.

70. Plaintiff has also suffered interference with normal and usual activities, as the financial woes caused by her unemployment forced her to pull her children out of the Christian school they were attending - something that was extremely important to Plaintiff, as she wishes for her children to be educated in accordance with her Christian values. Her children were active in sports, band, and theater at that school, and had made friends there.

71. ORS 659A.885(3) allows for punitive damages against employers such as Defendant MCMC who violate ORS 659A.030(1)(a). Oregon law places no cap on punitive damages. *See Smith v. Ethicon, Inc.*, 2022 U.S. Dist. 98543 at *2 (D. Or. June 2, 2022).

72. Based on the foregoing, in addition to violating Title VII, Defendant MCMC has violated ORS 659A.030(1)(a).

THIRD CAUSE OF ACTION
VIOLATION OF ORS 659A.030(1)(G)
AGAINST DEFENDANT MCCALL

73. Plaintiff refers to and hereby incorporates the foregoing paragraphs as though fully set forth herein.

74. ORS 659A.030(l)(g) prohibits any person from aiding and abetting an employer from engaging in employment discrimination.

75. In her role as Defendant MCMC's Chief Human Resources Officer, Defendant McCALL acted in concert with, or gave substantial assistance to, MCMC to unlawfully discriminate against Plaintiff on account of Plaintiff's religion. McCALL did this knowing that it was unlawful for the Hospital, as Plaintiff's employer, to engage in religious discrimination against Plaintiff.

76. Because Defendant MCMC carried out its religious discrimination against Plaintiff with Defendant McCALL's assistance, McCALL should be held individually and personally liable for her conduct. The same goes for any yet-to- be-identified persons whom Plaintiff later learns aided and abetted the Hospital's religious discrimination against Plaintiff - hence, the inclusion of DOES 1-50 as defendants in the herein proceeding.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendant MCMC as follows:

ON ALL CAUSES OF ACTION:

1. For economic damages in an amount according to proof at trial;
2. For non-economic damages in an amount according to proof at trial;
3. For punitive damages in an amount according to proof at trial;
4. For attorney's fees and costs associated with bringing and maintaining this action in accordance with the law; and
5. For such other and further relief as the Court may deem proper.

Dated: November 4,
2022

PACIFIC JUSTICE
INSTITUTE
/s/RAY D. HACKE
Ray D. Hacke
Attorney for Plaintiff
SHERRY H.
DETWILER

PROOF OF SERVICE

I am employed in the County of Marion, State of Oregon. I am over the age of eighteen and not a party to the within action; my business address is 1850 45th Ave., Suite 33, Salem, OR 97305.

On or about November 4, 2022, I served the following documents on the interested parties by placing a true copy thereof enclosed in sealed envelope(s) addressed to said parties:

**FIRST AMENDED COMPLAINT FOR DAMAGES
FOR RELIGIOUS DISCRIMINATION IN
VIOLATION OF TITLE VII [42 U.S.C. § 2000e-2]
AND ORS 659A.030(1)(a), AND AIDING AND
ABETTING RELIGIOUS DISCRIMINATION
[ORS 659A.030(1)(g)]**

PLEASE SEE ATTACHED SERVICE LIST

___ BY MAIL: I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice, it would be deposited with the U.S. postal service on that same date with postage thereon fully prepaid at Salem, Oregon in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

___ BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the office of the addressee(s).

X BY ELECTRONIC MAIL: I caused such documents to be served on the interested parties via electronic mail and through the court's ECF website.

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____ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

X (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on November 4, 2022, at Salem, Oregon.

/s/ LAUREN PEFFERLE

Lauren Pefferle

79a

SERVICE LIST

Via Electronic Mail:

Sharon Peters

Attorney For Defendants

Lewis Brisbois Bisgaard & Smith LLP

888 SW Fifth Ave, Suite 900

Portland, OR 97204

80a

EXHIBIT “A”

OFFICE OF THE DIRECTOR

Office of the State Public Health Director

**COVID-19 Vaccine Religious Exception Request Form**

I am requesting an exception from the COVID-19 vaccination On the basis, of a sincerely held religious belief.

Individual's name: Sherry Detwiler	Date of birth: 01/03/1976
Phone number: 541-631-1532	
Employer/Organization: Mid Columbia Medical Center	Job Title/Position: Director HIM/Privacy Officer

Please check the boxes below as appropriate and complete related questions:

- ☒ Receiving the COVID-19 vaccination conflicts with my religious observances, practices or beliefs as described below. Please describe your religious belief and how it affects your ability to receive a COVID-19 vaccination

See exemption request

82a

I certify the above information to be true and accurate and that I sincerely held the religious beliefs described above.

Signature:	Date:
/s/ Sherry Detwiler RHIA	9/30/2021

Please note that if your exception request is approved, you may be required by your employer or other responsible party to take additional steps to protect you and others from contracting and spreading, COVID-19. Workplaces are not required to provide this exception accommodation if doing so would pose a direct threat to the excepted individual or others in the workplace or would create an undue hardship.

Document accessibility: For individuals with disabilities or individuals who speak a language other than English, OHA can provide information in alternate formats such as translations, large print, or braille. Contact the Health Information Center at 1-971-673-2411, 711 TTY or COVID19.LanguageAccess@dhs-oh-state-or.us.

9/28/2021

Sherry Detwiler
3454 Royal Crest Dr. E,
The Dalles, OR 97058

Mid-Columbia Medical Center
1700 E. 19th St.
The Dalles, OR 97058

To Whom It May Concern,

I am a Christian seeking religious exemption from the
“Covid-19 Vaccination Requirement”.

I am requesting a religious; accommodation under
federal law. Title VII of the Civil Rights Act of 1964
[Title VII].

My religious beliefs are sincerely held.

It is against my faith and my conscience to commit sin.
Sin is anything that violates the will of God, as set
forth in the Bible, and as impressed upon the heart of
the believer by the Holy Spirit. In order to keep myself
from sin, and receive God's direction in my life, I pray
and ask God for wisdom and direction daily. As part of
my prayers, I have asked God for direction regarding
the current COVID shot requirement. As I have
prayed about what I should do, the Holy Spirit has
moved on my heart and conscience that I must not
accept the COVID shot. If I were to go against the
moving of the Holy Spirit, I would be sinning and

jeopardizing my relationship with God and violating my conscience.

Because the body is the temple of the Holy Spirit, we are compelled by Scripture to follow God's law when choosing what to put into it. "Do you not know that you are God's temple and that God's Spirit dwells in you? If anyone destroys God's temple, God will destroy him. For God's temple is holy, and you are that temple." 1 Corinthians 3:16-17 ESV

As a Christian protecting my body from defilement according to God's law, I invoke my religious right to refuse any vaccine which utilized abortion-derived cell lines at any stage of the creation of the vaccine. Further, insofar as the vaccines also contain neurotoxins, hazardous substances, attenuated viruses, animal parts, foreign DNA, albumin from human blood, carcinogens and chemical wastes that are proven harmful to the human body, I find injection of the same to be in direct conflict with my Christian duty to protect my body as the temple of the Holy Spirit.

Source:

<https://www.cdc.gov/vaccines/pubs/pinkbook/downloads/appendices/b/excipient-table-2.pdf> (last visited 9/28/2021)

I am therefore asking for an exemption from the COVID shot directive so that my conscience can remain clear before God. Thank you for your consideration.

s/ Sherry Detwiler, RHIA
Sherry Detwiler, RHIA

85a

EXHIBIT "B"

MCMC
MID-COLUMBIA MEDICAL CENTER

October 1, 2021

Sherry Dewtiler
3454 Royal Crest Drive, East
The Dalles, OR 97058

Dear Sherry,

This letter is in response to your request for religious accommodation received on September 30, 2021 regarding receiving the COVID-19 vaccine as mandated by OAR 333-019-1010. The following decisions are based on your OHA 3870 or OHA 3871 form submitted to our organization.

Based on the information supplied we are ☒ **Approving** ☒ **Denying** your request for accommodation based on the following: The religious exception is approved, however, you are not willing to meet the testing condition, so it is declined and moved to a medical accommodation request. Medical packet has been sent to Employee Health for review

Approved Accommodations:

- Weekly antigen testing
- Wearing personal protective equipment (PPE) at all times, unless eating or drinking

Declining Reason

- Weekly antigen testing – moving into medical request

If you have further questions or additional information, please reach out to Human Resources and we are happy to assist you.

87a

If your request for accommodations were denied, you will need to comply with the mandate by October 18, 2021 , or it will be considered a resignation of your position with Mid-Columbia Medical Center.

Respectfully,

s/ Cheri McCall

Cheri McCall,

Director, Human Resources

cc: confidential health file (personnel)

88a

EXHIBIT "C"

To Whom It May Concern,

I am a Christian seeking religious exemption from the “Covid-19 Testing Requirement”. This requirement by Mid-Columbia Medical Center for any staff that have been approved for religious exemption.

I am requesting a religious accommodation under federal law: Title VII of the Civil Rights Act of 1964 [Title VII].

My religious beliefs are sincerely held.

It is against my faith and my conscience to commit sin. Sin is anything that violates the will of God, as set forth in the Bible, and as impressed upon the heart of the believer by the Holy Spirit. In order to keep myself from sin, and receive God’s direction in my life, I pray and ask God for wisdom and direction daily. As part of my prayers, I have asked God for direction regarding the current COVID testing requirement. As I have prayed about what I should do, the Holy Spirit has moved on my heart and conscience that I must not participate in COVID testing that causes harm. If I were to go against the moving of the Holy Spirit, it would be sinning and jeopardizing my relationship with God and violating my conscience.

According to 1 Corinthians 6:19-20 Do you not know that your bodies are temples of the Holy Spirit, who is in you, whom you have received from God? You are not your own; you were bought at a price. Therefore honor God with your bodies. (NIV)

According to U.S. Environmental Protection Agency’s (EPA’s) 2005 *Guidelines for Carcinogen Risk Assessment*

https://cfpub.epa.gov/ncea/iris/iris_documents/documents/toxreviews/1025tr.pdf (last visited 9/30/2021)

Ethylene Oxide (EtO) is carcinogenic to humans. There is clear evidence that EtO is genotoxic and evidence supports a mutagenic mode of action, key precursor events are anticipated to occur in humans and progress to tumors, including evidence of chromosome damage in humans exposed to EtO.

This is important to note, because medical equipment is sterilized by a direct oxidation process which is predominantly EtO, exposure in the chlorohydrin process, this EtO is mixed with other chemicals.

The same EPA document states some of the cancers have a 15-year delay, however the multiplication of morphed DNA results in multiple cancerous states.

The nasal swabs used for testing COVID-19 are commonly referred to as "Ethylene Oxide Swabs".

According to the NIH, The Residual levels of EtO recovered from cotton swabs have adverse effects on DNA profiles.
<https://pubmed.ncbi.nlm.nih.gov/28063580/> (last visited 9/29/2021)

As a Christian protecting my body from defilement according to God's law, I invoke my religious right to refuse any testing which would alter my DNA and has been proven to cause cancer. I find testing with carcinogens and chemical waste to be in direct conflict with my Christian duty to protect my body as the temple of the Holy Spirit.

I am therefore asking for an exemption from the COVID testing directive so that my conscience can remain clear before God. Thank you for your consideration.

Sherry Detwiler, RHIA

91a

s/ Sherry Detwiler, RHIA

OFFICE OF THE DIRECTOR
Office of the State Public Health
Director

Oregon
Health
Authority

**COVID-19 ~~Vaccine~~ Medical Testing Medical
Exception Request Form**

I am requesting an exception from the COVID-19 vaccination on the basis of a diagnosed physical or mental condition that limits my ability to receive the COVID-19 vaccination, as certified by my medical provider below.

Individual's name: Sherry Detwiler	Date of birth: 1-3-1976
Phone number: 541.631.1532	
Signature: <u>s/ Sherry Detwiler, RHIA</u>	Date: 9-29-21
Employer/Organization: Mid Columbia Medical Center	Job Title/Position: Privacy Officer Dir. of Health Info

Please note that if your exception request is approved, you may be required by your employer or other responsible party to take additional steps to protect you and others from contracting and spreading COVID-19. Workplaces are not required to provide this exception accommodation if doing so would pose a direct threat to the excepted individual or others in the workplace or would create an undue hardship.

Statement from Medical Provider

Your patient, named above, has requested an exception to the COVID-19~~vaccination~~ medical testing due to a medical condition. Please provide the information below.

Please check an option below and complete related questions:

☒ The patient should not receive the COVID-19~~vaccination~~ medical testing due to a medical condition.

What is the medical condition that prevents them from receiving the COVID-19~~vaccination~~? medical testing? Sherry has a tendency to often have nosebleeds. She also has chronic sinusitis. This would create a negative environment for her nosebleeds and sinusitis.

☒ Yes ☐ No Is the medical condition permanent?

☐ Yes ☐ No Is the medical condition temporary? If yes, what is the expected duration?

Please describe how this medical condition impacts their ability to receive the COVID-19~~vaccination~~ Medical Testing.

Not having medical testing would lessen nosebleeds and chronic sinusitis, keeping Sherry healthier and more focused on her job.

☐ The patient may not receive a certain type of COVID-19 vaccination. The patient may receive a vaccination manufactured by .

☐ The patient may receive a COVID-19 vaccination.

I certify the above information to be true and accurate.

Printed name of medical provider: Ronda Mattley, D.C.	Date: 9-29-21
--	------------------

Signature of medical provider: s/ Ronda Mattley, D.C.	Work address: 1064 13 th Ave S. Nampa ID 83651
	Work telephone number: 208.461.4227

Document accessibility: For individuals with disabilities or individuals who speak a language other than English, OHA can provide information in alternate formats such as translations, large print, or braille. Contact the Health Information Center at 1-971-673-2411, 711 TTY or COVID19.LanguageAccess@dhsosha.state.or.us.

9/30/2021

Sherry Detwiler
3454 Royal Crest Dr. E.
The Dalles, OR 97058

Mid-Columbia Medical Center
1700 E. 19th St.
The Dalles, OR 97058

Dear Dale, Cheri, and Dennis:

I understand that “Employers of healthcare providers or healthcare staff, contractors and responsible parties who grant an exception to the vaccination requirement should take reasonable steps to ensure that unvaccinated healthcare providers and healthcare staff are protected from contracting and spreading COVID-19.” Per page 6 of the Temporary Administrative Order PH38-2021, Chapter 333 OHA, Public Health Division, 8/25/2021.

Based on my religious belief, I am requesting reasonable accommodation under ADA, to perform my duties as Director of Health Information/Privacy Officer from a remote location, 100% of the time; during this time of vaccine mandate and/or testing mandate. Several employees of Mid-Columbia Medical Center (MCMC) have already been offered, taken the opportunity and had proven success; thus this accommodation does not create undue hardship for the employer.

Concerns addressed:

I can attend meetings via Zoom, as the precedent has been set for the last year. Even before COVID was declared a pandemic, we had and still have,

teleconference lines for those who could not/did not attend meetings in person.

Hotspots can be in place, in case of internet service being dropped.

Hours can be adjusted for power outages.

Many successful Health Information Management (HIM) teams run the entire department remotely, regular check-ins with staff, clear lines of communication will help the department be connected. This has been the direction of HIM for over sixteen years.

This accommodation is a reasonable step to ensure the unvaccinated staff are protected from contracting and spreading Covid-19 as required by OAR 333-019-1010.

Sincerely,

s/ Sherry Detwiler, RHIA
Sherry Detwiler, RHIA

From: Cheri McCall <CheriM@mcmc.net>
To: Dale Lepper <DaleL@mcmc.net>, Sherry
Detwiler <SherryD@mcmc.net>

Cc:

Bcc:

Date: Tue, 19 Oct 2021 15:22:28 -0700

Subject: Re: reasonable accommodation

Sherry,

I am sorry this has taken some time to respond to. I knew that you had applied for a medical exception based on one of the two conditions of your approved religious exceptions, referring to the "weekly antigen testing". I have been made aware that the medical exception has been denied. I do not know the details of that denial and you would need to speak with Employee Health regarding the details.

I can however confirm, you still have an approved religious exception, but based on the two conditions of weekly antigen testing and wearing of the PPE at all times based on the state mandate. You will need to reach out to Connie Jubitz to arrange the weekly antigen testing date and time. MCMC does not want to lose any staff due to this mandate and have worked hard to meet both the mandate and staff needs.

However, in my discussion with your supervisor Dale Lepper on the request of working 100% remote, he is not comfortable approving that request as it is a hardship on your department and team. We have had increased complaints and dissatisfaction from your team since you started to work remote. Dale had approved of your working intermittently remote,

however, it has become clear you worked beyond what was agreed to and your team has struggled.

Your team has lost confidence in your ability to lead and guide the team and question some of your recent decision making. Dale can go into detail of these areas for specifics.

- Recent hire. We became aware of your selecting an acquaintance from church with no HIM experience over an experienced current staff within HIM. You did not set up any interviewing process and were actually counseled by HR recruiter that this person did not have any experience and you had an internal candidate.
- Your team has shared their “observation” of your ill treatment of another co-worker. Also not responding to this co-worker on critical request for guidance on critical needs to the organization. The need for support is at the director level.
- Response to your team is often delayed or null
- Asking your team to call you on your “cell phone” leaving them with the perception that you are not working from home.

Although your perception is you are able to successfully work remote and support your team, the consistent feedback is that the department lacks support, structure and guidance during a time when leaders need to be focused on their teams and supporting them through the challenges facing healthcare.

99a

Therefore, we are placing you on unpaid leave as outlined in the attached document, and you will not have access to your PTO or EIH during this time. We will move you to an unpaid leave status through October 30, 2021 or until you fall into compliance with the mandate or approved religious exception. If you choose not to meet the expectations, your employment with MCMC will end on October 31, 2021.

We will be sending a letter to you via the mail outlining the above process. I have also attached the No Action document you received last week.

Please let me know if you have any further questions.

Respectfully,
Cheri

100a

EXHIBIT “E”

101a

U.S. EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

[US EEOC Logo] **Seattle Field Office**
909 First Avenue, Suite
400
Seattle, WA 98104
(206) 576-3000
Website: www.eeoc.gov

DETERMINATION AND NOTICE OF RIGHTS
(This Notice replaces EEOC FORMS 161 & 161-A)

Issued On: 06/06/2022

To: Sherry Detwiler
3454 Royal Crest Dr. E.
THE DALLES, OR 97058

Charge No: 551-2022-00489

EEOC Representative and email: Bryne Moore
Investigator
bryne.moore@eeoc.gov

DETERMINATION OF CHARGE

The EEOC issues the following determination: The EEOC will not proceed further with its investigation and makes no determination about whether further investigation would establish violations of the statute. This does not mean the claims have no merit. This determination does not certify that the respondent is in compliance with the statutes. The EEOC makes no finding as to the merits of any other issues that might be construed as having been raised by this charge.

NOTICE OF YOUR RIGHT TO SUE

This is official notice from the EEOC of the dismissal of your charge and of your right to sue. If you choose to file a lawsuit against the respondent(s) on this charge under federal law in federal or state court, **your lawsuit must be filed WITHIN 90 DAYS of your receipt of this notice.** Receipt generally occurs on the date that you (or your representative) view this document. You should keep a record of the date you received this notice. Your right to sue based on this charge will be lost if you do not file a lawsuit in court within 90 days. (The time limit for filing a lawsuit based on a claim under state law may be different.)

If you file a lawsuit based on this charge, please sign-in to the EEOC Public Portal and upload the court complaint to charge 551-2022-00489.

On Behalf of the Commission:

June 6, 2022

Date

s/ Bryne Moore

For

Elizabeth Cannon

Director

103a

Cc:

Caroline Janzen
Janzen Legal Services, LLC - Rugged Law
caroline@ruggedlaw.com

James M Barrett
Ogletree Deakins Law Firm
james.barrett@ogletreedeakins.com

Florence Z Mao
OGLETREE, DEAKINS, NASH, SMOAK &
STWEART, P.C.
florence.mao@ogletree.com

Please retain this notice for your records.

Enclosure with EEOC Notice of Closure and Rights
(01/22)

**INFORMATION RELATED TO FILING SUIT
UNDER THE LAWS ENFORCED BY THE EEOC**

*(This information relates to filing suit in Federal or State court **under Federal law**. If you also plan to sue claiming violations of State law, please be aware that time limits may be shorter and other provisions of State law may be different than those described below.)*

**IMPORTANT TIME LIMITS — 90 DAYS TO FILE A
LAWSUIT**

If you choose to file a lawsuit against the respondent(s) named in the charge of discrimination, you must file a complaint in court **within 90 days of the date you receive this Notice**. Receipt generally means the date when you (or your representative) opened this email or mail. You should **keep a record of the date you received this notice**. Once this 90-day period has passed, your right to sue based on the charge referred to in this Notice will be lost. If you intend to consult an attorney, you should do so promptly. Give your attorney a copy of this Notice, and the record of your receiving it (email or envelope).

If your lawsuit includes a claim under the Equal Pay Act (EPA), you must file your complaint in court within 2 years (3 years for willful violations) of the date you did not receive equal pay. This time limit for filing an EPA lawsuit is separate from the 90-day filing period under Title VII, the ADA, GINA or the ADEA referred to above. Therefore, if you also plan to sue under Title VII, the ADA, GINA or the ADEA, in addition to suing on the EPA claim, your lawsuit must

be filed within 90 days of this Notice **and** within the 2- or 3-year EPA period.

Your lawsuit may be filed in U.S. District Court or a State court of competent jurisdiction. Whether you file in Federal or State court is a matter for you to decide after talking to your attorney. You must file a “complaint” that contains a short statement of the facts of your case which shows that you are entitled to relief. Filing this Notice is not enough. For more information about filing a lawsuit, go to <https://www.eeoc.gov/employees/lawsuit.cfm>.

ATTORNEY REPRESENTATION

For information about locating an attorney to represent you, go to: <https://www.eeoc.gov/employees/lawsuit.cfm>.

In very limited circumstances, a U.S. District Court may appoint an attorney to represent individuals who demonstrate that they are financially unable to afford an attorney.

HOW TO REQUEST YOUR CHARGE FILE AND 90-DAY TIME LIMIT FOR REQUESTS

There are two ways to request a charge file: 1) a FOIA Request or 2) a Section 83 request. You may request your charge file under either or both procedures. EEOC can generally respond to Section 83 requests more promptly than FOIA requests.

Since a lawsuit must be filed within 90 days of this notice, please submit your request for the charge file promptly to allow sufficient time for EEOC to respond and for your review. Submit a signed written request stating it is a “FOIA Request” or a “Section 83 Request” for Charge Number 551-2022-00489 to the

District Director at Nancy Sienko, 450 Golden Gate Avenue 5 West PO Box 36025
San Francisco, CA 94102.

You can also make a FOIA request online at <https://eeoc.arkcase.com/foia/portal/login>.

You may request the charge file up to 90 days after receiving this Notice of Right to Sue. After the 90 days have passed, you may request the charge file only if you have filed a lawsuit in court and provide a copy of the court complaint to EEOC.

For more information on submitting FOIA Requests and Section 83 Requests, go to: <https://www.eeoc.gov/eeoc/foia/index.cfm>.

NOTICE OF RIGHTS UNDER THE ADA AMENDMENTS ACT OF 2008 (ADAAA)

The ADA was amended, effective January 1, 2009, to broaden the definitions of disability to make it easier for individuals to be covered under the ADA/ADAAA. A disability is still defined as (1) a physical or mental impairment that substantially limits one or more major life activities (actual disability); (2) a record of a substantially limiting impairment; or (3) being regarded as having a disability. *However, these terms are redefined, and it is easier to be covered under the new law.*

If you plan to retain an attorney to assist you with your ADA claim, we recommend that you share this information with your attorney and suggest that he or she consult the amended regulations and appendix, and other ADA related publications, available at: http://www.eeoc.gov/laws/types/disability_regulations.cfm.

“Actual” disability or a “record of” a disability

If you are pursuing a failure to accommodate claim you must meet the standards for either “actual” or “record of” a disability:

- ✓ **The limitations from the impairment no longer must be severe or significant** for the impairment to be considered substantially limiting.
- ✓ In addition to activities such as performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, thinking, concentrating, reading, bending, and communicating (more examples at 29 C.F.R. § 1630.2(i)), **“major life activities” now include the operation of major bodily functions**, such as: functions of the immune system, special sense organs and skin; normal cell growth; and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions; or the operation of an individual organ within a body system.
- ✓ **Only one** major life activity need be substantially limited.
- ✓ Except for ordinary eyeglasses or contact lenses, the beneficial effects of **“mitigating measures”** (e.g., hearing aid, prosthesis, medication, therapy, behavioral modifications) **are not considered** in determining if the impairment substantially limits a major life activity.

- ✓ An impairment that is **“episodic”** (e.g., epilepsy, depression, multiple sclerosis) or **“in remission”** (e.g., cancer) is a disability if it **would be substantially limiting when active.**
- ✓ An impairment **may be substantially limiting even though** it lasts or is expected to last **fewer than six months.**

“Regarded as” coverage

An individual can meet the definition of disability if an **employment action was taken because of an actual or perceived impairment** (e.g., refusal to hire, demotion, placement on involuntary leave, termination, exclusion for failure to meet a qualification standard, harassment, or denial of any other term, condition, or privilege of employment).

- ✓ “Regarded as” coverage under the ADAAA no longer requires that an impairment be substantially limiting, or that the employer perceives the impairment to be substantially limiting.
- ✓ The employer has a defense against a “regarded as” claim only when the impairment at issue is objectively **both** transitory (lasting or expected to last six months or less) **and** minor.
- ✓ A person is not able to bring a failure to accommodate claim **if** the individual is covered only under the “regarded as” definition of “disability”.

***Note:** Although the amended ADA states that the definition of disability “shall be construed broadly” and “should not demand extensive analysis,” some*

courts require specificity in the complaint explaining how an impairment substantially limits a major life activity or what facts indicate the challenged employment action was because of the impairment. Beyond the initial pleading stage, some courts will require specific evidence to establish disability. For more information, consult the amended regulations and appendix, as well as explanatory publications, available at http://www.eeoc.gov/laws/types/disability_regulations.cfm.

110a

EXHIBIT “F”

111a

Date Calculator: Add to or Subtract From a Date

Enter a start date and add or subtract any number of days, months, or years.

Count Days **Add Days** Workdays Add Workdays Weekday Week No

Advertising

From Monday, June 6, 2022

Added 90 days

Result: Sunday, September 4, 2022

Calendar showing period from June 6, 2022 to September 4, 2022

June 2022 24 days added							July 2022 31 days added							August 2022 31 days added							September 2022 4 days added						
Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat
			1	2	3	4						1	2		1	2	3	4	5	6					1	2	3
5	6	7	8	9	10	11	3	4	5	6	7	8	9	7	8	9	10	11	12	13	4	5	6	7	8	9	10
12	13	14	15	16	17	18	10	11	12	13	14	15	16	14	15	16	17	18	19	20	11	12	13	14	15	16	17
19	20	21	22	23	24	25	17	18	19	20	21	22	23	21	22	23	24	25	26	27	18	19	20	21	22	23	24
26	27	28	29	30			24	25	26	27	28	29	30	28	29	30	31				25	26	27	28	29	30	
							31																				

☐ = Start date (Jun 6, 2022) ☐ = Final result date (Sep 4, 2022)



**Time & Date Calculator App
for iOS**

See how long remains before a
deadline or exactly when those 30
days are up.



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