

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DOCKET NO. 1:22-cv-11999

LAURA DYER,
Plaintiff,

v.

BOSTON MEDICAL CENTER,
Defendant.

**COMPLAINT AND DEMAND
FOR JURY TRIAL**

INTRODUCTION

1. Defendant violated Plaintiff's right to the free exercise of religion and discriminated against her on the basis of disability by requiring that, as a condition of her continued employment, she be injected with products advertised as a COVID-19 vaccine. Defendant enforced this requirement in the knowledge that Plaintiff's sincerely held religious beliefs prevented her from being injected with the products and that she had previously experienced allergic reactions to certain ingredients in the products. By enforcing this requirement and terminating Plaintiff's employment, Defendant violated the Civil Rights Act, the Americans with Disabilities Act, and the Massachusetts anti-discrimination law, M.G.L. c. 151B.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action under 42 U.S.C. § 2000e-5 (f) and 28 U.S.C. §§ 1331 and 1343 (a), and 42 U.S.C. § 12112 (b), and has supplemental jurisdiction over State-law claims.

PARTIES

3. Plaintiff Laura Dyer is an individual who resides in East Arlington, Massachusetts.

4. Defendant Boston Medical Center is a corporation with a principal place of business at One Boston Medical Center Place, Boston, MA 02118; is a person within the meaning of 42 U.S.C. § 2000e (a); and is an employer within the meaning of 42 U.S.C. § 2000e (b) and of M.G.L. 151B, § 1 (5).

EEOC CHARGE

5. Plaintiff filed a timely charge with the United States Equal Opportunity Commission (EEOC) (Charge No. 523-2022-01265). The EEOC issued a right-to-sue notice on August 31, 2022. Plaintiff brings this case within 90 days of receipt of the EEOC right-to-sue notice. All preconditions for filing this lawsuit have been performed or have occurred.

FACTS

6. Plaintiff is a Christian (Catholic) who was employed as a Registered Nurse at Boston Medical Center from June 25, 2013, until Defendant terminated her employment on October 15, 2021.

7. On August 21, 2021, Defendant adopted a policy titled “COVID-19 Immunization” (Exhibit A) that stated:

Vaccination for COVID-19 is a condition of employment at BMC... COVID-19 vaccination is a requirement to work or volunteer or to be visiting personnel at BMC unless BMC approves a medical or religious exemption from the requirement for immunization.

8. In enforcing its policy, Defendant informed Plaintiff that to continue her employment, she would need to be injected with a product advertised as a COVID-19 vaccine.

9. The previous year, on December 11, 2020, the Food and Drug Administration (“FDA”) had issued an Emergency Use Authorization (“EUA”) for the product known as the Pfizer-BioNTech COVID-19 Vaccine “for the prevention of COVID-19 for individuals 16 years of age

and older.”¹ The FDA later issued a second EUA for the product known as the Moderna COVID-19 Vaccine, and then another EUA for the product known as the Johnson & Johnson COVID-19 or Janssen Vaccine. The EUA statute, 21 U.S.C. § 360bbb-3, explicitly states that anyone to whom an EUA product is administered must be informed of the option to accept or to refuse it, as well as alternatives to the product and the risks and benefits of receiving it.

10. On August 23, 2021, the FDA approved Pfizer-BioNTech’s product marketed as Comirnaty, which the FDA described as “a monovalent COVID-19 vaccine that is authorized for emergency use to prevent COVID-19.”² On September 23, 2021, the FDA published its Review Memorandum, which states: “COMIRNATY is a vaccine indicated for active immunization to prevent coronavirus disease 2019 (COVID-19) caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in individuals 16 years of age and older.”³ With regard to prevention, as set forth below, the actual risk reduction, i.e. the reduction of the risk that a recipient would have a symptomatic positive test for COVID-19 after being injected with the product, was 0.84%. Even though it claimed that the product would prevent COVID-19, the FDA made no claims about for how long it might do so:

How long will Comirnaty provide protection?

Data are not yet available to inform about the duration of protection that the vaccine will provide.⁴

11. The EUA Review Memorandum for the Moderna product issued on November 30, 2020, states that “severe adverse reactions occurred in 0.2% to 9.7% of participants.” Nevertheless,

¹ <https://www.fda.gov/media/144412/download>

² <https://www.fda.gov/emergency-preparedness-and-response/coronavirus-disease-2019-covid-19/pfizer-biontech-covid-19-vaccines#comirnaty>

³ <https://www.fda.gov/media/152432/download>

⁴ <https://www.fda.gov/vaccines-blood-biologics/qa-comirnaty-covid-19-vaccine-mrna> (February 8, 2022).

“there is no adequate, approved, and available alternative to the product for preventing COVID-19 caused by SARS-CoV-2... The review team therefore recommends issuance of an EUA for use of the Moderna COVID-19 Vaccine for active immunization to prevent COVID-19 caused by SARS-CoV-2 in individuals 18 years of age and older.”⁵ The FDA noted various adverse reactions to the Janssen product, including peripheral neuropathy in 0.21% of the study participants.⁶ Another adverse reaction to the Janssen product, shortness of breath, can indicate thrombosis. Accordingly, in 2021, the FDA published a fact sheet, which states:

The Janssen COVID-19 Vaccine can cause thrombosis with thrombocytopenia syndrome (TTS) which may be life-threatening. TTS may involve thrombosis at unusual locations for a thrombus (i.e., cerebral vein, visceral artery or vein, extremity artery, central artery or vein) or in an extremity vein or pulmonary artery. Among reported cases of TTS following administration of the Janssen COVID-19 Vaccine, symptoms began approximately one to two weeks after vaccination.

Instruct Janssen COVID-19 Vaccine recipients to seek immediate medical attention for shortness of breath, chest pain, leg swelling, persistent abdominal pain, neurological symptoms (including severe or persistent headaches or blurred vision), or petechiae beyond the site of vaccination.⁷

12. On or about August 21, 2021, Plaintiff requested an exemption from the requirement on both medical and religious grounds. Plaintiff articulated how being injected with the products would conflict with her sincerely held religious belief. With regard to the medical basis, after being injected with an influenza vaccine, Plaintiff had experienced soreness, dizziness, shortness of breath. The World Health Organization states:

Who should not take the vaccine?

⁵ <https://www.fda.gov/media/144673/download> , p. 7-8.

⁶ <https://www.fda.gov/media/146217/download>, p. 49.

⁷ https://www.fda.gov/media/146304/download?utm_medium=email&utm_source=govdelivery

Individuals with a history of severe allergic reaction to any component of the vaccine should not take this or any other mRNA vaccine.⁸

Because of the common ingredients, e.g. polysorbate and polyethylene glycol, Plaintiff feared that if she was injected with a product advertised as a COVID-19 vaccine she would suffer another adverse reaction, possibly worse and longer lasting. Plaintiff informed Defendant of her previous adverse reaction and of her well-founded fear.

13. Defendant did not engage in any meaningful interactive process to determine whether it could accommodate Plaintiff's request, nor (contrary to the EUA) did Defendant inform Plaintiff of the risks of being injected with the product. On October 8, 2021, Defendant denied Plaintiff's request.

14. Defendant could have accommodated Plaintiff's request without undue hardship. When Defendant denied Plaintiff's request, it was clear both that the products advertised as COVID-19 vaccines do not prevent recipients from catching and spreading COVID-19.

15. On August 23, 2021, the FDA announced: "Based on results from the clinical trial, the [Pfizer] vaccine was 91% effective in preventing COVID-19 disease." However, according to the results of the drug trials that Pfizer conducted in 2020 in connection with its "vaccine," the absolute risk reduction (the reduction of the risk that a recipient would have a symptomatic positive test for COVID-19 after receiving the drug) was 0.84%.⁹ As cardiologist Dr. Aseem Malhotra stated in the *European Scientist*:

[W]hat was reported in the mainstream news as being 95% effective against infection was in fact relative risk reduction, not absolute risk reduction from the double blind randomized controlled trial that took place during the more lethal

⁸ <https://www.who.int/news-room/feature-stories/detail/the-moderna-covid-19-mrna-1273-vaccine-what-you-need-to-know#:~:text=What's%20the%20recommended%20dosage%3F,given%20intramuscularly%2C%204%20weeks%20apart.>

⁹ <https://www.thennt.com/review-covid-analysis-2020/>

circulating post-Wuhan ancestral strain of the virus. That specific NEJM paper which underpinned the emergency use authorization of the Pfizer mRNA vaccine actually revealed an absolute risk reduction (ARR) of 0.84%. In other words, for every 119 individuals vaccinated one person would be protected from being infected... Furthermore, as newer and thankfully, less lethal, mutated strains became dominant, any protection against infection at the very least became less effective and likely completely ineffective, even if there is some significant (as yet to be fully determined in absolute individual terms) protection against serious illness and death.¹⁰

16. Despite the FDA's claim in August 2021 that the products are effective at preventing COVID-19, it soon became obvious that they are not. The number of prominent political leaders who have received the products and gone on to catch COVID-19 makes the reality difficult to ignore. For example:

17. On August 19, 2021, three U.S. Senators (John Hickenlooper of Colorado, Angus King of Maine, and Roger Wicker of Mississippi) announced that they had tested positive for COVID-19. All three had been injected with products advertised as COVID-19 vaccines. Senator King stated: "While I am not feeling great, I'm definitely feeling much better than I would have without the vaccine."¹¹ Senator Hickenlooper said: "I'm grateful for the vaccine (and the scientists behind it) for limiting my symptoms and allowing us to continue our work for Colorado."¹² Senator Wicker tested positive again in February 2022 and for a third time in June 2022.¹³

¹⁰ Dr. Aseem Malhotra, "Being Pro-Covid 19 Vaccines and Pro-transparency are not mutually exclusive – ending all mandates globally and accessing the raw data is now essential to restore trust," *European Scientist* (August 16, 2022).

<https://www.europeanscientist.com/en/features/being-pro-covid-19-vaccines-and-pro-transparency-are-not-mutually-exclusive-ending-all-mandates-globally-and-accessing-the-raw-data-is-now-essential-to-restore-trust/>

¹¹ <https://www.cnn.com/2021/08/19/politics/roger-wicker-tests-positive-covid>

¹² <https://www.denverpost.com/2021/08/19/john-hickenlooper-covid-19-positive-congress/>

¹³ <https://www.usnews.com/news/best-states/mississippi/articles/2022-06-13/us-sen-wicker-of-mississippi-again-tests-positive-for-covid>

18. On October 19, 2021, the Department of Homeland Security announced that Secretary Alejandro Mayorkas had tested positive for COVID-19, describing him as “fully vaccinated” and experiencing “only mild congestion.”¹⁴

19. On December 19, 2021, Senator Elizabeth Warren and Senator Cory Booker both announced that they had tested positive for COVID-19. Senator Warren tweeted: “Thankfully, I am only experiencing mild symptoms & am grateful for the protection provided against serious illness that comes from being vaccinated & boosted.” Senator Booker tweeted: “I’m beyond grateful to have received two doses of vaccine and, more recently, a booster – I’m certain that without them I would be doing much worse.”¹⁵

20. On January 2, 2022, the Department of Defense announced that Secretary Lloyd Austin had tested positive for COVID-19. Secretary Austin stated:

As my doctor made clear to me, my fully vaccinated status — and the booster I received in early October — have rendered the infection much more mild than it would otherwise have been. And I am grateful for that.¹⁶

On August 15, 2022, the Defense Department announced that Secretary Austin had tested positive for COVID-19 again and was (again) experiencing mild symptoms. Secretary Austin stated;

Now, as in January, my doctor told me that my fully vaccinated status, including two booster shots, is why my symptoms are less severe than would otherwise be the case... The vaccines work and will remain a military medical requirement for our workforce.¹⁷

¹⁴ <https://www.reuters.com/world/us/us-homeland-security-secretary-tests-positive-covid-19-media-2021-10-19/>

¹⁵ <https://www.thenewportbuzz.com/double-vaxxed-and-boosted-senators-warren-and-booker-test-positive-for-covid-19/33664>

¹⁶ <https://www.defense.gov/News/Releases/Release/Article/2886520/statement-by-secretary-of-defense-lloyd-j-austin-iii-on-covid-status/>

¹⁷ <https://www.defense.gov/News/Releases/Release/Article/3127969/statement-by-secretary-of-defense-lloyd-j-austin-iii-on-his-covid-status/>

21. On March 13, 2021, former President Barack Obama announced that he had tested positive for COVID-19, stating: “Michelle and I are grateful to be vaccinated and boosted.”¹⁸

22. On March 31, 2022, William Burns (Director of the Central Intelligence Agency) tested positive for COVID-19. The Wall Street Journal quoted the CIA as stating that Mr. Burns was fully vaccinated and boosted” and “experiencing mild symptoms.”¹⁹

23. On April 6, 2022, the Department of Justice announced that Attorney General Merrick Garland had tested positive for COVID-19. According to the press release, “the Attorney General is fully vaccinated and boosted.”²⁰

24. The same day (April 6, 2022) the Department of Commerce announced:

Today, after experiencing mild symptoms, Secretary [Gina] Raimondo tested positive for COVID using an at-home antigen test. She is fully-vaccinated and boosted, and she is confident that the vaccine has prevented her from experiencing more significant symptoms.²¹

25. On April 7, 2022, House Speaker Nancy Pelosi tested positive for COVID-19. Her spokesperson described her as “fully vaccinated and boosted, and is thankful for the robust protection the vaccine has provided.”²²

26. On April 9, 2022, the Department of Agriculture released a statement that Secretary Tom Vilsack had tested positive for COVID-19. It described him as “fully vaccinated and boosted.”²³

¹⁸ <https://www.npr.org/2022/03/13/1086362826/obama-has-tested-positive-for-covid>

¹⁹ <https://www.wsj.com/articles/cia-director-william-burns-tests-positive-for-covid-19-11648745041>

²⁰ <https://www.justice.gov/opa/pr/statement-attorney-general-merrick-b-garland-1>

²¹ <https://www.commerce.gov/news/press-releases/2022/04/statement-secretary-gina-m-raimondo>

²² <https://www.npr.org/2022/04/07/1066212755/speaker-nancy-pelosi-has-tested-positive-for-covid>

²³ <https://www.usda.gov/media/press-releases/2022/04/09/statement-office-us-agriculture-secretary-tom-vilsack>

27. On April 26, 2022, the White House announced that Vice President Kamala Harris had tested positive for COVID-19. According to PBS:

Harris, 57, received her first dose of the Moderna COVID-19 vaccine weeks before taking office and a second dose just days after Inauguration Day in 2021. She received a booster shot in late October and an additional booster on April 1.²⁴

28. On April 28, 2022, Maine Governor Janet T. Mills announced that she had tested positive for COVID-19. Her office stated: “The Governor is fully vaccinated and has received two boosters – with the second booster dose being administered on April 8, 2022 – providing her with the strongest level of protection against serious disease or hospitalization.”²⁵

29. On May 4, 2022, Secretary of State Anthony Blinken tested positive for COVID-19. The State Department press release described him as “fully vaccinated and boosted against the virus and is experiencing only mild symptoms.”²⁶

30. On May 8, 2022, Governor Kathy Hochul of New York tested positive for COVID-19. She tweeted, “Today I tested positive for COVID-19. Thankfully, I’m vaccinated and boosted, and I’m asymptomatic.”²⁷ The vaccinated Mayor of New York City, Eric Adams, had tested positive the previous month. On September 20, 2022, Mayor Adams said, “I’m thrilled to roll up my sleeve and get boosted and encourage all eligible New Yorkers to do the same.”²⁸

²⁴ <https://www.pbs.org/newshour/politics/vice-president-kamala-harris-tests-positive-for-covid-19>

²⁵ <https://www.maine.gov/governor/mills/news/governor-mills-announces-positive-covid-19-test-result-2022-04-28>

²⁶ <https://www.state.gov/secretary-blinken-tests-positive-for-covid-19/>

²⁷ <https://www.wsj.com/articles/new-york-gov-kathy-hochul-tests-positive-for-covid-19-11652044052>

²⁸ <https://www.nyc.gov/office-of-the-mayor/news/686-22/mayor-adams-launches-covid-19-booster-campaign-additional-flexibility-nyc#/0>

31. On May 9, 2022, Susan Rice, President Biden’s domestic policy advisor announced that she had tested positive for COVID-19, and stated: “I’m feeling fine and grateful to be vaccinated and double boosted.”²⁹

32. On May 16, 2022, the office of Delaware Governor John Carney announced that he had tested positive for COVID-19: “Governor Carney is vaccinated and double boosted.”³⁰
Governor Carney said that he was experiencing “mild symptoms.”³¹

33. On June 1, 2022, Labor Secretary Marty Walsh tested positive for COVID-19 and stated that he was experiencing “mild symptoms and was “grateful to be both vaccinated and boosted.”

34. The same day Interior Secretary Deb Haaland tested positive for COVID-19 and stated, “I feel fine and am grateful to be fully vaccinated and twice boosted.”³²

35. On June 6, 2022, Transportation Secretary Pete Buttigieg (“vaccinated and boosted”) tested positive for COVID-19 and said that he was “experiencing mild symptoms.”³³

36. On June 13, 2022, the Department of Health & Human Services announced that Secretary Xavier Becerra had tested positive for COVID-19 again. The department’s press release described him as “fully vaccinated and boosted against COVID-19 and experiencing mild symptoms.”³⁴ He had previously tested positive for COVID-19 a little over a month before, on May 18, 2022, when the department’s press release stated:

This morning in Berlin, ahead of G7 meetings for health ministers, U.S. Health and Human Services Secretary Xavier Becerra tested positive for COVID-19 after

²⁹ <https://www.cnn.com/2022/05/09/politics/susan-rice-positive-covid>

³⁰ <https://news.delaware.gov/2022/05/16/governor-carney-tests-positive-for-covid-19/>

³¹ https://www.wdel.com/news/gov-carney-feeling-well-after-testing-positive-for-covid-19/article_91f0816c-d576-11ec-85bd-23d3731f5496.html

³² <https://www.nytimes.com/2022/06/01/us/politics/martin-walsh-positive-coronavirus.html>

³³ <https://abcnews.go.com/US/transportation-secretary-pete-buttigieg-tests-positive-covid-19/story?id=85088123>

³⁴ <https://www.hhs.gov/about/news/2022/06/13/statement-assistant-secretary-public-affairs-sarah-lovenheim-hhs-secretary-becerra-testing-positive-covid-19.html>

taking a PCR test. He is fully vaccinated and boosted against COVID-19, and is experiencing mild symptoms.³⁵

37. On June 15, 2022, the National Institutes for Health announced that Dr. Anthony Fauci (director of the National Institutes of Allergy and Infectious Diseases) had caught COVID-19: “He is fully vaccinated and has been boosted twice. He is currently experiencing mild symptoms.”³⁶ Dr. Fauci took Paxlovid and promptly caught COVID-19 again.³⁷

38. On June 20, 2022, North Carolina Governor Roy Cooper announced that he had tested positive for COVID-19: “I’m feeling fine. Thanks to vaccinations and boosters, my symptoms are very mild.”³⁸ The previous July, Governor Roy had issued Executive Order 224, which ordered mandatory injection for State employees or, in the alternative weekly testing for COVID-19, and stated: “The most effective protection against the Delta variant-or against any form of COVID-19-is getting vaccinated. Vaccinations also protect the people around us from sickness and death.”

39. On July 10, 2022, Senate Majority Leader Charles Schumer of New York caught COVID-19. His spokesperson stated: “The Leader is fully vaccinated and double boosted, and has very mild symptoms.”³⁹

40. On July 11, 2022, Senator Richard Blumenthal tested positive for COVID-19 and stated, “I’m not experiencing symptoms & am thankful to be fully vaccinated & boosted.”⁴⁰

³⁵ <https://www.hhs.gov/about/news/2022/05/18/statement-from-assistant-secretary-for-public-affairs-sarah-lovenheim-on-hhs-delegation-traveling-in-berlin.html>

³⁶ <https://www.nih.gov/news-events/news-releases/niaid-director-fauci-tests-positive-covid-19>

³⁷ <https://www.cnn.com/2022/07/27/as-more-people-report-covid-rebounds-after-paxlovid-experts-insist-cases-are-rare.html>

³⁸ <https://governor.nc.gov/news/press-releases/2022/06/20/governor-cooper-tests-positive-covid-19>

³⁹ <https://www.cnn.com/2022/07/10/politics/chuck-schumer-has-covid/index.html>

⁴⁰ <https://thehill.com/homenews/senate/3553488-blumenthal-second-democrat-to-miss-votes-with-covid-complicating-senate-agenda/>

41. President Joe Biden — vaccinated and double-boosted⁴¹ — recovered from another bout of COVID-19 over the summer. He received his second booster dose on Wednesday, March 30, 2022, and tested positive for COVID-19 on July 21, 2022, just 15 weeks later. The White House press release dated July 21, 2022, stated:

This morning, President Biden tested positive for COVID-19. He is fully vaccinated and twice boosted and experiencing very mild symptoms. He has begun taking Paxlovid.

He took Paxlovid, and (like Dr. Fauci) caught COVID-19 again.⁴² It is also common knowledge that First Lady Jill Biden — twice “vaccinated” and twice “boosted,” according to her spokesperson — has also caught COVID-19.⁴³

42. The “vaccinated” and thrice-boosted Canadian Prime Minister, Justin Trudeau, has caught COVID-19 twice (so far). He was “vaccinated” on April 23, 2021, received a booster on January 4, 2022, caught COVID-19 later that month, received a second shot in April 2022, caught COVID-19 for the second time in June, then got a third “booster” shot in July.

43. On August 8, 2022, Michigan Governor Gretchen Whitmer stated that she had tested positive for COVID-19: “Thankfully, I am only experiencing mild symptoms after being fully vaccinated and twice boosted.”⁴⁴ Nine months earlier, on the occasion of receiving one of her

⁴¹ <https://www.politico.com/news/2022/03/30/biden-receive-second-covid-booster-00021667>

⁴² <https://www.cnn.com/2022/06/13/americas/justin-trudeau-covid19-intl/index.html>;
<https://www.businessinsider.com/justin-trudeau-got-moderna-booster-shot-after-his-astrazeneca-jab-2021-7>;

<https://www.politico.com/news/2022/06/13/trudeau-positive-covid-00039165>

⁴³ <https://www.reuters.com/world/us/us-first-lady-jill-biden-tests-positive-covid-19-statement-2022-08-16/>

⁴⁴ <https://www.michigan.gov/whitmer/news/press-releases/2022/08/08/governor-whitmer-statement-on-testing-positive-for-covid-19>

booster shots, Governor Whitmer had stated: “The three safe, effective vaccines continue to be our best shot at beating COVID-19.”⁴⁵

44. On August 25, 2022, New Mexico Governor Lujan Grisham announced that she had tested positive for COVID-19: “I am very grateful to be experiencing only mild symptoms after being fully vaccinated and twice boosted against COVID-19.”⁴⁶

45. On September 6, 2022, Senator Jackie Rosen of Nevada announced that she had tested positive for COVID-19. Her office stated that she was experiencing “mild symptoms” and was “thankful to have been fully vaccinated and boosted to protect against severe illness.”⁴⁷

46. On September 27, 2022, another Cabinet member, Michael Regan (Administrator of the Environmental Protection Agency) posted a Tweet stating that he had tested positive for COVID-19, was experiencing “mild symptoms,” and was “grateful to be vaccinated and boosted.”⁴⁸

47. CDC director Rochelle Walensky tested positive for COVID-19 on October 22; the CDC announced that Walensky was “up to date with her vaccines.”⁴⁹ This came approximately one month after she was injected with the bivalent product. On the day of her injection, ABC quoted Walensky as saying:

All the data from this new bivalent vaccine have demonstrated that it will protect you against — more likely protect you — against the strains that we have circulating right now, those Omicron BA.5 strains, as well as keep you well protected, because we’ve seen that some of that protection can wane over time.

⁴⁵ <https://www.michigan.gov/whitmer/news/press-releases/2021/11/05/photos-gov--whitmer-receives-safe-effective-covid-19-vaccine-booster>

⁴⁶ <https://www.governor.state.nm.us/2022/08/25/governor-tests-positive-for-covid-19/>

⁴⁷ <https://www.rosen.senate.gov/2022/09/06/senator-rosen-tests-positive-for-covid-19/>

⁴⁸ <https://twitter.com/EPAMichaelRegan/status/1574924863802056705>

⁴⁹ <https://www.cdc.gov/media/releases/2022/s1022-covid-director.html>

So, we are really encouraging everybody to roll up their sleeves and get this updated bivalent vaccine.⁵⁰

Just four weeks after her bivalent-booster injection, Walensky caught COVID-19. Then she took Paxlovid and caught it again.⁵¹

48. On November 1, 2022, the Department of Education announced that Education Secretary Miguel Cardona had caught COVID-19. The department's press release described him as "fully vaccinated and boosted against COVID-19 and experiencing mild symptoms."⁵²

49. On November 17, 2022, Colorado Governor Jared Polis tested positive for COVID-19. His office stated, "The Governor is fully vaccinated, is asymptomatic, and will be working from home with his full schedule until he is no longer contagious (for five days if he remains asymptomatic)."⁵³ In December 2021, Governor Polis had declared that "unvaccinated" people who catch COVID-19 have only themselves to blame ("it's their own darn fault"), a statement he later supplemented by saying that unvaccinated people "are often the victims of misinformation."⁵⁴

50. On November 20, 2022, Oregon Governor Kate Brown tested positive for COVID-19.⁵⁵ She tweeted:

After returning from Vietnam, Dan and I have tested positive for COVID-19. We are recuperating at home and, while this changes our Thanksgiving plans, we are

⁵⁰ <https://abcnews.go.com/Health/cdc-director-weighs-pandemic-bivalent-covid-shot-critically/story?id=90323875>

⁵¹ <https://www.cdc.gov/media/releases/2022/s1031-covid-19-cdc-director.html>

⁵² <https://www.ed.gov/news/press-releases/statement-acting-assistant-secretary-communications-and-outreach-kelly-leon-education-secretary-cardona-testing-positive-covid-19>

⁵³ <https://www.colorado.gov/governor/news/9086-gov-polis-tests-positive-covid-asymptomatic-will-continue-duties-governor-while-working>

⁵⁴ <https://www.politico.com/news/2021/12/19/jared-polis-three-dose-vaccine-525532>;
<https://www.deseret.com/utah/2021/12/14/22834582/colorado-governor-jared-polis-covid-19-emergency-over-unvaccinated-pandemic-vaccine-masks>

⁵⁵ <https://www.oregonlive.com/news/2022/11/gov-kate-brown-tests-positive-for-covid-19.html>

grateful for effective vaccines and boosters that are helping ensure our symptoms don't become serious.

51. The inefficacy of the products is something that public health officials are now acknowledging publicly. Dr. Deborah Birx, former White House Coronavirus Response Coordinator, stated recently: “I knew these vaccines were not going to protect against infection and I think we overplayed the vaccines.”⁵⁶ Similarly, as former CDC director Dr. Tom Frieden stated, “protection against infection through vaccination is something of a flash-in-the-pan phenomenon.” Dr. Anthony Fauci now concedes that vaccine-induced immunity “isn’t durable”:

“We know that people get infected and then get reinfected. And people get vaccinated, and they get infected. So, immunity isn’t measured in decades or lifetimes. It’s measured in several months.”⁵⁷

52. Acknowledging this reality, the CDC changed its COVID-19 guidance in August 2022, so that its prevention recommendations “no longer differentiate based on a person’s vaccination status.”⁵⁸ The CDC now concedes that the products advertised as COVID-19 vaccines do not prevent recipients from catching, getting sick from, and spreading COVID-19.

53. Figures from the Massachusetts Department of Public Health (DPH) figures show that since at least February 2022 the majority of people hospitalized in Massachusetts for COVID-19 have been “fully vaccinated.”

54. Massachusetts DPH figures show that by mid-July 2022 more than 3,000 “fully vaccinated” people in Massachusetts had died from COVID-19. The Massachusetts DPH categorizes individuals as “fully vaccinated” if they have received the number of doses required

⁵⁶ <https://youtu.be/8AYqTgtIgLA>

⁵⁷ <https://www.marketwatch.com/articles/anthony-fauci-covid-19-biden-immunity-51658437525?siteid=nf-rss>

⁵⁸ <https://www.cdc.gov/mmwr/volumes/71/wr/mm7133e1.htm>

to complete the COVID-19 vaccine series for their age and all of these doses have been reported to the Massachusetts Immunization Information System.

55. In mid-July the Massachusetts DPH stopped publishing the number of COVID-19 breakthrough cases, i.e. people who were injected with the products and then caught the disease. The DPH website states “data on vaccine breakthrough cases in Massachusetts are no longer being updated.” It does not say why.

56. The latest — and apparently final — weekly report on COVID-19 cases among “fully vaccinated” individuals states that 11.4% of “fully vaccinated” people have caught COVID-19 after becoming “fully vaccinated”:

- As of July 2, 2022 there were 5,408,359 fully vaccinated people and there were 617,337 cases in vaccinated people
- 10,121 of those 617,337 cases resulted in hospitalization and 3,213 cases resulted in death based on information reported to date⁵⁹

DPH’s responses to public records requests show that the number of breakthrough cases in the period June 26-September 3, 2022, was 58,199. See Exhibits B and C, attached. Of the 5,555,220 people in Massachusetts that DPH classifies as “fully vaccinated” at least 675,000 (more than 12%) are recorded as having subsequently caught COVID-19.

57. Below the figures in the weekly report, the DPH includes this note about undercounting both of cases and hospitalizations:

Identification of cases in vaccinated people relies on matching data between the system of record for cases and vaccinations. The number of cases in vaccinated people may be undercounted due to discrepancies in the names and dates of birth of individuals, resulting in an inability to match records across systems. Hospitalization data is likely also undercounted as identification and reporting of

⁵⁹ Massachusetts Department of Public Health COVID-19 Vaccine Data –Tuesday, July 5, 2022.

hospitalized cases relies on that information being obtainable by case investigators through patient interview.

58. For most people who display some symptoms of COVID-19, those symptoms are mild (e.g. sore throat, slight cough, and runny nose) and do not require a visit to a healthcare provider. If a person with COVID-19 does not report the infection to a healthcare provider, nobody enters the case into a healthcare provider's database, and it does not appear in the DPH figures.

59. Accordingly, the DPH case count of 617,337 "fully vaccinated" people who subsequently caught COVID-19 excludes those who do not report the fact to a healthcare provider. It also excludes people who were injected with the products but caught COVID-19 within the 14-day period prior to them becoming "fully vaccinated" according to the Department's definition of that term.

60. Defendant's express reason for terminating Plaintiff was the fact that Plaintiff had not been injected with a product advertised as a COVID-19 vaccine. At all material times, Defendant knew that: (a) being injected with such a product would not have prevented Plaintiff from contracting and spreading COVID-19; (b) that Plaintiff had suffered an adverse reaction from a product containing an ingredient also found in the products advertised as COVID-19 vaccines and was at risk of further harm from mRNA products; and (c) that Defendant could have accommodated Defendant's request without undue hardship.

61. Plaintiff had experienced an adverse reaction to the influenza vaccine. On the basis of her previous adverse reaction Plaintiff suffers from an impairment that limited one or major life activities, which is a disability within the meaning of the ADA, 42 U.S.C. § 12102.

62. In addition, if Defendant genuinely (albeit mistakenly) believed that being injected with the product would have prevented Plaintiff from contracting and spreading COVID-19, then Defendant perceived Plaintiff (wrongly) as being more of disease vector than employees who

had been injected with the products advertised as COVID-19 vaccines. Accordingly, Defendant regarded Plaintiff as having an impairment that substantially limits one or more major life activities, which constitutes a disability within the meaning of 42 U.S.C. § 12102 (1).

63. By terminating Plaintiff's employment for her not being injected with a medically unnecessary product containing an ingredient also found in a product that had previously caused her to suffer harm, Defendant discriminated against Plaintiff on the basis of disability.

64. By terminating Plaintiff's employment based on the erroneous perception that Plaintiff was more susceptible to catching a disease than other employees, Defendant discriminated against Plaintiff on the basis of her disability.

65. By terminating Plaintiff's employment for her not being injected with a medically unnecessary product that conflicted with Plaintiff's sincerely held religious beliefs, Defendant discriminated against Plaintiff on the basis of religion

66. At all material times, Plaintiff was qualified to perform the essential functions of the job, with or without reasonable accommodation.

CLAIM FOR RELIEF

COUNT 1

Section 703 (a) of Title VII, 42 U.S.C. § 2000e-2(a)

Defendant discriminated against Plaintiff on the basis of her religion

67. Plaintiff repeats and incorporates by reference the factual allegations in the preceding paragraphs.

68. Plaintiff sincerely possessed a bona fide religious belief that conflicted with an employment requirement, namely Defendant's requirement that Plaintiff be injected with a product advertised as a COVID-19 vaccine.

69. Plaintiff informed Defendant of the conflict.

70. Defendant took adverse employment decisions against Plaintiff for not complying with the employment requirement because of her conflicting religious belief, namely inducing her to renounce her beliefs and terminating her employment.

71. Defendant discriminated against Plaintiff on the basis of her religion in violation of 42 U.S.C. § 2000e-2(a) as follows:

72. Defendant failed to engage with Plaintiff in an interactive process in efforts to reasonably accommodate her religious beliefs that prohibit him from being injected with the products advertised as COVID-19 vaccines.

73. Defendant failed to adequately attempt to reasonably accommodate Plaintiff's sincerely held religious observance, practice, and beliefs that prohibit her from being injected with the products advertised as COVID-19 vaccines.

74. Defendant failed to reasonably accommodate Plaintiff's sincerely held religious observance, practice, and beliefs that prohibit her from being injected with the products advertised as COVID-19 vaccines.

75. Accommodating Plaintiff's sincerely held religious observance, practice, and beliefs that prohibit her from being injected with the products advertised as COVID-19 vaccines would not have caused Defendant undue hardship.

76. Defendant discriminated against Plaintiff on the basis of her religion in violation of the Civil Rights Act, Section 703 (a) of Title VII, 42 U.S.C. § 2000e-2(a).

77. As a result of Defendant's acts and omissions, Plaintiff has suffered harm.

COUNT 2

Violation of the American with Disabilities Act

Defendant discriminated against Plaintiff on the basis of disability

78. Plaintiff repeats and incorporates by reference the factual allegations in the preceding paragraphs.

79. The acts and omissions alleged in the preceding paragraphs constitute discrimination in violation of the Americans with Disabilities Act, 42 U.S.C. § 12112 (b) (5)(A).

80. Defendant acted with malice or with reckless indifference to Plaintiff's federally protected rights.

81. As a result, Plaintiff has suffered and continues to suffer harm.

COUNT 3

Violation of the Massachusetts General Laws Chapter 151B

Defendant discriminated against Plaintiff on the basis of her religion

82. Plaintiff repeats and incorporates by reference the factual allegations in the preceding paragraphs.

83. Plaintiff sincerely possessed a bona fide religious belief that conflicted with an employment requirement, namely Defendant's requirement that Plaintiff be injected with a product advertised as a COVID-19 vaccine.

84. Plaintiff informed Defendant of the conflict.

85. Defendant took adverse employment decisions against Plaintiff for not complying with the employment requirement because of her conflicting religious belief, namely inducing her to renounce her beliefs and terminating her employment.

86. Defendant discriminated against Plaintiff on the basis of her religion in violation of Chapter 151B of the Massachusetts General Laws as follows:

87. Defendant failed to engage with Plaintiff in an interactive process in efforts to reasonably accommodate her religious beliefs that prohibit him from receiving the products advertised as COVID-19 vaccines.

88. Defendant failed to adequately attempt to reasonably accommodate Plaintiff's sincerely held religious observance, practice, and beliefs that prohibit her from receiving the products advertised as COVID-19 vaccines.

89. Defendant failed to reasonably accommodate Plaintiff's sincerely held religious observance, practice, and beliefs that prohibit her from receiving the products advertised as COVID-19 vaccines.

90. Accommodating Plaintiff's sincerely held religious observance, practice, and beliefs that prohibit her from being injected with the products advertised as COVID-19 vaccines would not have caused Defendant undue hardship.

91. Defendant discriminated against Plaintiff on the basis of her religion in violation of M.G.L. c. 151B.

92. As a result of Defendant's acts and omissions, Plaintiff has suffered harm.

COUNT 4

Violation of the Massachusetts General Laws Chapter 151B

Defendant discriminated against Plaintiff on the basis of disability

93. Plaintiff repeats and incorporates by reference the factual allegations in the preceding paragraphs.

94. Defendant discriminated against Plaintiff on the basis of disability in violation of Chapter 151B of the Massachusetts General Laws.

95. As a result of Defendant's acts and omissions, Plaintiff has suffered and continues to suffer harm.

PRAYER FOR RELIEF

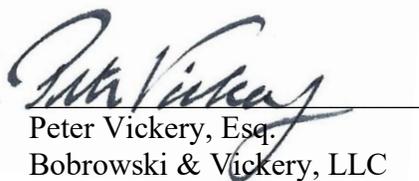
Plaintiff respectfully requests that this Honorable Court:

- A. Award Plaintiff back pay and front pay;
- B. Award Plaintiff damages (including damages for emotional distress) plus her costs and her reasonable attorney's fees, and
- C. Order such other and further relief as the Court deems just and appropriate.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all issue so triable pursuant to Fed. R. Civ. P. 38 and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

Respectfully Submitted
Laura Dyer
By Her Attorney:



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November 22, 2022