

APPENDIX H

GRIEVANCE FORM

State Wide Comm. Colleges COLLEGE

Grievance Number: 01.2022-001

Initially filed on: _____

Step I _____ Filed on: _____

Step II _____ Filed on: _____

Step III _____ Filed on: 1.20.22

Step IV _____ Filed on: _____

Step V _____ Filed on: _____

Grievant(s) Class action

Title(s) varied

Filed on behalf of _____

Statement of Grievance

Written statement reciting the event or occurrence upon which the alleged grievance is based. (*Describe what happened*).

Wrongful terminations of bargaining unit members, who were denied an exemption from the Commonwealth's Covid-19 mandate notwithstanding sincerely held Religious Beliefs as specified in the signed and executed Memorandum of Agreement between the Board of Higher Education on behalf of the Massachusetts Community Colleges and AFSCME Council 93, Local 1067 dated 11.3.21

When and Where Grievance Occurred

(Give date, day, time and location).

Across the community college system.

APPENDIX H - (Continued)

Specific Provision(s) Breached

Give contract Article, Sections and explanation if necessary.

See attached statement.


Any and all other articles and laws that may apply.

Relief or Remedy Sought

Reinstate all members and make them whole and any other remedy deemed appropriate.

Grievant(s) to be made whole and any other remedy deemed appropriate.

Signature of Grievant(s) CLASS ACTION Date: _____

Signature of Union Steward  (Mandatory), Coordinator Date: 1.20.22

Received by: Emailed to M.Murray (Optional) at Step III on 1.20.22

January 20, 2022
Class Action Grievance
AFSCME Council 93, State and Community Colleges Local 1067

Dispute: Wrongful Termination of Bargaining Unit Members, who were denied an exemption from the Commonwealth's Covid -19 mandate notwithstanding sincerely held Religious Beliefs as specified in the signed and executed Memorandum of Agreement between the Board of Higher Education on behalf of the Massachusetts Community Colleges and AFSCME Council 93, Local 1067 dated November 3, 2021.

Synopsis: Each of the Community Colleges processed their own on campus request from those bargaining unit employees, seeking a religious exemption to the Covid-19 Vaccine mandate. Campuses made arbitrary and capricious decisions and did not follow the EEOC guidelines and “were not consistent with applicable laws, Equal Employment Opportunity Commission (EEOC)/Massachusetts Commission Against Discrimination (MCAD) guidance.....”

Basis: Campuses' did not follow established law in making decisions and could not prove that providing the accommodations caused an **Undue Hardship.**

https://www.eeoc.gov/laws/guidance/section-12-religious-discrimination#h_984461328691610748665504

Overview Directly from the EEOC.gov website:

Religion is very broadly defined for purposes of Title VII. The presence of a deity or deities is not necessary for a religion to receive protection under Title VII. **Religious beliefs can include unique beliefs held by a few or even one individual;** however, mere personal preferences are not religious beliefs. Individuals who do not practice any religion are also protected from discrimination on the basis of religion or lack thereof. Title VII requires employers to accommodate religious beliefs, practices and observances if the beliefs are “sincerely held” and the reasonable accommodation poses no undue hardship on the employer.

Sincerely Held

Title VII requires employers to accommodate those religious beliefs that are “sincerely held.”^[38] Whether or not a religious belief is sincerely held by an applicant or employee is rarely at issue in many types of Title VII religious claims.^[39] For example, with respect to an allegation of discriminatory discharge or harassment, it is the motivation of the discriminating official, not the actual beliefs of the individual alleging discrimination, that is relevant in determining if the discrimination that occurred was because of religion. A detailed discussion of

reasonable accommodation of sincerely held religious beliefs appears in § 12-IV, but the meaning of “sincerely held” is addressed here.

Like the religious nature of a belief, observance, or practice, the sincerity of an employee’s stated religious belief is usually not in dispute and is “generally presumed or easily established.”^[40] Further, the Commission and courts “are not and should not be in the business of deciding whether a person holds religious beliefs for the ‘proper’ reasons. We thus restrict our inquiry to whether or not the religious belief system is sincerely held; we do not review the motives or reasons for holding the belief in the first place.”^[41] The individual’s sincerity in espousing a religious observance or practice is “largely a matter of individual credibility.”^[42] Moreover, “a sincere religious believer doesn’t forfeit his religious rights merely because he is not scrupulous in his observance,”^[43] although “[e]vidence tending to show that an employee acted in a manner inconsistent with his professed religious belief is, of course, relevant to the factfinder’s evaluation of sincerity.”^[44] Factors that – either alone or in combination – might undermine an employee’s credibility include: whether the employee has behaved in a manner markedly inconsistent with the professed belief;^[45] whether the accommodation sought is a particularly desirable benefit that is likely to be sought for secular reasons;^[46] whether the timing of the request renders it suspect (e.g., it follows an earlier request by the employee for the same benefit for secular reasons);^[47] and whether the employer otherwise has reason to believe the accommodation is not sought for religious reasons.

However, none of these factors is dispositive. For example, although prior inconsistent conduct is relevant to the question of sincerity, an individual’s beliefs – or degree of adherence – may change over time, and therefore an employee’s newly adopted or inconsistently observed religious practice may nevertheless be sincerely held.^[48] Similarly, an individual’s belief may be to adhere to a religious custom only at certain times, even though others may always adhere,^[49] or, fearful of discrimination, he or she may have forgone his or her sincerely held religious practice during the application process and not revealed it to the employer until after he or she was hired or later in employment.^[50] An employer also should not assume that an employee is insincere simply because some of his or her practices deviate from the commonly followed tenets of his or her religion, or because the employee adheres to some common practices but not others.^[51] As noted, courts have held that “Title VII protects more than . . . practices specifically mandated by an employee’s religion.”^[52]

3. Employer Inquiries into Religious Nature or Sincerity of Belief

Because the definition of religion is broad and protects beliefs, observances, and practices with which the employer may be unfamiliar, the employer should ordinarily assume that an employee’s request for religious accommodation is based on a sincerely held religious belief. If, however, an employee requests religious accommodation, and an employer has an objective basis for questioning either the religious nature or the sincerity of a particular belief, observance, or practice, the employer would be justified in seeking additional supporting information. *See infra* § 12-IV-A-2.

- **If the Respondent disputes that CP’s belief is “sincerely held,” the following evidence may be relevant:**
 - ⇒ Oral statements, an affidavit, or other documents from CP describing his or her beliefs and practices, including information regarding when CP embraced the belief, observance, or practice, as well as when, where, and how CP has adhered to the belief, observance, or practice; and/or,

IN EVERY INSTANCE OF TERMINATION, THE BARGAINING UNIT MEMBER PROVIDED STATEMENTS AND EXAMPLES.

EXAMPLE 2

Religious Practice versus Secular Practice

A Seventh-day Adventist employee follows a vegetarian diet because she believes it is religiously prescribed by scripture. Her vegetarianism is a religious practice, even though not all Seventh-day Adventists share this belief or follow this practice, and even though many individuals adhere to a vegetarian diet for purely secular reasons.

EXAMPLE 6

Personal Preference That Is Not a Religious Belief

Sylvia’s job has instituted a policy that employees cannot have visible tattoos while working. Sylvia refuses to cover a tattoo on her arm that is the logo of her favorite band. When her manager asks her to cover the tattoo, she states that she cannot and that she feels so passionately about the importance of the band to her life that it is essentially her religion. However, the evidence demonstrates that her tattoos and her feelings do not relate to any “ultimate concerns” such as life, purpose, death, humanity’s place in the universe, or right and wrong, and they are not part of a moral or ethical belief system. Simply feeling passionately about something is not enough to give it the status of a religion in someone’s life. Therefore, her belief is a personal preference that is not religious in nature.^[37]

“ultimate concerns” such as life, purpose, death, humanity’s place in the universe, or right and wrong, and they are not part of a moral or ethical belief system

IN EVERY INSTANCE OF TERMINATION, THE BARGAINING UNIT MEMBER PROVIDED STATEMENTS AND EXAMPLES AND ARTICULATED THEIR ULTIMATE CONCERNS.

EXAMPLE 5

Unique Belief Can Be Religious

Edward practices the Kemetic religion, based on ancient Egyptian faith, and affiliates himself with a tribe numbering fewer than ten members. He states that he believes in various deities, and follows the faith's concept of Ma'at, a guiding principle regarding truth and order that represents physical and moral balance in the universe. During a religious ceremony he received small tattoos encircling his wrist, written in the Coptic language, which express his servitude to Ra, the Egyptian god of the sun. When his employer asks him to cover the tattoos, he explains that it is a sin to cover them intentionally because doing so would signify a rejection of Ra. **These can be religious beliefs and practices even if no one else or few other people subscribe to them.**[\[36\]](#)

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement is by and between the Board of Higher Education on behalf of the Massachusetts Community Colleges (the Community Colleges) and the American Federation of State and County and Municipal Employees, Council 93, Local 1067 (the Union) (collectively, the Parties).

WHEREAS, the Parties agree that widespread vaccination against COVID-19 on the Community College campuses would ensure the safest possible working and learning environment for all employees and students; the importance of fully vaccinating the population against COVID-19 cannot be overstated, and

WHEREAS, the Parties recognize the increased access and availability of vaccines in the Commonwealth, the Food & Drug Administration's full and pending approval of available vaccines, and that COVID-19 vaccines are now readily available at no cost to all, and

WHEREAS, the Parties agree that this mandate is solely related to the COVID-19 pandemic and does not set precedent.

NOW THEREFORE, for the mutual promises and considerations contained herein, the Parties agree as follows:

1. The Union's unit members are required to be fully vaccinated as defined by the Centers for Disease Control (CDC), which is currently receiving a dose of a one dose FDA approved or emergency use authorized COVID-19 vaccine or 2 doses of a two dose FDA approved or emergency use authorized COVID-19 vaccine no later than 2 weeks) prior to January 3, 2022. In the event of a change in the definition of full vaccination status by the CDC, the parties shall schedule a meeting to bargain the impact of this change in definition. Unit members may use the paid COVID leave provisions, to the extent available, to take time to become vaccinated as well as to recover from any side effects in addition to currently available contractual leave.
2. Unit members will be required to provide verification through written proof of an official record of full vaccination status consistent with the Community Colleges policy and this Memorandum of Agreement.
3. Unit members who submit verification of full vaccination status by January 3, 2022 in compliance with the Policy shall be credited with one compensatory day to be used within sixty (60) days after January 3, 2022. If the compensatory day is not used, it shall be forfeited. There shall be no cash payout of the compensatory day for any purpose.
4. Unit members may request a reasonable accommodation from this vaccination requirement for reasons, including medical and sincerely held religious beliefs, by completing the designated Employee Reasonable Accommodation Request Form and providing supporting information to

the employing college's Human Resources Office through the designated electronic platform or by delivery to the office designated by each College. Requests for reasonable accommodations, including requests to be exempt from the vaccine requirement for medical or religious reasons, will be considered consistent with applicable laws, Equal Employment Opportunity Commission (EEOC)/Massachusetts Commission Against Discrimination (MCAD) guidance, and the Board of Higher Education Policy on Affirmative Action, Equal Opportunity and Diversity for the Massachusetts Community Colleges. The College will engage in an interactive process to determine if the Employee is eligible for a reasonable accommodation and, if so, whether the requested accommodation is reasonable and does not create an undue hardship for the College and/or does not pose a direct threat to the health or safety of the Employee or others in the learning and working environment.

5. Unit members who refuse vaccination without an approved reasonable accommodation and unit members with an approved reasonable accommodation who refuse to abide by the terms of the approved reasonable accommodations, including additional health and safety protocols contained therein, are not permitted to work or be on campus and will be considered in violation of this policy.
6. Any disciplinary action imposed upon a unit member for violation of this memorandum shall be subject to Article 28 of the Parties' collective bargaining agreement.
7. If the Employee decides not to comply with the COVID-19 verification requirement, the Employee may submit a letter of resignation by January 3, 2022 with an end of employment effective date up to, and including, February 3, 2022. The employing College will accept the Employee's resignation and allow the Employee to utilize any accrued personal, vacation and/or compensatory time beginning January 3, 2022 through February 3, 2022 upon request. Such employees shall not anticipate receiving unemployment compensation.
8. The Parties acknowledge that current guidance from Massachusetts Department of Unemployment Assistance states with respect to employees who resign or are terminated for failing to become fully vaccinated pursuant to this Agreement is as follows:


My employer has a policy that requires employees to receive the COVID-19 vaccine as a condition of employment. Will I be eligible to collect unemployment benefits if I resign due to the policy or if I get terminated for not complying with it?

Although the Department of Unemployment Assistance decides all unemployment claims on a case-by-case basis, as a general matter, employees who are separated from employment for failing or refusing to comply with an employer's requirement that employees maintain COVID-19 vaccination will not be eligible to collect unemployment benefits.

9. On or after July 1, 2022, the parties shall meet at the request of the Union to review the status of this Agreement.

10. This agreement shall constitute full agreement by the parties and shall only be modified by subsequent agreement in writing.

FOR BOARD OF HIGHER EDUCATION

By: 
Michael J. Murray, Esq.
Director of Employee and Labor Relations
Date: November 3, 2021

FOR AFSCME Council 93, Local 1067

By: Kimberly Sylvia
Name: Kimberly Sylvia
Title: Coordinator of Higher Education
Date: November 3, 2021

By: Thomasine Corbett
Name: Thomasine Corbett
Title: President, Local 1067 Date:
November 3, 2021