

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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<p>MATTHEW PAWLOWSKI,  Plaintiff,  v.  BERKLEY RISK ADMINISTRATORS COMPANY, LLC,  Defendant.</p>	<p>Court File No. _____</p> <p><b>COMPLAINT JURY TRIAL DEMANDED</b></p>
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**INTRODUCTION**

1. Plaintiff Matthew Pawlowski brings this Title VII religious-discrimination and failure-to-accommodate claim against Defendant Berkley Risk Administrators Company LLC (“Defendant” or “Berkley”) because Berkley fired Pawlowski for failing to receive the COVID-19 vaccine due to his sincerely held religious beliefs, failed to accommodate his sincere religious beliefs, and failed to adequately engage in the interactive process with him.

2. Plaintiff was an outside-claims adjuster employed by Berkley, but he worked full-time directly for the League of Minnesota Cities Insurance Trust (“LMCIT”)—a client of the Defendant—and worked successfully in that position for 8 years before Berkley fired him because of his religious objections to the COVID-19 vaccine.

3. From the onset of the pandemic, Plaintiff continued to do his job with very little change. Plaintiff did most of his work from his home office but did go out into the field about once per week; on those occasions, he wore a mask.

4. On or about September 21, 2021, Berkley informed its employees during a virtual meeting that it would be instituting a mandatory COVID-19 vaccination policy (“Vaccine Policy”) for all its employees.

5. Plaintiff was given until February 1, 2022, to be vaccinated or else face termination. Plaintiff applied for an exemption.

6. Defendant notified the Plaintiff that his exemption had been approved; however, it also informed him that it could not accommodate his exemption because it claimed that his job entailed essential duties that had to be performed in person. Specifically, Berkley told Mr. Pawlowski that Berkley could not allow him to put others “at risk” due to his unvaccinated status.

7. Pawlowski made several attempts to communicate with Defendant to resolve the issue short of his termination and received little-to-no meaningful interaction with the Defendant. He was then terminated on February 1, 2022.

8. Defendant terminated Mr. Pawlowski’s employment despite the fact that he never went to any Berkley facility or LMCIT facility as a regular part of his employment, rarely interacted with individuals in person when performing his daily duties, worked almost exclusively from home, and exclusively worked for and remotely reported to his manager, Mark Johnson. Moreover, he was willing to mask, undergo non-intrusive testing, and practice social-distancing while in the presence of other individuals.

9. There was and is no undue hardship for the Defendant to keep the Plaintiff employed while accommodating his exemption.

10. To make matters worse, the Defendant failed to make any meaningful effort, as part of the interactive process, to provide Plaintiff an opportunity to work a different job within the company in order to accommodate his religious objection. Berkley made no effort to help him, despite its obligation to do so.

11. Because Plaintiff's sincerely held religious beliefs prevent him from becoming vaccinated with the COVID-19 vaccine, he is entitled to relief under Title VII of the Civil Rights Act and other statutes as described below.

### **THE PARTIES**

12. Plaintiff Matthew Pawlowski resides in Bloomington, Minnesota, within the District of Minnesota.

13. Defendant Berkley's corporate office is located at 222 S 9<sup>th</sup> St #2700, Minneapolis, Minnesota 55402, within the District of Minnesota.

### **JURISDICTION AND VENUE**

14. The Court has subject-matter jurisdiction under 28 U.S.C. §§ 1331 and 42 U.S.C. §§ 2000e(j) and 2000e-2 ("Title VII"). Plaintiff alleges federal questions arising under the laws of the United States under Title VII.

15. This Court has authority to award the requested relief pursuant to Title VII of the Civil Rights Act; and costs and attorneys' fees pursuant to Title VII and 42 U.S.C. § 1988(b).

16. This Court has both general and specific jurisdiction over Berkley, which is located within the District of Minnesota, and its acts and omissions alleged herein took place in the District of Minnesota.

17. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(1), (b)(2) and (e) and because Berkley is doing business in the District, and a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this judicial District.

**FACTUAL ALLEGATIONS**

18. Mr. Pawlowski began his employment with Berkley on or about December 15, 2014. He served as an outside claims adjustor working directly for the League of Minnesota Cities Insurance Trust ("LMCIT"), a contracted client of Berkley. Mr. Pawlowski was assigned by Berkley to handle LMCIT's liability claims.

19. Mr. Pawlowski was employed to investigate liability claims. His primary role on the west metro team was as the no-fault sanitary sewer backup lead. The investigations primarily involved interviewing relevant parties over the phone and driving to observe damages to structures and personal property.

20. Throughout the COVID-19 pandemic, Mr. Pawlowski continued to do his job from his home office while going into the field to investigate claims a few hours per week. While doing so, he practiced social distancing and wore a mask.

21. Beginning in March 2021, COVID-19 vaccinations became widely available to adults in the United States.

22. On or about September 21, 2021, Berkley informed its workforce, including Mr. Pawlowski, that it was contemplating whether it would implement a mandatory vaccine policy.

**Plaintiff's Sincerely Held Religious Beliefs**

23. Mr. Pawlowski is a Christian. He believes that the COVID-19 vaccine poses a dangerous intrusion into his body, thus violating his bodily integrity and his duty before God to protect his body and soul from such intrusion. **Exhibit 1.**

24. Mr. Pawlowski believes—based on religious teachings and the Bible—that he is obligated to adhere to his conscience because he will stand before God to give an account for all that he does. This includes refraining from putting dangerous and deleterious substances in his body.

25. As requested by Berkley, Mr. Pawlowski provided it with a letter from his pastor that detailed the specific reasons why the COVID-19 vaccines are incompatible with Mr. Pawlowski's biblical convictions. This included his belief that the COVID-19 vaccines are an unbiblical intrusion into his physical body, which is the temple of the Holy Spirit. **Exhibit 1.**

26. Pawlowski's religious objection to the COVID-19 vaccine is sincere, as demonstrated in part by his willingness to adhere to it despite threats of and actual employment discrimination by Berkley.

**Berkley's Vaccine Policy and Pawlowski Request for Accommodation**

27. On or about September 21, 2021, Berkley informed its employees of its Vaccine Policy requiring all employees to receive a COVID-19 vaccination or else submit a request for religious or medical accommodation, as applicable.

28. Berkley's Vaccine Policy conflicts with Mr. Pawlowski's sincerely held religious beliefs because he believes it is his duty before God to abstain from unbiblical intrusions into his body.

29. On October 11, 2021, Mr. Pawlowski requested a religious exemption from Berkley based on his sincerely held religious beliefs. In his request he notified Berkley's Human Resource Department that he is a Christian and that he declined to receive a COVID-19 vaccination because to do so would violate his sincerely held religious conviction. **Exhibit 1.**

30. Mr. Pawlowski spent a significant amount of time considering his religious beliefs related to his responsibility as a Christian to abstain from these vaccines. This included seeking spiritual counsel from his Pastor David Hall. Mr. Pawlowski included a letter from Pastor David Hall as a part of his exemption request. **Exhibit 1.**

31. On December 7, 2021, Berkley informed Mr. Pawlowski that it would not accommodate his religious beliefs. Berkley claimed that Mr. Pawlowski's essential job functions required him to have too much personal contact, thereby putting individuals at risk if he remained unvaccinated. **Exhibit 1.**

32. On December 13, 2021, Mr. Pawlowski requested an appeal of Berkley's decision. Because he had been doing his job for nearly 2 years since the onset of the pandemic from his home office and wearing a mask while in the presence of others, all without any issues, he suggested that this was evidence that Berkley would not suffer any undue hardship but could accommodate his religious conviction and allow him to continue to do his job. **Exhibit 1.**

**Berkley Fails to Engage in the Interactive Process, Fails to Accommodate Mr. Pawlowski, and Terminates Him Because of His Religious Beliefs.**

33. On December 14, 2021, Berkley informed Mr. Pawlowski that there was no formal appeal process. Furthermore, it doubled down on its position that allowing Mr. Pawlowski to continue the work he had been doing for 2 years during the pandemic would pose an undue hardship on the company because he was a safety risk due to his unvaccinated status.

**Exhibit 1.**

34. Berkley did not meaningfully engage in an interactive process with Mr. Pawlowski but merely claimed that it would be more than a *de minimis* cost to it if he were to continue in his employment unvaccinated.

35. On January 31, 2022, Berkley sent Mr. Pawlowski a formal termination letter.

**Exhibit 1.**

36. Berkley terminated Mr. Pawlowski for not complying with its mandatory vaccination policy.

37. By refusing to accommodate Mr. Pawlowski's sincerely held religious beliefs that served as the basis for his objection to its mandatory vaccination policy, Berkley unlawfully discriminated against him.

38. Berkley unlawfully compelled Mr. Pawlowski to choose between keeping his employment and violating his sincerely held religious beliefs.

**The Defects of Berkley's Vaccination Mandate**

39. At the time Berkley refused Mr. Pawlowski a religious accommodation and forced its employees to get vaccinated or be fired, evidence was publicly available to Berkley that

demonstrated that the COVID-19 vaccines available to Americans do not reduce transmission of the COVID-19 virus but rather only protect the individual recipients of the vaccine from serious infection. *E.g.*, Jennifer Frazer, “The Risk of Vaccinated COVID Transmission Is Not Low,” *Scientific American*, Dec. 16, 2021, available at <https://www.scientificamerican.com/article/the-risk-of-vaccinated-covid-transmission-is-not-low/> (last visited Dec. 3, 2022); Carlos Franco-Paredes, “Transmissibility of SARS-CoV-2 among fully vaccinated individuals,” *The Lancet*, Jan. 1, 2022, available at [https://www.thelancet.com/journals/laninf/article/PIIS1473-3099\(21\)00768-4/fulltext](https://www.thelancet.com/journals/laninf/article/PIIS1473-3099(21)00768-4/fulltext) (last visited Dec. 3, 2022).

40. Further, measures other than mandatory vaccination, such as temperature checks, mask-wearing, social distancing, and quarantining of infected individuals—all of which Mr. Pawlowski was willing to do—are as effective, if not more effective, at controlling the spread of COVID-19 than mass-vaccinating the population.

41. Given that the “safety risks” posed by Mr. Pawlowski have been the only interest identified by Berkley, and given that safety is advanced little or not at all by the vaccination mandate imposed by it, which Berkley knew or should have known, Berkley cannot demonstrate that an undue hardship actually existed.

42. Berkley’s decision to deny Mr. Pawlowski an accommodation cannot be rationally supported by the evidence and was in violation of his rights.

43. Berkley’s termination of Mr. Pawlowski was intentional discrimination, with malice and reckless indifference to Mr. Pawlowski’s rights under Title VII, as demonstrated by the allegations herein.



**Mr. Pawlowski Exhausted All Administrative Remedies**

44. After he was terminated, on February 1, 2022, Pawlowski filed a Charge of Discrimination in the EEOC on March 22, 2022. **Exhibit 2**

45. On November 16, 2022, the EEOC issued Pawlowski a right-to-sue notice. **Exhibit 3.**

**CAUSE OF ACTION**

**Count One**  
**42 U.S.C. §§ 2000e, et. seq.**

**Title VII Religious Discrimination and Failure to Accommodate**

46. Plaintiff reincorporates the foregoing as if fully written herein.

47. Title VII of the Civil Rights Act of 1964 prohibits Berkley from discriminating against its employees on the basis of their sincerely held religious beliefs. See 42 U.S.C. § 2000e-2(a).

48. As alleged herein, Mr. Pawlowski holds sincere religious beliefs that preclude him from receiving a COVID-19 vaccine.

49. Mr. Pawlowski informed Berkley of those beliefs and requested a religious exemption and reasonable accommodation from the Policy.

50. When Berkley refused to accommodate Mr. Pawlowski by falsely declaring that to do so would impose an undue hardship on Berkley, it failed to initiate the interactive process regarding Mr. Pawlowski's accommodation request.

51. Despite Mr. Pawlowski's best efforts to initiate an interactive process, Berkley made no effort to meaningfully engage in that process or to accommodate Mr. Pawlowski's sincerely held religious beliefs.

52. Beside the interactive process, Berkley failed to provide Plaintiff with a reasonable accommodation, and instead terminated his employment, thereby discriminating against Pawlowski because of his religious beliefs.

53. Berkley's failure to accommodate the Plaintiff has harmed and will continue to harm him.

54. By failing to engage in the interactive process or offer any reasonable accommodation, Berkley's discriminatory actions were intentional and/or reckless and in violation of Title VII.

55. Mr. Pawlowski filed charges with the EEOC complaining of these discriminatory actions on March 22, 2022, and the EEOC issued a right-to-sue letter on November 16, 2022.

56. By the acts, policies, and practices set forth in more detail above, Berkley has discriminated against Plaintiff in the terms and conditions of his employment on the basis of his religion, in violation of Title VII of the Civil Rights Act of 1964.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Matthew Pawlowski respectfully requests that the Court enter judgment against Defendant and provide him with the following relief:

- A. A declaratory judgment that Berkley violated Mr. Pawlowski's rights under Title VII;

- B. An award of actual, nominal, and general damages in favor of Plaintiff because of Berkley's violations of Title VII, in an amount to be proven at trial;
- C. An award of compensatory damages under Title VII in an amount to be proven at trial;
- D. An award of back pay, front pay, treble damages and statutory penalties, interest, emotional distress and pain and suffering, damages to compensate for dignitary harm to Plaintiff, and any other damages or penalties available at law;
- E. Reinstatement to Mr. Pawlowski's former position at Berkley, with credit for years of work service during the time he was illegally terminated, and wage and benefit increases consistent with what an employee in his position would have received during his illegal termination.
- F. An award of punitive damages because of Berkley's intentional discrimination against Mr. Pawlowski with malice and reckless indifference to his rights under Title VII.
- G. Reasonable attorneys' fees, costs, and other costs and disbursements in this action pursuant to 42 U.S.C. § 1988, upon Plaintiff prevailing and appropriate motion for the same;
- H. All and any further relief to which Plaintiff may be entitled; and
- I. A trial by jury of all such matters properly tried as such is requested.

**UPPER MIDWEST LAW CENTER**

Dated: February 13, 2023

*/s/ James V. F. Dickey*

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