

**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS**

CANDY STALLWORTH,

Petitioner,

vs.

Case No. 22-3446

ONEBLOOD, INC.,

Respondent.

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RECOMMENDED ORDER

An administrative hearing was conducted in this case on January 17, 2023, via Zoom, before James H. Peterson, III, Administrative Law Judge with the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Candy Christine Stallworth, pro se  
6840 Trailride North  
Milton, Florida 32570

For Respondent: Mary Caroline Cravatta, Esquire  
Foley & Lardner, LLP  
301 East Pine Street  
Orlando, Florida 32801

STATEMENT OF THE ISSUE

Whether Respondent, OneBlood, Inc. (Respondent or OneBlood), unlawfully discriminated against the employment of Candy Stallworth (Petitioner) because of her religion or in retaliation for her engagement in protected activities.

PRELIMINARY STATEMENT

Petitioner filed an Employment Complaint of Discrimination (Discrimination Complaint) with the Florida Commission on Human Relations (the Commission or FCHR) on April 20, 2022, which was assigned FCHR No. 202233417.

After investigating Petitioner's allegations, the Commission's executive director issued a determination of "No Reasonable Cause" dated October 11, 2022 (Determination), accepting the recommendation that "it is unlikely that unlawful discrimination occurred in this matter." An accompanying Notice of Determination notified Petitioner of her right to file a Petition for Relief for an administrative proceeding within 35 days from the Determination. Thereafter, Petitioner filed a Petition for Relief dated November 9, 2022, and on November 10, 2022, the Commission forwarded the petition to DOAH for the assignment of an administrative law judge to conduct an administrative hearing.

The undersigned was assigned the case and scheduled it for an administrative hearing, which was held on January 17, 2023, via Zoom conference. During the hearing, Petitioner testified on her own behalf, presented the testimony of OneBlood employees Rick Gaffney, Michael Stiles, and Cathy Olesen, and offered 10 exhibits received into evidence as Petitioner's Exhibits P-1a, P-1b, and P-2 through P-9. OneBlood, through expanded cross examination, presented the testimony of its employees called by Petitioner and offered 21 exhibits received into evidence as Respondent's Exhibits R-1 through R-21.

The proceedings were recorded and a transcript was ordered. The parties were given 30 days from the filing of the transcript to submit their proposed recommended orders. The two-volume Transcript of the hearing was filed on

February 17, 2023. Thereafter, Respondent timely filed its Proposed Recommended Order, which has been considered in the preparation of this Recommended Order. Petitioner did not file a proposed recommended order.

#### FINDINGS OF FACT

1. OneBlood is a not-for-profit 501(c)(3) corporation responsible for providing safe, available, and affordable blood to hundreds of hospitals and their patients.

2. Petitioner began working for OneBlood in 2008 as a donor services specialist. Her duties included collecting blood donations and working with donors to provide a positive donor experience.

3. In March of 2020, following the onset of the COVID-19 pandemic, OneBlood began paying its employees, including Petitioner, additional compensation above and beyond their regular base rate of pay.

4. The purpose of the additional compensation was twofold: first, OneBlood was concerned about the challenges facing its employees during the pandemic and believed the additional compensation would help its employees navigate the unprecedented uncertainty; and second, Respondent believed that providing additional compensation would incentivize its employees to stay on during the challenging times.

5. Respondent first announced this additional compensation on March 15, 2020, via a company-wide e-mail from Respondent's President and CEO, Bud Scholl (Mr. Scholl). The additional compensation was dubbed "mission premium pay" and was set at 20 percent of each employee's base compensation. Employees began receiving the additional 20 percent on March 15, 2020.

6. Shortly after the announcement, Respondent made additional changes. First, it created two different "levels" of additional compensation – "mission premium pay," for remote workers; and "essential premium pay," for frontline

workers, including Petitioner. Second, it increased the amount of essential premium pay for frontline workers from 20 percent to 25 percent.

7. From March 29, 2020, to April 3, 2021, Petitioner, along with all other frontline workers, received the 25 percent essential premium pay.

8. Nearly a year later, in March of 2021, OneBlood decided to gradually decrease the amount of essential premium pay. This decision was made, in part, due to the recent availability of COVID-19 vaccines.

9. In accordance with a gradual phase-out schedule, essential premium pay was provided as follows: 25 percent until April 3, 2021; 20 percent from April 4 to June 26, 2021; 15 percent from June 27 to September 18, 2021; 10 percent from September 19 to December 11, 2021; 5 percent from December 12, 2021, to March 5, 2022; and 0 percent thereafter.

10. In 2021, Respondent began to take measures to incentivize its employees to become vaccinated against COVID-19.

11. On August 17, 2021, OneBlood announced a voluntary “Vaccine Incentive Program” in a company-wide e-mail from Mr. Scholl, stating “[t]he amount of team members who are in quarantine due to either contracting COVID-19 or having been exposed to COVID-19 is growing every day” and that, as a result, Respondent was “facing an operational crisis if [it did not] get this under control quickly.”

12. At the time the Vaccine Incentive Program was announced, the essential premium pay percentage was 15 percent for unvaccinated employees, including Petitioner.

13. Under the Vaccine Incentive Program, effective August 22, 2021, essential premium pay percentage was increased back up to 25 percent for employees who provided proof of vaccination.

14. After implementation of the Vaccine Incentive Program, Respondent released a new phase-out schedule, under which all employees would receive a 10 percent base rate increase (irrespective of vaccination status) beginning

on December 12, 2021. Petitioner received this base rate increase despite being unvaccinated.

15. While the phase-out schedule for unvaccinated employees receiving essential premium pay remained the same as that announced in March of 2021 (*see* paragraph 9, above), the new phase-out schedule provided for essential premium pay for vaccinated employees as follows: 25 percent until January 9, 2022; 13 percent from January 10 to March 5, 2022; and ending (0 percent) on March 6, 2022.

16. Under both the March 2021 and new phase-out schedule, as of March 6, 2022, essential premium pay ceased for all workers, both vaccinated and unvaccinated.

17. When the Vaccine Incentive Program was announced, OneBlood also announced that employees holding director-level and above positions would be required to be vaccinated. A vaccination requirement, however, was not and never was imposed on employees below the director level.

18. Participation in the Vaccine Incentive Program was wholly voluntary, and employees who did not become vaccinated did not face termination or any adverse action. Employees who remained unvaccinated continued to receive essential premium pay subject to the phase-out schedule announced in March of 2021, and their hourly rate or salary was not affected in any way by their decision to remain unvaccinated.

19. The sole consequence of choosing to remain unvaccinated was that unvaccinated employees did not receive the additional premium pay provided to vaccinated employees under the Vaccine Incentive Program.

20. According to Petitioner, she felt “persuaded” to get the vaccine and believed that Respondent would eventually require all employees to become vaccinated.

21. Petitioner testified that a OneBlood employee told her that, at some point, Respondent was likely to require vaccinations for other employees. The evidence does not show that the employee was speaking on behalf of

OneBlood, or that Respondent was ever told that employees below the director level would be required to obtain a COVID-19 vaccine. Further, there is no evidence that OneBlood ever required vaccinations for individuals below the director level. Petitioner was never required to become vaccinated during her employment.

22. At the time of the hearing, approximately 35 percent of the employees in the region where Petitioner worked during her employment with OneBlood were unvaccinated. There is no evidence that those employees faced termination or adverse action with respect to their employment because of their unvaccinated status.

23. At all pertinent times, OneBlood provided its employees with sincerely-held religious beliefs that conflicted with vaccination the opportunity to request a “religious accommodation.” If an employee’s religious accommodation request was approved, the employee would be eligible to receive the additional amount of essential premium pay provided to vaccinated employees regardless of their unvaccinated status.

24. In order to request a religious accommodation, employees were required to submit a specific form. Initially, employees were provided with a standard “Request for Religious Accommodation” form, but Respondent eventually created a new form specifically related to COVID vaccination, titled “Religious Accommodation – COVID-19 Vaccination Exemption Request.” (Religious Accommodation Request).

25. Employees requesting religious accommodations related to the Vaccine Incentive Program were required to submit this specialized form.

26. All Religious Accommodation Requests were reviewed by OneBlood’s Vice President of Human Resources, Rick Gaffney. In reviewing the requests, Mr. Gaffney evaluated whether the requesting employee made a connection between a specific religious belief and their decision to remain unvaccinated.

27. Petitioner submitted a Religious Accommodation Request on August 29, 2021, which was 12 days after the Vaccine Incentive Program was announced.

28. Petitioner maintains that she did not submit her Religious Accommodation Request in order to receive the additional amount of essential premium pay given to vaccinated employees, but instead was for the purpose of being exempted from what she believed was a forthcoming vaccine mandate.

29. Along with her Religious Accommodation Request, Petitioner submitted a letter that she authored and a letter from an individual named Reverend John A. Kirkpatrick.

30. Upon review of Petitioner's Religious Accommodation Request, Mr. Gaffney determined that she had not sufficiently stated a specific sincerely held religious belief that conflicted with vaccination. Mr. Gaffney informed Petitioner of the denial in an email to her dated September 1, 2021, stating:

Hello Candy –

HR has received and evaluated your request for a Religious Accommodation related to an exemption from the COVID Vaccination. Based on the information provided, your request for a Religious Accommodation has been denied due to the following reasons:

- The August 17, 2021 letter provided letterhead with your name on it appears to have been copied on-line from a law firm in WA state: <https://www.angusleelaw.com/aboutus/blog/what-does-a-religious-accommodation-request-letter-look-like>. Additionally, the letter discusses Washington law and refers to Proclamation 21-14 from WA state – which has nothing to do with an employee working in the state of Florida. Therefore, the submission

raises questions of how this letter appropriately conveys your sincerely held religious beliefs.

- In the letter dated August 24, 2021 with Church of His Presence letterhead refers to the August 17, 2021 letter as a “letter from her (your) attorney” and that the pastor concurs “with this letter that she (you) should be given every consideration for this exemption.” It also refers to “her (your) personal religious convictions.” However, the pastor does not describe why this Christian denomination prohibits its adherents from getting a COVID vaccine. It refers instead to your “personal religious convictions.” However, personal beliefs are not protected under Title VII of the Civil Rights Act.
- Regarding the argument of exemption based the use of fetal tissue. It is significant to note that Pfizer as well as Moderna did not use a fetal cell line to produce and manufacture their vaccine. See attached link: [https://www.michigan.gov/documents/coronavirus/COVID19\\_Vaccines\\_and\\_Fetal\\_Cells\\_031921\\_720415\\_7.pdf](https://www.michigan.gov/documents/coronavirus/COVID19_Vaccines_and_Fetal_Cells_031921_720415_7.pdf)

In summary, the documents you have submitted, do not meet the appropriate standard for OneBlood to approve a religious exemption.

Best, regards,  
Rick

31. In response, on September 2, 2021, Petitioner sent an email to Mr. Gaffney asking for reconsideration and permission to submit additional documentation in support of her Religious Accommodation Request.

32. By email to Petitioner dated September 8, 2021, Mr. Gaffney stated:

Good morning Candy-  
I have been on PTO for a few days, therefore my apologies for the delay in responding to your email. Requests for a Religious Accommodation do not be [sic] in a legal format. However, the details

provided should include information and sufficient details in order to determine the legitimacy of the request for a Religious Accommodation.

As you know and to date, OneBlood has not required all employees to be vaccinated as a condition of employment, but rather continues to encourage team members to seriously consider the COVID19 vaccination. Also, while the company respects everyone's personal opinion around vaccinations, nevertheless, not all held beliefs qualify for a bona fide Religious Accommodation. The letter provided from your pastor concurs with your personal religious convictions. However, the letter does not describe why this Christian denomination prohibits its members/believers from getting a COVID-19 vaccine.

I have recently updated a new form specific for a Religious Accommodation related to COVID-19 that has standard questions. This new form should assist you in providing the additional details needed for further evaluation. Any additional information submit [sic] along with the previous information you provided will be evaluated for consideration.

Best, regards,  
Rick

33. On September 24, 2021, Petitioner submitted a Second Religious Accommodation Request along with a letter from an individual named Apostle Dr. Ameh Joseph Sunday, a letter from an individual named Christy Murrell, and photocopied images of the cover of a Bible.

34. Upon review of Petitioner's Second Religious Accommodation Request, Mr. Gaffney determined that Petitioner had again failed to sufficiently state a specific sincerely-held religious belief that conflicted with vaccination. In his testimony, Mr. Gaffney explained the shortcomings of Petitioner's Second Religious Accommodation Request, as summarized in the bullet points below:

- Petitioner indicated that she believed in the power of prayer and that Jesus is a healer but failed to explain how this belief is in any way at odds with vaccination;

- Petitioner referenced the Bible generally but failed to explain about how any specific verse or tenet was at odds with vaccination;
- Dr. Sunday’s letter stated that Petitioner was a “good Christian” but did not specifically mention any religious belief held by Petitioner that conflicted with vaccination;
- Ms. Murrell’s letter stated that Petitioner was a good mom and hard worker but did not specifically mention any religious belief held by Petitioner that conflicted with vaccination.

35. Mr. Gaffney informed Petitioner that her Second Religious Accommodation Request had been denied in an email dated October 4, 2021, explaining that the information she provided did not sufficiently state a sincerely held religious belief that conflicted with vaccination. In the email, Mr. Gaffney offered to further discuss the denial decision.

36. On October 6, 2021, Petitioner submitted materials in support of a third Religious Accommodation Request to Mr. Gaffney. Upon his review, Mr. Gaffney found that the third request provided no additional support and once again denied Petitioner’s request on the grounds that Petitioner had not sufficiently articulated any sincere and specific religious belief that prevented her from becoming vaccinated.

37. Mr. Gaffney informed Petitioner of the third denial in an email dated November 19, 2021. In that email, Mr. Gaffney reiterated that OneBlood was only encouraging vaccinations for employees in Petitioner’s role, and that vaccinations were not required.

38. Although Petitioner never qualified for the higher amount of essential premium pay available to vaccinated employees and employees who were granted religious exemptions, there is no evidence that Petitioner was

disciplined or ever faced any adverse employment action because of her decision to remain unvaccinated. In particular, Petitioner’s regular pay was not cut or affected in any way.<sup>1</sup>

39. The only “consequence” of Petitioner remaining unvaccinated was that she received a lower amount of essential premium pay from August 22, 2021 – the date when the Vaccine Incentive Program went into effect—and January 10, 2022—the date when she was terminated for unrelated reasons.

40. The evidence was insufficient to show that OneBlood discriminated against or subjected Petitioner to adverse employment actions because of her religion or failure to be vaccinated. Rather, the evidence demonstrated that Petitioner was terminated because Respondent had reason to believe that Petitioner had engaged in misconduct related to OneBlood’s donor incentive program.

41. Under its donor incentive program, OneBlood’s blood donors are provided with reward vouchers that can be redeemed for gift cards as an incentive to continue giving blood.

42. To redeem reward vouchers, donors are directed to Respondent’s online “Rewards Store,” where donors enter a rewards code and are then directed to a portal where they can select a particular gift card to redeem. Once a donor selects a gift card to redeem from the online Rewards Store, that gift card is emailed to an email address supplied by the donor.

43. Each reward voucher is linked to a particular donor’s unique donation identification number and is tied to a specific date. If a donor does not have access to a computer or has a problem while redeeming or attempting to redeem a reward voucher, the reward voucher itself instructs the donor to reach out to OneBlood’s Customer Care Department and provides a number and email to contact for help in redeeming their reward voucher.

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<sup>1</sup> The additional essential premium pay Petitioner would have received had she articulated a sufficient basis to grant her Religious Accommodation Requests is approximately \$2,300.00.

44. In accordance with its Donor Incentive Policy, OneBlood placed limitations on its employees' abilities to redeem reward vouchers provided to donors. The Donor Incentive Policy is electronically distributed to all of OneBlood's front line, donor-facing employees, including Petitioner.

45. Petitioner reviewed a copy of OneBlood's Donor Incentive Policy as recently as November 1, 2021, and electronically acknowledged her receipt of that policy.

46. OneBlood's Donor Incentive Policy states:

OneBlood offers donors an incentive as a thank you for their blood donation and to encourage them to return for future blood donations.

The OneBlood incentive is only offered to allogenic donors who successfully clear the medical screening portion for a transfusable product in which a venipuncture is performed. Incentives are not offered to those who are deferred from donating blood.

All donor incentives are tracked and reconciled.

Distribution of donor incentives:

Team members are only to issue the assigned incentive(s) to each donor as directed by donor operations management and marketing communication.

In some cases, a donor may not accept the incentive. In these cases, OneBlood team members cannot accept the incentive on the donor's behalf, even if the donor offers the item to the team member.

47. After implementing its Donor Incentive Policy, OneBlood placed additional limitations in response to a pattern of misconduct with respect to the donor reward vouchers. Specifically, a number of Respondent's employees had been using reward vouchers for their own personal use instead of

providing the reward vouchers to donors. The additional limitations included prohibiting donor-facing and most other OneBlood employees from assisting donors in redeeming their reward vouchers. Such assistance was solely to be provided by Respondent's Customer Care Department.

48. By prohibiting donor-facing employees from helping donors redeem reward vouchers, Respondent sought to eliminate the appearance and opportunity for any impropriety. Respondent trained its donor-facing employees on these additional limitations.

49. In order to screen for potential theft or other inappropriate use of donor reward vouchers, in September 2021, OneBlood began running daily donor reward voucher reports. These reports reflect daily reward voucher redemptions and the email addresses where the selected gift cards were sent. The reports are automatically generated and sent to members of Respondent's Customer Care Department for audit and review.

50. On December 29, 2021, an email chain was forwarded to OneBlood's Vice President of Donor Relations, Cathy Olesen, who oversees Respondent's territories in Florida and Georgia. The email chain alerted Ms. Olesen to a potential issue with regard to the daily report generated on December 25, 2021, which showed all reward vouchers redeemed on December 24th.

51. At the time, Ms. Olesen was unaware of Petitioner's religious beliefs, vaccination status, or Religious Accommodation Requests. Ms. Olesen only became aware of those matters after Petitioner filed the underlying charges in this case.

52. The email chain reviewed by Ms. Olesen indicated that on December 27, 2021, a member of OneBlood's Customer Care team had reviewed the December 24th report and noted four reward vouchers associated with a specific donor that had been redeemed on December 24, 2021, using the e-mail address "candy.stallworth@oneblood.org," which was Petitioner's email during her employment with OneBlood.

53. The email chain further indicates that information regarding vouchers redeemed under Petitioner's email address was forwarded to one of Respondent's Digital Relationship Specialists, who, reportedly, upon contacting the donor, was advised by the donor that the donor never tried to redeem the reward vouchers and that none were ever sent to the donor.

54. There is no evidence that either of the OneBlood employees in the email chain were aware of Petitioner's religion, vaccination status, or Religious Accommodation Requests.

55. After reviewing the email chain, Ms. Olesen suspected that Petitioner had acted in violation of Respondent's policies and practices with respect to donor reward vouchers. Based on those suspicions, Ms. Olesen ran several additional reports and reviewed the history of reward vouchers generated with respect to the particular donor. Her review revealed that the vouchers redeemed on December 24, 2021, by [candy.stallworth@oneblood.org](mailto:candy.stallworth@oneblood.org) had been generated in response to the donor giving blood on August 10, October 15, November 4, and December 21, 2021. It also showed that from June of 2019 to October of 2020, email addresses associated with Petitioner had redeemed seven other reward vouchers associated with the same donor.

56. Ms. Olesen also reviewed the donor's donation history, which showed no record of the donor giving blood or attempting to give blood on December 24, 2021—the day on which the four reward vouchers in question had been redeemed. Further, the report showed no record of the donor giving or attempting to give blood on any occasion from December 6, 2021, the date on which he had received the last of the at-issue vouchers, and January 6, 2022.

57. Based on her review, Ms. Olesen was of the opinion that there was a reasonable basis to believe that Petitioner should be disciplined for violating Respondent's policy and practice by using her own email address to redeem donor reward vouchers.

58. Ms. Olesen reported her concerns to OneBlood's Regional Director of Collections and Recruitment, Michael Stiles, and directed him to conduct further investigation. Mr. Stiles was unaware of Petitioner's religious beliefs, vaccination status, or Religious Accommodation Requests until the filing of the underlying charge in this matter.

59. In his investigation, Mr. Stiles spoke to Petitioner about the report of vouchers redeemed under Petitioner's email in early January of 2022. Immediately following this interview, Petitioner called an individual who claimed to be the donor linked to the reward vouchers on her cell phone, and Mr. Stiles spoke to the alleged donor on the phone at Petitioner's request. During this call, the alleged donor told Mr. Stiles that he had given the reward vouchers to Petitioner.

60. The alleged donor did not specify to Mr. Stiles whether he had given Petitioner the reward vouchers to redeem for herself or to help him redeem for himself. However, under either scenario, Petitioner's behavior would have been in violation of OneBlood's Donor Incentive Policy and restrictions.

61. During the hearing, Petitioner showed a video recording of an exchange between Petitioner and a man purportedly identifying himself as the donor associated with the at-issue reward vouchers. In the video, Petitioner did the majority of the talking and asked the purported donor a series of leading questions, in response to which the donor seemingly indicates his belief that Petitioner did not "steal" his donor reward vouchers. The authenticity of the video and the identity of the alleged donor were not properly established. Regardless, however, by Petitioner's own admission the video was taken after her termination and, as a result, Respondent could not possibly have considered this evidence at the time of the termination decision.

62. Following his investigation, Mr. Stiles recommended that Petitioner's employment be terminated based on his good faith belief that she had

violated the Donor Incentive Policy and related practices. OneBlood has terminated other employees for engaging in similar misconduct.

63. Mr. Stiles consulted with Ms. Olesen regarding his recommendation. Ms. Olesen agreed.

64. Ms. Olesen and Mr. Stiles provided the recommendations necessary to effectuate Petitioner's termination. Mr. Stiles signed the Corrective Action Documentation, on behalf of OneBlood, that was generated in connection with Petitioner's alleged misconduct and termination.

65. Petitioner's employment with OneBlood was terminated on January 10, 2022.

66. At a minimum, the evidence indicated that Petitioner had used her own email to help a donor redeem his vouchers in violation of OneBlood's policy.

67. OneBlood's stated reason for Petitioner's termination was that she had engaged in donor theft in violation of the Donor Incentive Policy. Petitioner disagreed with this reason.

68. In her Discrimination Complaint, in which Petitioner indicated both religion and retaliation as the basis of her claim, Petitioner alleges:

I believe I have been discriminated against pursuant to Chapter 760 of the Florida Civil Rights Act, and/or Title VII of the Federal Civil Rights Act, and/or the Age Discrimination in Employment Act, and/or the Americans with Disabilities Act as applicable for the following reason(s): The Complainant alleges discrimination based on Religion and Retaliation. She alleges that on three occasions, she requested a religious exemption from the requirement to have a COVID vaccine. The Respondent denied her religious exemption request. Furthermore, in August 2021 Respondent HR representative Mr. Gaffney informed her that 25 percent of her pay would be withheld if she did not take a vaccine. From the period of August 2021 to January 10, 2022, the Complainant had 25 percent of her pay withheld for not having the

COVID vaccine. The Complainant alleges that on January 10, 2022, she was “fired” for “printing off a document for a donor which we always do for the elderly.” The Complainant further alleges that as she was walking out of the building with her supervisor “Mike”, he told her that “it was HR who retaliated and did this that he didn’t want to.”

69. The evidence, however, as outlined in the Findings of Fact above, is insufficient to support Petitioner’s allegations. Rather, the evidence adduced at the final hearing indicated that Petitioner’s religion, vaccination status, and Religious Accommodation Requests played no role in Petitioner’s termination, and that there was no unlawful retaliation.

#### CONCLUSIONS OF LAW

70. DOAH has jurisdiction over the parties and subject matter of this proceeding. *See* §§ 120.569, 120.57(1), and 760.11(4)(b), Fla. Stat.;<sup>2</sup> *see also* Fla. Admin. Code R. 60Y-4.016.

71. The Florida Civil Rights Act of 1992, as amended (the Act), is codified in sections 760.01 through 760.11, Florida Statutes. Section 760.10(1) provides, in pertinent part:

(1) It is an unlawful employment practice for an employer:

(a) To discharge or to fail or refuse to hire any individual, or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, national origin, age, handicap, or marital status.

(b) To limit, segregate, or classify employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities, or adversely affect any individual’s status as an employee, because of such

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<sup>2</sup> Unless otherwise indicated, all references to the Florida Statutes, Florida Administrative Code, and federal laws are to the current versions, which have not substantively changed since the time of the alleged discrimination.

individual's race, color, religion, sex, national origin, age, handicap, or marital status.

72. OneBlood is an “employer” within the meaning of the Act. *See* § 760.02(7), Fla. Stat. (“Employer’ means any person employing 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such a person.”).

73. Florida courts have held that because the Act is patterned after Title VII of the Civil Rights Act of 1964, as amended, federal case law dealing with Title VII is applicable. *See Fla. Dep’t of Cmty. Aff. v. Bryant*, 586 So. 2d 1205, 1209 (Fla.1st DCA 1991).

74. As developed in federal cases, a prima facie case of discrimination under Title VII may be established by direct evidence, which, if believed, would prove the existence of discrimination without inference or presumption. Direct evidence, consisting of blatant remarks whose intent could be nothing other than discriminatory, does not exist in this case. *See Damon v. Fleming Supermarkets of Fla., Inc.*, 196 F.3d 1354, 1358-59 (11th Cir 1999). Where direct evidence is lacking, one seeking to prove discrimination must rely on circumstantial evidence of discriminatory intent, using the three-part shifting “burden of proof” pattern established in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). *See Holifield v. Reno*, 115 F.3d 1555, 1562 (11th Cir. 1997).

75. Under *McDonnell Douglas*, first, Petitioner has the burden of proving a prima facie case of discrimination by a preponderance of the evidence. Second, if Petitioner sufficiently establishes a prima facie case, the burden shifts to Respondent to “articulate some legitimate, nondiscriminatory reason” for its action. Third, if Respondent satisfies this burden, Petitioner must prove by a preponderance of the evidence that the legitimate reasons asserted by Respondent are in fact mere pretext. *McDonnell Douglas Corp.*, 411 U.S. at 802-04.

76. “Title VII [and the Act] require [ ] employers ‘to accommodate, within reasonable limits, the bona fide religious beliefs and practices of employees.’” *Robinson v. Children’s Hosp. Boston*, 2016 WL 1337255, at \*6 (D. Mass. Apr. 5, 2016) (citing *Sánchez-Rodríguez v. AT & T Mobility Puerto Rico, Inc.*, 673 F.3d 1, 12 (1st Cir. 2012)).

77. In order to establish a prima facie case of an employer’s alleged failure to accommodate a religious belief or practice under Title VII or the Act, an employee must prove that: (1) she holds a sincere religious belief that conflicts with an employment requirement; (2) she has informed the employer about the conflict; and (3) she was discharged or disciplined for failing to comply with the conflicting employment requirement. *See Beadle v. Hillsborough Cnty. Sheriff’s Dep’t*, 29 F.3d 589, 592 n.5 (11th Cir. 1994); *Johnson v. AutoZone, Inc.*, 768 F. Supp. 2d 1124, 1136 (N.D. Ala. 2011).

78. Petitioner failed to establish a prima facie case of failure to accommodate.

79. As to the first element required to establish a prima facie case, the evidence showed that Respondent never required that Petitioner receive a COVID vaccination as a condition of employment. While Respondent encouraged vaccination and established a policy to incentivize vaccination,<sup>3</sup> it was not required of OneBlood employees below the director level. *See Wilshin v. Allstate Ins. Co.*, 212 F. Supp. 2d 1360, 1373 (M.D. Ga. 2002) (granting summary judgment in favor of employer on failure-to-accommodate claim because “Plaintiff was never required to work on Saturday, it is impossible for him to have been disciplined or discharged for refusing to do so”). To this day, a significant percentage of Respondent’s workforce is unvaccinated.

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<sup>3</sup> The EEOC has specifically authorized vaccine incentive programs similar to the Vaccine Incentive Program implemented by Respondent. *See What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws*, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (last updated March 14, 2022).

Moreover, Petitioner failed to establish that she held a sincere religious belief that conflicted with any employment requirement.

80. As to the second element for a prima facie case, even if OneBlood had required COVID-19 vaccinations as a condition of Petitioner's employment (which it did not), Petitioner never sufficiently explained or made any connection as to how her purported sincerely-held religious belief actually conflicted with vaccination. While she made three separate submissions in support of her Religious Accommodation Requests, none drew any specific, identifiable connection between her religion and her decision to remain unvaccinated. Without any specific connection between her religion and vaccination decision, Petitioner's objections to vaccination as articulated in her Religious Accommodation Requests appeared to have been based merely on her personal beliefs, which are not entitled to protection under Title VII or the Act. *See U.S. Equal Employment Opportunity Comm'n, Section 12; Religious Discrimination* (Jan. 15, 2021), ("Social, political, or economic philosophies, as well as mere personal preferences, are not religious beliefs protected by Title VII.").

81. Finally, as to the final element for a prima facie case, Respondent did not demonstrate that she was discharged or disciplined for failing to be vaccinated. *See e.g., Johnson*, 768 F. Supp. 2d at 1139 (granting summary judgment in favor of employer on failure-to-accommodate claim when employee had suffered no discipline as a result of his failure to comply with employment requirement).

82. Even if Petitioner had submitted enough evidence to show a prima facie case of unlawful discrimination based on her religion, unrefuted evidence in this case demonstrated that OneBlood had a nondiscriminatory reason supporting its decision to terminate Petitioner.

83. The ultimate reason for Petitioner's termination was OneBlood's belief that Petitioner had violated OneBlood's Donor Incentive Policy and engaged in donor incentive theft.

84. Whether Petitioner actually engaged in the conduct that Respondent claims gave rise to her termination is not at issue; instead, the relevant inquiry is whether the decision makers believed in good faith that Petitioner had engaged in the misconduct at the time they made the decision to terminate. *See Elrod v. Sears, Roebuck & Co.*, 939 F.2d 1466, 1470 (11th Cir. 1991) (explaining that: (a) court’s inquiry is limited to whether employer believed employee was guilty of misconduct and if so, whether such belief was reason behind discharge; and (b) that question of whether employee actually engaged in misconduct was “irrelevant” to analysis); *Nix v. WLCY Radio/Rahall Communications*, 738 F.2d 1181, 1187 (11th Cir. 1984) (An “employer may fire an employee for a good reason, a bad reason, a reason based on erroneous facts, or for no reason at all, as long as its action is not for a discriminatory reason.” (abrogated on different grounds); *Thomas v. Hall*, 2011 WL 4021333, at \*4 (N.D. Fla. 2013) (explaining that plaintiffs “may not establish that an employer’s proffered reason is pretext merely by questioning the wisdom of the employer’s reasons, at least not where ... the reason is one that might motivate a reasonable employer” (internal quotations and citation omitted)).

85. Petitioner did not demonstrate with credible evidence that the reason asserted by OneBlood for Petitioner’s termination was mere pretext for unlawful discrimination.

86. In sum, Petitioner failed to prove her claim of failure-to-accommodate and it is otherwise concluded, based upon the evidence, that Respondent did not violate the Florida Civil Rights Act of 1992, sections 760.01 through 760.11, and is not liable to Petitioner for intentional discrimination in employment on this basis.

87. Petitioner also failed to demonstrate a prima facie case of unlawful retaliation in violation of the Act or Title VII.

88. Title VII makes it unlawful for employers to retaliate against employees for opposing unlawful employment practices. *See* 42 U.S.C.

§ 2000e-3(a); *see also* § 760.10(7), Fla. Stat. (It is an unlawful employment practice for an employer to discriminate against a person because that person has, “opposed any practice which an unlawful employment practice is” or because that person “has made a charge . . . under this subsection.”).

89. Just as in discrimination claims based on status, Petitioner may establish a claim of illegal retaliation using either direct or circumstantial evidence. Direct evidence of retaliation does not exist in this case. In relying on circumstantial evidence, tribunals use the *McDonnell Douglas* analytical framework. *See Bryant v. Jones*, 575 F.3d 1281, 1307-08 (11th Cir. 2009). “Under [that] framework, a plaintiff alleging retaliation must first establish a prima facie case by showing that: (1) she engaged in a statutorily protected activity; (2) she suffered an adverse employment action; and (3) she established a causal link between the protected activity and the adverse action.” *Id.*

90. In this case, Petitioner failed to establish a prima facie case of retaliation. While the evidence showed that Petitioner had contacted human resources prior to her termination to obtain an exemption from any COVID-19 vaccine requirement, she failed to show a causal connection between that contact and her ultimate termination.

91. Therefore, Petitioner failed to carry her burden of persuasion necessary to state a prima facie case for her claim of a retaliatory discharge because of her participation in a protected activity.

92. Considering all of the evidence submitted in this case, it is concluded that Petitioner failed to demonstrate by a preponderance of the evidence that OneBlood engaged in unlawful discrimination or retaliation when it terminated Petitioner’s employment.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Florida Commission on Human Relations enter a

final order dismissing Petitioner's Discrimination Complaint and Petition for Relief consistent with the terms of this Recommended Order.

DONE AND ENTERED this 12th day of April, 2023, in Tallahassee, Leon County, Florida.



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JAMES H. PETERSON, III  
Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 12th day of April, 2023.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.