

NJ Town Must Face Firefighters' Vaccine Exemptions Suit

By **Bill Wichert**

Law360 (August 8, 2022, 3:15 PM EDT) -- A New Jersey state judge refused Monday to toss a discrimination lawsuit against West Orange from firefighters alleging the township improperly denied their requests for exemptions from its COVID-19 vaccine mandate, citing the municipality's conflicting positions on the workers' religious and medical arguments.

In denying its bid to dismiss the action, Judge Lisa M. Aduato of Essex County Superior Court zeroed in on how West Orange initially told the firefighters that it was "not challenging" the religious and medical bases for the requests, but now the township is arguing that their religious beliefs and medical conditions do not support their state Law Against Discrimination claims.

During a Zoom hearing, the judge said it seemed unfair for the township to say it would not question the firefighters' religious beliefs or medical disabilities and would now seek to dismiss the lawsuit "based on saying that they don't meet the definition of those things." She said it would be inappropriate to toss the suit on such grounds.

"As a matter of law, there is no basis for me to dismiss this complaint, and I am relying in part on the somewhat inconsistent position taken by the township when they initially said we're not challenging and then began to challenge," Judge Aduato said.

The seven plaintiffs — firefighters Frank Balestriere, Joseph DeLuise, Daniel Keenan, Sergio Rivas and Joseph Neto, and fire captains Sean Gaynor and Carmine Ruta — filed an amended complaint in April alleging they were placed on unpaid leave after West Orange denied their exemption requests.

The plaintiffs remain unvaccinated against COVID-19 but have since returned to work and must comply with masking and testing requirements, their attorney, John D. Coyle of Coyle Law Group LLP, said during Monday's hearing.

By Oct. 15, 2021, Balestriere, DeLuise, Keenan, Gaynor and Neto submitted exemption requests due to their religious beliefs, and Ruta and Rivas submitted requests based on their medical conditions, according to the complaint.

In largely identical letters, West Orange denied the requests that month, the complaint said. The letters stated in part that the township is "'not challenging your disability exemption request'" or "'not challenging your sincerely held religious beliefs,'" but cited public safety risks posed by their unvaccinated statuses, the complaint said.

The township later sought to have the complaint dismissed on the grounds that the plaintiffs failed to back up their religious and disability discrimination claims.

West Orange said the complaint does not explain how the religious beliefs of Balestriere, DeLuise, Keenan, Gaynor and Neto "manifest in refusal to obtain vaccinations for COVID-19," according to the township's May 9 motion brief. The plaintiffs "are seeking to create a protected class based solely upon their objection to the COVID-19 vaccine," the brief said.

"As set forth in *Fallon*, however, an objection to vaccinations does not establish a protected class, because such an objection alone does not establish a 'religious' belief under the legal standards for application of civil rights statutes," the brief said, citing the Third Circuit's 2017 opinion in *Fallon v.*

The township similarly argued that Ruta and Rivas are not disabled under the language of the LAD.

At Monday's hearing, township attorney Mark Y. Moon of Trenk Isabel Siddiqi & Shahdanian PC, reiterated those points and argued that the municipality's initial "not challenging" position was irrelevant to whether the plaintiffs can meet the requisite elements to pursue their claims.

During a discussion about the township's challenge to the religious bias claims, however, Coyle said he argued in court papers that "it's actually kind of insulting that they would even raise this" given that the township said it was not challenging the beliefs and now it's arguing the beliefs "must be thrown out by the court before they even answer or provide any discovery."

The plaintiffs are represented by John D. Coyle, Jesse C. Ehnert and Donald Soutar of Coyle Law Group LLP.

The township is represented by Richard D. Trenk and Mark Y. Moon of Trenk Isabel Siddiqi & Shahdanian PC.

The case is Frank Balestriere et al. v. Township of West Orange, case number L-1734-22, in the Superior Court of New Jersey, County of Essex.

--Editing by Robert Rudinger.