

State of Wisconsin



Labor and Industry Review Commission

Mark Behrens, Complainant

Fair Employment Decision¹

**Schoeneck Containers, Inc.,
nka Radius Packaging, Respondent**

Dated and Mailed:

ERD Case No. CR202002609
EEOC Case No. 26G02100176C

February 20, 2025
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The decision of the administrative law judge is **affirmed**. Accordingly, the complainant's complaint is dismissed.

By the Commission:

/s/

Michael H. Gillick, Chairperson

/s/

Georgia E. Maxwell, Commissioner

/s/

Marilyn Townsend, Commissioner

¹ **Appeal Rights:** See the green enclosure for the time limit and procedures for obtaining judicial review of this decision. If you seek judicial review, you **must** name the Labor and Industry Review Commission as a respondent in the petition for judicial review. Appeal rights and answers to frequently asked questions about appealing a fair employment decision to circuit court are also available on the commission's website <http://lirc.wisconsin.gov>.

Procedural Posture

This case is before the commission to consider the complainant's allegation that the respondent refused to reasonably accommodate a religious observance or practice, and that it terminated his employment because of creed and because he opposed a discriminatory practice, in violation of the Wisconsin Fair Employment Act (hereinafter "Act"). An administrative law judge for the Equal Rights Division of the Department of Workforce Development held a hearing on probable cause and issued a decision. The complainant filed a timely petition for commission review.

The commission has considered the petition and the positions of the parties, and it has reviewed the evidence submitted at the hearing. Based on its review, the commission agrees with the decision of the administrative law judge, and it adopts the findings and conclusions in that decision as its own.

Memorandum Opinion

In his petition for commission review, the complainant essentially reiterates the same arguments that were made at the hearing before the administrative law judge. The complainant states that his refusal to wear a mask was a religious practice which the respondent failed to reasonably accommodate, that the respondent terminated his employment because of his creed, and that because the termination occurred after he had "thoroughly explained [his] religious beliefs," the termination was retaliatory, in violation of the Act. The commission has considered these arguments, but does not find them persuasive.

In May of 2020, in response to a growing number of COVID-19 cases, the respondent implemented a policy requiring the use of masks or face coverings in certain areas of its facility. The complainant largely complied with the respondent's policy, although sometimes he wore his mask below his nose or chin.

On August 1, 2020, an Emergency Order, issued by Wisconsin Governor Tony Evers, went into effect. The Emergency Order required everyone over the age of five to wear a face covering while indoors, other than in a private residence, while in the presence of other people who were not a member of their household. The Emergency Order included a few activities during which face coverings were not required to be worn in public. The Emergency Order also provided an exception for people with medical conditions that prevented the use of a face covering. None of the exceptions applied to the complainant in the workplace. The respondent notified all employees that, because of the Emergency Order, they would be required to wear a face covering while at work unless they were alone in a room or actively eating or drinking.

Discrimination on the basis of creed:

The complainant testified that he held a religious belief that the face covering Emergency Order was "a weapon that is being used to wage war against God's

Church.” However, while the complainant indicated he was generally opposed to the use of government to require “submission and control,” he never established that he could not wear a facemask because of his religious beliefs. Indeed, from May to August, the complainant regularly followed the respondent’s internal policy requiring the use of masks or face coverings.

In his communication to the respondent on September 6, 2020, the complainant referenced religious themes, along with political and scientific reasons that he objected to the use of the mask. In that email, he cited his personal belief that the danger of COVID-19 was overblown and that masks were ineffective. The complainant explained to the respondent that:

“First, I want you to know that if I truly thought Covid-19 was a big threat to the world and the people around me and that all I had to do to protect my fellow citizens was to wear a mask, I would be glad to wear a mask.”

The commission accepts that statement from the complainant at face value. Although one of the many reasons the complainant objected to the use of a mask was his religious belief, the commission finds that complainant would have worn a mask at work notwithstanding his religious beliefs, had he not held a personal belief that mask wearing was unnecessary.

In order to establish a prima facie case of religious discrimination with respect to discharge, an individual must show that: (1) the individual holds a sincere/bona fide religious belief that conflicted with an employment requirement; (2) the individual informed the employer of her/his religious belief/or the conflict; and (3) the individual was discharged for not complying with the conflicting employment requirement. *Deguire v. Swiss Colony*, ERD Case No. 200000308 (LIRC Aug. 17, 2001). Once a prima facie case is established, the burden shifts to the employer to demonstrate that it could not reasonably accommodate the individual’s religious belief without undue hardship to its business. *Id.* In this case, the complainant failed to meet the first prong of a prima facie case of discrimination.

Although the complainant showed that he held a religious belief regarding mask mandates, he did not establish that his religious belief prevented him from complying with the face covering requirement. It was the complainant’s personal belief that facemasks were unnecessary that led to his refusal to wear the mask, not his religious convictions. Accordingly, the respondent’s termination of the complainant’s employment for refusal to wear a face covering was not because of his religious beliefs. The complainant failed to establish that the respondent discriminated against him on the basis of creed. The administrative law judge’s dismissal of that claim is, therefore, affirmed.

Accommodations offered:

In response to the complainant's request to be relieved from wearing a facemask at work, the respondent offered three potential solutions. First, because the Emergency Order included an exception for those who were unable to wear a mask for medical reasons, the respondent offered to allow the complainant to work without a mask if he obtained a doctor's note indicating that he was unable to wear a mask. However, because the complainant had no medical condition limiting his ability to wear a mask, the complainant could not accept this option.

Next, the respondent offered two reasonable accommodations: 1) that the complainant could wear a clear face shield, instead of a mask, while working; or 2) that the complainant could take an unpaid leave of absence from the respondent until the mask mandate was lifted.

The complainant asserted that he believed the glare of the face shield would have posed a safety risk. The respondent countered that it would permit him to wear anti-glare safety glasses with the face shield, in order to address that concern. The complainant never tried wearing the face shield, or the face shield and safety glasses combined, to see if it might work. He simply rejected the offered accommodation outright.

The respondent also offered to allow the complainant to take an unpaid leave of absence while the Emergency Order was in effect. An unpaid leave of absence can be a reasonable accommodation. *See, Feiler v. Midwest Express Airlines, Inc.*, ERD Case No.199902011 (LIRC June 6, 2003). In this case, the Emergency Order prohibited the complainant from being in the workplace without a face covering and the respondent was attempting to comply with the law. If the complainant was unable or unwilling to work with a face shield, he could have accepted an unpaid leave of absence until the Emergency Order was lifted. He did not accept this accommodation and continued to work without wearing a mask. His employment was terminated, as a result.

As explained above, the commission has found that the complainant did not establish that his religious belief was the actual reason he refused to wear a mask at work. However, even if the complainant's religious belief prevented him from wearing a mask at work, the respondent provided two reasonable accommodations, wearing safety glasses and a clear face shield, or taking an unpaid leave of absence. The respondent did not fail to offer a reasonable accommodation to the complainant, in violation of the Act. The administrative law judge's dismissal of that claim is, therefore, affirmed.

Discrimination and Retaliation:

Lastly, the complainant argues that the respondent terminated his employment in retaliation for his opposition to discrimination in the workplace. This argument, too, fails. The complainant did not offer any evidence that he had objected to discrimination in the workplace. Although he requested an accommodation, he never asserted that he was being discriminated against. Without evidence that the complainant engaged in protected opposition, no prohibited retaliation could have occurred. *Castle v. St. Charles Youth and Family Services*, ERD Case No. CR201203205 (LIRC April 17, 2015). Accordingly, the complainant's claim that he was discharged for opposing a discriminatory practice under the Act was properly dismissed.

Conclusion:

For all of the reasons stated above, the commission agrees with the administrative law judge that the complainant has not established probable cause to believe that the respondent violated the Act. Accordingly, the dismissal of the complainant's complaint is affirmed.

cc: Atty. Brenna M. Wildt