

Nick Rolovich Update

By Martin J. Greenberg

In November of 2022, we produced an article with respect to Coach Nick Rolovich and his termination from Washington State University as head football coach on Greenberg's Coaching Corner entitled "Nick Rolovich: Termination for Covid-19 Vaccination Refusal" with a post-script in December of 2022. We issued a further update in June of 2023 with an article entitled "Update: Nick Rolovich Lawsuit."

In our article posted in 2022, we indicated that the Honorable Judge Thomas Rice of the Eastern District of Washington Division of the United States District Court in Case Number 2: 22-CV-00319-TOR permitted the continuance of some of Rolovich's claims against Washington State University including: (1) violations of Title VII, (3) alleged violations of Washington Law against discrimination, (3) alleged breach of contract, and (4) alleged wage withholding. Rolovich alleged initially that he was not granted an accommodation for a religious exemption with respect to his failure to be vaccinated against Covid-19.

Both parties filed Cross-Motions for Summary Judgment. On January 6, 2025, Judge Rice issued an order that opined on Rolovich's failure to accommodate theory, holding that

To establish a failure-to-accommodate theory, the plaintiff must allege the following: (1) he had a bona fide religious belief, the practice of which conflicts with an employment duty; (2) he informed his employer of the belief and conflict; and (3) 'the employer threatened him with or subjected him to discriminatory treatment, including discharge, because of his inability to fulfill the job requirements.' *Heller v. EBB Auto Co.*, 8 F.3d 1433, 1438 (9th Cir. 1993).¹

However, the Court found that

the record does not support Plaintiff's claim of religious objection to the vaccination. Plaintiff frequently expressed secular concerns about the COVID-19 vaccine to friends, family members and coworkers. In the thousands of pages of discovery, Plaintiff does not invoke a religious objection to the vaccine. This alone is a basis for denying Plaintiff's claimed religious object.²

"Undue hardship is an affirmative defense. *Bolden-Hardge*, 63 F.4d at 1224."³ "An accommodation may result in an undue hardship if there is 'more than a de minimis cost to the

¹ Order on Cross Motions for Summary Judgment, *Rolovich v. Washington State University*, Case No. 2:22-CV-00319-TOR, ECF No. 125, Jan. 6, 2025.

² *Id.*

³ *Id.*

employer . . . [or] more than a de minimis impact on coworkers. *Balint v. Carson City, Nev.*, 180 F.3e 1047, 1054 (9th Cir. 1999).⁴

The Court further found that

Defendant asserts that the Plaintiff's accommodation request would have resulted in increased travel costs, harm to recruitment and fundraising efforts, and damage to WSU's reputation and donor commitments, in addition to an increased risk of exposure to COVID-19 to student athletes, other coaching staff, the media and the public. ECF No. 93. This un rebutted evidence shows 'undue hardship.'⁵

Defendant put forward un rebutted expert testimony that Plaintiff's unvaccinated status materially increased the risk of spreading COVID-19 to others. Plaintiff has repeatedly refused to wear a mask during games and meetings. Defendant has shown that Plaintiff's job as head football coach undisputedly required frequent interactions with students, coworkers, donors, the media, and others (hundreds of people). This created an undue hardship for Defendant and no other possible accommodation would have negated that risk. The overwhelming evidence shows that Plaintiff's refusal to vaccinate would cause undue hardship to Defendant.⁶

Judge Rice also issued a ruling on Washington State University's Motion for Summary Judgment on Plaintiff's claims of breach of contract and wage withholding, and found that

Defendant seeks summary judgment of Plaintiff's claims for breach of contract and wage withholding because Defendant had just cause to terminate Plaintiff's employment. In Washington, 'just cause' is defined as 'a fair and honest cause or reason, regulated by good faith on the part of the party exercising the power.' *Baldwin v. Sisters of Providence in Washington, Inc.*, 112 Wash. 2d 127, 139 (1989). When an employee is discharged for 'just cause,' the discharge may not be 'arbitrary, capricious, or illegal' and must be based on facts that are supported by substantial evidence and are reasonably believed by the employer to be true. *Id.* Here Defendant had just cause to terminate Plaintiff's employment. Accordingly, these two claims are denied.⁷

The Court found that "[i]n consideration of undisputed evidence ignoring the speculative evidence, the Court finds the Defendant's Motion for Summary Judgment must be granted."⁸

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

In a statement, the State of Washington responded to Judge Rice's ruling as follows:

The governor's COVID-19 vaccination mandate was a critical measure to stem the spread of the virus during the pandemic. As the Court recognized, the overwhelming, undisputed evidence proved that allowing an unvaccinated head football coach to continue in his position during the height of the pandemic would have endangered the health and safety of the university community. Thus, the university's decision to deny Mr. Rolovich's exemption request and terminate his employment was consistent with the governor's proclamation, our duty to protect the university community, and the law.⁹

Nick Rolovich's lawyer, E. Job Seese, stated that they will appeal the ruling:

We are obviously disappointed by Judge Rice's ruling, and we intend to appeal it. We believe that the trial court's cursory analysis was in error on multiple issues and that the Ninth Circuit will agree that there was more than sufficient evidence for Coach Rolovich's claims to proceed to a jury.¹⁰

Rolovich, the State's highest paid employee at \$3M per year when he was fired from Washington State University, was recently hired to be a Senior Offensive Assistant by California.¹¹ The final decision from Judge Rice comes three years after Rolovich's termination midway through the 2021 football season.¹² Once again, at the time he was terminated, Washington State Employees were required to be vaccinated against Covid-19, a decision that was later rescinded by the State of Washington.¹³

Hats off to Washington State University. Instead of caving in and settling the matter as a not for cause firing, Washington State University stood its ground on the basis of termination for cause, and was ultimately successful. This is a good lesson for other universities in similar cases.

⁹ Scotty White, *Former Washington State HC Nick Rolovich loses lawsuit after COVID-19 debacle*, CLUTHPOINTS.COM, January 7, 2025, <https://clutchpoints.com/washington-state-football-news-nick-rolovich-loses-lawsuit-after-covid-19-debacle>.

¹⁰ *Id.*

¹¹ Tim Booth, *Ex-WSU coach Nick Rolovich, fired after refusing COVID vaccine, hired by Cal*, THE SEATTLE TIMES, December 13, 2024, <https://www.seattletimes.com/sports/wsu-cougar-football/ex-wsu-coach-nick-rolovich-returns-to-college-football-after-being-hired-at-cal/>.

¹² Melissa Luck, *Former WSU coach Rolovich appealing judge's ruling on his dismissal*, KXLY.COM, February 26, 2025, https://www.kxly.com/news/former-wsu-coach-rolovich-appealing-judges-ruling-on-his-dismissal/article_be3fea36-f491-11ef-8e26-f3c574a29c3b.html.

¹³ Martin J. Greenberg and Ben Crockett, *Nick Rolovich vs. Washington State University*, GREENBERG'S COACHING CORNER, October 17, 2022, [gcc-Rolovich-10-17-22.pdf](https://www.greenbergscoachingcorner.com/nick-rolovich-10-17-22.pdf).

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