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File Name: 25a0251p.06

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

CHRISTINA HENRY,

Plaintiff-Appellant,

v.

SOUTHERN OHIO MEDICAL CENTER,

Defendant-Appellee.

No. 24-3863

Appeal from the United States District Court for the Southern District of Ohio at Cincinnati.
No. 1:22-cv-00679—Michael R. Barrett, District Judge.

Argued: June 12, 2025

Decided and Filed: September 11, 2025

Before: GRIFFIN, LARSEN, and MATHIS, Circuit Judges.

COUNSEL

ARGUED: Brian C. Unger, MENDENHALL LAW GROUP, Akron, Ohio, for Appellant. Benjamin Landau-Beispiel, THE KULLMAN FIRM, P.L.C., New Orleans, Louisiana, for Appellee. **ON BRIEF:** Brian C. Unger, Warner Mendenhall, MENDENHALL LAW GROUP, Akron, Ohio, for Appellant. Benjamin Landau-Beispiel, S. Mark Klyza, THE KULLMAN FIRM, P.L.C., New Orleans, Louisiana, for Appellee.

OPINION

LARSEN, Circuit Judge. During the COVID-19 pandemic, Southern Ohio Medical Center (SOMC) required its employees either to be vaccinated against the disease or to test weekly for it. Christina Henry refused both options, citing religious objections. SOMC then placed her on unpaid leave. Henry sued under Title VII for failure to accommodate her religious

beliefs and for retaliation. The district court granted summary judgment in favor of SOMC, holding that Henry's requested accommodation would place an undue hardship on SOMC and that Henry had failed to show that SOMC's stated reasons for placing her on unpaid leave were pretextual. For the reasons below, we AFFIRM.

I.

Christina Henry worked as a Licensed Practical Nurse for SOMC in its Pediatric Medical Office where she had regular direct contact with patients, including newborns. In August 2021, SOMC responded to the COVID-19 pandemic by adopting a vaccination policy for all staff but permitted employees with religious objections to instead submit to weekly nasopharyngeal testing.¹ SOMC considered different testing methods but chose nasopharyngeal because the U.S. Centers for Disease Control and other medical authorities preferred this method. SOMC offered anterior nares and oropharyngeal testing for individuals who, for medical reasons, could not have a sample collected from deep in the nasal cavity.

When SOMC began testing, it sent the nasopharyngeal specimens to a third party for analysis, with results returned within three to seven days. This waiting period exacerbated staff shortages, interfered with patient care, and increased patients' risk of exposure to asymptomatic employees. By August 2021, when SOMC adopted the mandatory vaccinate-or-test policy, it had developed the ability to analyze nasopharyngeal testing specimens in-house in less than 24 hours. This turnaround reduced the time that asymptomatic employees potentially exposed vulnerable patients to infected staff.

That same month, SOMC's Vice President of Human Resources, Vicki Noel, notified all SOMC employees of the new vaccination and testing requirements via email. Noel also attached an FAQ sheet for the COVID-19 Vaccination Requirement and asked recipients to "Please carefully review . . . and let me know if you have any clarifying questions." R. 26-2, Noel Email 8/16/21, PageID 699. The FAQ sheet explained that employees could receive exemptions from

¹Nasopharyngeal testing uses a swab to collect a sample from three centimeters inside the nasal cavity. Alternative testing methods include oropharyngeal testing, which uses a swab to collect a sample from the middle part of the throat; anterior nares testing, which uses a swab to collect a sample from just inside the nostrils; and saliva testing, which collects samples from spit in a tube.

vaccination for several reasons but that exempted employees had to test weekly via nasopharyngeal testing; SOMC offered oropharyngeal and anterior nares testing for employees with medical conditions requiring alternative testing methods. Henry received and reviewed the email.

After Noel's email, SOMC received about 300 exemption requests. Every requester agreed to weekly testing except Henry and one other nurse—the other nurse resigned before the required vaccination date, however. SOMC granted every religious exemption request from vaccination, including Henry's, but it denied Henry's request for a religious exemption from testing.

Henry asked for a religious exemption in early September 2021. She began her letter stating, "I am writing to request a religious exemption from covering my face with a mask or shield, and to abstain from covid testing and vaccines because these are violations of my sincerely held religious beliefs." R. 21-3, Henry Letter 9/3/21, PageID 263. She then explained her opposition to COVID vaccines and testing:

My sincerely-held Christian beliefs DO NOT ALLOW ME to: . . . be assaulted by a foreign body being inserted into my nasal passages (i.e., covid test) as my body is the temple of the Holy Spirit and is to remain pure.

. . . .

The body is the temple of the Holy Spirit and as such, should not be used for medical treatments that are unnecessary, and abhorrent. Substances in the test and the vaccine are possibly harmful to the human body, and we are called to protect the body and not participate in pharmakaia.

. . . .

Further, participating in a medical experiment, such as covid testing or vaccines, is also a violation of my religious beliefs. Covid tests have an emergency authorization by the FDA, not an approval. Therefore, these are experimental treatments, and I have the right to refuse to consent.

Id., PageID 263–64. Henry concluded by summarizing her religious accommodation request: “My request for accommodation is that I do not consent to getting a covid vaccine [or] taking a covid test.”² *Id.*, PageID 264.

SOMC’s manager of Employee Health and Wellness, Sara Blankenship, concluded that SOMC could exempt Henry from vaccination but not from weekly testing because doing so would threaten patient health. Blankenship had not yet dealt with an employee’s refusal to test, however, so she referred the question to SOMC’s Ethics Committee to determine whether SOMC had an ethical obligation to accommodate Henry.

On September 7, SOMC’s Director of Social Work, Pastoral Care, and Patient Relations, Teresa Bryan, called Henry and asked about Henry’s beliefs so that Bryan could present the accommodation request to the Ethics Committee. Bryan asked Henry about “foreign objects being inserted into her body” and Henry explained that her religious objection extended to throat swabs and having “any type of instrument put in her body.” R. 21-13, Mot. for Sum. Jud. Ex. A, PageID 594. She also claimed that “she would never be ‘tested again,’” for example, for cancer. *Id.* During this call, Henry also proposed an accommodation for the first time: SOMC should allow her to “self-screen” and “stay home if . . . sick.” *Id.*, PageID 593; R. 21-4, Henry Dep., PageID 322.

A week later, the Ethics Committee determined that its weekly testing requirement for unvaccinated employees was appropriate and that patients’ right to a safe environment outweighed Henry’s right not to test.

The next day, Blankenship and SOMC’s Director of Human Resources, Ken Applegate, called Henry and informed her that SOMC had approved her vaccine exemption but that Henry needed to agree to weekly testing by the vaccination deadline, September 17. The parties dispute whether, during this call, Henry asked about alternative forms of COVID testing. Henry claimed in her deposition and in an affidavit attached to her opposition to summary judgment that she asked and Applegate said that SOMC could not offer her an alternative test. Applegate and Blankenship claim Henry never asked about alternative testing.

²Henry also stated a religious objection to wearing a mask, although she later relented on this point.

Later that same day, Henry hand-delivered a letter to SOMC which again asked for an exemption from vaccination and “Covid testing.” R. 21-3, Henry Letter 9/14/21, PageID 273. The letter explained that “[t]his requirement to be fully vaccinated for Covid-19 and submit to Covid testing is something I cannot participate in because doing so would **harm my soul**. . . . If you still do not think you can provide a reasonable accommodation that does not conflict with my sincerely held Christian beliefs, I kindly request a formal response detailing specifically the reasons for which you cannot approve my exemption.” *Id.* Henry’s letter said nothing about her alleged request for alternative testing methods earlier that day.

Two days later, SOMC informed Henry that it could not exempt her from weekly testing but that, if Henry still refused weekly testing or vaccination, SOMC could grant her a personal leave of absence instead of termination. Henry continued to refuse. So SOMC placed her on unpaid leave on September 18, 2021. In March 2022, SOMC lifted its testing requirement due to changed pandemic conditions, and Applegate invited Henry to return to SOMC. Henry declined because she had accepted employment elsewhere. There is no evidence that Henry ever requested any alternative form of testing during her approximately six months of unpaid leave.

Henry then sued in November 2022, alleging failure to accommodate her religious beliefs and retaliation under Title VII of the Civil Rights Act of 1964.³ The district court granted summary judgment in favor of SOMC. *See Henry v. S. Ohio Med. Ctr.*, 2024 WL 4117206, at *1 (S.D. Ohio Sep. 9, 2024). After assuming that Henry had established a prima facie case of failure to accommodate, *id.* at *3, the district court first rejected Henry’s claim that she had requested alternative forms of testing by finding that her affidavit claiming as much conflicted with her deposition testimony and was therefore a sham, *id.* at *6. The court then held that accommodating Henry would have caused SOMC undue hardship because exempting her from vaccination and all testing would have placed vulnerable patient populations at risk. *Id.* In the alternative, the court assumed that Henry requested saliva testing from SOMC—her preferred testing method according to the affidavit—and held that providing this testing would impose an undue hardship because saliva tests could only be analyzed off-site and results took 48 hours. *Id.*

³Henry also brought claims under the Americans with Disabilities Act of 1990 but voluntarily dismissed those claims.

at *7. The court also held that Henry failed to show that SOMC’s “concern about the spread of the COVID-19 virus,” was a pretextual reason for placing Henry on unpaid leave. *Id.* at *8. Henry timely appealed.

II.

Summary judgment is appropriate “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). We view the evidence in the light most favorable to and draw all reasonable inferences for the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). The central issue at the summary-judgment stage is “whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251–52 (1986). And Federal Rule of Civil Procedure 56(c) requires the entry of summary judgment “against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

A.

Henry first argues that the district court erred because SOMC failed to accommodate her religious beliefs as required by Title VII. We disagree.

“The analysis of any religious accommodation case begins with the question of whether the employee has established a prima facie case of religious discrimination.” *Tepper v. Potter*, 505 F.3d 508, 514 (6th Cir. 2007) (citation omitted). To do so, a plaintiff must show that she “(1) . . . holds a sincere religious belief that conflicts with an employment requirement; (2) . . . has informed the employer about the conflicts; and (3) . . . was discharged or disciplined for failing to comply with the conflicting employment requirement.” *Id.* (citation omitted). If the plaintiff establishes a prima facie case, the employer can still defeat a failure-to-accommodate claim by showing “that it could not reasonably accommodate the employee without undue hardship.” *Id.* (citation omitted); *see also US Airways, Inc. v. Barnett*, 535 U.S. 391, 402 (2002); *DeVore v. Univ. of Ky. Bd. of Trs.*, 118 F.4th 839, 845 (6th Cir. 2024) (applying the test). An undue hardship occurs when accommodating the request would impose a

“substantial” burden “in the context of [the] employer’s business.” *Groff v. DeJoy*, 600 U.S. 447, 471 (2023).⁴ At issue here is what notice Henry provided to her employer and whether her requested accommodations would impose an undue hardship.

The district court rejected Henry’s failure-to-accommodate claim on two grounds. It first found that Henry had communicated to SOMC that she wanted an exemption from vaccination and *all* COVID testing. *Henry*, 2024 WL 4117206, at *6. The court reached this conclusion by holding that Henry’s affidavit claiming that she had requested an alternative to nasopharyngeal COVID testing was a sham because it conflicted with deposition testimony where Henry admitted she could not remember whether she requested alternative testing. *Id.* The court next held that exempting Henry from vaccination and all testing would place an undue hardship on SOMC by putting its vulnerable patient population at risk. *Id.* at *6–7. In the alternative, the court held that, even if Henry had requested a different type of test (saliva testing), that request would still impose an undue hardship on SOMC. *Id.* at *7–8. We address each conclusion in turn.

i.

Start with the notice Henry provided to SOMC. We have long held that a defendant must have “informed the employer” of the conflict between her sincere religious belief and the offending employment requirement. *Smith v. Pyro Mining Co.*, 827 F.2d 1081, 1085 (6th Cir. 1987); *Tepper*, 505 F.3d at 514; *DeVore*, 118 F.4th at 845. What does it mean to “inform” one’s employer? Our circuit surprisingly has little precedent on this subject. Several district court decisions and a recent Sixth Circuit opinion draw helpful lines, however.

At one end of the spectrum, “[a]n employee fails to inform his employer where the employee never mentions his need for a religious accommodation to a supervisor at all.” *Jiglov v. Hotel Peabody, G.P.*, 719 F. Supp. 2d 918, 930 (W.D. Tenn. 2010); *see also Laney v. Ohio Dep’t of Youth Servs.*, 719 F. Supp. 2d 868, 883 (S.D. Ohio 2010) (holding that a plaintiff did not

⁴Both before the district court and on appeal SOMC also challenges the sincerity of Henry’s religious beliefs. Like the district court, we assume without deciding that Henry’s beliefs were sincerely held. *See Henry*, 2024 WL 4117206, at *3; *Kentucky v. Beshear*, 981 F.3d 505, 509 (6th Cir. 2020) (order) (assuming the plaintiff “sincerely held [the] religious belief”).

establish a prima facie case when she “offer[ed] no evidence that she ever requested a religious accommodation”); *Getachew v. BP N. Am. Prods., Inc.*, 2006 WL 278982, at *9 (S.D. Ohio Feb. 2, 2006) (“There is no evidence that plaintiff ever informed defendant that requiring him to pay for the lottery ticket would offend his religious beliefs. In fact, plaintiff testified in his deposition that he did not tell his supervisor.”).

On the opposite end of the spectrum sit cases like *DeVore*. There we highlighted, in a COVID testing case, the kinds of objections that serve to put an employer “on notice ‘about the conflicts’” between an employee’s sincere religious convictions and a testing mandate. *DeVore*, 118 F.4th at 845. We suggested that the plaintiff there had provided sufficient notice when she relayed specific “objections to the nasal test.” *Id.* at 846. The plaintiff explained, for example, that nasal test was “invasive” and therefore “interfered with her religious obligation to treat her body as a ‘temple.’” *Id.* But we concluded that she had not established a conflict between these religious convictions and other forms of testing offered by the employer because she had not explained what the ostensible conflict was. *Id.* at 847–48; *see also id.* at 848 (“Her invasiveness objection responds only to nasal swab testing.”).

DeVore tells us that Henry had to provide SOMC with reasonably specific objections from which SOMC could determine which tests would infringe on her religious beliefs. Henry informed SOMC that she desired an exemption from COVID testing. But she offered SOMC no reason to believe that she opposed only nasopharyngeal testing (as she would later claim). Instead, she repeatedly requested an exemption in terms, and with reasoning, that would cause a reasonable employer to believe that she objected to “*both* vaccination *and* testing, no matter the type.” *Henry*, 2024 WL 4117206, at *6. At most, one could infer that she, at times, requested an exemption from any *invasive* testing—*i.e.*, an exemption from all forms of testing except by saliva. Neither reading helps Henry’s case because SOMC has shown that granting either exemption would have imposed a “substantial” burden “in the overall context of [SOMC’s] business.” *Groff*, 600 U.S. at 468.

Recall the timeline and substance of Henry’s requests. In response to SOMC’s email explaining the vaccine and testing requirements (and notifying employees that alternative forms of testing were available for those with medical needs), Henry wrote SOMC on September 3,

explaining that she wished “to request a religious exemption from . . . *covid testing* and vaccines because these are violations of my sincerely held religious beliefs.” R. 21-3, Henry Letter 9/3/21, PageID 263 (emphasis added). She attached a letter from her pastor, which she indicated would explain her religious beliefs. The pastor’s letter stated that “Henry’s sincerely held religious beliefs,” included “objection to *covid tests*, masks, and vaccines.” R. 21-3, Pastor Letter, PageID 271–72 (emphasis added). Both the pastoral letter and Henry’s request explained that Henry objected to “participating in a medical experiment, such as covid testing” and argued that COVID tests “have an emergency authorization from the FDA, not an approval. Therefore, these are experimental treatments” which, she claimed, gave her “the right to refuse” testing. R. 21-3, Henry Letter 9/3/21, PageID 264; *accord* R. 21-3, Pastor Letter, PageID 271–72. And both letters concluded with a request for a blanket exemption. The pastor explained that “[t]aking a *covid test* . . . is an affront to Christina Henry’s sincerely held religious beliefs.” R. 21-3, Pastor Letter, PageID 272 (emphasis added). And Henry summarized her position stating: “My request for accommodation is that I do not consent to getting a covid vaccine [or] *taking a covid test*.” R. 21-3, Henry Letter 9/3/21, PageID 264 (emphasis added).

Although Henry repeatedly requested to be exempt from all COVID testing, some of the reasoning in her letter could suggest that her request was limited to exemption from all *invasive* COVID testing. Henry’s accommodation request explained that her “sincerely-held Christian beliefs” did not permit her to “be assaulted by a foreign body being inserted *into [her] nasal passages* (i.e., covid test).” *Id.*, PageID 263 (emphasis added). The request then objected that “substances in the test . . . are possibly harmful” to her body and explained that she was “called to protect the body and not participate in *pharmakaia*.” *Id.* Henry’s pastor explained that our “bodies are temples of the Holy Spirit,” thus “it is an affront to a Christian to inject their body with a man-made substance in an effort to ‘improve’ the immune system or *insert a dubious object into one’s body* to detect an asymptomatic illness.” R. 21-3, Pastor Letter, PageID 272 (emphasis added). These statements show that Henry objected to insertion of a test into her nose, which would exclude nasopharyngeal and anterior nares testing. And more generally, they evince an objection to introducing “substances in the test” or “object[s]” for detecting illness into her body, which would also exclude oropharyngeal testing.

Henry's conversation with Bryan on September 7 shows that she at best objected to all invasive testing. During the call, as described by Bryan's notes, Henry "denied she would allow" throat swabs (oropharyngeal testing) for strep throat and she objected to testing generally. R. 21-13, Mot. for Sum. Jud. Ex. A, PageID 594. Henry explained that "she would never want to have any type of instrument put in her body" because she "trust[ed] in the Lord to take care of [her]." *Id.* She thus "relayed [that] she would not want to be coded," would "never be 'tested again' for cancer screens etc.," and "would not be receiving the flu vaccine." *Id.* Henry proposed only one accommodation: SOMC should allow her to "self-screen" and stay home if she felt sick. *Id.* During her deposition, Henry confirmed that Bryan's notes detailing this part of their conversation were accurate. Bryan's notes also claim that Henry stated, "God does not want [me] to be tested. If I am forced to be tested I feel it is a retaliation against me and my religion." R. 21-13, Mot. for Sum. Jud. Ex. A, PageID 594 (citation modified). But in her deposition, Henry did not remember saying this on the call. The undisputed portion of Bryan's notes, however, show that Henry objected to all invasive forms of COVID testing.

Henry pushes back. She argues that her deposition testimony and an affidavit that she attached to her opposition to SOMC's motion for summary judgment show that SOMC knew that she objected only to nasopharyngeal testing. We disagree.

First, Henry's deposition testimony. In her deposition, Henry testified that she inquired about alternative forms of testing during the September 14 call with Applegate and Blankenship:

Q. Okay. Did you say anything during that conversation?

A. I just stated I was not going to agree to weekly testing, that form of weekly testing, and asked if there was any other forms of testing that was acceptable. And he said no, there's not. I had to do that specific one.

R. 21-4, Henry Dep., PageID 325–26.

Read liberally in Henry's favor, Henry's testimony doesn't indicate that she notified SOMC that she now objected to only nasopharyngeal testing. Although Henry testified that she "asked if there was any other forms of testing that was acceptable" during the September 14 call, the question must be evaluated against the backdrop of the information that SOMC had up to that point. When it is, there can be no dispute about *which* form of testing SOMC reasonably would

have understood Henry to be referencing. Every piece of evidence prior to the September 14 conversation states unequivocally that Henry maintained a religious objection to every form of testing except possibly saliva. And Henry never told SOMC otherwise. So even if Henry asked if there were other forms of testing available, that alone wouldn't put SOMC on notice that she had changed her stance on other forms of invasive testing, such as oropharyngeal or anterior nares.

Nor would anything after the September 14 call have alerted SOMC that Henry's objections extended only to nasopharyngeal testing, so that it reasonably would have understood Henry's request for alternative testing to include other forms of invasive testing. For example, right after the September 14 call, Henry delivered a letter to SOMC which did not say that she was willing to submit to other forms of invasive testing—indeed it did not mention any request for alternative testing at all. Henry only said that she was “asking to continue with [her] position's responsibilities . . . just as [she] ha[d] from the very beginning of the pandemic.” R. 21-3, Henry Letter 9/14/21, PageID 273.

Henry seems to suggest that SOMC should have intuited that she had a change of heart about accepting invasive forms of testing between the September 7 call with Bryan where she communicated opposition to all forms of invasive testing and her call with Blankenship and Applegate on September 14 where she allegedly asked about alternative tests. But no evidence suggests that SOMC should have had reason to suspect this. Indeed, Henry's behavior when it came to masking points the other way. Henry's September 3 accommodation request, and the attached pastoral letter, explained in detail why “[w]earing a mask is an affront to [Henry's] Christian beliefs.” R. 21-3, Henry Letter 9/3/21, PageID 263; R. 21-3, Pastor Letter, PageID 271. But when Henry changed her mind, she explicitly told Bryan that “she could, ‘wear a mask at work.’” R. 21-13, Mot. for Sum. Jud. Ex. A, PageID 594. In other words, she provided SOMC with notice.

What's more, in response to further questioning, Henry arguably walked back her claim in her deposition testimony that she had even asked whether alternative forms of testing were available:

Q. Did you have any other types of testing that you suggested or recommended, or did you just ask if they had other ones?

A. I asked if there was something—any other types that was less invasive. I was willing to spit in a—like, there's a type that you can spit in a cup.

Q. Did you talk about that with Mr. Applegate, or is that just something you knew of?

A. That was something I knew of. *I don't remember if I did ask them or not.*

Q. *Okay. Whether or not there were other forms of testing?*

A. *Correct.*

R. 21-4, Henry Dep., PageID 326 (emphasis added). So nothing in Henry's deposition testimony indicates that she put SOMC on notice that she had a change of heart about the types of tests she was willing to take.

Second, consider Henry's affidavit. There, Henry again states that during the September 14 phone call, she asked if she "could take a different type of test, to which Mr. Applegate told me I could not." R. 25-1, Henry Aff., PageID 634. But again, against the backdrop of the prior communications between Henry and SOMC, such a question would not indicate to SOMC that Henry had now changed her stance on invasive testing. That is true even though Henry's affidavit goes on to explain all the different tests that she would have been willing to take had SOMC offered them—basically, any test other than nasopharyngeal testing. *Id.* The problem for Henry? Her affidavit doesn't say that she *communicated* that change of heart to SOMC, and as such, SOMC had no notice that Henry would now consider other forms of invasive testing.

In sum, the record, read in the light most favorable to Henry, reveals that SOMC would have reasonably interpreted Henry's request for a "different type of test" to ask only for a non-invasive alternative (saliva). The record thus establishes that SOMC would reasonably have understood Henry to have been willing to accept only one of two accommodations: either an exemption from all COVID testing or an accommodation allowing her to engage in non-invasive (saliva) testing.⁵

⁵The district court took a different tack in determining that at most Henry objected to all forms of invasive testing. The court declined to countenance Henry's affidavit, concluding that the affidavit was a sham. For the reasons stated above, we don't believe it is necessary to find the affidavit a sham in order to find in favor of SOMC.

ii.

The district court concluded that either exempting Henry from all COVID testing or using saliva testing would have imposed an undue hardship on SOMC. *Henry*, 2024 WL 4117206, at *6–7. We agree.

To demonstrate an undue hardship under Title VII, an employer must show that the “burden is substantial in the overall context of an employer’s business.” *Groff*, 600 U.S. at 468. But “Title VII does not require that safety be subordinated to the religious beliefs of an employee.” *Draper v. U.S. Pipe & Foundry Co.*, 527 F.2d 515, 521 (6th Cir. 1975). “[S]afety considerations are highly relevant in determining whether a proposed accommodation would produce an undue hardship on the employer’s business.” *Id.* Further, “[i]n determining whether an accommodation would pose an undue hardship, an employer is permitted to draw conclusions based on evidence and information that was available at the time.” *Henry*, 2024 WL 4117206, at *3 (quoting *MacDonald v. Or. Health & Sci. Univ.*, 2024 WL 3316199, at *7 (D. Or. July 5, 2024)); cf. *Smith v. Chrysler Corp.*, 155 F.3d 799, 807 (6th Cir. 1998) (explaining in the American with Disabilities Act discrimination context that employers may rely “on the particularized facts then before it” and that courts “do not require that the decisional process used by the employer be optimal or that it left no stone unturned”).

Start with the exemption from all testing. We recently rejected a nearly identical challenge on undue hardship grounds. See *Wise v. Child.’s Hosp. Med. Ctr. of Akron*, 2025 WL 1392209 (6th Cir. May 14, 2025). In *Wise*, a staff pharmacist who worked with children was dismissed by a pediatric hospital after refusing COVID vaccination and *all* testing for religious reasons. The pharmacist sued under Title VII after her termination. *Id.* at *1. Our court explained that “[t]he hospital cares for particularly vulnerable patients whose lives could be

Still, the district court’s determination was not an abuse of discretion. See *Reich v. City of Elizabethtown*, 945 F.3d 968, 975 (6th Cir. 2019). The sham-affidavit rule forbids a party from “creat[ing] a factual issue by filing an affidavit, after a motion for summary judgment has been made, which contradicts her earlier deposition testimony.” *Id.* at 976 (citation omitted). The district court read Henry’s deposition to admit that she “couldn’t remember if she asked about ‘other forms’ of testing.” *Henry*, 2024 WL 4117206, at *6. And the district court concluded that this admission, made soon after the September 14 call, conflicted with her claim in the affidavit filed “eight months later, [that] she was sure she did.” *Id.* That reading of the deposition and affidavit is not unreasonable, especially in light of Henry’s long history of objecting to any COVID testing.

placed at risk if they were to contract the virus. It was thus paramount that Defendant take the highest precautions to ensure the safety of those patients.” *Id.* at *5 (discussing the risk of COVID transmission to children). Based on these safety concerns, we concluded that it would have been “an undue hardship for the hospital to accommodate Plaintiff’s request to be exempt from both testing and vaccination.” *Id.* at *5. So too here. *Wise* makes clear that exempting Henry from all testing and vaccination requirements would place an undue hardship on SOMC. *See also Kizer v. St. Jude’s Child.’s Rsch. Hosp.*, 2024 WL 4816856, *1 (6th Cir. Nov. 18, 2024) (holding that a hospital treating “vulnerable pediatric patients” could not accommodate the plaintiff’s religious objection without undue hardship); *Savel v. MetroHealth Sys.*, 2025 WL 1826674, at *2 (6th Cir. July 2, 2025) (holding that exempting a “patient-facing” employee from vaccination would impose an undue hardship).

Now consider the request for saliva testing. Even this accommodation would place an undue hardship on SOMC by increasing the delay in analyzing Henry’s test results. The district court concluded that “[m]ore than doubling the time it takes to learn whether a patient-facing employee is positive for the virus unmistakably compromises SOMC’s mission to serve the community and keep it safe.” *Henry*, 2024 WL 4117206, at *7 (citation omitted). The district court was correct. We have held that an accommodation that significantly increases the health and safety risks of vulnerable patients constitutes an undue hardship. *Wise*, 2025 WL 1392209, at *5; *Savel*, 2025 WL 1826674, at *2; *see also Bushra v. Main Line Health, Inc.*, 2025 WL 1078135, at *2 (3d Cir. Apr. 10, 2025) (The “increased risk of transmitting COVID-19 to others . . . when they interact[] with vulnerable groups . . . establishes undue hardship.”). And saliva testing would have presented such risks.

Before the district court, SOMC presented evidence showing that saliva testing was a less effective method of detecting COVID infection than other forms of testing available at the time—thus increasing the risk of the spread of COVID. *Cf. Draper*, 527 F.2d at 521. Henry introduced no evidence to dispute this. SOMC also presented evidence showing that it did not have the in-house capacity to analyze saliva testing results. Analyzing saliva tests would have required third-party analysis which would have at least doubled the time (from 24 to 48 hours) it took for SOMC to learn whether Henry tested positive for COVID. That would also double the

amount of time that Henry could have been unknowingly exposing SOMC's patients and staff to the virus.

Henry does not dispute that SOMC lacked the capacity to perform saliva testing in-house and would have been required to send tests off-site. Instead, she challenges the sufficiency of SOMC's evidence that obtaining the results of Henry's saliva test from a third-party would take at least 48 hours. But SOMC supported this fact with the declaration of Brad Profitt, SOMC's Administrative Director of the Lab, who testified that when utilizing third-party testing vendors earlier in the pandemic, SOMC had to wait three to seven days for results. Profitt also testified, based on his knowledge as administrator of SOMC's lab, that "there would be at least one day required in getting the specimen to the lab and at least a day's time, if not longer, in the lab conducting the analysis and reporting its findings to SOMC." R. 21-9, Profitt Decl., PageID 459. Profitt was competent to testify to these facts based on his experience and expertise as SOMC's lab director. Henry, on the other hand, introduced no evidence that saliva test results could have been obtained in less than 48 hours. She has thus failed to present "significant probative evidence that establishes more than some metaphysical doubt as to the material facts." *Golden v. Mirabile Inv. Corp.*, 724 F. App'x 441, 445 (6th Cir. 2018) (citation modified).

In sum, either of Henry's requested accommodations would have imposed an undue hardship on SOMC, so her failure-to-accommodate claim fails.

B.

Henry finally contends that SOMC retaliated against her by placing her on unpaid leave. We once more disagree.

Title VII prohibits employers from retaliating against employees for their "opposition to an action made unlawful by Title VII." *Creusere v. Bd. of Educ. of City Sch. Dist. of City of Cincinnati*, 88 F. App'x 813, 820 (6th Cir. 2003). Henry does not rely on direct evidence, so to establish a prima facie case of retaliation, Henry must show four elements: (1) she engaged in a protected activity under Title VII, (2) SOMC knew she was exercising protected rights, (3) SOMC took adverse employment action against Henry, and (4) a causal connection existed between the protected activity and the adverse employment action. See *Taylor v. Geithner*, 703

F.3d 328, 336 (6th Cir. 2013). If Henry makes a prima facie case, the burden “shifts” to SOMC “to articulate some legitimate, nondiscriminatory reason” for its action. *Tex. Dep’t of Cmty. Affairs v. Burdine*, 450 U.S. 248, 252–53 (1981) (citation omitted). If SOMC carries “this burden,” Henry must show that SOMC’s reasons “were a pretext for discrimination.” *Id.* at 253.

We may assume that Henry established a prima facie case of retaliation. Even so, SOMC offered a nondiscriminatory reason for placing her on unpaid leave—exempting her from vaccination and testing could lead to the spread of COVID-19 among its staff and patients. And Henry has not shown that this reason was pretextual. *Cf. Graoch Assocs. #33, L.P. v. Louisville/Jefferson Cnty. Metro Hum. Rels. Comm’n*, 508 F.3d 366, 371 (6th Cir. 2007).

Henry argues that the temporal proximity between her request and the adverse action establishes pretext. *See Seeger v. Cincinnati Bell Tel. Co.*, 681 F.3d 274, 285 (6th Cir. 2012) (stating that temporal proximity may indicate pretext, though it “cannot be the sole basis for finding pretext” (citation omitted)). SOMC placed Henry on unpaid leave two weeks after her request for a religious accommodation. That argument fails, however, because SOMC put Henry on unpaid leave the day after the long-established deadline (September 17) by which every employee had to vaccinate or agree to testing. The preexisting deadline “negate[s] any inferences that may arise from the temporal proximity between [Henry’s] protected activities” and her placement on unpaid leave. *See Barrett v. Lucent Techs., Inc.*, 36 F. App’x 835, 843 (6th Cir. 2002) (per curiam); *cf. Montell v. Diversified Clinical Servs., Inc.*, 757 F.3d 497, 507 (6th Cir. 2014) (“When the employer proceeds along lines previously contemplated, we must not take the temporal proximity of the adverse employment action as evidence of causality.” (citation modified)). Thus, the temporal proximity between Henry’s accommodation request and her being put on unpaid leave occurred because of SOMC’s long-established vaccination deadline.

Henry also argues that SOMC’s refusal to provide her with available alternative forms of testing shows pretext. But that argument turns on us accepting the claim that Henry put SOMC on notice during the September 14 call that she would now consider other forms of invasive testing. For the reasons explained above, her deposition testimony and affidavit don’t establish that she provided SOMC such notice.

Finally, Henry argues that SOMC's granting of all other accommodations shows pretext. Henry did not make this argument before the district court and has thus forfeited it. *See United States v. Clark*, 24 F.4th 565, 577 (6th Cir. 2022). But the argument would fail in any event because Henry has not shown that any other accommodation recipients were similarly situated to her "in all relevant respects." *Bashaw v. Majestic Care of Whitehall, LLC*, 130 F.4th 542, 551 (6th Cir. 2025) (citation omitted). The uncontested evidence shows that of the "approximately 300" employees who requested an accommodation, all "agreed to weekly testing" except Henry and one other nurse. R. 21-3, Blankenship Decl., PageID 255, ¶ 28. And the other nurse who opposed weekly testing "resigned prior to the processing of her exemption request." *Id.*, PageID 255 n.1. Henry cannot establish pretext because she and the other exemption applicants were not similarly situated.

In sum, Henry has not shown that SOMC retaliated against her for requesting a religious accommodation because she has not shown that SOMC's stated fear of spreading COVID when putting her on unpaid leave was pretextual.

* * *

We AFFIRM the district court's judgment.