Circuit Court for Baltimore County
Case No.: C-03-CV-23-000993

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 2122

September Term, 2023

TERESA HARMON

v.

KAISER PERMANENTE INSURANCE COMPANY, ET AL.

Friedman,
Kehoe, S.,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kenney, J.
Concurring Opinion by Friedman, J.

Filed: July 24, 2025

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Teresa Harmon appeals an order of the Circuit Court for Baltimore County dismissing her first amended complaint ("FAC") against Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc.; Kaiser Permanente Insurance Company; Katherine Ballesteros; and Suzanna V. Williams (collectively, appellees).[1] In the first count of the FAC, Ms. Harmon alleged, among other things, that appellees discriminated against her when they first granted, but later revoked, her requested religious exemption from Kaiser's COVID-19 vaccination policy, and retaliated against her when she refused to obtain a COVID-19 vaccination.[2] Ms. Harmon presents two questions for our review, which we have rephrased as follows[3]:

I. Did the circuit court err in dismissing her religious discrimination claim for failure to state a claim upon which relief may be granted?

II. Did the circuit court err in dismissing her retaliation claim for failure to state a claim upon which relief may be granted?

[1] We refer to Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc. and Kaiser Permanente Insurance Company collectively as "Kaiser." We refer to Katherine Ballesteros and Suzanna V. Williams as Ms. Ballesteros and Ms. Williams.

[2] Kaiser, in its brief, states that her exemption request was "provisionally approved."

[3] As presented in Ms. Harmon's appellate brief, the questions are:

1. Did the circuit court incorrectly dismiss Ms. Harmon's claim for religious discrimination when Ms. Harmon declared her sincerely-held religious beliefs to Kaiser, to which Kaiser granted her religious exemption, but then Kaiser revoked the same?

2. Did the circuit court incorrectly dismiss Ms. Harmon's claim for retaliation when Ms. Harmon was fired after she filed an internal discrimination claim in reaction to Kaiser's employment practices?

As we explain below, we shall affirm the judgment of the circuit court.

FACTUAL BACKGROUND

Ms. Harmon, a registered nurse, was employed between January 4, 2020 and January 10, 2022 as an "on-call" oncology nurse at the Kaiser Oncology Infusion Center in Gaithersburg, Maryland. Her managing supervisor was Ms. Ballesteros; Ms. Williams was a Human Resource supervisor at Kaiser.

Kaiser, on August 2, 2021, implemented a policy requiring all employees to receive a COVID-19 vaccination or obtain an exemption. Its exemption policy in regard to religion, in pertinent part, provided:

> In addition to signing the online Covid 19 vaccination exemption form under the penalty of perjury that they have a sincerely held religious belief, practice, or observance that prohibits them from receiving any Covid 19 vaccine, they will need to disclose the religion and specific teaching or doctrine that prevents them from receiving the vaccine.

Having declined to receive any of the COVID-19 vaccines, Ms. Harmon, on August 23, requested a religious exemption on Kaiser's online vaccination exemption form. The religious exemption form was a questionnaire, and, when it appeared that employees were answering the questions identically, Kaiser requested more information about Ms. Harmon's religious beliefs on September 21. It is unclear from the record if Ms. Harmon provided additional information or, if she did, what it was. In any event, she received an approval of her religious exemption request on September 29. Because she was unvaccinated, she was required to test for COVID-19 two times a week. Vaccinated nurses were not.

On November 3, Ms. Harmon applied for a full-time oncology nursing position with Kaiser. Later that same day, Kaiser requested additional information from her regarding her religious exemption request and asked her to complete the online COVID-19 exemption questionnaire again. Not understanding why doing so was necessary and unable to get an explanation from Kaiser, Ms. Harmon engaged an attorney to represent her on November 8. Over the next several weeks, Ms. Harmon and her attorney sought clarification from Ms. Ballesteros and Ms. Williams about Kaiser's request for additional information without success. Ms. Harmon then filed an internal complaint with Kaiser.

Kaiser notified Ms. Harmon on December 9 that her exemption request was denied.[4] About a week later, Ms. Ballesteros notified Ms. Harmon that, unless she was vaccinated, she would not be allowed to return to her position and would be placed on administrative leave. Around this same time, Ms. Harmon learned that the full-time nursing position for which she had applied had been changed to two, part-time nursing positions. On January 10, 2022, Kaiser terminated Ms. Harmon's employment. The week before she was terminated, Ms. Harmon learned that Kaiser had re-posted the nursing position for which she had applied as a full-time position.

[4] Ms. Harmon views the denial as a revocation of a previously approved exemption. Kaiser states that the November 3 request for more information and to complete the online questionnaire again was to get "additional information," including how her "religious beliefs . . . conflict with the vaccine policy."

On March 7, 2023, Ms. Harmon filed a thirty-three-page, four count complaint that the defendants moved to dismiss for failure to state a claim.[5] She then filed a forty-two-page, eight count FAC[6] that defendants also moved to dismiss for failure to state a claim.

After a hearing on the motion to dismiss the FAC, the circuit court, on October 17, 2023, issued a written opinion and order granting defendants' motion to dismiss Ms. Harmon's FAC in its entirety. Ten days later, Ms. Harmon filed a "Motion to Alter or Amend Judgment or Alternatively, for Reconsideration[.]" At the conclusion of that motion, she asked the court to

> alter, amend and/or reconsider its Order and Judgment, and that Defendants' Motion to Dismiss and memorandum must be DENIED and Ms. Harmon's motion for reconsideration is respectfully requested to be GRANTED, and her complaint and amended complaints including her Second Amended Complaint [("SAC")] included herewith be permitted to proceed to discovery and a trial by jury.[7]

The court denied all the requested relief, and Ms. Harmon filed this timely appeal.

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[5] Three of the named defendants in Ms. Harmon's original complaint were named in her FAC. Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc. was not named in her original complaint.

[6] Her FAC raised the following eight counts against all four defendants: (1) discrimination based on religion in violation of Md. Code Ann., State Government ("SG"), §§ 20-601 and 20-801; (2) discrimination based on genetic information in violation of SG § 20-601; (3) age discrimination in violation of SG § 20-602; (4)(a) retaliation in violation of SG §20-601; (4)(b) negligence; (5) wrongful discharge; (6) invasion of privacy; (7) intentional infliction of emotional distress; and (8) civil conspiracy. Counts (5)-(8) were not included in her original complaint.

[7] Ms. Harmon's SAC was similar to her FAC as to the two counts alleging religious discrimination and retaliation, except she added that she was "Christian;" that, as a "Christian . . . she believes and knows [that her body] is the Temple of the Holy Spirit" (emphasis omitted); and that she was treated differently from other employees who (continued…)

DISCUSSION

Standard of Review

Ms. Harmon appeals the circuit court's dismissal of her FAC for failure to state a claim as to the religious discrimination and retaliation counts and the denial of her motion to alter or amend the judgment.

A motion to dismiss should only be granted when "the allegations [in the complaint] do not state a cause of action for which relief may be granted." *Floyd v. Mayor & City Council of Baltimore*, 463 Md. 226, 241 (2019) (quotation marks and citation omitted). We review de novo the grant of a motion to dismiss to determine "whether the trial court was legally correct." *Blackstone v. Sharma*, 461 Md. 87, 110 (2018) (quotation marks and citations omitted). *See also D.L. v. Sheppard Pratt Health Sys., Inc.*, 465 Md. 339, 350 (2019). Our review is "limited generally to the four corners of the complaint and its incorporated supporting exhibits[.]" *Wireless One, Inc. v. Mayor & City Council of Baltimore*, 465 Md. 588, 604 (2019) (quotation marks and citation omitted).

In our review, all "reasonable inferences are drawn in a light favorable to the non-moving party" because "only if the allegations and permissible inferences, if true, would not afford relief to the plaintiff" should a motion to dismiss be granted. *Litz v. Md. Dep't of Env't*, 434 Md. 623, 643 (2013) (quotation marks and citation omitted). On the other hand, "bald assertions and conclusory statements will not suffice." *Campbell v. Cushwa*,

received religious exemptions. In addition, she added as exhibits to her SAC two documents. One was "Religious Exemption Declarations" that included partial screen shots of Kaiser's online religious exemption form. The other, which was titled "Nurse Attestations[,]" included attestations from those with whom she worked.

133 Md. App. 519, 534 (2000) (cleaned up). We assume the truth of all well-pleaded facts, but "any ambiguity or uncertainty in the allegations bearing on whether the complaint states a cause of action must be construed against the pleader." *Alleco Inc. v. Harry & Jeanette Weinberg Found., Inc.*, 340 Md. 176, 193 (1995) (quotation marks and citation omitted).

A plaintiff is not required to plead a prima facie case to survive a motion to dismiss, but the stated factual allegations, measured by the elements of a prima facie case, must support a plausible claim for relief. *Coleman v. Md. Ct. of Appeals*, 626 F.3d 187, 190 (4th Cir. 2010), *aff'd*, 566 U.S. 30 (2012). *See also Swierkiewicz v. Sorema, N.A.*, 534 U.S. 506, 515 (2002) (explaining that "an employment discrimination plaintiff need not plead a prima facie case of discrimination"); *Bing v. Brivo Sys., LLC*, 959 F.3d 605, 617 (4th Cir. 2020) (stating that, at the motion to dismiss stage in an employment discrimination case, the question is whether the plaintiff has alleged facts that plausibly state a violation "above a speculative level" (cleaned up)).

I. Religious Discrimination

Because the Maryland Fair Employment Practices Act ("FEPA") is modeled after Title VII of the Civil Rights Act of 1964, interpretation by the federal courts of Title VII provides guidance in the interpretation of FEPA.[8] *Peninsula Reg'l Med. Ctr. v. Adkins*, 448 Md. 197, 209 (2016). Under FEPA, an employer may not "discharge, or otherwise discriminate against any individual with respect to the individual's compensation, terms,

[8] With the exception of the United States Supreme Court on federal constitutional issues, federal court opinions do not serve as precedent but may be considered as persuasive authority.

conditions, or privileges of employment because of . . . religion[.]" SG § 20-606(a)(1)(i). A religious discrimination claim may be pursued under either of two theories: failure to accommodate and disparate treatment. *Chalmers v. Tulon Co. of Richmond*, 101 F.3d 1012, 1017 (4th Cir. 1996).

Ms. Harmon does not expressly use the terms "failure to accommodate" or "disparate treatment." *Cf. Sturgill v. Am. Red Cross*, 114 F.4th 803, 811 (6th Cir. 2024) (holding that, because "nothing in her complaint can be plausibly read to put the Red Cross on notice that she claimed it treated her differently on account of her religious beliefs separate from her failure-to-accommodate claim[,]" plaintiff failed to set forth a stand-alone disparate treatment claim). Thus, it is not abundantly clear which of the two theories she is pursuing in her religious discrimination claim. But for the purpose of our review, we will assume that she was pursuing both.

A. Failure to Accommodate

There are three elements to an employee's failure to accommodate claim: "(1) he or she has a bona fide religious belief that conflicts with an employment requirement; (2) he or she informed the employer of this belief; and (3) he or she was disciplined for failure to comply with the conflicting employment requirement." *United States Equal Emp. Opportunity Comm'n v. Consol Energy, Inc*., 860 F.3d 131, 141 (4th Cir. 2017) (cleaned up). When a prima facie failure to accommodate claim is established, the burden shifts to the employer to show (1) that the employee was provided with a reasonable accommodation for his or her religious beliefs, or (2) that an accommodation would cause an "undue hardship." *Id*. (cleaned up). In this context, an "undue hardship," is one where

"an accommodation would result in substantial increased costs in relation to the conduct of its particular business." *Groff v. DeJoy*, 600 U.S. 447, 470 (2023).

A protected "bona fide religious belief" is one that is sincerely held and religious in nature. *Welsh v. United States*, 398 U.S. 333, 339 (1970). That the belief is "sincerely held" addresses the "adherent's good faith in the expression of [the] religious belief." *Patrick v. LeFevre*, 745 F.2d 153, 157 (2d Cir. 1984). The sincerity prong is essentially a credibility assessment and an issue for a fact finder. For that reason, it is generally not "amenable to disposition on a motion to dismiss." *Menk v. MITRE Corp.*, 713 F. Supp. 3d 113, 146 (D. Md. 2024) (quotation marks and citation omitted). Here, the sincerity prong was sufficiently pleaded.

That a belief is "religious in nature" seeks to differentiate "between those beliefs that are held as a matter of conscience and those that are animated by motives of deception and fraud." *Patrick*, 745 F.2d at 157. That does not mean, however, that a person's religious beliefs need to be "acceptable, logical, consistent, or comprehensible to others[.]" *Thomas v. Rev. Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 714 (1981). On the other hand, "no employee is entitled to a blanket exemption entitling them to make 'unilateral decisions' about which job requirements to comply with, even where religion is expressly invoked in communicating the beliefs." *Shigley v. Tydings & Rosenberg LLP*, 723 F. Supp. 3d 440, 446 (D. Md. 2024) (quotation marks and citation omitted). The ultimate question is whether the professed belief is based on a recognizably religious "scheme of things," *Welsh*, 398 U.S. at 339 (cleaned up), and rather than "secular morality or personal health, convenience, preference, or whim[.]" *Shigley*, 723 F. Supp. 3d at 446-47 (citing *Dachman v. Shalala*, 9

F. App'x 186, 192 (4th Cir. 2001) ("While an employer has a duty to accommodate an employee's religious beliefs, [it] does not have a duty to accommodate an employee's preferences.")).

We are not persuaded that Ms. Harmon's FAC sufficiently pleaded a bona fide religious claim conflicting with an employment requirement. In the first 119 paragraphs of her FAC, before addressing her religious discrimination count, the only statements or allegations regarding religion are:

1. because of her "religious convictions," she chose to request an exemption instead of accepting the vaccine;

2. she declined the COVID-19 vaccine "due to [her] religious beliefs" and filled out Kaiser's religious exemption questionnaire and answered "several personal questions regarding [her] sincerely held religious beliefs";

3. she answered the questionnaire "because [she is] proud of [her] religious beliefs and had nothing to hide";

4. she was told by Kaiser that "trained people" from Human Resources would review each religious exemption carefully, but when she asked for the credentials of those "who would be assessing [her] beliefs," she received no response from Kaiser;

5. she felt "under constant scrutiny for standing up for [her] beliefs in good faith";

6. after submitting her first religious exemption form on August 23, 2021, but before submitting her second religious exemption form on September 13, Kaiser sent her an "employee Q&A Covid workforce vaccination verification and testing email" that stated: "In addition to signing the on line Covid 19 vaccination exemption form under the penalty of perjury that they have a sincerely held religious belief, practice or observance that prohibits them from receiving and [sic] Covid 19 vaccine, they will need

to disclose the religion, and the specific teaching or doctrine that prevents them from receiving the vaccine";

7. after submitting a second exemption form, Human Resources sent her an email "requesting more information to determine the sincerity of [her] religious beliefs." Additionally, the email "undermined [her] sincerely held religious beliefs" because it reminded employees that "there is still time to get vaccinated and meet the new September 30, 2021 deadline";

8. the email Kaiser sent on September 29, 2021, approving her religious exemption claim but stating, "[i]f your views change and you no longer have a sincerely held religious belief, practice, or observance that prevents you from receiving any Covid 19 vaccine, please provide proof of full vaccination here[,]" constituted "harassment" because Kaiser "mock[ed her] sincerely held beliefs by inferring that [she] may want to surrender [her] beliefs for a vaccine";

9. an email from Human Resources on November 3, 2021, stated that she needed to fill out another religious exemption form for Kaiser "to judge whether or not [her] sincerely held religious beliefs were actually sincere";

10. Kaiser stated on November 8, 2021, "that I must reply to their email . . . regarding the sincerity of [her] firmly held beliefs.";

11. Kaiser terminated her not for her "body of work but instead for exercising [her] God given rights and standing up for my sincerely held religious beliefs";

12. her "religious beliefs were mysteriously scrutinized" by Kaiser, and she was terminated because her "religious beliefs did not meet their 'secret' standards[,]" and Kaiser never tried to "meet with [her] personally to try to discuss [her] beliefs";

13. she has "been mocked, discriminated, harassed, and intimidated because [her] religious beliefs do not align with some incognizant standard which [Kaiser] is unwilling to disclose"; and

14. the discrimination she faced was because of her "religion (including her 'religious observances, practice, and belief.' MD Code SG 20-601 Definitions (Maryland Code 2023 Edition)))."

In the religious discrimination count, she again alleges being subjected to "unwelcome" discrimination that was due to her "religion (including her 'religious observances, practice, and belief.' MD Code SG 20-601 Definitions (Maryland Code (2023 Edition)))." And the copy of her Maryland Commission on Civil Rights discrimination charge form, attached as an exhibit to the FAC, states that she was "discriminated against based on [her] religion (Christian)[.]"

That is the only time she alleges anything beyond holding religious beliefs, but that one is a Christian is a conclusory statement that does not connect the refusal to be vaccinated to a religious belief. *Campbell*, 133 Md. App. at 534. *See also Mason v. Gen. Brown Cent. Sch. Dist.*, 851 F.2d 47, 51 (2nd Cir. 1988) ("An individual's assertion that the belief he holds [is religious] does not . . . automatically mean that the belief is religious."). Merely identifying a particular religion is not sufficient to plead the second prong of the first element of a religious discrimination claim because nowhere does she expressly link her objection to the COVID-19 vaccine to her religious faith.[9] *Cf. Menk*, 713

[9] During oral argument, Ms. Harmon's counsel directed us to four other instances in the FAC that she claims sufficiently pleaded that she held a sincere religious belief. The first instance is paragraph 128 (included above as number 14). The second instance is at paragraph 189, under the invasion of privacy count, where she stated: "No employer may mock, ridicule, or publicly demean and terminate anyone because they are Jewish, Muslim, Christian, Falun Gong, Buddhist, Hindu, Atheist or other religion or non-religion, yet that is what DEFENDANTS did to HARMON." The third instance is at paragraph 199, under the intentional infliction of emotional distress count, where she stated:

(continued…)

F. Supp. 3d at 150 (holding that employees' complaint lacked the specificity required to overcome a motion to dismiss because employees failed to allege what religions they practiced; failed to allege any individualized subjective personal beliefs; and failed to state how those religious beliefs/practices form the basis of their objection to employer's policy).[10] Therefore, if Ms. Harmon was clearly pursuing a religious discrimination claim based on a failure to accommodate, it was not pleaded sufficiently.

> DEFENDANTS' conduct in terminating HARMON and ordering her off campus from her job as a senior oncology nurse just days after she declared her faith to her employer, namely terminating her employment just days before CHRISTMAS 2021 a known religious holiday of her faith, demonstrates extreme and outrageous conduct that would shock the conscious [sic] of all reasonable Americans who know our country and state were founded upon religious freedom and that the employer knew they had a duty to deliberately and carefully seek to provide reasonable accommodations for her religious faith, and they refused to do so.

The fourth instance was the Maryland Commission on Civil Rights form attached to her FAC that we discussed above. None of the above instances articulate any linkage between her religious beliefs to her objection to the COVID-19 vaccine.

[10] *See* the following cases where it has been held that a general allegation of a religious belief without identifying a conflicting belief is insufficient to survive a motion to dismiss for religious discrimination under Title VII: *Harvey v. Bayhealth Med. Ctr., Inc.*, 715 F. Supp. 3d 594, 601 (D. Del. 2024) (dismissing plaintiff's failure to accommodate claim where she alleged "God would [not] want me to receive this vaccine and that she honors God by being the one to 'choose' or 'decide' what is allowed to enter her body" is insufficient because she was personally choosing her own standards (quotation marks omitted)); *Cagle v. Weill Cornell Med.*, 680 F. Supp. 3d 428, 435 (S.D.N.Y. 2023) ("Bald allegations that a plaintiff has a religious belief and that those religious beliefs conflict with an employment requirement are insufficient to state a claim for religious discrimination under Title VII" where plaintiff alleges only that she has "religious beliefs" and that those beliefs include "religious practices of non-vaccination." (quotation marks omitted)).

Cases where the plaintiff adequately pleaded a link between a religious belief and an objection to an employer's COVID-19 policy include: *Barnett v. Inova Health Care*

(continued…)

B. Disparate Treatment

A prima facie claim that an employee was treated by the employer differently than other employees because of religious beliefs involves a four-element inquiry. The employee must allege: "(1) membership in a protected class; (2) satisfactory job performance; (3) adverse employment action; and (4) different treatment from similarly

Servs., 125 F.4th 465, 470-71 (4th Cir. 2025) (holding that the employee's beliefs are an "essential part of a religious faith" and are plausibly connected with her refusal to receive the COVID-19 vaccine where she alleged: "(1) it would be sinful for her to engage with a product such as the vaccination after having been instructed by God to abstain from it; (2) her religious reasons for declining the covid vaccinations were based on her study and understanding of the Bible and personally directed by the true and living God; and (3) receiving the vaccine would be sinning against her body, which is a temple of God, and against God himself" (cleaned up)); *Sturgill*, 114 F.4th at 807-11 (reversing district court's dismissal where employee had alleged facts that supported an inference that her refusal to be vaccinated for COVID-19 was an "aspect" of her religious observance, practice, or belief that, as a Christian, she honors the Bible's command that our "bodies are temples of the Holy Spirit" and that taking the vaccine would defile her body); *Passarella v. Aspirus, Inc.*, 108 F.4th 1005, 1009 (7th Cir. 2024) (holding that employees adequately alleged they objected to the COVID-19 vaccine because it conflicted with their Christian beliefs regarding the sanctity of the human body); *Ringhofer v. Mayo Clinic, Ambulance,* 102 F.4th 894, 901-02 (8th Cir. 2024) (reversing district court's dismissal of a failure to accommodate Title VII claim at the motion to dismiss stage where plaintiffs alleged their "body is a temple" in objection to the vaccination requirements, "adequately identif[ied] religious views they believe[d] to conflict with taking the Covid-19 vaccine" and "plausibly connect[ed] their refusal to receive the vaccine with their religious beliefs[,]" as did plaintiff alleging that "[m]y faith is in my Creator who is my Healer" and that "[s]hifting my faith from my Creator to medicine is the equivalent of committing idolatry-holding medicine in greater esteem th[a]n Elohim"); *Ellison v. Inova Health Care Servs.*, 692 F. Supp. 3d 548, 558-59 (E.D. Va. 2023) (holding that plaintiff "adequately linked his objection to a sincerely held religious belief" and withstood the motion to dismiss when he stated "life begins at conception," "every life is sacred," and "any action that would generate a future demand for fetal cell tissue, violates the core religious beliefs that he holds dear[,]" but, the allegations of plaintiffs that their body was a temple were insufficient to withstand the motion to dismiss where, although couched in religious terms, one plaintiff refused to be vaccinated based on concerns of safety and another alleged a "blanket privilege" based on his "God-given responsibility" to make decisions over the integrity of his body (cleaned up)). Such claims were not articulated in the FAC.

situated employees outside the protected class." *Polk v. Amtrak Nat'l R.R. Passenger Corp.*, 66 F.4th 500, 507 (4th Cir. 2023) (quotation marks and citation omitted). The "different treatment" element relates to the employer's intent, which may be satisfied by either "direct" or "circumstantial" evidence. *Id.* When an employee establishes a prima facie case, the burden shifts to the employer to proffer a non-discriminatory explanation for the adverse employment action, which, if met, shifts the burden back to the employee to establish that the proffered justification is pretextual and that the employer's disparate treatment was because of the employee's religion. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802, 804-05 (1973). Here, the only element really at issue is whether Ms. Harmon was treated differently from "similarly situated employees."

Her FAC states: "On information and belief, Ms. Harmon states that Jehovah Witnesses are allowed religious exemptions at Kaiser." In dismissing her religious discrimination claim, the circuit court stated:

> On the face of the FAC, Plaintiff does not assert any facts to show that she received disparate treatment from any other employee who also requested a religious exemption. Plaintiff does not assert any facts as to the other employees who had requested a religious exemption and whether they had received similar inquiries from Defendant Kaiser's HR Department. Plaintiff only states that one other employee in Defendant Kaiser's Gaithersburg Oncology Unit had also been denied exemptions and ultimately retired but does not assert what type of exemption the other employee had requested, religious or otherwise. Nor does Plaintiff assert in the FAC that other employees with similar religious beliefs received disparate treatment from Defendant Kaiser regarding the approval or denial of their religious exemption requests.

In her appellate brief, Ms. Harmon contends that the disparate treatment element is "impossible" to prove because it would require access to personal information of individual

employees that is not available to her. She points only to the above quoted allegation in her FAC related to Jehovah's Witnesses. To avoid a motion to dismiss, Ms. Harmon was not required to "prove" the claimed disparate treatment, but, as discussed by the circuit court, she did not assert any facts to support an allegation that she was treated differently than other employees claiming religious exemptions generally or other employees with religious beliefs similar to her beliefs. She did not claim to be a Jehovah's Witness or articulate any similarity of her beliefs to those of the Jehovah's Witnesses.

II. Retaliation

FEPA prohibits an employer from retaliating against an employee because of the employee's religion. SG § 20-606(a)(1)(i). Establishing a prima facie case of retaliation under FEPA requires an employee to show that: (1) the employee engaged in a protected activity; (2) the employer took an adverse action against the employee; and (3) a causal connection existed between the protected activity and the adverse action. *Muse-Ariyoh v. Bd. of Educ. of Prince George's Cnty.*, 235 Md. App. 221, 244 (2017), *cert. denied*, 457 Md. 680 (2018). Opposing an "unlawful employment practice" including having "charge[d], testified, assisted, or participated" in an investigation of such practices are all protected activities. *Chappell v. S. Md. Hosp., Inc.*, 320 Md. 483, 493-95 (1990) (quotation marks and citation omitted). To establish the causal connection between a protected activity and an adverse employment action, an employee must show the protected activity "was a motivating factor in an employer's decision to subject them to an adverse employment

action[.]" *Taylor v. Giant of Md., LLC.*, 423 Md. 628, 658 (2011) (quotation marks and citation omitted).

In count (4) of her FAC, Ms. Harmon claims a cause of action for retaliation under SG § 20-601 based on Kaiser terminating her for "reporting acts of unlawful employment practices that were being perpetrated against her[.]" In her FAC, she states that she filed an internal discrimination complaint on November 12, 2021 and spoke to a "Suraj" about how she was "treated by HR and not given such benign information as [her] HR director's name."

Based on that allegation, the circuit court found that Ms. Harmon did not plead sufficiently the retaliation count because the allegation was "not related to any prohibited employment practice as prescribed by Title 20." Moreover, she failed to allege that the filing of that complaint was a motivating factor in her suspension and termination.

Ms. Harmon baldly argues in her appellant's brief that she filed a discrimination complaint "because of how she was treated by Kaiser Human Relations, the nature of which fully encompasses instances of discrimination based upon her religious beliefs." Appellees respond that, even if the filing of the complaint constituted a protected activity, no causal connection between filing the complaint and her ultimate termination is pleaded.

We agree that Ms. Harmon failed to plead that her "suspension and termination was causally connected to her filing of a discrimination complaint" with Kaiser's HR Department as opposed to her refusal to be vaccinated. For that reason, Ms. Harmon failed to plead sufficiently her retaliation claim, and its dismissal was appropriate. In short, we hold that the circuit court neither erred nor abused its discretion in dismissing the religious

discrimination and retaliation claims and denying the relief requested in her Motion to Alter or Amend Judgment or Alternatively, for Reconsideration, including proceeding on the SAC.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

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I agree completely with and join the majority's thorough and careful opinion in this case. I write separately to emphasize that our affirmance of the trial court's decision does not reflect any disagreement with or discrimination against Ms. Harmon's religious beliefs. It rests solely from her failure to take advantage of the benefit provided by the Rules to plaintiffs at the complaint stage of a lawsuit. When the plaintiff files an original complaint, the defendant may respond with a motion to dismiss that identifies the legal shortcomings of the complaint. Before the court decides the motion to dismiss the original complaint, the plaintiff has the opportunity to file, without leave of the court, an amended complaint curing the identified defects. Here, a defective original complaint was filed and the defendants' motion to dismiss pointed out legal defects. But instead of taking advantage of the legal research provided in the defendants' motion to dismiss and curing the identified defects, the first amended complaint failed to do so.