



EEOC Updates COVID-19 Vaccination Guidance for Employers

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The U.S. Equal Employment Opportunity Commission (EEOC) recently updated and expanded its guidance for employers related to COVID-19 and workplace vaccination policies.

Issued on May 28, the expanded technical assistance details how federal employment non-discrimination laws ? including the Americans with Disabilities Act (ADA) and the Genetic Information Nondiscrimination Act (GINA) ? apply when employers require or offer incentives for workers to obtain vaccinations.

Employers developing their vaccination policies should proceed with caution. The technical assistance issued by the EEOC answers COVID-19 questions only from the perspective of the equal employment opportunity laws. As the EEOC notes in a news release, employers should be aware that other federal, state, and local laws may also affect COVID-19 pandemic policies regarding employees.

Key Updates

The EEOC?s latest guidance included updates on:

1. **Vaccination Requirements.** Federal equal employment opportunity (EEO) laws do not prevent an employer from requiring all employees physically entering the workplace to be vaccinated for COVID-19 ? so long as employers comply with the reasonable accommodation provisions of the ADA, Title VII of the Civil Rights Act of 1964, along with other EEO considerations. Employers should be prepared, for example, to make reasonable accommodations for employees who, because of a religious belief or a disability, do not get vaccinated, ?unless providing an accommodation would pose an undue hardship? to the employer. The question of what constitutes an undue hardship is fact-specific, and must be assessed independently.

As a best practice, any employer who publishes a COVID-19 vaccination policy to its employees should emphasize that it will consider requests for a reasonable accommodation based on disability or on a sincerely-held religious belief or practice.

2. **Proof of Vaccination.** An employer may ask employees if they received the COVID-19 vaccine in the community ? say from a pharmacy, personal health care provider or public clinic ? without running afoul of certain restrictions under the ADA. There may be any number of reasons, besides having a disability, for why an employee may not show documentation or other confirmation of vaccination. Please note that any documentation showing an employee has been vaccinated is medical information that must be kept confidential and should be stored separate and apart from the respective employee?s personnel file.
3. **Vaccine Incentives.** An employer may offer an incentive to employees to voluntarily provide proof of vaccination. An employer may also offer an incentive to employees to voluntarily receive a vaccination administered by the employer or its agent. In the latter situation, though, the incentive ? a reward or penalty ? cannot be so substantial as to be coercive. The EEOC has not provided examples of what it considers to be coercive, so a more de minimis-type incentive may be the safest course of action.

NOTE: If an employer wants to make vaccinations mandatory and plans to administer them itself, new and more problematic issues arise under the ADA, especially in connection with pre-screening questions. Mandatory employer-issued vaccination policies should be created with, and vetted by, legal counsel before implementation.

4. **Vaccine Information.** Employers may provide employees and their family members with information to educate them about COVID-19 vaccines and to raise awareness about the benefits of vaccination. (The latest technical assistance highlights federal government resources available to those seeking more information about how to get vaccinated.)

An Evolving Landscape

While the guidance provides greater clarity about what employers should and should not do in connection with vaccination policies, it should not be regarded as legal advice. Companies must consider the continually evolving state and local laws where they operate, as well as other federal regulations and even recent court decisions. The EEOC has also said that, as new developments occur, it will consider any impact they may have on its guidance and will provide additional updates and assistance to the public as needed.

We will continue to closely monitor COVID-19-related developments affecting employers. To learn more about how our law firm counsels clients on compliance with employment statutes and regulations, contact us for a consultation.

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