

LEGAL UPDATES

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EEOC Allows Employer COVID-19 Vaccine Mandates and Incentives

On May 28, 2021, the Equal Employment Opportunity Commission (EEOC) issued updated guidance for employers. This long-awaited guidance provides an update to our earlier alert and clarifies that employers can require COVID-19 vaccinations and even provide incentives.

Vaccinations

Employers **can** require employees who enter the workplace to be vaccinated for COVID-19. However, the employer must comply with all applicable laws, including the reasonable accommodation provision of the Americans with Disabilities Act (ADA) and Title VII of the Civil Rights Act of 1964. Employers can also require employees to provide proof of vaccination, but this information will be considered medical information that must be kept confidential and stored separately from the employee's personnel file pursuant to the ADA.

Incentives

Employers **can** offer vaccine incentives—but restrictions apply if the employer is administering the vaccines to employees and all employers must maintain confidentiality of vaccine information subject to ADA rules applicable to other medical information.

For employers offering vaccines to employees, the employer can provide vaccine incentives—and even penalties—so long as they are “not so substantial as to be coercive.” The EEOC guidance suggests that a large incentive could pressure employees to disclose protected medical information through the pre-vaccination disability-related screening questions. The EEOC did not offer guidance on what incentive could be “so substantial as to be coercive.”

In contrast, the EEOC did not provide a limit on the size of incentives employers can provide if they only request proof of the employee's COVID-19 vaccination.

What this means to you

This new guidance provides employers much needed clarification on vaccine-related issues, including mandates and incentives, giving the EEOC's perspective on how it will view these issues under the ADA and Genetic Information Nondiscrimination Act.

Contact us

If you have questions about the recent EEOC guidance, your workforce and vaccinations or incentives, please contact Tim Hilton, Jenna Brofsky, Michaeli Hennessy or your Husch Blackwell attorney.

Your Comprehensive COVID-19 Legal Resource

Since the pandemic's onset, Husch Blackwell has continually monitored state-by-state orders regarding capacity, masking, vaccines, and more. We regularly address your FAQs and provide you with easy-to-use COVID-19 tools about returning to work and navigating federal programs. Contact our industry-specific legal teams or your Husch Blackwell attorney to plan through and beyond the pandemic.