



EEOC issues guidance on employer-mandated COVID-19 vaccine programs

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The EEOC recently published guidance in anticipation of employers mandating that their employees get COVID-19 vaccines as they become more widely available. The EEOC confirms that employers can require that employees receive the COVID-19 vaccination as a condition of employment and may also require proof of vaccination subject to certain limitations.

Such limitations include providing reasonable accommodations (including telework and leaves of absence) to employees with disabilities under the Americans with Disabilities Act (ADA) whose disability(ies) prevent them from getting the vaccine.

Employers mandating COVID-19 vaccines for their employees must also provide reasonable accommodations to employees who are unable to receive the vaccine because of a sincerely held religious belief, practice or observance, unless the accommodation poses undue hardship on the employer under Title VII. Similar to the ADA, if the employer cannot provide a reasonable accommodation, then the employer may exclude the employee from the workplace by again considering alternative accommodations.

While the employer is allowed to request proof of receipt of the vaccine, subsequent questions, such as asking an employee why they did not receive the vaccine, may elicit information about a disability and would only be allowed if such inquiry is considered job-related and consistent with business necessity.

Lastly, according to the EEOC guidance, administering a COVID-19 vaccine to employees or requiring proof of having received a

vaccine does not, by itself, implicate the Genetic Information Nondiscrimination Act (GINA). However, employers should be cautious of pre-vaccination medical screening questions that elicit genetic information and thereby potentially violate GINA. If the pre-vaccination questions do include questions about genetic information, then employers who want to ensure that employees have been vaccinated may want to only request proof of vaccination, instead of administering the vaccine themselves.

In sum, COVID-19 vaccines will soon be available to many employers and employees. While the EEOC provides that employers can require vaccination as a condition of employment, employers still need to be aware of limitations posed by the ADA, Title VII, and GINA. In anticipation, employers should begin developing plans for whether they want to mandate the vaccine, and if so, how they will administer such a program to ensure compliance with all applicable laws.

Authors
