

EEOC Guidance: Employers May Incentivize Covid Vaccination

June 03, 2021

On May 28, 2021, the U.S. Equal Employment Opportunity Commission (EEOC) issued new guidance on COVID-19 vaccinations in the workplace entitled [“What You Should Know About COVID-19 and the ADA, the Rehabilitation Act and other EEO laws.”](#) Among the salient topics considered, the EEOC confirmed that documentation regarding an employee’s test status and related health information is confidential medical information. This information must be separately and confidentially maintained in an employee’s medical file and apart from any HR file or other file an employer maintains on its employees. The guidance also provides clarifications on Americans with Disabilities Act (ADA) applications and what constitutes a direct threat in the workplace, as well as how to handle accommodations in the workplace when an employee presents that they are unable to take a vaccine due to a disability or other protected situation. The guidance also outlines several tenets that employers must follow regarding religious accommodations, pregnant employees, and an employee’s genetic information. Employers are responsible for communicating with their employees regarding compliance with these laws, ensuring supervisors and managers are fully knowledgeable on handling these issues in the workplace, and identifying employees who need these protections. Also critical, an employer should not disclose that an employee is receiving an accommodation or retaliate against any employee for requesting an accommodation. The EEOC stated that requesting confirmation of a vaccination is not a disability related inquiry under the ADA or the Genetic Information Nondiscrimination Act (GINA), and therefore an employer may offer an incentive to an employee to encourage vaccinations. The incentive should not be so large to make employees feel pressured to disclose protected health information. Lastly, an employer may offer vaccinations to the employee’s family members, but care must be made to follow the limitations imposed under GINA.

The EEOC reminded employers that the issues surrounding COVID-19 in the workplace are constantly evolving. Employers must be mindful to monitor guidances from CDC and other public health authorities, as well as EEOC publications for further legal compliance and best practices.

Your employment law team at McGlinchey will continue to closely monitor these emerging issues and provide information as new topics emerge.

Related people

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