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News

## Updated EEOC Guidance on Vaccines

Newsbrief

02 JUN 2021

This past Friday the EEOC updated its COVID-19 guidance. This is the first time the guidance has been updated under the Biden administration. The update dealt with vaccination, and was drafted prior to the revised CDC guidance issued earlier in May relaxing mask requirements for fully-vaccinated individuals. Here are some key takeaways:

1. A mandatory vaccination policy is permissible, but it appears it will be carefully scrutinized if challenged. Not only do employers need to provide reasonable accommodations to disabled employees (including pregnancy-related conditions that constitute a disability) and employees with sincerely-held religious beliefs, but employers are reminded that if such a policy has a disparate impact on a protected group, for example, those individuals or groups that face greater barriers to receiving a COVID-19 vaccination, those employees may be negatively impacted by a vaccination requirement.
2. The EEOC also provided some examples of reasonable accommodations in this situation. Those would include allowing an unvaccinated employee to enter the workplace wearing a face mask, work at a social distance from coworkers or non-employees, work a modified shift, get periodic tests for COVID-19, be given the opportunity to telework, or finally, accept a reassignment.
3. The EEOC also confirmed that an employee's vaccination information is confidential medical information under the ADA and needs to be stored separately from the employee's personnel file.
4. Finally, the EEOC also addressed vaccine incentives. If the employer is administering the vaccination, employees can be incentivized, but not too much, or they may feel coerced to disclose confidential medical information. On the other hand, if the employer is not administering the vaccine, then there are no incentive limitations.

We'll focus more on the updated guidance in our next bulletin and discuss some longer-reaching issues touched upon by the new guidance.

In the meantime, let us know if we can help you with your vaccination program. We routinely counsel clients on how to navigate state and federal requirements regarding vaccines, return to work issues and the like.

Thanks, Jack, Elizabeth and Jim