

## Labor & Employment Law Alert: EEOC Issues Updated COVID-19 Guidance

The United States Equal Employment Opportunity Commission (“EEOC”) issued updated guidance on May 28, 2021 that addresses workplace issues related to the COVID-19 pandemic. Among other issues, the guidance addresses whether employers can require employees to be vaccinated or incentivize employees to get vaccinated, and what accommodations might be considered for those who cannot be vaccinated.

The EEOC guidance states that federal employment laws do not prevent employers from requiring all employees who physically enter the workplace to be vaccinated for COVID-19 provided the employer complies with federal anti-discrimination laws such as Title VII and the Americans with Disabilities Act. Thus, employers who impose a mandatory vaccination policy must ensure that it is implemented in a fair and consistent manner without regard to any protected status such as sex, race, or national origin and that the policy does not disproportionately impact employees based on their race, color, religion, sex, or national origin. Employers should consider that certain demographics face greater barriers to receiving a vaccination and may be disproportionately affected by a mandatory vaccination policy.

Employers must also consider providing reasonable accommodations to those who cannot be vaccinated due to a disability or sincerely held religious belief. The EEOC guidance provides examples of potential accommodations such as allowing an unvaccinated worker to telework, work a modified shift, accept reassignment, take periodic COVID-19 tests, wear a face mask and/or socially distance while working. These are only suggestions and employers are not required to make accommodations that would create an undue burden on them. Also, if allowing an unvaccinated employee to work would pose a direct threat (i.e., significant risk of substantial harm) to the health and safety of employees or others and cannot be properly mitigated with a reasonable accommodation, the employer may deny an accommodation request. Regardless of the scenario, employers should individually assess each request for an accommodation to determine its viability consistent with federal, state, and local law.

The EEOC also clarified that employers may incentivize employees to get vaccinated and provide educational information to employees and their families to encourage vaccination. Under the EEOC’s guidance, employers are not limited when offering incentives to employees who provide proof that they were vaccinated by a third-party such as their doctor or a pharmacy. However, employers may only offer incentives that are “not so substantial as to be coercive” when enticing employees to receive a vaccination administered by the employer or its agent. The guidance also reiterates that records of employee vaccinations must be kept confidential like any other medical record.

As employers navigate the constantly evolving issues related to the pandemic, our Firm’s **labor and employment attorneys** are standing by to provide prompt and sound advice to best position the employer and its workers for success.

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