

New EEOC Updated COVID-19 Technical Assistance Says Employers Can Require Employees To Get The COVID-19 Vaccine

AUTHOR: JAVAS SMITH

CONTRIBUTOR: CHRISTI COLEMAN

Under federal Equal Employment Opportunity (“EEO”) laws, an employer may require employees to become fully vaccinated before entering the workplace, if the reason is job-related and consistent with a business necessity. In some circumstances, federal laws required an employer to provide reasonable accommodations for employees who do not get vaccinated due to a disability or sincerely held religious belief if the accommodation does not pose an undue hardship on the employer. Such accommodations include wearing a face mask, working at a distance from other employees, or allowing the employee to work remotely.

While this gives employers legal authority to require vaccinations for employees that enter the workplace, employers should still use caution. Because of ADA concerns and potential religious exemptions, it may still be more prudent to use other avenues to encourage employees to get fully vaccinated, including providing education about the vaccines, facilitate access to get the vaccine, including possibly providing the opportunity to get vaccinated at the job site, and providing paid time off for employees to get vaccinated.

Further EEOC guidance states that employers administering the COVID-19 vaccine may offer bonuses and other incentives for employees to get the vaccine as this is not considered a disability-related inquiry. Those incentives, however, cannot be coercive. Employers are prohibited from taking adverse actions against employees for refusing to take the vaccine administered through the employer. The EEOC has also stated that employers may request proof of vaccination; however, this proof must be kept confidential to comply with federal disability law.

In sum, employers are now more equipped with federal legal protections for aggressively trying to get their employees vaccinated, especially when working in person. Still, however, that will not prevent employees or former employees from seeking suing employers for any adverse employment actions for refusing to get vaccinated. It is still incumbent on employers to educate employees about their questions and concerns regarding the vaccine. If an employer determines that they want to have a mandate that all employees get vaccinated, they must still consider whether it is a business necessity. All of these considerations must be made so that employers minimize their legal risks as much as possible before any vaccine requirements are given to employees. The Labor and Employment Team at Sandberg Phoenix is prepared to assist employers with how to navigate the evolving EEOC guidelines. For assistance with this and other employment law matters, please contact a member of the Labor and Employment Team.