

Insights: Alerts

EEOC Issues Enforcement Guidance on Mandatory COVID-19 Vaccinations

December 18, 2020

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In the wake of the FDA's Emergency Use Authorization ("EUA") for a number of newly developed COVID-19 vaccinations (including the vaccinations developed by Pfizer-BioNTech and Moderna), many employers are deciding whether to implement mandatory vaccination programs once the various vaccines are readily available. On December 16, 2020, the EEOC issued [guidance](#) providing employers with some information to consider when contemplating and/or instituting mandatory vaccination programs. The initial guidance from the EEOC has a particular emphasis on any such program's intersection with the Americans with Disabilities Act ("ADA") and Title VII of the Civil Rights Act ("Title VII").

A. The COVID-19 Vaccination is Not a Medical Examination Under the ADA

The EEOC has advised that a COVID-19 vaccination itself is not a medical exam, but has warned that questions asked during pre-screening may implicate the ADA's disability-related inquiries provisions. Thus, if the employer (or its contracted third-party) administers the vaccinations, the employer must show that any prescreening questions are job related and consistent with business necessity. This risk is obviated when an employee receives the vaccine from a third-party, such as a pharmacist.

B. Employers Must Provide Necessary Religious and Medical Accommodations

The EEOC guidance also cautions that if an employer requires employees to take a COVID-19 vaccination, then the employer must reasonably accommodate employees with either medical or sincerely held religious reasons not to get vaccinated, absent an undue burden/direct threat. Further, the EEOC states that because religious beliefs come in many forms, the employer should presume that the belief is valid unless there is objective evidence to the contrary.

The medical and religious accommodations do not require employers to simply allow unvaccinated employees to enter the worksite as normal; but, similarly, employers cannot immediately terminate employees who raise such objections or request an accommodation for medical or religious reasons. Once an employee requests an accommodation from an employer's vaccination requirement, the employer must engage the employee in an interactive process to determine whether the accommodation poses an undue hardship on the employer and/or whether the requested accommodation would pose a direct threat to the workplace and other employees. In determining the reasonableness of requested accommodations, the EEOC is clear that employers should

consider telework and other arrangements that have been used throughout the pandemic without posing an undue hardship or creating a direct threat.

C. Conclusion

Although the EEOC's update provided some helpful guidance for employers considering a mandatory vaccination program for COVID-19, there is still much that is unknown about the various COVID-19 vaccinations. Employers considering a mandatory COVID-19 vaccination program should contact legal counsel. We will continue to monitor the situation and update as necessary.

Related People



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