

COVID-19 Breaking News

December 21, 2020

EEOC RELEASES GUIDANCE ON EMPLOYER-MANDATED VACCINATIONS

By Jon Vegosen and Vince DeCicco

As anticipated in our [December COVID-19 Legal Update](#), the Equal Employment Opportunity Commission (EEOC) has updated its guidance on employer-mandated COVID-19 vaccinations. Please note that this guidance only relates to issues within the EEOC's authority and should be discussed with legal counsel in conjunction with the issues highlighted in our [prior newsletter](#). Here are some key points:

1. Employers can generally require that their employees receive a COVID-19 vaccine, subject to exceptions for those employees with disabilities or sincerely held religious beliefs that prevent them from receiving a vaccine.
2. Under the Americans with Disabilities Act (ADA), employers can physically exclude employees who cannot be vaccinated from the workplace if they pose a "direct threat to the health or safety of individuals in the workplace" that cannot be eliminated with a reasonable accommodation, absent due hardship. This does not mean that the employment of these employees may automatically be terminated. Employers will need to determine whether such employees have any additional protections under EEO laws or other federal, state, and local laws or regulations.
3. Under Title VII of the Civil Rights Act, employers on notice of employees' sincerely held religious beliefs that prevent them from receiving a vaccination are required to provide a reasonable accommodation, absent due hardship. If a reasonable accommodation is not possible, employers may physically exclude the employees from the workplace. This does not mean that employers may automatically terminate the employment of these employees. Employers will need to determine whether such employees have any additional protections under EEO laws or other federal, state, and local laws or regulations.
4. Employers who administer vaccines (or contract with a third-party to administer vaccines) to their employees should know that the administration of a vaccine does not constitute a medical examination under the ADA. Employers should be aware, however, that pre-vaccination medical screening questions and proof of vaccination requests may elicit protected information about a disability or genetic information. Questions and requests that elicit information about a disability should be avoided, unless they are "job-related and consistent with business necessity." Employers should also consider warning employees not to provide genetic information in response to any vaccine-related questions or requests.

The full EEOC Vaccination Q & A can be found [here](#). For assistance navigating employer and employee rights with respect to employee vaccine policies and programs, contact your legal counsel.

FVLD publishes updates on legal issues and summaries of legal topics for its clients and friends. They are merely informational and do not constitute legal advice. We welcome comments or questions. If we can be of assistance, please call or write Jon Vegosen at 312.701.6860 or jvegosen@fvldlaw.com, or Vince DeCicco at 312.701.6878 or vdecicco@fvldlaw.com, or your regular FVLD contact.

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