

EEOC Gives Okay for Employer's Vaccine Incentive Programs in Certain Instances

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Since the beginning of the COVID-19 pandemic, the Equal Employment Opportunity Commission (EEOC) has frequently released guidance on the many employment law compliance issues that have arisen as a result of the pandemic. The latest guidance issued by the EEOC concerns whether employers may implement vaccine incentive programs to encourage employees to get vaccinated without running afoul of the Americans with Disabilities Act (ADA) or the Genetic Information Discrimination Act (GINA). In its [May 28, 2021 Guidance](#), the EEOC advised employees that vaccine incentive programs are lawful under the ADA and GINA in certain circumstances.

First, the Guidance explains that, under the ADA, employers may offer an incentive to employees to voluntarily provide documentation or other confirmation that they received a vaccination on their own from a pharmacy, public health department, or other health care provider in the community. The EEOC determined that such an incentive for employees to disclose proof of their vaccination status is not a disability-related inquiry covered under the ADA.

Second, the EEOC determined that, under the ADA, an employer may offer an incentive to employees for voluntarily receiving a vaccination administered by the employer or its agent so long as that incentive is “not so substantial as to be coercive.” The EEOC explained that “[b]ecause vaccinations require employees to answer pre-vaccination disability-related screening questions, a very large incentive could make employees feel pressured to disclose protected medical information.” The EEOC clarified, however, that these limitations on the incentive only apply to vaccinations administered by employers or their agents.

As it relates to GINA, the EEOC advised employers that they may offer incentives to employees to either (i) receive a vaccination, or (ii) to provide proof of vaccination, without running afoul of GINA as long as the employer does not acquire genetic information about the employee during the process. Under GINA, however, an employer may not offer an incentive in return for employees' family members getting vaccinated by their employers or their employers' agents.

Employers should remember, however, that the guidance issued by the EEOC is just that—guidance. A federal court analyzing these issues may disagree with the EEOC's interpretation of ADA and

GINA. Employers are also bound by similar state laws and a state court's interpretation of those laws. Moreover, many state legislatures are seeking to pass legislation which would make it unlawful to discriminate against an employee based on their vaccination status. Accordingly, employers that seek to implement a vaccine incentive program should ensure it not only complies with federal law, but also the diverse array of laws on the issue of vaccines in the workplace passed at the state level.

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