



Employment Law Note

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EEOC: Employers May Require Employees to Receive Covid-19 Vaccine



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When news broke of the development of a Covid-19 vaccine, some employers began asking whether they could require their employees to receive the shot. On December 16, the Equal Employment Opportunity Commission (“EEOC”) updated its Covid-19 guidance to address this question. The answer: yes (usually).

The EEOC’s guidance follows prior policies for immunizations in general, clarifying that a vaccination is not a “medical examination” and that requiring proof of vaccination is not a “disability-related inquiry.” Because such examinations and inquiries are generally restricted by the Americans With Disabilities Act (“ADA”), the EEOC’s position clears the way for employers to implement vaccine requirements once the vaccine shots become widely available. That said, employers must be prepared to make exceptions for employees who are unable to receive the vaccine due to disability or a sincerely held religious belief.

ADA Disability Accommodations

Under the ADA, employers may implement qualification standards that ensure no employee poses a “direct threat” to the health or safety of other individuals in the workplace; however, if a safety-related qualification standard (*e.g.*, a vaccine requirement) screens out individuals with disabilities, the employer must demonstrate that an unvaccinated employee would pose a direct threat to the workplace that cannot be eliminated or reduced by a reasonable

accommodation. If an employer concludes that an unvaccinated employee poses a direct threat to others in the workplace, the employer must then conduct an individualized assessment to determine whether a reasonable accommodation could reduce the threat to an acceptable level without imposing an undue burden on the employer. Employers are expected to engage in an interactive process with the employee to identify any potential accommodations.

If the employer concludes that the threat cannot be reduced to an acceptable level, the employee may be physically excluded from the workplace. The employer, however, may not automatically terminate the employee and must first, determine whether any other federal, state, or local law provides additional rights to the employee. For example, the employee may be entitled to leave under the Families First Coronavirus Response Act or the Family and Medical Leave Act (“FMLA”).

Title VII Religious Accommodations

Much like the ADA, Title VII requires that employers accommodate employees with sincerely held religious beliefs. Accordingly, once an employer is on notice that an employee’s religious belief, practice, or observance prevents the employee from receiving the Covid-19 vaccine, the employer must engage in the same interactive process to identify a reasonable accommodation.

Religious protection under Title VII is afforded only to *sincerely held* religious beliefs. Employees with

general doubts about the vaccine—or those who object to vaccination on non-religious ideological grounds—are not entitled to an accommodation under Title VII. The EEOC nonetheless cautions against questioning an employee’s religious belief absent an “objective basis” for doubting either the religious nature or sincerity of a religious belief. If such an objective basis exists, employers may request additional supporting information from the employee.

Deciding Whether a Mandatory Covid-19 Vaccine Policy is Best for Your Company

Employers should carefully consider whether mandating Covid-19 vaccinations is the best choice to protect their staff. As outlined here, employers that choose to implement a vaccine policy must be prepared to handle the administrative task of evaluating and responding to accommodation

requests on an individual basis. They must also be prepared to deal with employees who may object for other reasons. Large swaths of the American public have expressed distrust of the Covid-19 vaccine for a variety of reasons. While such objections would not entitle employees to any accommodation, they could cause unnecessary disruptions in the workplace.

Employers who do not implement a vaccination requirement may opt in other ways to encourage their employees to receive the vaccine. Providing education to employees through wellness programs or offering some form of incentive to those who choose to receive the vaccination may be effective alternatives.

Given the complex array of requirements associated with instituting a mandatory Covid-19 vaccine policy, employers should consult with legal counsel before doing so.

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