

HENDERSON BROTHERS UPDATE

EEOC Guidance for Employer Vaccination Incentives

August 2021

[EEOC guidance](#) issued on May 28, 2021, covers assorted issues relating to mandatory vaccination policies, employer-provided incentives in exchange for documentation of vaccination, disability and religious accommodations and refusal to get vaccinated for certain reasons. The FAQ guidance also provides examples of accommodations for unvaccinated employees that include face masks, social distancing, remote work arrangements, etc.

Notable guidance:

Subject to certain limitations, an employer can lawfully require that its workforce obtain a COVID-19 vaccination as a condition of returning to the workplace. Consistent with previous guidance, the EEOC emphasizes that employers must reasonably accommodate employees who are unable or unwilling to get vaccinated because of a disability or sincerely held religious belief, practice, or observance.

The FAQs illustrate employers may also generally:

- offer an incentive to employees (and their family members) to receive a vaccination without violating federal EEO laws;
- encourage employees to receive a vaccination administered by the employer, or its agent, with an incentive, but the incentive may not be “so substantial as to be coercive” or be “very large”.
- offer an incentive for an employee to voluntarily provide documentation or other confirmation showing that they received a COVID-19 vaccination from their doctor or another health care provider in the community. When the vaccine is provided outside the workplace from a third party unrelated to the employer the ADA and GINA regulations are typically not implicated, therefore the incentive provided in exchange for the documentation is not capped. It would appear the incentive can be any amount.

One important issue the EEOC’s guidance does not address is whether an employer must provide a vaccine incentive to employees who are unable to obtain a vaccination due to a medical or religious-based reason.

State and Local Laws

Before implementing a mandatory vaccination policy or requiring evidence from employees that they have been vaccinated for COVID-19, employers should review state and local employment laws that may prohibit these policies.

Read more about the new EEOC guidance in [Littler Mendelson’s June 1 Insight](#). HBI will continue to provide updated information as it becomes available.

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