



EEOC Releases Guidance Regarding Employer Incentives for Voluntary COVID-19 Vaccinations

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The Equal Employment Opportunity Commission (EEOC) released long-awaited guidance on employer-offered incentives for COVID-19 vaccinations on May 29. Employers can encourage vaccination by offering monetary and other incentives, providing employees and their family members with educational materials about COVID-19 vaccines, raising awareness about the benefits of vaccination, and addressing common questions.

Incentives for Proof of Employee's Voluntary Vaccination in the Community

There is no limitation on the incentives employers may offer if employees receive the COVID-19 vaccine in the community (e.g., through a third-party pharmacy, vaccination clinic, or physician), and they are only required to provide proof of vaccination to the employer. Providing documentation or other confirmation of the employee's own vaccination in the community is not a disability-related inquiry covered by the Americans with Disabilities Act (ADA). Asking an employee if he or she has received a vaccination also does not violate the Genetic Information Nondiscrimination Act (GINA) because the inquiry neither seeks any form of genetic information nor implicates the employee's family medical history information.

Incentives for Employees Who Voluntarily Receive Employer-Administered Vaccines

Employers may only offer limited incentives to employees for vaccinations given by the employer or its agent. The incentives for employer-provided vaccines cannot be so substantial as to be coercive. Vaccinations require employees to disclose disability-related information during the screening process. Therefore, the

EEOC cautioned that a “very large” incentive would run afoul of the ADA because employees would feel pressured to get the vaccine and, in turn, disclose protected medical information. As of now, GINA is not implicated in this scenario because screening questions for the three vaccines currently available do not ask for genetic information.

Incentives for Proof of Employee’s Family Member’s Voluntary Vaccination in the Community

Employers can offer incentives to employees for providing confirmation that their family members were vaccinated on their own in the community. This is not an unlawful request under GINA because the fact that someone received a vaccination does not equate to information about the manifestation of a disease or disorder in a family member, which would be protected under GINA. Similarly, asking someone if their family members were vaccinated is not a disability-related inquiry covered by the ADA.

Incentives for Employee’s Family Member Who Voluntarily Receive Employer-Administered Vaccine

Employers cannot offer incentives for an employee’s family member getting vaccinated by the employer or its agent under GINA because this implicates the employee’s protected family medical history information. The EEOC noted that employers are not prohibited from offering family members the opportunity to be vaccinated if steps are taken to ensure GINA compliance. However, employers cannot require employees to have their family members get vaccinated and cannot penalize employees if their family members decide not to get vaccinated. Employers should also always keep vaccination information confidential.

This guidance provides helpful information to employers navigating ADA and GINA concerns in providing incentives for COVID-19 vaccines. However, employers must still be aware that other federal, state and local laws may come into play when they make decisions about incentive policies and consult with counsel if they have questions about the impact of such laws on their business.

For more information, contact [Katherine Koop Irwin](#), [Irina Strelkova](#), or any attorney with Frost Brown Todd's [Labor & Employment](#) practice group.

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