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EEOC Updates Guidance on COVID-19 Vaccinations

On October 13, the EEOC updated its COVID-19 vaccination Frequently Asked Questions (FAQs). The EEOC previously issued guidance for employers regarding COVID-19 vaccinations, which we discussed [here](#). The updated FAQs answer several important questions for employers, particularly given OSHA's impending vaccinate-or-test [Emergency Temporary Standard](#). Some key takeaways from the new EEOC guidance include:

An Employer May Require All Employees Physically Entering the Workplace to be Vaccinated

The EEOC has consistently taken positions supporting vaccination. Its recent FAQs continue that support, reiterating that employers can mandate vaccinations for employees working in person without violating EEO laws. However, employers must provide exceptions for employees who require accommodations due to disability, pregnancy, or religion. The updated guidance notes that mandatory vaccination policies may have a disparate impact on certain groups of employees because of disproportionate access to vaccines and encourages employers to evaluate options to address any such disparities. The FAQs affirm that employers may communicate with employees about the benefits of vaccination, including directing employees to information about free vaccination clinics, transportation assistance and toll-free phone numbers that can help with scheduling a vaccination.

Directions to Employees Requesting Accommodations

The EEOC guidance states that employers should provide the contact information of a management representative for employees who need to request vaccine-related accommodations.

Emphasis on Accommodations for Pregnant Employees

The EEOC notes that the CDC encourages individuals who are pregnant or breastfeeding to receive a COVID-19 vaccine. If a pregnant employee does not wish to be vaccinated and seeks an exemption from a mandatory vaccination policy, that employer must not discriminate against the pregnant employee when comparing the accommodations offered to other employees similar in their ability or inability to work. The EEOC provides specific examples of types of accommodations an employer may have to provide to a pregnant employee seeking an exemption from a mandatory vaccination policy, including job modification, remote work, changes in schedules or assignments or leave.

Requiring Proof of Vaccination

The FAQs confirm that employers may require employees to provide proof of vaccination, including a copy of the employee's vaccination card, without violating the Americans with Disabilities Act (ADA) or Genetic Information Non-Discrimination Act (GINA). Asking for confirmation of vaccination is not a disability-related inquiry under the ADA because it is not likely to disclose the existence of a disability. Requiring an employee to provide proof of vaccination from a healthcare provider not affiliated with the employer is not using, acquiring, or disclosing genetic information and, thus, does not implicate GINA. The EEOC reinforced that an employee's COVID-19 vaccination information is confidential medical information that must be kept separately from the employee's personnel file.

The timing and message of the updated guidance can be interpreted as the EEOC's support of the soon-to-be-published OSHA Emergency Temporary Standard. The guidance makes clear that employers can require employees to be vaccinated without running afoul of EEO laws and highlights the importance of engaging in an interactive process to evaluate an employee's need for reasonable disability, pregnancy and religious accommodations to mandatory vaccination policies.

If you have questions about the recently released FAQs, or any other vaccine mandate guidance, please contact [Katherine Koop](#)

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