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EEOC Guidance on COVID-19 Vaccines

Background

On December 16, 2020, the US Equal Employment Opportunity Commission (EEOC) issued [new guidance](#) on the interaction between federal laws and employer policies regarding COVID-19 vaccinations in the workplace.

Summary

Considerations for federal laws such as the Americans with Disabilities Act (ADA), Rehabilitation Act, and other EEO laws shape the latest published guidance.

The EEOC has confirmed that employers can institute mandatory vaccine policies, subject to specific limitations and restrictions to include the following:

- Employers may need to accommodate employees with disabilities that prevent the employees from receiving the vaccine. The accommodation process is individualized, and employers will need to evaluate each instance carefully.
- Similarly, some employees may indicate that they are unable to receive the vaccine because of a sincerely held religious belief, and employers will need to consider whether it is possible to make an accommodation based on such belief.

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- Employers will need to consider whether and how they are able to accommodate employees who are unable to receive the vaccine, whether based on a disability or religious belief.
- If an employer does decide to provide vaccinations to its employees, it will need to be careful with respect to what information it requests from employees; pre-vaccination screening protocols may involve disability-related inquiries or receipt of genetic information – the disclosure of that information can trigger the ADA's provision prohibiting disability-related inquiries, which can expose an employer to liability.

The EEOC's guidance does not give employers the automatic green light to vaccinate their employees. Employers will need to carefully weigh and determine whether, and how, they wish to implement a vaccine policy. Some organizations may provide vaccinations to employees on a voluntary basis, while others may require that all employees receive the vaccine and provide proof before returning to the workplace. Vaccine availability will likely affect these decisions, as well as industry considerations and operational impact of vaccine requirements.

Employer Next Steps

- Consider your company's stance on a COVID-19 vaccine policy.
- Continue to monitor information from EEOC and other government agencies for additional information and best practices, as guidance may change as the pandemic evolves.
- If you are a Full-Service or Virtual HR client and would like our assistance with updating your policies, please [email us](#).

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