

NEWS & INSIGHTS

EEOC issues COVID-19 vaccination guidance

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The below information is current as of the publication date listed. Because COVID-19 response measures on all fronts are continually evolving, clients should stay alert to new developments and consult with counsel on any critical questions.

With the advent of the COVID-19 vaccine, employers must wrestle immediately with the decision as to whether to mandate the COVID-19 vaccination. Employers may impose a vaccination requirement on employees subject to certain legally required exemptions. Specifically, exemptions to a mandatory vaccination policy include a refusal to be vaccinated based on a disability or medical condition, or a sincerely held religious belief.

COVID-19 immunizations and employee relations considerations – December 1, 2020

On December 16, the U.S. Equal Employment Opportunity Commission (EEOC) [issued guidance](#) for employers on the issue of mandated COVID-19 vaccination policies. The guidance confirms that the vaccine may be mandated and offers Q&A on key topics such as disability-related inquiries and medical exams, confidentiality of medical information, hiring practices, reasonable accommodations, return to work, and clarifications on discrimination, for example:

Definition of “medical examination.” Administering the vaccine to an employee is not considered a “medical examination” under the Americans with Disabilities Act (ADA) because the employer is not seeking medical information. However, pre-screening vaccination questions may implicate the ADA’s provision on disability-related inquiries, which are inquiries likely to elicit information about a disability. If the employer administers the vaccine, it must show such pre-screening questions asked are “job-related and consistent with business necessity.” If the vaccination is voluntary, the ADA requires the employee’s decision to answer pre-screening, disability-related questions also must be voluntary.

Proof of vaccination. Asking for proof an employee was vaccinated is permissible under the ADA.

Medical exemptions. If an employee requests an exemption based on a disability or medical condition, employers should conduct an individualized assessment to determine whether a “direct threat” exists, evaluating, among other things, the severity of the potential harm, the likelihood that the potential harm will occur, and the imminence of the potential harm. However, an employer may not exclude the employee from the workplace unless there is no way to provide a reasonable accommodation (which may include a transfer to another position) that would eliminate or reduce the risk. If there is a direct threat that cannot be reduced to an acceptable level, the employer can exclude the employee from physically entering the workplace, and potentially terminate.

Genetic Information Non-Disclosure Act. Administering a COVID-19 vaccination to employees or requiring employees provide proof they have received a COVID-19 vaccination does not implicate the Genetic Information Non-Disclosure Act because it does not involve the use of genetic information to make employment decisions, or the acquisition or disclosure of “genetic information” as defined by the statute.

Seek further guidance

Although this article identifies some significant considerations related to the EEOC’s guidance as it relates to the COVID-19 vaccine, ultimately, the circumstances of each situation differ, and employers should weigh cautiously any employment decisions when mandating a COVID-19 vaccine. In addition, as always, employers should remain aware that further guidance may be issued by either the EEOC and/or OSHA.

Saxton & Stump attorneys [Rick Hackman](#) and [Steve Fleury](#) are available to discuss your questions related to the COVID-19 vaccine and how our [Employment](#) and [Risk Mitigation and Safety](#) groups can help you devise an appropriate plan to navigate this complex issue.

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