Client Alert: EEOC Releases New Guidance Regarding COVID-19 Vaccinations For Employees

BY MARISSA • DECEMBER 21, 2020

The U.S. Equal Opportunity has recently issued updated guidance addressing COVID-19 vaccinations in the workplace. Employers should review this guidance as COVID-19 vaccinations continue to roll out across the country. Here are a few important points addressed in the guidance:

CAN EMPLOYERS REQUIRE EMPLOYEES TO GET VACCINATED AGAINST COVID-19?

Generally, yes. Once the COVID-19 vaccination becomes available, employers can choose to adopt mandatory vaccination policies that require employees to get vaccinated as a condition of entering the workplace. However, employers also must attempt to accommodate employees who, due to disabilities or sincerely-held religious beliefs, decline or refuse to receive the vaccine.

HOW SHOULD AN EMPLOYER RESPOND TO AN EMPLOYEE WHO INDICATES THAT HE OR SHE IS UNABLE TO RECEIVE A VACCINATION BECAUSE OF A DISABILITY?

An employer cannot automatically exclude an employee who refuses to receive a vaccination because of a disability. Instead, the employer must first conduct an "individualized assessment" to determine whether having that employee unvaccinated in the workplace would pose a "direct threat" to health and safety within the meaning of the ADA. If the employer decides that the unvaccinated employee would pose a "direct threat," the employer must next determine whether it can provide a reasonable accommodation to reduce this risk so that the employee no longer poses a "direct threat." For example, the employer may want to consider whether enforcing infection control policies, such as mask-wearing and social distancing, would acceptably reduce any threat.

Finally, if the employer determines that there is no way to provide a reasonable accommodation that would prevent the employee from posing a "direct threat," the employer can exclude the employee from physically entering the workplace. This does not mean, however, that the employer can automatically terminate the employee. Instead, the employer has a duty to determine whether any other rights apply under federal, state, or local law. For example, an employee who refuses to receive a vaccination because of a disability may be entitled to perform his or her position remotely as a reasonable accommodation.

HOW SHOULD AN EMPLOYER RESPOND TO AN EMPLOYEE WHO INDICATES THAT HE OR SHE IS UNABLE TO RECEIVE A VACCINATION BECAUSE OF A SINCERELY HELD RELIGIOUS PRACTICE OR BELIEF?

Once an employer is on notice that an employee's sincerely held religious belief, practice, or observance prevents the

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employee from receiving the vaccination, the employer must provide a reasonable accommodation for the religious belief, practice, or observance unless it would pose an "undue hardship" to the employer. Pursuant to EEOC guidance, employers should ordinarily assume that an employee's request for religious accommodation is based on a sincerely held religious belief. If, however, an employee requests a religious accommodation, and an employer has an objective basis for questioning either the religious nature or the sincerity of a particular belief, practice, or observance, the employer would be justified in requesting additional supporting information.

CLIENT TIP

As COVID-19 vaccinations continue to roll out across the country, employers should review this guidance and consider contacting legal counsel if faced with a vaccination exemption request.

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