Client Alert: Can Massachusetts Employers Collect COVID-19 Vaccination Cards From Employees?

BY ROBERT G. YOUNG • MAY 5, 2021

As COVID-19 vaccines have become more widely available, many employers have been faced with the questions of whether and how to request vaccination information from employees. As discussed below, Massachusetts employers generally *can* ask for and collect this information (including vaccination cards), but whether it is a good idea to do so is another story.

Thankfully, U.S. Equal Employment Opportunity Commission (EEOC) has provided some guidance addressing this topic. The Americans with Disabilities Act (ADA) generally prohibits employers from asking "disability-related inquiries" (i.e., questions that are likely to elicit information about a disability), except in certain limited circumstances where the question is "job-related and consistent with business necessity." However, according to EEOC guidance, merely asking or requiring an employee to show proof of receipt of a COVID-19 vaccination is not a "disability-related inquiry," and as such, does not by itself implicate the ADA.

Nonetheless, there are several issues employers must keep in mind when deciding whether to ask for or require proof of vaccination status. First, as noted in the EEOC guidance, follow-up questions by the employer (such as asking *why* an employee did not receive a vaccination) can constitute "disability-related inquiries," and as such can possibly result in ADA violations. Employers should be cautious about asking any such questions. Relatedly, the EEOC also suggests that employers who ask employees to provide proof of COVID-19 vaccination may want to warn those employees not to provide any medical information as part of that proof, in order to avoid implicating the ADA.

Second, information concerning an employee's vaccination status should be kept private and confidential, and employers who decide to collect and keep such information should ensure that it is stored in a secure location separate from the employee's personnel file.

Third, as discussed in our previous client alert, employers must keep in mind that mandating COVID-19 vaccinations implicates the ADA and also Title VII of the Civil Rights Act, and can potentially result in violations of these laws (as well as the Massachusetts Fair Employment Practices Act) if employers are not careful. Employers must remember that they have a duty to reasonably accommodate employees with disabilities and sincerely held religious practices or beliefs that may prevent them from receiving a COVID-19 vaccination.

Finally, before deciding to ask for or collect vaccination information, employers should take time to consider *why* they would want to do so, and how to respond in the event any employees refuse to provide such information. The fact that collecting vaccination cards may be permitted by law does not necessarily mean that it is a good idea for your workplace. If an employer has no imminent need for vaccination data, does it really make good sense to solicit (and

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become a custodian of) this personal health information? What effect might that have on employee perception and morale? The answers may vary from case to case.

CLIENT TIP

Employers should stay abreast of any developments in federal, state, and local law regarding the request and collection of COVID-19 vaccination information.

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