

EMPLOYEE BENEFITS LAW

INFORMATION MEMO

JUNE 9, 2021

EEOC Issues Updated Guidance Regarding COVID-19 Vaccination Incentives

Our [previous information memo](#) discussed several issues that employers should be aware of when considering whether to provide an incentive to employees to encourage them to receive the COVID-19 vaccine. On May 28, 2021, the Equal Employment Opportunity Commission (EEOC) issued [updated guidance](#) to employers on workplace COVID-19 vaccination policies, including guidance on employer-offered COVID-19 vaccine incentives.

Notably, the updated EEOC guidance provides the following:

- Confirmation that employers may offer an incentive to employees to *voluntarily* provide documentation or other confirmation that they received a COVID-19 vaccination on their own from a pharmacy, public health department or other health care provider in the community, so long as vaccination information is kept confidential pursuant to the Americans with Disabilities Act (ADA).
- Guidance that, under the ADA, employers may offer employees incentives to voluntarily receive a COVID-19 vaccination administered by the employer or its agent, so long as the incentive is *not so substantial as to be coercive*. This appears to be a shift from the EEOC's previous statement contained in proposed regulations that under the ADA, employers may offer no more than a *de minimis incentive*. Importantly, the EEOC did confirm that this ADA incentive limit is inapplicable if an employer offers an incentive to employees to voluntarily provide documentation or other confirmation that they received a COVID-19 vaccination on their own from a third-party provider that is not their employer or an agent of their employer.
- Guidance that it is not an unlawful request for genetic information under the Genetic Information Nondiscrimination Act (GINA) if employers ask an employee to provide documentation that the employee or a family member has been vaccinated by their own health care provider in the community. Furthermore, under GINA, an employer may offer an incentive to employees in exchange for the employee getting vaccinated by the employer or its agent so long as the employer does not acquire genetic information while administering the vaccine.
- Guidance that, so long as certain steps are taken to comply with GINA, employers may offer an employee's family member the opportunity to be vaccinated without offering the employee an incentive. However, an employer may not offer any incentives to an employee in exchange for a family member's receipt of a vaccination from an employer or its agent.

The updated EEOC guidance does not discuss the Health Insurance Portability and Accountability Act's (HIPAA) nondiscrimination requirements that are likely applicable to employer-offered COVID-19 vaccine incentive programs. As described in more detail in our [previous information memo](#), the HIPAA nondiscrimination rules impose incentive limitations (in addition to the ADA incentive limitations described above), and other requirements on such programs.

Employers considering offering vaccination incentives should review the updated guidance and other applicable legal requirements to ensure that their incentive arrangement is compliant.

If you have any questions, please contact [Daniel J. Nugent](#), any [attorney](#) in our [Employee Benefits and Executive Compensation practice](#) or the attorney at the firm with whom you are regularly in contact.

