

## **EEOC Issues New Guidance on Whether Employers May Require COVID-19 Vaccinations in the Workplace**

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As the COVID-19 vaccine is distributed across the country, employers must consider which policies and requirements they will follow in determining whether employees are required to be vaccinated before returning to the workplace. This week, the U.S. Equal Employment Opportunity Commission (“EEOC”) [issued new guidance](#) to help employers navigate these issues.

### **The Vaccine Itself is Not a “Medical Examination,” But Privacy Concerns Linger**

The EEOC does not consider the COVID-19 vaccine a “medical examination” under the Americans with Disabilities Act (“ADA”), as the vaccine does not seek information about an employee’s physical health status. However, the CDC instructs healthcare providers to ask certain questions before administering any vaccine to ensure no medical issues would prevent an individual from receiving the vaccine. Those pre-vaccination questions are likely to elicit information about a disability, and therefore must be job-related and consistent with business necessity. However, if the employee receives the vaccine voluntarily or from a third-party who is not contracted with the employer, these ADA issues do not apply.

Employers must also ensure that administering the vaccine does not violate the Genetic Information Nondiscrimination Act (“GINA”). Since certain pre-vaccination questions may elicit information regarding genetic information, the EEOC recommends that employers require employees to provide proof of vaccination rather than administering the vaccine themselves.

### **Title VII and ADA Issues When Employers Require Vaccination in the Workplace**

Employers may require their employees to receive the COVID-19 vaccination, but they must still comply with certain exceptions for disabilities and sincerely held religious beliefs. Under the ADA, employers may ensure that an individual shall not pose a “direct threat” to the safety of individuals in the workplace. However, if this disqualifies certain individuals on the basis of their disability, employers are required to provide “reasonable accommodations” to those disabled employees. This may include temporary leaves of absence or allowing employees to work remotely. Should an employee object to receiving the vaccine due to a “sincerely held religious belief,” employers are required to provide a reasonable accommodation unless it would pose an “undue hardship” for the employer.

### **Key Takeaway**

Employers should consider establishing or modifying their policies or practices based on these new opinion letters to ensure compliance. GableGotwals’ [Employment & Labor team](#) remains on the cutting edge of employment-related legal developments and is committed to helping employers navigate the nuances of emerging issues they face. Please contact any member of the team for further assistance.

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