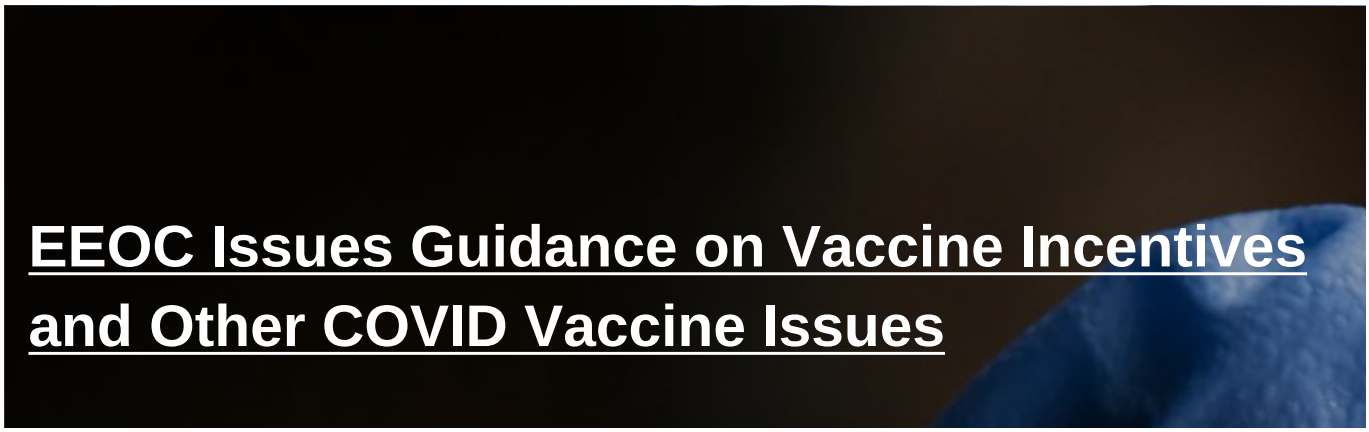


EEOC Issues Guidance on Vaccine Incentives and Other COVID Vaccine Issues

By: John Vering, John Neyens, Shannon Johnson, and Mark Opara



On May 28, 2021, the EEOC published long-awaited guidance regarding permissible incentives for employers who wish to encourage their employees and their families to receive the COVID-19 vaccine. The Guidance also addresses some other COVID-19 vaccine issues. This Guidance was prepared prior to the CDC's recent guidance that "Fully vaccinated people can resume activities without wearing a mask or physically distancing, except where required by federal, state, local, tribal, or territorial laws, rules, and regulations, including local business and workplace guidance." This new EEOC Guidance can be found at https://www.eeoc.gov/newsroom/eeoc-issues-updated-covid-19-technical-assistance in items K.1 through K.21 of the EEOC's Technical Assistance Guidance entitled "What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO laws." The highlights of this new EEOC Guidance are as follows:

- Federal **EEO laws do not prevent or limit the incentives that an employer can offer its employees to voluntarily provide documentation or other confirmation of COVID-19 vaccination obtained from a third party** (not the employer) in the community, such as a pharmacy, personal health care provider, or public clinic.
- **Employers may ask employees whether they have received the COVID-19 vaccine and may require proof of vaccination**.
- **If employers choose to obtain vaccination information from their employees, employers must keep vaccination information confidential pursuant to the ADA.**
- Employers that are administering vaccines to their employees directly or through a vendor may offer incentives for employees to be vaccinated, as long as the incentives are not so substantial as to be coercive. However, the guidance does not define what that means. Because vaccinations require employees to answer pre-vaccination disability-related screening questions, a very large incentive could make employees feel pressured to disclose protected medical information.
- If certain requirements are met, an employer does not violate the ADA by requiring a COVID-19 vaccination for all employees entering the workplace even though it knows some employees may not get vaccinated because of a disability.
- An employer may offer an employee's family member the opportunity to be vaccinated if no

incentive is offered.

- Employers may provide employees and their family members with information to educate them about COVID-19 vaccines and raise awareness about the benefits of vaccination. The technical assistance highlights federal government resources available to those seeking more information about how to get vaccinated.

We urge our clients and friends to continue to monitor new EEOC, CDC, and OSHA guidance and changing state and local legal requirements and seek legal advice if you have questions about masking or other COVID matters. We are also prepared to assist you in developing policies and answering your questions regarding all types of COVID-related issues.

This article is general in nature and does not constitute legal advice. Please note that new guidance is being provided by authorities on a daily basis so please monitor new developments and guidance, including but not limited to our firm's COVID-19 Resource Center. Readers with legal questions should consult the authors, John Vering (jvering@sb-kc.com), John Neyens (jneyens@sb-kc.com) Shannon Johnson (sjohnson@sb-kc.com), Mark Opara (mopara@sb-kc.com), or other shareholders in Seigfreid Bingham's Employment Law Group, including: Brenda Hamilton, Julie Parisi, or Christopher Tillery or your regular contact at Seigfreid Bingham at 816-421-4460.