Friday, May 28, 2021

On May 28, 2021, the U.S. Equal Employment Opportunity Commission (EEOC) released updated and expanded guidance on the COVID-19 pandemic’s interactions with federal equal employment opportunity (EEO) laws. The majority of the new guidance is directed at inquiries regarding vaccination status, vaccine incentives, and accommodations.

Highlights from the new guidance include:

- The federal EEO laws do not prevent employers from requiring employees to be vaccinated for COVID-19, but employers must provide accommodations for religion, disability, and pregnancy unless it would present an undue hardship.

- Examples of reasonable accommodations for employees who cannot become vaccinated include wearing a facial covering, social distancing, periodic COVID-19 testing, teleworking, and reassignment.

- Employers may ask employees to disclose their vaccination status and to provide proof of vaccination status. However, the EEOC considers an
employee’s vaccination status confidential medical information under the ADA, so it must be kept confidential and documentation must be stored in separate medical files.

- Employers may offer vaccination incentives. However, if the employer or its agent is administering the vaccine, it may not be substantial as to be “coercive.”

- The EEOC has reinforced that the definition of religion is broad and protects beliefs, practices, and observances against vaccination or certain types of vaccinations.

The EEOC guidance was drafted prior to the CDC’s release of new guidance regarding facial coverings and social distancing for vaccinated individuals. Accordingly, the updates do not provide any guidance on distinguishing between vaccinated and unvaccinated individuals.

Additionally, OSHA has revised its guidance to clarify that side effects from the COVID-19 vaccination are not an OSHA reportable incident.

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