

# Employment & Labor Alert



## Employers May Incentivize Vaccination So Long As Employees Are Not Coerced

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On May 28, 2021, the Equal Employment Opportunity Commission (“EEOC”) issued [guidance](#) regarding whether employers may incentivize employees to voluntarily provide proof of vaccination against COVID-19.

As vaccines become available to nearly every adult in the United States, many employers may wish to loosen restrictions in the workplace related to COVID-19, such as mandatory face coverings and capacity limits. To maintain a safe workspace, some employers are monitoring the percentage of their workforce that is vaccinated. However, since some employees with certain disabilities may be ineligible for the vaccination, employers have been concerned that requiring proof of vaccination may violate the prohibition against disability-related inquiries under the Americans with Disabilities Act (“ADA”).

The EEOC’s guidance provides that requesting proof of vaccination is not a disability-related inquiry. Employers may therefore incentivize employees to provide proof of vaccination in the form of rewards or penalties so long as they are “not so substantial as to be coercive.” The guidance does not discuss the standards for when an incentive becomes “coercive,” so employers should be careful about the type and nature of incentives.

Employers wishing to provide “very large incentives” should consider requiring proof of vaccination from a third-party provider that is not the employer or agent of the employer. Incentives linked to vaccinations provided by the employer could pressure employees to disclose protected medical information to the employer, but the EEOC explains that such risks are not present should the vaccinations be provided by a third party. Employers wishing to provide, for example, cash payments upon proof of vaccination should therefore consider requiring employees to receive their vaccinations from a third party. As with all other medical information, employers must keep vaccinations information confidential pursuant to the ADA.

The key takeaway from these new opinion letters is that employers should consider establishing or modifying policies or practices to ensure compliance. GableGotwals’s [Employment & Labor team](#) remains on the cutting edge of employment-related legal developments and are 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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