

EEOC Guidance on COVID-19 Vaccines and Employer Incentives

The Equal Employment Opportunity Commission (“EEOC”) posted [updated guidance](#) related to employer policies on COVID-19 vaccinations, incentives, and the impact of Equal Employment Opportunity (“EEO”) laws including the Americans with Disabilities Act (“ADA”), Health Insurance Portability and Accountability Act (“HIPAA”), the Genetic Information Nondiscrimination Act (“GINA”), and Title VII of the Civil Rights Act, as amended by the Pregnancy Discrimination Act (“Title VII”).

Federal EEO laws do not prohibit an employer from requiring employees to be vaccinated for COVID-19 before physically entering the workplace, as long as the employer complies with the reasonable accommodation provisions of the ADA and Title VII for an employee who cannot be vaccinated due to disability, pregnancy, or a sincerely held religious belief. Additionally, employers may consider **voluntary** vaccination programs and may offer incentives (e.g., cash, time-off) to encourage employees to obtain COVID-19 vaccinations.¹

This chart provides highlights from the guidance. It also provides insight as to how incentives may be used in a wellness program that is part of a group health plan. It is not exhaustive and does not take into account any state or local laws.

COVID-19 Vaccine Obtained from a Third-Party Vendor (e.g., provider, pharmacy, community center)					
Employer Action	Incentives	ADA Implications	HIPAA Implications	GINA Implications	Other Implications
Employer Requires Vaccine	No Incentives Offered for Vaccine	<ul style="list-style-type: none"> Permissible Subject to reasonable accommodation for disability, pregnancy and religious beliefs 	<ul style="list-style-type: none"> N/A 	<ul style="list-style-type: none"> N/A with respect to the employee Employer may not require vaccination of employee’s family members (e.g., spouse, children) 	<ul style="list-style-type: none"> Subject to provisions of Title VII Follow CDC, state/local guidelines to provide safe workplace
Employer Recommends Vaccine (Voluntary)	No Incentives Offered for Vaccine	<ul style="list-style-type: none"> Permissible 	<ul style="list-style-type: none"> N/A 	<ul style="list-style-type: none"> Permissible 	<ul style="list-style-type: none"> Follow CDC, state/local guidelines to provide safe workplace
	Incentives Offered for Vaccine	<ul style="list-style-type: none"> Permissible No restrictions on incentives for employee Consider providing the incentive to employees who cannot be vaccinated due to disability, pregnancy and religious beliefs 	<ul style="list-style-type: none"> Health contingent HIPAA limits apply if incentives are offered through group health plan (e.g., incentive limited to 30% of cost of coverage, reasonable alternative must be offered) 	<ul style="list-style-type: none"> Permissible Employer may incentivize family members (e.g., spouse, children) to voluntarily obtain vaccine 	<ul style="list-style-type: none"> Follow CDC, state/local guidelines to provide safe workplace

¹ According to the EEOC guidance, incentives may be used in voluntary vaccination programs (subject to certain limits). Incentives tied to a mandatory program may be problematic.



COVID-19 Vaccine Provided by Employer or Agent² of the Employer (e.g., on-site health fair)

Employer Action	Incentives	ADA Implications	HIPAA Implications	GINA Implications	Other Implications
Employer Requires Vaccine	No Incentives Offered for Vaccine	<ul style="list-style-type: none"> Permissible Must be job-related and consistent with business necessity Subject to reasonable accommodation for disability, pregnancy and religious beliefs 	<ul style="list-style-type: none"> N/A 	<ul style="list-style-type: none"> If prescreening does not include questions about an employee's genetic information (e.g., family medical history), GINA does not apply with respect to the employee³ Employer <u>may not</u> require vaccination of employee's family members (e.g., spouse, children) 	<ul style="list-style-type: none"> Subject to provisions of Title VII Follow CDC, state/local guidelines to provide safe workplace
Employer Recommends Vaccine (Voluntary)	No Incentives Offered for Vaccine	<ul style="list-style-type: none"> Permissible Do not need to show pre-screening questions are job-related 	<ul style="list-style-type: none"> N/A 	<ul style="list-style-type: none"> If prescreening does not include questions about an employee's genetic information (e.g., family medical history), GINA does not apply with respect to the employee³ Permissible for family members, subject to certain requirements (prior written authorization, confidentiality of information) 	<ul style="list-style-type: none"> Follow CDC, state/local guidelines to provide safe workplace
	Incentives Offered for Vaccine	<ul style="list-style-type: none"> Permissible Incentives cannot be "substantial"⁴ as this may indicate some degree of coercion from the employer to participate in the vaccination program Consider providing the incentive to employees who cannot be vaccinated due to disability, pregnancy and religious beliefs 	<ul style="list-style-type: none"> Health contingent HIPAA limits apply if incentives are offered through group health plan (e.g., incentive limited to 30% of cost of coverage, reasonable alternative must be offered) May be further limited by ADA requirement that incentives not be "substantial" 	<ul style="list-style-type: none"> Employer <u>may not</u> incentivize family members (e.g., spouse, children) to voluntarily obtain vaccine 	<ul style="list-style-type: none"> Follow CDC, state/local guidelines to provide safe workplace

This illustration reflects the existing EEOC guidance as it relates to federal EEO laws. It does not reflect state or local laws that may be more restrictive.

² The *employer's agent* means an individual or entity having the authority to act on behalf of, or at the discretion of the employer.

³ GINA does not currently apply as the [pre-vaccination medical screening questions](#) recommended by the Centers for Disease Control and Prevention ("CDC") as of May 27, 2021, do not require an individual to provide a family medical history or any other genetic information. However, should the CDC later modify these questions to include family medical history or other genetic information, GINA issues may arise.

⁴ The term "substantial" is not defined in the guidance.