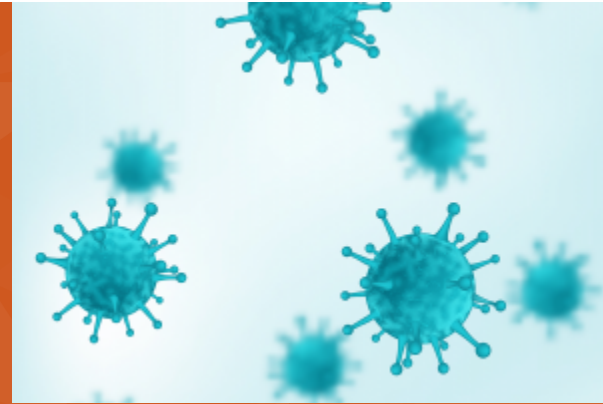


COVID-19 Alert: “Post-COVID” Workplace Guidelines

Federal EEOC Issues New Workplace Guidelines Related to Employee Vaccinations and Employee Safety

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On May 28, 2021, the U.S. Equal Employment Opportunity Commission (“EEOC”) published two guidelines intended to assist employers and employees transition to “post-COVID” work environments:

- A **Technical Assistance**, intended primarily for legal practitioners, that examines federal anti-discrimination law concepts in COVID-19 contexts; and
- An **Employee Resource**, drafted in plain language, that describes how federal anti-discrimination laws apply to workers during the pandemic.

The guidelines present specific standards with respect to reopening worksites to vaccinated and unvaccinated employees, and provide important reference points to employers with respect to the management of worksite and employee safety.

The EEOC Technical Assistance

The Technical Assistance provides instruction that applies the Americans with Disabilities Act (“ADA”) and the Genetic Information Nondiscrimination Act (“GINA”) to employer policies that either mandate or incentivize employee vaccinations.

The key updates to the Technical Assistance are summarized below:

- **Mandatory Employee Vaccination Policies Permitted Under Federal Anti-Discrimination Laws.** Federal anti-discrimination laws do not prevent an employer from requiring all employees physically entering the workplace to be vaccinated for COVID-19, so long as employers comply with the reasonable accommodation provisions of the ADA and Title VII of the Civil Rights Act of 1964 and other anti-discrimination considerations. Other laws, not in EEOC’s jurisdiction, may place additional restrictions on employers. From an anti-discrimination perspective, employers should keep in mind that because some individuals or demographic groups may face greater barriers to receiving a COVID-19 vaccination than others, some employees may be more likely to be negatively impacted by a vaccination requirement.
- **Employers May Inquire About Vaccination Status Without Violating Anti-Discrimination Laws.** When an employer asks an employee whether the employee has obtained a COVID-19 vaccine from a third party in the community, such as a pharmacy, personal health care provider, or public clinic, the employer is not asking a question that is likely to disclose the existence of a disability. Therefore, requesting documentation or other confirmation of vaccination by a third party in the community is not a disability-related inquiry under the ADA, and the disability anti-discrimination rules about such inquiries do not apply.

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- **Vaccination Incentive Programs Permitted Under Federal Anti-Discrimination Laws.**
Federal anti-discrimination laws do not prevent or limit employers from offering incentives to employees to voluntarily provide documentation or other confirmation of vaccination obtained from a third party (not the employer) in the community, such as a pharmacy, personal health care provider, or public clinic. 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 may offer incentives for employees to be vaccinated, as long as the incentives are not coercive. 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.
- **Employers May Provide Employees with Vaccine Awareness Education Materials.**
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.

The Employee Resource

The Employee Resource provides a basic overview of federal anti-discrimination laws that apply to employees in need of leave or job modification due to COVID-19 illness. The Employee Resource also briefly describes employer obligations with respect to COVID-19 worksite safety.

Questions about how your business should address re-opening post COVID-19 restrictions?

The EEOC's new COVID-19 guidelines highlight complexities that are attendant to the management of worksites and employees, that employers are now facing. Morse is focused on assisting our clients through these unprecedented times. Please contact [Matthew Mitchell](#) should you have questions concerning this subject, or any other COVID-19 response matters.

[Go to our full COVID-19 Resource Collection.](#)