

EEOC Issues Highly-Anticipated Guidance on Vaccine Incentive Programs

On May 28, 2021, the Equal Employment Opportunity Commission (EEOC) issued the [highly-anticipated guidance](#) on incentive programs, giving employers the green light to offer employees incentives to either receive the COVID-19 vaccine or verify their vaccination status.

In January 2021, the EEOC rescinded its proposed regulations on wellness programs. Under the previous guidance, wellness programs could only involve *de minimis* incentives like a water bottle or “a gift card of modest value.” Thus, there was concern that the incentives offered by companies to encourage employees to receive the COVID-19 vaccine would violate the wellness program rules.

Under the EEOC's new guidance, employers may offer employees incentives to voluntarily provide documentation or other confirmation that they received a vaccination on their own from a pharmacy, public health department or other health care provider in the community. Employers may also offer incentives (including both rewards and penalties) to encourage employees to voluntarily receive a vaccination, provided the incentive is not so substantial as to be coercive. In other words, the incentive cannot be so significant that it causes employees to feel as though they have no choice but to get vaccinated.

The EEOC's guidance also confirmed that incentive programs designed to encourage employees to provide proof of vaccination or receive a vaccination are generally permitted by the Genetic Information Nondiscrimination Act (GINA). However, employers may not offer incentives in exchange for an employee's family member getting vaccinated by the employer or its agent.

Finally, the EEOC has affirmed that employers may require all employees physically entering the workplace to be vaccinated for COVID-19. However, employers must provide reasonable accommodations for employees who, because of a disability or a sincerely held religious belief, practice or observance, do not get vaccinated for COVID-19, unless providing an accommodation would pose an undue hardship on the operation of the employer's business.

If you have any questions on the EEOC's guidance, or need assistance putting together an incentive policy, please contact [Shannon Toole](#) or your Reinhart attorney.

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