

CEP Magazine – September 2021

Accommodations, culture, and compliance: Considerations for your COVID-19 vaccination policy

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The U.S. Equal Employment Opportunity Commission (EEOC) of the federal government has issued guidance on COVID-19 vaccination policies for organizations across the United States,^[1] providing information related to policies and procedures for organizations large and small. (This guidance continues to evolve, and the EEOC website continues to be updated.) The EEOC protects employees and job applicants from discrimination by employers based on race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, age (40 or older), disability, and genetic information.

In its new COVID-19 guidance, the EEOC bars employers—including those who have mandatory vaccination policies—from discriminating against an employee or applicant who has a disability or religious reasonable accommodation request, and who makes their request during discussions with the organization; these employees and applicants cannot be automatically disciplined, terminated, not hired, or retaliated against.

This article aims to lay out some important aspects that organizations must consider as the workforce transitions from remote to in-person to remain compliant with the EEOC's new guidance.

Consider workers with disabilities

The Americans with Disabilities Act (ADA) is a federal law that falls under the EEOC and covers disability discrimination at the federal level, though many states and local governments have broader laws than the ADA. The ADA sets the standard for reasonable accommodation, policies, and discrimination definitions in the workplace that ensure fair and consistent treatment for all employees. Reasonable accommodations are adjustments and changes to the workplace by the employer to provide opportunities for employment within the organization to applicants and employees with disabilities. Under federal law, reasonable accommodation should be requested and cannot pose an “undue hardship” to the organization. Undue hardships should be considered on a case-by-case basis and handled consistently within the organization.

Employers that have a policy in place that requires vaccination to return to work or remain employed by the organization must consider reasonable accommodation for applicants and employees who do not or will not take the vaccine. The employer can and should ask for additional information regarding the reasonableness of the medical accommodation if one is requested. Each request should be managed on a case-by-case basis, consistent with current policy and procedures, while following local, state, and federal law. Organizations must also consider those who are fearful of returning to work and mental strain that employees may be under resulting from COVID-19.

If the employee has done their job effectively while telecommuting, is there an opportunity to continue with a telecommuting option? In situations where the person interacts with the general public and could cause harm without the vaccination, there might be an opportunity to relieve the person from the position. Of course,

reviewing each situation with an attorney or consultant is strongly recommended prior to terminating or removing anyone from their current position.

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