

> Client Alert

EEOC Says Employers May Offer Uncapped Incentives to Employees to Induce Them to Get Vaccinated by Third Party Medical Providers

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On October 13, 2021, the United States Equal Employment Opportunity Commission (“EEOC”) issued guidance to employers that wish to incentivize their workforce to get vaccinated against COVID-19; provided, however, the vaccine is administered by a third-party medical provider.

In early 2021, the EEOC gave employers the green-light to incentivize employees to get vaccinated without fear of violating anti-discriminations laws such as the Americans with Disabilities Act (“ADA”) and the Genetic Information Nondiscrimination Act (“GINA”). Previous EEOC guidance specified that employers could incentivize workers to get vaccinated voluntarily through a third-party medical provider or provide confirmation of vaccination, but did not explicitly address whether there were any limitations on the incentives employers could provide to their workforce.

Unlimited Vaccination Benefits

In its most recent guidance, the EEOC clarified that the ADA does not limit the value of incentives workers can receive for voluntarily getting vaccinated from a health care provider “that is not affiliated with their employer,” such as a personal physician or local medical clinic. The EEOC further clarified that GINA does not limit the value of potential incentives businesses can offer workers or their family members to get vaccinated so long as the employer is not administering the vaccine itself. It should be noted that GINA prohibits employers from asking employees medical questions about family members.

On the other hand, if the employer is itself administering the vaccine, the incentive “may not be so substantial as to be coercive,” the EEOC said. The EEOC’s rationale is that, since 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 to their employers or their agents.” There is no discussion of or guidance as to what is viewed as “so substantial.”

Employer Takeaway

In light of the EEOC's most recent guidance, employers should feel free to offer any incentives to employees to get vaccinated as they feel appropriate, without limitation, so long as the employer is not administering the vaccine itself. Most employers, of course, have neither interest nor facility to self-administer vaccinations. If employers, however, decide to administer vaccines to members of their workforce, they must be mindful not to offer incentives that would otherwise make employees feel as though the incentive offered impedes their choice with respect to the disclosure of their medical information.

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The Morrison Cohen LLP is available to provide legal advice and counsel concerning all employment matters concerning COVID-19-related compliance, or any other employment law questions that may arise from time to time.