

EEOC ISSUES COVID-19 VACCINE GUIDANCE

December 21, 2020

The EEOC has issued guidance for employers interested in requiring their employees to be vaccinated or providing their employees with access to COVID-19 vaccines. (See Section K of the [attached link](#).)

While the EEOC guidance indicates that employers can require COVID-19 vaccinations, employers should be aware of the Title VII and ADA implications related to any vaccine mandate.

Under Title VII, employers may be required to provide a reasonable accommodation to any vaccine requirement, if an employee's sincerely held religious belief, practice, or observance prevents the employee from receiving the vaccination. EEOC guidance provides that employers should ordinarily assume that an employee's request for religious accommodation is sincere.

Under the ADA, employers need to be cognizant of the extent to which a vaccine requirement would affect individuals with a disability. Employers considering a vaccine requirement should undertake an individualized assessment to determine whether an unvaccinated employee would pose a direct threat to the safety of the workplace. Employers requiring vaccination may still be required to provide reasonable accommodations to employees pursuant to the ADA, including remote work if possible.

EEOC guidance further indicates that additional ADA concerns may emerge if an employer provides access to the vaccine by engaging a third-party vendor, or even provides the vaccine itself. Although the EEOC guidance makes clear that administration of the vaccine is not a "medical examination" within the meaning of the ADA, pre-vaccine medical screenings conducted by the employer and/or any contracted third-party vaccine provider could constitute a disability-related inquiry under the ADA and may implicate the Genetic Information Nondiscrimination Act ("GINA"), which generally prohibits employers or doctors working for employers from asking employees questions about genetic information (including family medical history). Thus, employers seeking to have their employees vaccinated may want to consider asking employees for proof of vaccination in lieu of administering the vaccine themselves.

The EEOC guidance makes clear that asking an employee to provide proof of a COVID-19 vaccination does not implicate the ADA. Accordingly, employers requesting proof of vaccination should ensure that employees are not required to provide any additional medical information other than proof of vaccination. However, employers should be aware that follow-up questions directed at an employee regarding why he or she was not vaccinated may implicate the ADA or GINA.

Employers seeking to implement a COVID-19 vaccination policy will need to carefully assess these issues and whether a mandatory vaccine program is right for their particular business. If you need further information or assistance with developing a COVID-19 vaccine policy, or assistance with an accommodation request, please contact a member of our Employment team.

EMPLOYMENT

Alert

This alert was prepared by Hand Arendall Harrison Sale's Employment Team. For further information or assistance, please contact the author or the attorney with whom you normally work.

Emily Van Haneghan

Author

evanhaneghan@handfirm.com

251-694-6310

Mark T. Waggoner

Practice Group Chair

mwaggoner@handfirm.com

205-324-4400

Practice Group Members:

Roger L. Bates

Windy Cockrell Bitzer

Lisa Darnley Cooper

J. Cole Davis

Tracy R. Davis

Christine Hart

C. Dennis Hughes

Robert C. Jackson

John S. Johnson

Tracy T. Miller

Edward T. Rowe

Drew Sinor

Emily B. Van Haneghan

George M. Walker

Alabama: MOBILE • BIRMINGHAM • ATHENS • FAIRHOPE
Florida: DESTIN • PANAMA CITY • SANTA ROSA BEACH

Copyright © 2020 Hand Arendall Harrison Sale LLC. All rights reserved.

This alert is for general information only and is not intended as and does not constitute legal advice or solicitation of a prospective client. It should not be relied on for legal advice in any particular factual circumstance. An attorney-client relationship with the Firm cannot be formed by reading or relying on this information; such a relationship may be formed only by a specific and explicit agreement with Hand Arendall Harrison Sale LLC.

NOTE: The following language is required by Rule 7.2 of the Alabama State Bar Rules of Professional Conduct: "No representation is made that the quality of the legal services to be performed is greater than the quality of legal services performed by other lawyers."