CLIENT ALERT: COVID-19 - VACCINATION POLICIES IN THE WORKPLACE

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With the first COVID-19 vaccinations rollout in place in the U.S., the many employers are wondering whether they can require their employees to get vaccinated as a condition of their continued employment.

The existing legal considerations surrounding employee vaccination are mostly based on interpretation of the standing laws and other employee rights in the workplace. Last week, the U.S. Equal Employment Opportunity Commission (EEOC) released new guidance and information on the COVID-19 vaccinations in the workplace —a current interpretation of how employers might deal with the laws the agency enforces.

Voluntary Employee COVID-19 Vaccination

EEOC's guidance allows for employers to encourage its employees to voluntarily get vaccinated by providing easy access to educational and informative materials. Notably, the EEOC has made a statement that vaccinations are not to be considered as "medical examinations" which are protected under the Americans with Disabilities Act ("ADA").

Mandatory Employee Vaccination

Private employers can implement a mandatory vaccination policy. Additionally, it is also legal to ask an employee for proof of vaccination through the use of a vaccine certificate. If the employer is hosting the distribution of the vaccine, the employer is limited to what pre-screening questions they can ask since they may implicate the ADA's provision on disability-related inquiries. If the employer administers the vaccine, similar to how many employers offer annual flu shots through company insurance, the pre-screening questions to the employee must be job-related and consistent with business necessity.

Considerations for Employers

There are many controversial issues surrounding the COVID-19 vaccinations that employers may want to consider before resorting to mandatory vaccination. As a starting point, employers can (i) educate their employees in an unbiased manner about new COVID-19 findings as well as information on the new vaccines; (ii) encourage its employees to avoid spreading vaccine misinformation inside and outside of the workplace; and (iii)carefully evaluate if it is possible to transition from working remotely to in-person with proper safety protocols. If it is the employer's plan to reopen, and it intends for all of its employees to be vaccinated before returning to the physical workplace, the employer can begin the process by encouraging its employees to obtain the vaccine. The employer can also bring its employees back to the physical workplace in waves—beginning with those that have been vaccinated.

EEOC's latest Q&A surrounding the COVID-19 vaccine is well-written and answers many questions for both employers and employees. We will continue to monitor for new vaccine guidelines.

The COVID-19 pandemic is creating rapidly-changing issues for businesses, and government aid processes and measures designed to assist businesses may also change materially from when this blog is issued. We therefore encourage you to monitor our website, review our future blogs and generally remain alert for

additional updates or modifications to laws and regulations.

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