

Employers Can Offer Employees Vaccine Incentives

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The U.S. Equal Employment Opportunity Commission (“EEOC”) issued updated guidance explaining how employers can encourage employees to receive COVID-19 vaccinations without violating equal employment opportunity laws.

According to the EEOC, employers are permitted to encourage employees to get vaccinated by offering incentives such as paid time off days and/or cash bonuses. The EEOC’s guidance also states that incentives can come in the form of “penalties.” However, if employers or their contractors are administering vaccines as part of a vaccination program, any incentive must not be so substantial as to be deemed coercive. The guidance is unclear about when an incentive crosses the line of being coercive; but, it does state that if employers only require proof of vaccination from a third-party provider, the limitation on incentives does not apply.

It is important to note that when employees are providing proof of vaccination to receive incentives, employers must ensure all related documentation remains confidential. This ADA confidentiality requirement applies regardless of employees’ vaccination status, and, like all medical information, must be stored separately from employees’ personnel files.

One question that employers may still have is how to deal with vaccine incentives when employees are unable to be vaccinated due to a disability or sincerely held religious belief. With regard to incentives, the answer is not clear, but it is important to understand that an employer risks a failure to accommodate claim if it denies such employees the incentive. On the other hand, employers should never impose a “penalty” on employees who are unable to be vaccinated due to a disability, or who are unwilling to be vaccinated due to a sincerely held religious belief.

Bodman’s Workplace Law Group can assist employers in tailoring a vaccine policy to their needs. Any employer interested in issuing a vaccination policy to its workforce should contact any member of **Bodman’s Workplace Law Group**. Bodman cannot respond to your questions or receive information from you without first clearing potential conflicts with other clients. Thank you for your patience and understanding.

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