



Employers Ask EEOC For COVID-19 Vaccine Incentive Guidance

Insights

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Citing the uncertainty surrounding the state of the law when it comes to offering incentives to employees who receive the COVID-19 vaccination, a collection of over 40 business groups and associations just submitted a letter to the Equal Employment Opportunity Commission seeking guidance on what's allowed and what might violate federal law. [The February 1 letter](#) is the product of significant concern regarding the legality of a vaccination incentive program as summarized in a recent [FP Legal Alert](#) and highlighted in [a just-released FP Flash Survey which revealed 43% of employers are unsure about how to proceed](#). What do employers need to know about this development?

Employers Want To Play A Pivotal Role – But Need Direction

“We are hopeful that COVID-19 vaccines will provide a pathway to safely restart the economy,” said the consortium of business groups including healthcare, hospitality, manufacturing, dealership, retail industries and others, “and we want to help facilitate and expedite the vaccination process.” But in order to do so, the groups said, they need to the EEOC to “quickly issue guidance” clarifying the extent to which they can offer vaccination incentives without running afoul of the Americans With Disabilities Act (ADA) and other laws enforced by the EEOC.

The groups noted that employer-provided incentives can assist in the speedy and efficient distribution of vaccines. But the legal uncertainty about providing such incentives, has many employers concerned over liability – and therefore created unnecessary hesitancy. “We, therefore, urge the EEOC to issue guidance providing clarification on the extent to which employers may offer their employees incentives to vaccinate,” the groups said.

Employer Groups Make Two Specific Asks

The letter makes two specific asks of the EEOC when it comes to incentive guidance. First, to ensure the process is as effective and efficient as possible, the groups encouraged the EEOC to define what qualifies as a permissible incentive “as broadly as possible.” [The FP Flash Survey](#) noted that many employers were considering relatively small incentives (for example, 28% of those considering cash or gifts were inclined to offer under \$100 or nominal swag), which could be motivated by a concern that too large of an incentive could lead to legal violations under wellness program rules.

Second, bowing to the urgent and critical need for a robust incentive program, the groups asked the EEOC to deliver guidance explaining that vaccine incentives can be distinguished from wellness programs. “We recognize that wellness incentives have been closely scrutinized over the years and are the subject of recent regulations,” the groups said. However, by removing vaccine incentives from wellness program standards, employers would be more likely to participate in such a plan, free of this specific legal concern.

What’s Next?

We will continue to monitor developments related to the COVID-19 vaccines and related workplace questions that arise. Make sure you are subscribed to Fisher Phillips’ alert system to get the most up-to-date information. If you have questions about how to ensure that your vaccine policies comply with workplace and other applicable laws, visit our Vaccine Resource Center for Employers or contact your Fisher Phillips attorney or any attorney on our FP Vaccine Subcommittee.

This Legal Alert provides an overview of developing workplace issues. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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