



# Top 7 Takeaways from EEOC's COVID-19 and Vaccine Webinar for Employers

Insights

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Employers need to be especially on guard for the possibility that they may be hit with a vaccine-related EEOC charge, given that nearly a third of all pandemic-related charges filed with the agency since April 2020 involve a vaccine dispute. That's just one of seven key takeaways shared by the Equal Employment Opportunity Commission (EEOC) during a public webinar broadcast earlier today aimed at offering guidance to employers as we continue to navigate uncertain times. What are the seven key takeaways from the EEOC's "Employer Guidance in our COVID-19 World" webinar?

## 1. Stay Vigilant When It Comes to Vaccination Disputes

Perhaps the most surprising part of the webinar was the revelation that 30% of all COVID-19-related EEOC charges filed by employees since April 2020 involved a vaccine dispute. Approximately 2,700 of the nearly 9,000 COVID-19 charges handled by the agency since the start of the pandemic raised workplace issues related to the vaccine. And of those, only 300 (approximately 11%) related to ADA issues, which means the overwhelming number of vaccine-related claims relate to religious accommodation requests or related discrimination allegations.

To explore this topic further, we suggest you check out our [FP COVID Litigation Tracker](#), one of the firm's innovative website features providing detailed statistics about pandemic-related litigation broken down by geography, company size, and industry. In analyzing court filings, we see that about 20% of all COVID-19 lawsuits filed since the start of the year relate to vaccine disputes – and that number should continue to rise as the EEOC charges work their way through the administrative process and end up as court filings.

## 2. You Can Ask Your Workers About Their Vaccination Status

The EEOC once again confirmed that you can lawfully ask employees their vaccination status without violating federal anti-discrimination laws – provided, of course, the question is limited to a yes-or-no response. While some employers may be dropping their vaccine mandates as conditions of continued employment, many others may now be considering requesting vaccination status for a variety of other activities: for those who want to work in the office setting, those who wish to conduct business travel, those who want to attend work-related conferences or retreats, etc. The EEOC's statement was a welcome reminder of employer rights in this area. (And while the EEOC didn't cover this additional aspect since it falls outside of their purview, we

can also confirm that asking employees if they are vaccinated is almost certainly not a HIPAA violation.)

### **3. Be Cautious About Denying Religious Accommodation Requests**

It should come as little surprise that the EEOC – charged as the nation’s watchdog agency looking out for employee interests – warned employers during the webinar that you should generally accept a request for a religious accommodation as sincere, unless there is an objective basis to question it. This has obviously been a hot topic given the vast increase in accommodation requests related to COVID-19 vaccine mandates. We recommend you check out our [Employer’s 3-Step Guide to Responding to COVID-19 Vaccine Religious Objections](#) to make sure you understand both sides of the debate, and also read our insightful piece on the [Employer That Asks Workers Seeking Religious Exemption from Vaccine Mandate to Swear Off Tylenol and Tums](#) to get a better sense of your rights in this regard.

### **4. You Are Not Required to Offer the Accommodation the Employee Wants**

The EEOC did bolster one of the most critical aspects of the accommodation debate that is often overlooked by employers – you have no obligation to provide an employee’s preferred reasonable accommodation, so long as the accommodation that you do offer is reasonable. So even if an employee has a legitimate religious basis for not getting the COVID-19 vaccination, that doesn’t mean that you have an obligation to give them carte blanche access to the workplace as they may want. Perhaps you will require them to attend certain meetings virtually; perhaps they will be subject to heightened safety requirements (like constant facemasking at the office); perhaps they will need to present frequent negative COVID-19 tests. Work with your legal counsel to develop case-by-case solutions to any accommodation request.

### **5. You Should Consider Teleworking as a Reasonable Accommodation**

The EEOC spent some time focusing on one specific type of potential accommodation: teleworking (or remote work, or work-from-home, however you label it). The agency noted that teleworking should be at least considered as a reasonable accommodation so long as the employee can perform essential functions of the job. It encouraged employers to look at whether teleworking was previously effective (if applicable) for that particular individual or position before coming to a conclusion about whether it should be offered in a specific situation.

### **6. Remember That COVID-19 Might Be An ADA-Qualifying Disability**

The agency reminded employers that workers with COVID-19 can qualify as having a disability under the Americans with Disabilities Act (ADA) – but not always. The webinar reiterated that the question should be handled as an individualized assessment as with just about any disability inquiry. We recommend you read our [7 Key Takeaways for Employers as EEOC Says COVID-19 Is “Sometimes” a Disability Under The ADA](#) to get a broader understanding of this issue and a game plan for proceeding if and when an employee at your workplace catches the virus.

### **7. Be Wary of Coercive Discrimination**

## **7. Be wary of Caregiver Discrimination**

Finally, the agency confirmed that caregiver discrimination violates Title VII if it is based on the applicant's or employee's protected characteristic or association with an individual with a disability (which could also serve as an ADA violation). In other words, you need to be careful and train your managers not to treat unfairly any worker who may need to take time away from work to care for individuals who may be dealing with pandemic-related issues. Work with your legal counsel to understand the full ramifications of such issues.

## **Conclusion**

To ensure you stay up to speed with the latest developments, make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information and check out our [FP Vaccine Resource Center For Employers](#). For further information, contact your Fisher Phillips attorney or the author of this Insight.

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**Samantha J. Monsees**

Partner

816.842.8770

Email

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