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## EEOC Says Employers Can Require Employees to Receive COVID-19 Vaccine

Gray Reed Legal Alert

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In [new guidance](#), the EEOC stated that employers can require employees to receive a COVID-19 vaccine. The EEOC concluded that administering a vaccine or requiring proof of vaccination does not violate the Americans with Disabilities Act's (ADA) prohibitions against medical exams or disability-related inquiries or the Genetic Information Nondiscrimination Act's (GINA) restrictions against use of genetic information to make employment decisions.

That said, employers planning to require COVID-19 vaccination should carefully craft pre-screening vaccination questionnaires so as to steer clear of disability-related inquiries or questions regarding familial medical history. Pre-screening questions must be job-related and consistent with business necessity. Similarly, employers requiring proof of vaccination may want to warn employees not to provide any medical information as part of the proof in order to avoid ADA or GINA implications.

### **What if my Employee is Unable or Unwilling to be Vaccinated?**

Under the ADA, an employee may indicate they are unable to receive a COVID-19 vaccine because of a disability. To enforce a vaccination requirement, an employer must show that an unvaccinated employee would pose a direct threat due to a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation. The existence of a direct threat would necessarily include a determination that the unvaccinated employee would expose others to the virus at work. If an employer determines that an employee who cannot be vaccinated due to disability poses a direct threat, the employer cannot exclude the employee from work or take any other action against them unless there is no reasonable accommodation that would eliminate or reduce the risk so as to remove the direct threat. Note that a reasonable accommodation is not required where it would create an undue hardship for the employer. [Undue hardships](#) under the ADA can be evaluated by considering: the nature and cost of the accommodation, the overall financial resources of the facility making the accommodation, the number of persons employed at the facility, the type of operation of the employer, and the impact of the accommodation on the operation of the facility.

Similarly, under Title VII, an employee may indicate they are unable to receive a COVID-19 vaccine because of a sincerely held religious practice or belief. An employer must provide a reasonable accommodation for the religious belief or practice unless it would pose an

undue hardship. Employers can evaluate [undue hardship](#) under Title VII by considering: identifiable cost in relation to the size and operating costs of the employer, the number of individuals who will need a particular accommodation, diminished efficiency, and impact on workplace safety. Employers should ordinarily assume a request for a religious accommodation is sincere. However, if an employer has an objective basis for questioning either the religious nature or the sincerity of the belief or practice, an employer may request additional proof supporting the employee's claim.

### **Next Steps for Employers**

Employers looking forward to the prospect of an immunized workforce should consider safe, non-discriminatory methods of implementing on-site vaccination, requiring proof of vaccination, covering all or part of the cost of vaccination, or some combination of these measures. However, employers must also anticipate the need to reasonably accommodate those employees who refuse the vaccine due to disability or sincerely held religious beliefs, barring an undue hardship on the employer. Employers should continue to refer to [CDC protocols](#) and EEOC guidance in determining reasonable accommodations in order to provide a safe and healthy workplace for all. As always, employers should consider seeking counsel prior to implementing a vaccination policy or excluding an employee from the workplace because of refusal to be vaccinated.

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