

Equal Employment Opportunity Commission (EEOC) Employee COVID-19 Vaccine Information. *Source: National Retail Federation <https://nrf.com/>*

U.S. Equal Employment Opportunity Commission: [What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws](#)

Background:

The ADA contains strict restrictions on an employer's ability to require employees to undergo a medical examination and make disability-related inquiries. After the Food & Drug Administration's (FDA) issuance of an Emergency Use Authorization for the Pfizer/BioNTech COVID-19 vaccine, it was incumbent upon the EEOC to inform the employer community about the application of these restrictions to the current pandemic.

New Guidance

First and foremost, EEOC's new guidance clarifies that a vaccination is not a "medical examination" under the ADA and that asking employees about whether they have been vaccinated is not a disability-related inquiry.

EEOC did, however, also state that an employer (or a contractor hired by the employer to administer the vaccine) could implicate the ADA's provision on disability-related inquiries when asking an employee to answer pre-vaccination screening questions. The EEOC reasoned that these questionnaires could elicit information about a disability. As a result, an employer administering the vaccine (or one hiring a contractor to do so) must demonstrate that any screening questions are both "job-related and consistent with business necessity." To do meet the "job related/business necessity" standard, the EEOC further explained that employers must show that an employee who refuses to answer pre-screening questions, and therefore cannot receive the vaccine, will pose a "direct threat" to the health or safety of him/herself, coworkers, or others.

The EEOC then went on to explain ways employers could require vaccinations without having to meet the "job related/business necessity" standard. First, an employer who offers voluntary vaccinations to employees (and the decision to answer the pre-screening questions is also voluntary), does not implicate the ADA. Second, an employer who mandates that employees receive a COVID vaccine from a third-party pharmacy or other medical provider with whom the employer does not have a contract does not implicate the ADA.

Reasonable Accommodations

The EEOC reiterated its prior guidance that employers must accommodate disability-related and religious objections.

For disability-related objections, the EEOC explained that if a vaccination requirement screens out or tends to screen out an individual with a disability, the 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 reduced by reasonable accommodation." To determine whether a "direct threat" exists, employers should assess: the duration of the risk, the nature and

severity of the potential harm, the likelihood that the potential harm will occur, and the imminence of the potential harm.

For religious objections, the EEOC opined that, if an employee claims that his/her “sincerely held” religious belief prevents him/her from receiving the vaccination, the employer must provide a reasonable accommodation, except unless it would pose an undue hardship (generally defined as more than a de minimus cost or burden).