

EEOC Will Issue Guidance on COVID-19 Vaccine Incentive Programs Offered by Employers

By **Amanda M. Connelly**

Lawmakers and many employer organizations have urged the Equal Employment Opportunities Commission (EEOC) to issue guidance to companies that are considering providing incentives to employees who get the COVID-19 vaccine. Specifically, Sen. Richard Burr and Rep. Virginia Foxx stressed the importance of guiding employers that want to protect their employees stating,

“Employers actively working to protect their employees by increasing the number of workers receiving vaccinations through incentive programs are seeking assurance this action is allowable and does not violate important labor laws such as the Americans with Disabilities Act...”

In response, just a few days ago Carol Miaskoff, the EEOC’s acting legal counsel, stated that the agency expects to update its technical assistance to address these issues, but that the work is still ongoing. She did not indicate when the EEOC would issue its guidance.

Even without the promised guidance, many employers have offered incentives to their employees who receive the COVID-19 vaccine, including paid time off and cash bonuses, but the concern is the legality of the incentive programs. Do these incentives violate federal anti-bias laws? Do they violate the Americans with Disabilities Act (ADA)? If an employee cannot receive the vaccine for medical or religious reasons, how are those employees being treated?

Employers should be careful when offering incentives to employees prior to the EEOC’s guidance. Things to consider before offering incentives are to look at the size of the incentive, meaning if the incentive is too large, it may lose its “voluntary” status, the value of the incentive, and to ensure there isn’t a disability-related inquiry of the employees.

Roetzel will continue to monitor developments in this area. For more information and insight on this matter, please contact one of the listed Roetzel attorneys.

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