

Business Groups Urge EEOC To Clarify Legality of COVID-19 Vaccination Incentives

By Karen Adinolfi

While one approach for employers wishing to have a widely COVID-vaccinated workforce is the provision of incentives to employees to get the vaccine, questions have arisen about how much of an incentive is too much so as to render the decision to get the vaccine more involuntary than voluntary. Businesses such as Trader Joes, Instacart, and Aldi have offered various incentives to employees to encourage them to become vaccinated, from cash payments to paid time off to obtain both phases of the vaccine. However, some businesses are concerned that such incentives might run afoul of the EEOC's recently proposed wellness rule, which, among other things, limits the amount of such incentives.

Such is the uncertainty that 42 business groups, including the U.S. Chamber of Commerce, the National Restaurant Association, and the National Retail Federation, have joined together to urge the EEOC to take a "broad approach" as to which vaccine incentives are legal. The group recognized that widespread vaccinations are crucial to economic recovery, but the uncertainty caused by the proposed wellness rule has caused employers to become hesitant to act. The business groups asked the EEOC to in essence differentiate between the COVID-19 vaccine and other wellness initiatives, arguing that the severity of the pandemic outweighs arguments for treating the vaccine like other wellness programs.

The EEOC has not yet responded, and it is unclear what, if any, action they may take. Such action could take the form of informal guidance or initiation of the rule-making process.

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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