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While Employers Can Require Employees be Vaccinated Under Federal Law, Employees Can Refuse Vaccination on Religious Grounds, New Guidance Says

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The Equal Employment Opportunity Commission, a bipartisan federal agency that enforces workplace civil rights laws, on Friday provided updated guidance stating that under federal law, employers can require all employees in a physical space be vaccinated against Covid-19.

Even so, the same guidance says federal laws require that the employer provide accommodation for employees who may refuse getting vaccinated on religious grounds or because of a disability. Giving an example, the EEOC said the employer may need to provide a socially distanced setting for those employees, require mask-wearing, or allow those employees to telework.

Additionally, employers may provide incentives for employees to get vaccinated, so long as those incentives are not coercive.

The EEOC's updated guidance are meant to provide answers for incessant questions about workplace relations in the Covid-19 era, as more businesses are welcoming their employees back to physical buildings. The bipartisan federal agency is led by President Joe Biden-appointed Charlotte Burrows, who said guidance will be continually updated in an effort to provide clarity and assistance to both employees and employers. The EEOC is made up of five members, three of whom are Republicans appointed by former President Donald Trump.

On its website, the EEOC pointed to what it said may be a legal issue "beyond the EEOC's jurisdiction," when it spoke of a concern about the three authorized vaccines in the U.S. — the Pfizer, Moderna and Johnson & Johnson vaccines — which were granted emergency use as opposed to full approval from federal health officials.

THE EEOC further stated that, “because some individuals or demographic groups may face greater barriers to receiving a Covid-19 vaccination than others, some employees may be more likely to be negatively impacted by a vaccination requirement.”

Marc Freedman, vice president of employment policy at the U.S. Chamber of Commerce, told the Wall Street Journal that the guidance should serve to allay employees' fears that returning to the workplace is safe. “To the extent that employees are concerned that coming back to the workplace will put them at risk of getting Covid-19, anything that helps an employer get more employees vaccinated will help make the case that the workplace is safe,” Mr. Freedman told WSJ.

Mr. Freeman also stated that while he was pleased the EEOC clarified that employers could provide incentives to employees to get vaccinated, the further statement that those incentives could not be "coercive" could sow confusion. Coercive is defined as using force or threats to receive a certain response.

That could “expose employers to challenges from employees who don’t wish to be vaccinated,” he told WSJ.

Whether the new guidelines will affect the workforce remains to be seen, as it will depend on how many employers will require that their employees get vaccinated, and whether employees mind if they do.