

Free Beer for Proof of Vaccine? Or Better Yet - One Million Dollars?

By: Laura Caty on June 3, 2021 on graydon.law

If only every employer could give a \$1 million incentive for a vaccine like the Ohio Vax-A-Millions program...then I would probably be on vacation instead of writing this blog.

The EEOC issued guidance on Friday May 28th clarifying long standing questions about the COVID-19 vaccine after organizational leaders requested additional legal guidance.

Can my employer mandate that I receive the COVID-19 vaccine?

YES! With some exceptions. An employer can mandate its employees who are physically in their workspace to be vaccinated for COVID-19. This does not apply to those who continue to work remotely. However, employers must still remain legally compliant with the Americans with Disabilities Act and Title VII for those who require reasonable accommodations.

What does this mean? Can an employee state that he or she doesn't believe in the vaccine? Or what if an employee's doctor provides a note excusing him from the vaccine? Reasonable accommodation can exempt employees from an employer's mandatory vaccine policy because of a disability or sincerely held religious belief.

There is one more exception. If providing this employee with an exception would pose an undue hardship on the company's business or create a direct threat to the health of others, the employee is not entitled to skirt the vaccine policy. There may still be an accommodation obligation, but that accommodation might mean being placed on an unpaid leave of absence.

Can my employer legally give incentives to employees who received vaccines?

YES! But with every attorney's answer comes an exception. The incentives seen across the country include paid time off, monetary rewards, bonus vacation time, and yes...free beer (although we legally can't condone this). Employers should keep in mind when determining what incentive will truly incentivize employees, the incentive may not be coercive. In addition, employers will need to consider ERISA and ADA implications if more than a *de minimis* incentive is offered to those who get vaccinated.

Lastly, the employer should be careful to keep all medical information confidential. It is suggested to have a third party administer the vaccines so that employer's do not have any disability related information from their employees.

As always, drawing a line between those who are exempt from the vaccine is a tough distinction and those who do not qualify is a legally charged decision. Please note that it is important to check federal and state laws before mandating vaccination or providing incentives. While these items may be OK under most federal law, many states (and ERISA) have enacted (or have pending) laws that prohibit discrimination based upon vaccination status. The attorneys at Graydon have the knowledge and experience to help make these decisions. Give us a call. Most issues can be handled in a quick, single phone call.