

Employers Begin Offering COVID-19 Vaccination Incentives as an Alternative to Mandating the Vaccine. But is Doing So Risky?

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As COVID-19 vaccines become increasingly available to the public, employers may consider requiring that their employees be vaccinated. We have addressed related considerations for mandating vaccines in recent updates: [Can, and Should, Employers Require that Employees be Vaccinated for Covid-19?](#) and [EEOC Issues Guidance Regarding Mandatory Vaccinations](#). The concept of mandatory vaccinations raises many questions, including responding to potential employee objections and whether employers must compensate employees for time spent getting the shots.

Some employers across the country are bypassing such issues, encouraging vaccination of their workforce by offering incentives to employees who choose to do so when eligible. Tyson Foods, Inc., recently announced a new policy that offers employees up to four hours of regular pay if they get a vaccine outside of work hours. Companies such as Trader Joe's, for example, are offering two hours of regular pay, and others are offering \$100 bonuses as incentives. But incentive programs do not come without risks. There are some potential pitfalls, and related recommendations, for employers considering such programs.

The EEOC's Position on Vaccination Incentives Remains Unclear

On February 1, 2021, 42 business groups came together to request that the Equal Employment Opportunity Commission (EEOC) provide guidance on vaccination incentives. This request is especially significant in light of proposed rules issued by the EEOC in January 2021 that would limit incentives offered in connection with corporate wellness programs. The February request specifically encouraged the EEOC to differentiate between the vaccine and other wellness initiatives, citing the paramount needs during the pandemic.

It is unclear what position the EEOC will take, if any, on vaccine initiatives. In the meantime, employers may take caution by limiting the value of any incentives in accordance with the recent proposed wellness incentive rules, thereby offering only *de minimis* incentives such as a modest gift card or a water bottle. Offering employees paid time off is likely a safer option, as well.

Vaccination Incentives May Spark Discrimination Claims

Offering vaccination incentive programs may also give rise to discrimination claims from employees who cannot or will not participate. More specifically, disabled workers with health conditions that prevent them from safely getting vaccinated, or workers whose sincerely held religious beliefs do not comport with vaccination, may claim that such programs are discriminatory.

Providing *de minimis* incentives, or even paid time off, for vaccinations may curb such allegations more so than if employers were to offer more significant rewards. Regardless, employers who move forward with incentive programs should be prepared to respond to employees who request the incentive yet claim that they cannot get vaccinated due to a disability or their religious beliefs. An appropriate response may involve developing avenues other than vaccination for these particular employees to obtain an equivalent incentive.

Conclusion

Vaccination incentive programs may be an attractive option for some employers, but pose potential risks and must be carefully crafted. Before offering incentives in connection with COVID-19, therefore, employers should consult with legal counsel to assess the legality of such programs, including appropriate treatment of any incentives for tax purposes.

If you have any questions about these or any other related matters, please contact the Nexsen Pruet Employment & Labor Law team.