

HR COMPLIANCE BULLETIN

EEOC Issues New FAQs on COVID-19 Vaccine Programs & Incentives

On May 28, 2021, the Equal Employment Opportunity Commission (EEOC) added new answers to frequently asked questions (FAQs) to its existing guidance on how employers should comply with the Americans with Disabilities Act (ADA) while also observing all applicable emergency workplace safety guidelines during the coronavirus (COVID-19) pandemic. The agency also updated five of the FAQs from the existing guidance.

The new and updated FAQs clarify the types of programs employers may have to help ensure that their employees receive COVID-19 vaccinations. They also address the extent to which employers may require or provide incentives for employees or employees' family members to receive vaccines. The new FAQs also provide expanded guidance on the types of information employers may request or require as part of their workplace vaccination policies and programs.

This HR Compliance Bulletin contains only the FAQs that were added or updated on May 28, 2021. Employers that are subject to the ADA should not only become familiar with these FAQs, but also review the EEOC's full guidance, which was initially issued on March 18 and updated several times in 2020.

Action Steps

All employers should follow the most current guidelines and suggestions for maintaining workplace safety, as issued by the Centers for Disease Control and Prevention (CDC) and any applicable state or local health agencies. Employers with 15 or more employees should also become familiar with and follow the guidance provided in all of the EEOC's FAQs about ADA compliance. These and all smaller employers should ensure that they comply with state and local anti-discrimination laws as well.

Highlights

Employer Vaccine Programs

The EEOC's new FAQs clarify, among other things, that employers may:

- ✓ Require employees who will be physically entering the workplace to be vaccinated, as long as certain requirements are met;
- ✓ Offer to provide vaccinations to employees on a voluntary basis;
- ✓ Offer incentives for employees to receive COVID-19 vaccinations, as long as the incentives are not coercive;
- ✓ Offer to provide vaccinations to employees' family members on a voluntary basis (but may not require or provide incentives for family members' vaccinations).

Mandatory Vaccines and Reasonable Accommodations

Employers with mandatory vaccination programs must provide reasonable accommodations for individuals who refuse the vaccine due to disability, pregnancy or religion.



JP Griffin Group



K. Vaccinations – *As updated May 28, 2021*

The availability of COVID-19 vaccinations raises questions under the federal equal employment opportunity (EEO) laws, including the ADA, the Rehabilitation Act, the Genetic Information Nondiscrimination Act (GINA), and Title VII of the Civil Rights Act, as amended by the Pregnancy Discrimination Act (Title VII).

This section was originally issued on Dec. 16, 2020, and was clarified and supplemented on May 28, 2021. The May 2021 updates are consistent in substance with the original technical assistance and also address new subjects. (For example, see discussion of vaccine incentives under the ADA starting at K.16 and under GINA starting at K.18). On May 13, 2021, the CDC issued updated guidance for fully vaccinated individuals, exempting them from masking requirements “except where required by federal, state, local, tribal, or territorial laws, rules, and regulations, including local business and workplace guidance.” The EEOC is considering the impact of this CDC guidance on EEOC’s COVID-19 technical assistance provided to date.

The EEOC has received many inquiries from employers and employees about the type of authorization granted by the U.S. Department of Health and Human Services (HHS) Food and Drug Administration (FDA) for the administration of three COVID-19 vaccines. These three vaccines were granted Emergency Use Authorizations (EUA) by the FDA. It is beyond the EEOC’s jurisdiction to discuss the legal implications of EUA or the FDA approach. Individuals seeking more information about the legal implications of EUA or the FDA approach to vaccines can visit the [FDA’s EUA page](#). The EEOC’s jurisdiction is limited to the federal EEO laws as noted above.

Indeed, other federal, state and local laws and regulations govern COVID-19 vaccination of employees, including requirements for the federal government as an employer. The federal government as an employer is subject to the EEO laws. Federal departments and agencies should consult the Safer Federal Workforce Task Force for additional guidance on agency operations during the COVID-19 pandemic.

The EEOC questions and answers provided here only set forth applicable EEO legal standards, unless another source is expressly cited. Whether an employer meets the EEO standards will depend on the application of these standards to particular factual situations.

The technical assistance on vaccinations below was written to help employees and employers better understand how federal workplace discrimination laws apply during the COVID-19 pandemic caused by the SARS-CoV-2 virus and its variants. The technical assistance here is based on and consistent with the federal civil rights laws enforced by the EEOC and with EEOC regulations, guidance and technical assistance. Analysis of how it applies in any specific instance should be conducted on an individualized basis.

COVID-19 Vaccinations: EEOC Overview

K.1. (Added May 28, 2021) Under the ADA, Title VII, and other federal employment nondiscrimination laws, may an employer require all employees physically entering the workplace to be vaccinated for COVID-19?

The federal EEO laws do not prevent an employer from requiring all employees physically entering the workplace to be vaccinated for COVID-19, subject to the reasonable accommodation provisions of Title VII and the ADA and other EEO considerations discussed below. These principles apply if an employee gets the vaccine in the community or from the employer.



In some circumstances, Title VII and the ADA require an employer to provide reasonable accommodations for employees who, because of a disability or a sincerely held religious belief, practice or observance, do not get vaccinated for COVID-19, unless providing an accommodation would pose an undue hardship on the operation of the employer's business. The analysis for undue hardship depends on whether the accommodation is for a disability (including pregnancy-related conditions that constitute a disability) (see K.6) or for religion (see K.12).

As with any employment policy, employers that have a vaccine requirement may need to respond to allegations that the requirement has a disparate impact on—or disproportionately excludes—employees based on their race, color, religion, sex or national origin under Title VII (or age under the Age Discrimination in Employment Act (40+)). Employers should keep in mind 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.

It would also be unlawful to apply a vaccination requirement to employees in a way that treats employees differently based on disability, race, color, religion, sex (including pregnancy, sexual orientation and gender identity), national origin, age or genetic information, unless there is a legitimate non-discriminatory reason.

K.2. (Added May 28, 2021) What are some examples of reasonable accommodations or modifications that employers may have to provide to employees who do not get vaccinated due to disability; religious beliefs, practices, or observance; or pregnancy?

An employee who does not get vaccinated due to a disability (covered by the ADA) or a sincerely held religious belief, practice, or observance (covered by Title VII) may be entitled to a reasonable accommodation that does not pose an undue hardship on the operation of the employer's business. For example, as a reasonable accommodation, an unvaccinated employee entering the workplace might wear a face mask, work at a social distance from coworkers or non-employees, work a modified shift, get periodic tests for COVID-19, be given the opportunity to telework, or finally, accept a reassignment.

Employees who are not vaccinated because of pregnancy may be entitled (under Title VII) to adjustments to keep working, if the employer makes modifications or exceptions for other employees. These modifications may be the same as the accommodations made for an employee based on disability or religion.

K.3. (Added May 28, 2021) How can employers encourage employees and their family members to be vaccinated without violating the EEO laws, especially the ADA and GINA?

Employers may provide employees and their family members with information to educate them about COVID-19 vaccines, raise awareness about the benefits of vaccination, and address common questions and concerns. Also, under certain circumstances employers may offer incentives to employees who receive COVID-19 vaccines, as discussed in [K.16 - K. 21](#). As of May 2021, the federal government is providing vaccines at no cost to everyone ages 12 and older.

There are many resources available to employees seeking more information about how to get vaccinated:

- The federal government's online [vaccines.gov](https://www.vaccines.gov) site can identify vaccination sites anywhere in the country (or <https://www.vacunass.gov> for Spanish). Individuals also can text their zip code to "GETVAX" (438829)—or "VACUNA" (822862) for Spanish—to find three vaccination locations near them.
- CDC's website offers a link to a listing of [local health departments](#), which can provide more information about local vaccination efforts.



- In addition, the CDC offers [background information for employers about workplace vaccination programs](#). The CDC provides a complete communication “tool kit” for employers to use with their workforce to educate people about getting the COVID-19 vaccine. (Although originally written for essential workers, it is useful for all workers.) See [CDC’s Essential Workers COVID-19 Toolkit](#). Employers should provide the contact information of a management representative for employees who need to request a reasonable accommodation for a disability or religious belief, practice, or observance or to ensure nondiscrimination for an employee who is pregnant.
- Some employees may not have reliable access to the internet to identify nearby vaccination locations or may speak no or limited English and find it difficult to make an appointment for a vaccine over the phone. The CDC operates a toll-free telephone line that can provide assistance in many languages for individuals seeking more information about vaccinations: 800-232-4636; TTY 888-232-6348.
- Some employees also may require assistance with transportation to vaccination sites. Employers may gather and disseminate information to their employees on low-cost and no-cost transportation resources available in their community serving vaccination sites and offer time-off for vaccination, particularly if transportation is not readily available outside regular work hours.

General

K.4. (Added May 28, 2021) Is information about an employee’s COVID-19 vaccination confidential medical information under the ADA?

Yes. The ADA requires an employer to maintain the confidentiality of employee medical information, such as documentation or other confirmation of COVID-19 vaccination. This ADA confidentiality requirement applies regardless of where the employee gets the vaccination.

Although the EEO laws themselves do not prevent employers from requiring employees to bring in documentation or other confirmation of vaccination, this information, like all medical information, must be kept confidential and stored separately from the employee’s personnel files under the ADA.

Mandatory Employer Vaccination Programs

K.5. (Added Dec. 16, 2020; Updated May 28, 2021) Under the ADA, may an employer require a COVID-19 vaccination for all employees entering the workplace, even though it knows that some employees may not get a vaccine because of a disability?

Yes, provided certain requirements are met. Under the ADA, an employer may require all employees to meet a qualification standard that is job-related and consistent with business necessity, such as a safety-related standard requiring COVID-19 vaccination. However, if a particular employee cannot meet such a safety-related qualification standard because of a disability, the employer may not require compliance for that employee unless it can demonstrate that the individual would pose a “direct threat” to the health or safety of the employee or others in the workplace. A “direct threat” is a “significant risk of substantial harm” that cannot be eliminated or reduced by reasonable accommodation. This determination can be broken down into two steps: determining if there is a direct threat and, if there is, assessing whether a reasonable accommodation would reduce or eliminate the threat.

To determine if an employee who is not vaccinated due to a disability poses a “direct threat” in the workplace, an employer first must make an individualized assessment of the employee’s present ability to safely perform the essential functions



of the job. The factors that make up this assessment are: (1) the duration of the risk; (2) the nature and severity of the potential harm; (3) the likelihood that the potential harm will occur; and (4) the imminence of the potential harm.

The determination that a particular employee poses a direct threat should be based on a reasonable medical judgment that relies on the most current medical knowledge about COVID-19. Such medical knowledge may include, for example, the level of community spread at the time of the assessment. Statements from the CDC provide an important source of current medical knowledge about COVID-19, and the employee's health care provider, with the employee's consent, also may provide useful information about the employee. Additionally, the assessment of direct threat should take account of the type of work environment, such as:

- Whether the employee works alone or with others or works inside or outside;
- The available ventilation;
- The frequency and duration of direct interaction the employee typically will have with other employees and/or non-employees;
- The number of partially or fully vaccinated individuals already in the workplace;
- Whether other employees are wearing masks or undergoing routine screening testing; and
- The space available for social distancing.

If the assessment demonstrates that an employee with a disability who is not vaccinated would pose a direct threat to self or others, the employer must consider whether providing a reasonable accommodation, absent undue hardship, would reduce or eliminate that threat. Potential reasonable accommodations could include requiring the employee to wear a mask, work a staggered shift, making changes in the work environment (such as improving ventilation systems or limiting contact with other employees and non-employees), permitting telework if feasible, or reassigning the employee to a vacant position in a different workspace.

As a best practice, an employer introducing a COVID-19 vaccination policy and requiring documentation or other confirmation of vaccination should notify all employees that the employer will consider requests for reasonable accommodation based on disability on an individualized basis. (See also [K.12](#) recommending the same best practice for religious accommodations.)

K.6. (Added Dec. 16, 2020; Updated May 28, 2021) Under the ADA, if an employer requires COVID-19 vaccinations for employees physically entering the workplace, how should an employee who does not get a COVID-19 vaccination because of a disability inform the employer, and what should the employer do?

An employee with a disability who does not get vaccinated for COVID-19 because of a disability must let the employer know that he or she needs an exemption from the requirement or a change at work, known as a reasonable accommodation. To request an accommodation, an individual does not need to mention the ADA or use the phrase "reasonable accommodation."

Managers and supervisors responsible for communicating with employees about compliance with the employer's vaccination requirement should know [how to recognize an accommodation request from an employee with a disability](#) and know to whom to refer the request for full consideration. As a best practice, before instituting a mandatory vaccination policy, employers should provide managers, supervisors and those responsible for implementing the policy with clear information about how to handle accommodation requests related to the policy.



Employers and employees typically engage in a flexible, interactive process to identify workplace accommodation options that do not impose an undue hardship (significant difficulty or expense) on the employer. This process may include determining whether it is necessary to obtain supporting medical documentation about the employee's disability.

In discussing accommodation requests, employers and employees may find it helpful to consult the [Job Accommodation Network \(JAN\) website](#) as a resource for different types of accommodations. JAN's materials about COVID-19 are available [here](#). Employers also may consult applicable [OSHA COVID-specific resources](#).

Even if there is no reasonable accommodation that will allow the unvaccinated employee to be physically present to perform his or her current job without posing a direct threat, the employer must consider if telework is an option for that particular job as an accommodation and, as a last resort, whether reassignment to another position is possible.

The ADA requires that employers offer an available accommodation if one exists that does not pose an undue hardship, meaning a significant difficulty or expense. Employers are advised to consider all the options before denying an accommodation request. The proportion of employees in the workplace who already are partially or fully vaccinated against COVID-19 and the extent of employee contact with non-employees, who may be ineligible for a vaccination or whose vaccination status may be unknown, can impact the ADA undue hardship consideration.

Employers may rely on [CDC recommendations](#) when deciding whether an effective accommodation is available that would not pose an undue hardship.

Under the ADA, it is unlawful for an employer [to disclose that an employee is receiving a reasonable accommodation or to retaliate against an employee for requesting an accommodation](#).

K.7. (Added Dec. 16, 2020; Updated May 28, 2021) If an employer requires employees to get a COVID-19 vaccination from the employer or its agent, do the ADA's restrictions on an employer making disability-related inquiries or medical examinations of its employees apply to any part of the vaccination process?

Yes. The ADA's restrictions apply to the screening questions that must be asked immediately prior to administering the vaccine if the vaccine is administered by the employer or its agent. An [employer's agent](#) is an individual or entity having the authority to act on behalf of, or at the direction of, the employer.

The ADA generally restricts when employers may require medical examinations (procedures or tests that seek information about an individual's physical or mental impairments or health) or make disability-related inquiries (questions that are likely to elicit information about an individual's disability). The act of administering the vaccine is not a "medical examination" under the ADA because it does not seek information about the employee's physical or mental health.

However, because the pre-vaccination screening questions are likely to elicit information about a disability, the ADA requires that they must be "job related and consistent with business necessity" when an employer or its agent administers the COVID-19 vaccine. To meet this standard, an employer would need to have a reasonable belief, based on objective evidence, that an employee who does not answer the questions and, therefore, cannot be vaccinated, will pose a direct threat to the employee's own health or safety or to the health and safety of others in the workplace. (See general discussion in [K.5](#).) Therefore, when an employer requires that employees be vaccinated by the employer or its agent, the employer should be aware that an employee may challenge the mandatory pre-vaccination inquiries, and an employer would have to justify them under the ADA.



The ADA also requires employers to keep any employee medical information obtained in the course of an employer vaccination program confidential.

Voluntary Employer Vaccination Programs

K.8. (Added Dec. 16, 2020; Updated May 28, 2021) Under the ADA, are there circumstances in which an employer or its agent may ask disability-related screening questions before administering a COVID-19 vaccine *without* needing to satisfy the “job-related and consistent with business necessity” standard?

Yes. If the employer offers to vaccinate its employees on a voluntary basis, meaning that employees can choose whether or not to get the COVID-19 vaccine from the employer or its agent, the employer does not have to show that the pre-vaccination screening questions are job-related and consistent with business necessity. However, the employee’s decision to answer the questions must be voluntary. (See [K.16-17](#).) The ADA prohibits taking an adverse action against an employee, including harassing the employee, for refusing to participate in a voluntary employer-administered vaccination program. An employer also must keep any medical information it obtains from any voluntary vaccination program confidential.

K.9. (Added Dec. 16, 2020; Updated May 28, 2021) Under the ADA, is it a “disability-related inquiry” for an employer to inquire about or request documentation or other confirmation that an employee obtained the COVID-19 vaccine from a third party in the community, such as a pharmacy, personal health care provider or public clinic?

No. When an employer asks employees whether they obtained a COVID-19 vaccine from a third party in the community, such as a pharmacy, personal health care provider or public clinic, the employer is not asking a question that is likely to disclose the existence of a disability; there are many reasons an employee may not show documentation or other confirmation of vaccination in the community besides having a disability. Therefore, requesting documentation or other confirmation of vaccination by a third party in the community is not a disability-related inquiry under the ADA, and the ADA’s rules about such inquiries do not apply.

However, documentation or other confirmation of vaccination provided by the employee to the employer is medical information about the employee and must be kept confidential.

K.10. (Added May 28, 2021) May an employer offer voluntary vaccinations only to certain groups of employees?

If an employer or its agent offers voluntary vaccinations to employees, the employer must comply with federal employment nondiscrimination laws. For example, not offering voluntary vaccinations to certain employees based on national origin or another protected basis under the EEO laws would not be permissible.

K.11. (Added May 28, 2021) What should an employer do if an employee who is fully vaccinated for COVID-19 requests accommodation for an underlying disability because of a continuing concern that he or she faces a heightened risk of severe illness from a COVID-19 infection, despite being vaccinated?

Employers who receive a reasonable accommodation request from an employee should process the request in accordance with applicable ADA standards.

When an employee asks for a reasonable accommodation, whether the employee is fully vaccinated or not, the employer should engage in an interactive process to determine if there is a disability-related need for reasonable accommodation.



This process typically includes seeking information from the employee's health care provider with the employee's consent explaining why an accommodation is needed.

For example, some individuals who are immunocompromised might still need reasonable accommodations because their conditions may mean that the vaccines may not offer them the same measure of protection as other vaccinated individuals. If there is a disability-related need for accommodation, an employer must explore potential reasonable accommodations that may be provided absent undue hardship.

Title VII and COVID-19 Vaccinations

K.12. (Added Dec. 16, 2020; Updated May 28, 2021) Under Title VII, how should an employer respond to an employee who communicates that he or she is unable to be vaccinated for COVID-19 (or provide documentation or other confirmation of vaccination) because of a sincerely held religious belief, practice, or observance?

Once an employer is on notice that an employee's sincerely held religious belief, practice, or observance prevents the employee from getting a COVID-19 vaccine, the employer must provide a reasonable accommodation unless it would pose an undue hardship. Employers also may receive religious accommodation requests from individuals who wish to wait until an alternative version or specific brand of COVID-19 vaccine is available to the employee. Such requests should be processed according to the same standards that apply to other accommodation requests.

EEOC guidance explains that the definition of religion is broad and protects beliefs, practices, and observances with which the employer may be unfamiliar. Therefore, the employer should ordinarily assume that an employee's request for religious accommodation is based on a sincerely held religious belief, practice, or observance. However, if an employee requests a religious accommodation, and an employer is aware of facts that provide an objective basis for questioning either the religious nature or the sincerity of a particular belief, practice, or observance, the employer would be justified in requesting additional supporting information.

Under Title VII, an employer should thoroughly consider all possible reasonable accommodations, including telework and reassignment. For suggestions about types of reasonable accommodation for unvaccinated employees, see [K.6](#). In many circumstances, it may be possible to accommodate those seeking reasonable accommodations for their religious beliefs, practices, or observances.

Under Title VII, courts define "undue hardship" as having more than minimal cost or burden on the employer. This is an easier standard for employers to meet than the ADA's undue hardship standard, which applies to requests for accommodations due to a disability. Considerations relevant to undue hardship can include, among other things, the proportion of employees in the workplace who already are partially or fully vaccinated against COVID-19 and the extent of employee contact with non-employees, whose vaccination status could be unknown or who may be ineligible for the vaccine. Ultimately, if an employee cannot be accommodated, employers should determine if any other rights apply under the EEO laws or other federal, state, and local authorities before taking adverse employment action against an unvaccinated employee.

K.13. (Added Dec. 16, 2020; Updated May 28, 2021) Under Title VII, what should an employer do if an employee chooses not to receive a COVID-19 vaccination due to pregnancy?

Under Title VII, some employees may seek job adjustments or may request exemptions from a COVID-19 vaccination requirement due to pregnancy.



If an employee seeks an exemption from a vaccine requirement due to pregnancy, the employer must ensure that the employee is not being discriminated against compared to other employees similar in their ability or inability to work. This means that a pregnant employee may be entitled to job modifications, including telework, changes to work schedules or assignments, and leave to the extent such modifications are provided for other employees who are similar in their ability or inability to work. Employers should ensure that supervisors, managers, and human resources personnel know how to handle such requests to avoid disparate treatment in violation of Title VII.

GINA and COVID-19 Vaccinations

Title II of GINA prohibits covered employers from using the genetic information of employees to make employment decisions. It also restricts employers from requesting, requiring, purchasing, or disclosing genetic information of employees. Under Title II of GINA, genetic information includes information about the manifestation of disease or disorder in a family member (which is referred to as “family medical history”) and information from genetic tests of the individual employee or a family member, among other things.

K.14. (Added Dec. 16, 2020; Updated May 28, 2021) Is Title II of GINA implicated if an employer requires an employee to receive a COVID-19 vaccine administered by the employer or its agent?

No. Requiring an employee to receive a COVID-19 vaccination administered by the employer or its agent would not implicate Title II of GINA unless the pre-vaccination medical screening questions include questions about the employee’s genetic information, such as asking about the employee’s family medical history.

As of May 27, 2021, the pre-vaccination medical screening questions for the first three COVID-19 vaccines to receive EUA from the FDA do not seek family medical history or any other type of genetic information. See [CDC’s Pre-vaccination Checklist](#). Therefore, an employer or its agent may ask these questions without violating Title II of GINA.

The act of administering a COVID-19 vaccine does not involve the use of the employee’s genetic information to make employment decisions or the acquisition or disclosure of genetic information and, therefore, does not implicate Title II of GINA.

K.15. (Added Dec. 16, 2020; Updated May 28, 2021) Is Title II of GINA implicated when an employer requires employees to provide documentation or other confirmation that they received a vaccination from a doctor, pharmacy, health agency, or another health care provider in the community?

No. An employer requiring an employee to show documentation or other confirmation of vaccination from a doctor, pharmacy, or other third party is not using, acquiring, or disclosing genetic information and, therefore, is not implicating Title II of GINA.

This is the case even if the medical screening questions that must be asked before vaccination include questions about genetic information, because documentation or other confirmation of vaccination would not reveal genetic information. Title II of GINA does not prohibit an employee’s *own* health care provider from asking questions about genetic information. This GINA Title II prohibition only applies to the employer or its agent.



Employer Incentives For COVID-19 Voluntary Vaccinations Under ADA and GINA

ADA: Employer Incentives for Voluntary COVID-19 Vaccinations

K.16. (Added May 28, 2021) Under the ADA, may an employer offer an incentive to employees to voluntarily provide documentation or other confirmation that they received a vaccination on their own from a pharmacy, public health department, or other health care provider in the community?

Yes. Requesting documentation or other confirmation showing that an employee received a COVID-19 vaccination in the community is not a disability-related inquiry covered by the ADA.

Therefore, an employer may offer an incentive to employees to voluntarily provide documentation or other confirmation of a vaccination received in the community. As noted elsewhere, the employer is required to keep vaccination information confidential pursuant to the ADA.

K.17. (Added May 28, 2021) Under the ADA, may an employer offer an incentive to employees for voluntarily receiving a vaccination administered by the employer or its agent?

Yes, if any incentive (which includes both rewards and penalties) is not so substantial as to be coercive. Because vaccinations require employees to answer pre-vaccination disability-related screening questions, a very large incentive could make employees feel pressured to disclose protected medical information.

As explained in K.16., however, this incentive limitation does not apply if an employer offers an incentive to employees to voluntarily provide documentation or other confirmation that they received a COVID-19 vaccination on their own from a third-party provider that is not their employer or an agent of their employer.

GINA: Employer Incentives for Voluntary COVID-19 Vaccinations

K.18. (Added May 28, 2021) Under GINA, may an employer offer an incentive to employees to provide documentation or other confirmation that they or their family members received a vaccination from their own health care provider, such as a doctor, pharmacy, health agency or another health care provider in the community?

Yes. Under GINA, an employer may offer an incentive to employees to provide documentation or other confirmation from a third party not acting on the employer's behalf, such as a pharmacy or health department, that employees or their family members have been vaccinated.

If employers ask an employee to show documentation or other confirmation that the employee or a family member has been vaccinated, it is not an unlawful request for genetic information under GINA because the fact that someone received a vaccination is not information about the manifestation of a disease or disorder in a family member (known as family medical history under GINA), nor is it any other form of genetic information. GINA's restrictions on employers acquiring genetic information (including those prohibiting incentives in exchange for genetic information), therefore, do not apply.

K.19. (Added May 28, 2021) Under GINA, may an employer offer an incentive to employees in exchange for the employee getting vaccinated by the employer or its agent?

Yes. Under GINA, as long as an employer does not acquire genetic information while administering the vaccines, employers may offer incentives to employees for getting vaccinated.



Because the pre-vaccination medical screening questions for the three COVID-19 vaccines now available do not inquire about genetic information, employers may offer incentives to their employees for getting vaccinated. See [K.14](#) for more about GINA and pre-vaccination medical screening questions.

K.20. (Added May 28, 2021) Under GINA, may an employer offer an incentive to an employee in return for an employee's family member getting vaccinated by the employer or its agent?

No. Under GINA's Title II health and genetic services provision, an employer may not offer any incentives to an employee in exchange for a family member's receipt of a vaccination from an employer or its agent. Providing such an incentive to an employee because a family member was vaccinated by the employer or its agent would require the vaccinator to ask the family member the pre-vaccination medical screening questions, which include medical questions about the family member. Asking these medical questions would lead to the employer's receipt of genetic information in the form of family medical history *of the employee*.

The regulations implementing Title II of GINA prohibit employers from providing incentives in exchange for genetic information. Therefore, the employer may not offer incentives in exchange for the family member getting vaccinated. However, employers may still offer an employee's family member the opportunity to be vaccinated by the employer or its agent, if they take certain steps to ensure GINA compliance.

K.21. (Added May 28, 2021) Under GINA, may an employer offer an employee's family member an opportunity to be vaccinated *without offering the employee an incentive*?

Yes. GINA permits an employer to offer vaccinations to an employee's family members if it takes certain steps to comply with GINA.

Employers must not require employees to have their family members get vaccinated and must not penalize employees if their family members decide not to get vaccinated. Employers must also ensure that all medical information obtained from family members during the screening process is only used for the purpose of providing the vaccination, is kept confidential, and is not provided to any managers, supervisors, or others who make employment decisions for the employees.

In addition, employers need to ensure that they obtain prior, knowing, voluntary and written authorization from the family member before the family member is asked any questions about his or her medical conditions. If these requirements are met, GINA permits the collection of genetic information.

Source: Equal Employment Opportunity Commission