

BUSINESS INSURANCE.

EEOC issues updated guidance on COVID-19 vaccinations

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Employers must first seek an accommodation for employees who refuse to be vaccinated for COVID-19 for disability or religious-related reasons before taking any action against them, the U.S. Equal Employment Opportunity Commission said Wednesday in updated guidance.

Employers cannot automatically terminate workers who refuse the vaccine because of a disability or religious beliefs before first conducting an individualized assessment that considers whether the workers pose a direct threat, said the agency in its update of COVID-19 related guidance, which has been expected by experts.

In focusing on disability-related issues, the four factors to be considered in determining whether there is a direct threat are: the severity of the potential harm; the likelihood the potential harm will occur; and the potential harm's imminence, the agency said.

Employers cannot exclude the employee from the workplace "unless there is no way to provide a reasonable accommodation (absent undue hardship) that would eliminate or reduce this risk, so the unvaccinated employee does not pose a direct threat," the guidance said.

Before terminating an employee, employers must also determine if any other rights apply under equal employment opportunity laws or other federal, state or local authorities, it said.

Similarly, employers must provide a reasonable accommodation if a worker refuses to be vaccinated because of "sincerely held" religious beliefs, unless it poses an undue hardship under Title VII of the Civil Rights Act of 1964, the guidance said.

Among the other vaccine-related questions addressed by the new guidance, it states the vaccination itself is not a medical exam, although pre-screening vaccination questions may implicate the Americans with Disabilities Act's provision on disability-related inquiries, and the employer must show that these questions are "job-related and consistent with business necessity."

The guidance states also that requiring an employee to show proof of receipt of a COVID-19 vaccination is not considered a disability-related inquiry.

The Genetic Information Nondiscrimination Act is not implicated when a vaccine is administered to employees, or when proof that they have received a vaccine is required, it states.

The guidance does not address issues including whether an employees' anxiety about receiving a vaccination can be considered in deciding whether a reasonable accommodation should be considered.

