

Proof of COVID-19 Vaccines:

What Your Borough Needs to Know

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COVID-19 Vaccination Record Card

Please keep this record card, which includes medical information about the vaccines you have received.

Por favor, guarde esta tarjeta de registro, que incluye informacion medica sobre las vacunas que ha recibido.

Last Name		First Name	MI
Date of birth		Patient number (medical record IIS record number)	
Vaccine	Product Name/ Manufacturer Lot Number	Date	Healthcare Professional or Clinic Site
1 st Dose COVID- 19		mm / dd / yy	
2 nd Dose		mm / dd / yy	

As government officials and the U.S. Centers for Disease Control (CDC) continue to relax restrictions for individuals who are fully vaccinated for COVID-19, many employers are looking for guidance to determine if they can legally obtain information regarding the vaccination status of their employees.

There are many reasons that an employer may wish to maintain COVID-19 vaccination record information such as:

- The ability to determine contact tracing protocols.
- The potential reduction in personal protective equipment practices among employees.
- Return to domestic air travel.
- Potential impact of exposure, including quarantine.

Additionally, a municipality may need to accommodate demands for vaccination status of the organization's employees who are performing services on behalf of residents.

On April 2, the CDC issued updated guidance for fully vaccinated individuals that indicated the following.

- Such individuals can meet with other fully vaccinated people indoors without wearing masks or physical distancing.

- They do not need to quarantine and be tested following a known exposure if asymptomatic.
- They can return to domestic travel without quarantine requirements.

The U.S. Equal Employment Opportunity Office (EEOC) previously indicated that employers may request employees for proof of a COVID-19 vaccination. Asking for reasons why someone isn't vaccinated could pose a problem, however.

The EEOC guidance provides that asking or requiring employees to show proof of receiving a COVID-19 vaccination is not a disability-related inquiry under the Americans with Disabilities Act (ADA). Thus, employers may request or require employees to provide proof of receiving a vaccine without implicating the "business necessity" test by requesting personal medical

information from an employee under the ADA.

In PA, when an individual is vaccinated against COVID-19, the vaccine provider issues them a CDC COVID-19 Vaccination Record Card as evidence of vaccination. These cards include limited information, such as name, date of birth, the date of the vaccine dose, the type of vaccine, and where the vaccine was received. This limited information is not considered medical information under current guidance from the EEOC.

Notwithstanding this guidance, there are still safeguards that an employer must take to ensure compliance with state and federal law.

First, vaccination records are "health records" under the Health Insurance Portability and Accountability Act (HIPAA).

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HIPAA is a federal law that created “national standards to protect sensitive patient health information from being disclosed without the patient’s consent or knowledge,” according to the CDC. Under its privacy rule, health care providers and certain organizations are prevented from being able to share private health information about a person without their consent.

Second, there are privacy requirements for medical record information that may come into play for vaccination records under state law.

If a borough decides to ask employees about their vaccination status, they should consider steps to minimize the employer’s compliance risk under ADA, HIPPA, and PA privacy laws.

Such steps may include the following.

Employers should only request a copy of the CDC Vaccination Record Card from an employee during the vaccination process. Employees should be directed not to provide any other medical information as part of the requested proof of receipt of a COVID-19 vaccination. This will ensure that no other information is received by the employer that may reveal information about a disability or medical condition.

No additional follow-up questions can be asked of the employee as to why an individual did not receive a vaccination.

Once COVID-19 vaccination records are collected, the employer must ensure that the vaccination record is kept confidential and in a separate location from the employee’s personnel file.

Access to COVID-19 vaccine information should be strictly limited, the same as any other confidential employee medical information, to those individuals within the borough with a need to know.

Employers who may wish to disclose the vaccination status of their employees should strongly consider obtaining written consent or permission from employees.

Moreover, employers should be cognizant that any actions that

distinguish vaccinated employees from those employees who are not vaccinated risks potentially claims of discrimination under the ADA, depending on the circumstances and reason for the non-vaccination status.

Certain employers may find the need for employee vaccination status and records more compelling than others depending on their business type and clientele. All employers should consider the company’s individual needs and circumstances and should talk with legal counsel about their options.

Are there exemptions?

Under the ADA, an employer can have a workplace policy that includes “a requirement that an individual shall not pose a direct threat to the health or safety of individuals in the workplace.”

If a vaccination requirement screens out a worker with a disability or religious belief, the employer must show that unvaccinated employees would pose a “direct threat” due to a “significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation.”

The EEOC guidance indicates that employers should evaluate four factors to determine whether a direct threat exists:



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- The duration of the risk.
- The nature and severity of the potential harm.
- The likelihood that the potential harm will occur.
- The imminence of the potential harm.

If an employee who cannot be vaccinated poses a direct threat to the workplace, the employer must discuss the situation with employees and consider whether a reasonable accommodation, such as masking, remote work, or social distancing, can be made given the employee's specific job and circumstances.

Boroughs should contact their municipal solicitor for all legal opinions.



About the author: Andrew M. Rongaus, Esq., is a partner at Siana Law, and is chair of

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