



4 key considerations when collecting vaccine status information

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IN FOCUS: Although agencies must have employees attest to their vaccine status and impose additional safety protocols on those who are unvaccinated, the Safer Federal Workforce Task Force's most recent [updates to the model safety principles](#) do not specify how agencies should administer these requirements.

Kalijarvi, Chuzi, Newman & Fitch partner Elaine Fitch told **cyberFEDS**® that "to be of any value whatsoever, the attestation will have to be in writing and under oath/certification/verification" because "people will think twice before signing a document attesting under penalty of perjury that they have been vaccinated."

The Office of Personnel Management, she said, will likely issue a standard form for all government agencies to use that should include the "penalties for lying under oath, which could include loss of a security clearance and/or loss of employment."

However, if no standard form is issued, agency forms should describe the masking and testing requirements for employees who either do not sign the form or attest that they are not vaccinated, Fitch added. "Then there is no question about the ramifications of choosing to remain unvaccinated."

Federal Practice Group partner Debra D'Agostino told **cyberFEDS**® the attestation form should warn employees that failing to sign the document or provide vaccine status means the agency will regard that individual as unvaccinated. She also agreed the form should clearly state that lying about vaccine status could result in discipline or other adverse consequences.

The forms also should define vaccinated as two weeks after the last shot, Fitch noted.

As agencies begin to implement the guidelines, Fitch and D'Agostino said these four areas should be carefully considered:

1. Confidentiality. D'Agostino said the attestation form must be kept confidential and separate from the employee's personnel file pursuant to the Rehabilitation Act. Agencies should also advise employees who will have access to the information about confidentiality requirements and "establish a clear standard for access" to vaccine status.

2. Access and administration. The guidance does not say who should administer these forms and who should have access to vaccine status, but Fitch said, generally "HR/LER should be in charge of administering and gathering the forms to prevent disclosure of medical information." Although "it would be inadvisable for individual managers to be left in charge of this information," Fitch said, managers may have a need to know an employee's vaccination status in some cases, such as enforcing extra testing, mask wearing, and distancing requirements for the unvaccinated. Managers will also have to decide what actions to take if an employee cannot perform a job because of these restrictions, she added, noting that "if the employee's job requires travel, and he cannot travel because he is unvaccinated, the manager will need to know that and determine what to do about that essential job duty." Also, when individuals with disabilities cannot get vaccinated due to their medical condition and need a reasonable accommodation, managers also will have a need to know vaccine status to determine what accommodations can be provided, Fitch explained.

3. Policies. Restrictions on accessing vaccination status "absolutely" should be clearly outlined in a policy about attestation so that managers and employees know what to expect, Fitch said. "It is a per se violation of the Rehabilitation Act to disclose medical information," but "managers and coworkers get in trouble for this all the time," so "every employee in the agency will need to be educated on the requirements to keep vaccination information confidential."

In addition, D'Agostino said agencies "would be wise to apply consistent policies across their various facilities, although it may make sense to apply stricter requirements and/or more frequent testing for those employees who interact with the public or in close quarters with one another. For example, [Transportation Security Administration] agents stationed in airports pose a greater risk if infected than employees who can largely telework or work from private, enclosed office spaces."

4. Visitors versus members of the public. Agencies should also be aware of the difference between "visitors" and "members of the public" entering federal buildings for a public service or benefit. Visitors must be asked for vaccination status and those who decline or are unvaccinated have to comply with the requisite safety protocols. In addition, those who are not fully vaccinated or decline to provide their status must provide proof of a negative COVID-19 test at least three days before entering a federal building or participating in an in-person meeting, event, or conference, the guidance states. For example, Fitch said, visitors would include someone attending a conference or an attorney attending a meeting with a client. In contrast, these requirements do not apply to members of the public entering a federal property to obtain a public service or benefit. Unvaccinated visitors still must comply with all relevant Centers for Disease Control and Prevention guidance, including wearing a mask and physically distancing from other people.

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