



Task force outlines COVID attestation process

By Anjali Patel, Esq., **cyberFEDS®** Legal Editor Washington Bureau

IN FOCUS: Along with information on collecting vaccination status, new Safer Federal Workforce Task Force [guidelines](#) also address storing the information, penalties for falsification, and who has the right to access the information.

George Chuzi, a partner at Kalijarvi, Chuzi, Newman & Fitch, PC, told **cyberFEDS®** that the new guidance "highlights the problem created by the federal Government's failure to provide a uniform and secure means of documenting that a person has been fully vaccinated. While virtually everyone who has been vaccinated has received a CDC card reflecting the particular vaccine and dates of administration, apparently those cards can be easily forged, rendering them unreliable as evidence."

Yet, "asking employees to certify their status under penalty of perjury should be sufficient, but because the forms are surrendered to and retained by the agency when completed, vaccinated and unvaccinated employees remain on the honor system thereafter. It remains to be seen whether this system will be sufficient," he added.

He also said the updated guidance seems "unnecessarily confusing," particularly the parts requiring fully vaccinated individuals to wear masks in public indoor settings in high transmission areas while allowing them to go without masks in low or moderate transmission areas. From an operational perspective, agencies "should be required to indicate at the entrances to every building or facility whether that facility is in a high transmission area, or a low/moderate area. There is only one answer for each facility, and the responsibility for making that determination should not be left to the employees."

The Task Force's updates provide the following guidelines for collecting and accessing vaccine status information as well as managing accommodations and potential discipline.

Asking for vaccine status

According to the guidance, agencies should use the Safer Federal Workforce Task Force's [template email](#) to ask all employees, including teleworkers and remote workers, to complete the [vaccination certification form](#), which asks employees to provide vaccination status information and attest to the truthfulness of that information. Once

completed, employees should submit the form to an appropriate agency official designated to collect the forms.

In addition, according to the guidance, agencies must:

- Distribute the form to all employees, including current civilian federal employees and members of the uniformed services, such as a reservist or member of the National Guard on active duty. Agencies should determine "the best method of distribution" for those who may not have email access. However, agencies do not have to distribute these forms to employees if they have already collected vaccination status information from.
- Instruct employees to update their vaccination status if their vaccination status changes.
- Treat those who do not complete the form as not fully vaccinated and impose stricter safety protocols requiring masking, social distancing, and weekly or biweekly COVID-19 testing.

Federal Practice Group partner Heather White told **cyberFEDS®** that "it is very important that employees and contractors take seriously the requirement to either attest to their vaccinated status or provide a recent negative test if not vaccinated before entering a federal building or Federally controlled indoor worksite" because "violations of this protocol, including making a false attestation, will be treated as misconduct" and may lead to discipline up to and including removal from their position. Contractors, she said, also do not have the same due process protections afforded to most federal employees and are usually at will employees who can be terminated for almost any reason. "Therefore, those planning to rely on regular testing to continue to enter federal workplaces will need to be proactive about getting tested ahead of time, both because it is the right thing to do and in order to avoid jeopardizing or even losing their employment."

Providing false information also constitutes a federal crime under [18 USC 1001](#) and could affect the employee's security clearance. Employees who decline to answer -- which includes selecting "I decline to respond" on the form -- are not providing false information.

Access to vaccination status

Under the Privacy Act, [5 USC 552](#) a(b)(1), agencies may disclose vaccine status to employees "who have a need for the record" to perform their duties," but "should only disseminate information to the appropriate agency officials who have a need to know to ensure effective implementation of the safety protocols, which, in many cases, will include the supervisor level." In addition, because agencies must comply with the Privacy Act "at all times," they should consult with their senior agency official for privacy.

Agencies must store employee disclosures about vaccine status as medical files under Office of Personnel Management's regulations. Those not subject to OPM regulations or with employees not covered by OPM/GOVT-10 must provide an alternative Privacy Act statement. Agencies may develop their own processes for maintaining records of these submissions.

While providing the information to those with a need to know, agencies should take steps to "promote privacy and IT security," but generally should not keep this information in the Official Personnel Folders.

Verifying status provided on forms

Generally, agencies should not request additional documentation to verify vaccination status, but they may do so when investigating "a good faith allegation that strongly suggests that an employee made a false statement" on the vaccination form, the task force said.

If "an employee who has attested to being vaccinated exhibits symptoms of COVID-19 illness, the agency should apply its safety protocols, but this is not an appropriate reason to request documentation to verify an employee's vaccination status."

Accommodations

The guidance directs employees who are not vaccinated due to medical or religious reasons to indicate that they have not been vaccinated or decline to respond on the vaccination form and follow the requisite safety protocols. As necessary after submitting the form, these employees may use the agency's established reasonable accommodations process to seek an accommodation.

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