



ask



08.13.21

## Dear HR Knowledge: May We Ask Our Employees About Their COVID-19 Vaccination Status?

This question is becoming increasingly common as we start to transition toward our “new normal.” Now that the COVID-19 vaccine is available to individuals, employers are questioning whether to mandate the vaccination. The answer is not a straightforward one; there are many moving parts.

### How do we break it down?

At this time, there are no state or local guidelines in place that would prevent an employer from asking employees about their COVID vaccination status. With that in mind: Yes, employers can theoretically ask their employees whether they are vaccinated or not. However, we recommend that you keep this dialog short. A simple yes or no is sufficient. As with all personal and secure information, there should always be a purpose and intent behind collecting information from your employees.

Let's look at two examples:

1. You plan to ask employees about their vaccination status to comply with the CDC guidelines (fully vaccinated individuals do not need to wear a face covering or participate in social distancing).
  - o This example is appropriate in the sense that you are looking after the overall health and safety of your employees. Also consider the state and local guidelines around face coverings and social distancing, as these guidelines may be stricter than the CDC's.

This content is provided with the understanding that HR Knowledge is not rendering legal advice. While every effort is made to provide current information, the law changes regularly and laws may vary depending on the state or municipality. The material is made available for informational purposes only and is not a substitute for legal advice or your professional judgment. You should review applicable laws in your jurisdiction and consult experienced counsel for legal advice. If you have any questions regarding this content, please contact [HR Knowledge](#).

2. You plan to ask employees about their vaccination status because you are organizing a company outing for **only** those individuals who are fully vaccinated.
  - o This example is inappropriate because your intent in asking the question could lead to discrimination against those who are not vaccinated.

Although [EEOC guidance](#) does confirm that employers may lawfully require employees to be vaccinated, employers should understand that certain employees may be excused from any such requirement. At the end of the day, it is your employee's choice whether to get the vaccine. Importantly, keep in mind that some individuals will choose not to be vaccinated based on a religious belief or medical condition. And their reason for not getting the vaccine could lead to discrimination charges down the road. For example, if you know they didn't get vaccinated for religious reasons, you run the risk that they may feel they are being treated differently because they disclosed their religious beliefs.

### **What about vaccination cards?**

The standard throughout the healthcare industry with COVID-19 vaccines is to provide a vaccination card with the dates the vaccination was administered. Asking for this vaccination card from employees is outside of the scope of what an employer needs to keep on file for medical records. These cards are considered confidential medical information and you should store them separately from the employee's personnel file to maintain HIPAA compliance. It is critical to determine what you are going to do with the information you collect, where you are going to store it, and who will have access to it.

Asker beware! Not only are the vaccination cards out of scope for an employee's personnel file, but these cards are also being falsified on the dark web. The inconsistencies of information being logged on these cards allow them to be easily manipulated. This adds another layer of complexity for employers — how do we validate that this vaccination card is legitimate?

### **Where do we go from here?**

Companies should understand that one size does not fit all when it comes to COVID vaccinations in the workplace. Our recommendation is to do what you believe is best suited for your organization. Company A may collect proof of vaccinations to eliminate the need for universal masking. Company B may choose to use the honor system and assume that all individuals not wearing masks are vaccinated. And Company C may opt to eliminate all risk and mandate all employees to continue wearing masks. All these companies have one thing in common —acceptable plans for COVID-19 vaccinations based on CDC guidance.

One approach is to create an internal policy and acknowledgment allowing employees to attest to whether they are vaccinated without having to provide additional details. Companies may

This content is provided with the understanding that HR Knowledge is not rendering legal advice. While every effort is made to provide current information, the law changes regularly and laws may vary depending on the state or municipality. The material is made available for informational purposes only and is not a substitute for legal advice or your professional judgment. You should review applicable laws in your jurisdiction and consult experienced counsel for legal advice. If you have any questions regarding this content, please contact [HR Knowledge](#).



choose to create a company policy that documents their stance on COVID vaccination requirements within the workplace.

Please be aware that laws are constantly changing, almost daily when it comes to COVID. While we would love to provide a blanket answer for this question, we encourage businesses to stay up to date on the ordinances within the states, counties, and municipalities that your business operates in.

Communication will be key in the coming months for your employees! Adapting to a routine of checking for additional updates will be crucial to ensure that you are communicating the correct information to employees in each jurisdiction that you operate in. You know your business best, and we suggest doing what you feel is most well-suited for your workforce while adhering to local and federal guidelines surrounding COVID.

This content is provided with the understanding that HR Knowledge is not rendering legal advice. While every effort is made to provide current information, the law changes regularly and laws may vary depending on the state or municipality. The material is made available for informational purposes only and is not a substitute for legal advice or your professional judgment. You should review applicable laws in your jurisdiction and consult experienced counsel for legal advice. If you have any questions regarding this content, please contact [HR Knowledge](#).

## The People Simplifying HR

For almost twenty years, HR Knowledge has made it our mission to demystify the complex and daunting process of HR management. We do more than just provide the level of service and technology you'd expect from an industry leader. We combine unparalleled passion for service with our decades of HR, payroll, and benefits experience to provide our clients with personalized and actionable advice that is second—to—none. From managed payroll to employee benefits to HR support, we can help your organization thrive, grow, and reduce operating costs—no matter what industry you serve. Whether you're interested in our Full-Service solution or just need your employee handbook written, HR Knowledge can help you minimize risk while staying on top of compliance regulations. The bottom line? We're not just another cloud-based technology company that also does HR, #WeAreHR. [Get the scoop](#) on how we can help you simplify HR.



@WEAREHRK