

# Who Can Know About Employee Vaccination Status?

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**E**mployers are grappling with when supervisors can be told about employees' vaccination status and whether workers can wear badges indicating they've been vaccinated. The answer is complicated by the fact that vaccination status is considered confidential medical information, according to the Equal Employment Opportunity Commission (EEOC).

Mandatory badge requirements on vaccination status should be avoided, legal experts agree, but they're divided over whether employers should let employees wear badges voluntarily.

## When to Inform Supervisors

According to EEOC guidance (<https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>), vaccination information is confidential medical information and as such can be disclosed only on a need-to-know basis.

Who needs to know depends partly on company policy regarding face masks, said Brian Pezza, an attorney with Lewis Rice in St. Louis. "If fully vaccinated employees do not have to wear masks in the office, their direct supervisors might have a need-to-know vaccine status in order to enforce that policy," he said.

"It would be reasonable to disclose employee vaccine status to employees who may be managing a situation with a workplace COVID-19 exposure," said Brett Coburn, an attorney with Alston & Bird in Atlanta.

If an employer has mandated vaccinations and someone is not vaccinated because of an accommodation, that person's supervisor would need to know this information so that the accommodations, which likely would involve social distancing and some wearing of masks in common areas, would be recognized and enforced, said John Zaloom, an attorney with Moore & Van Allen in Raleigh, N.C.

Although questioning employees whether they have been vaccinated is best left to HR, a supervisor may ask employees if they have been vaccinated, as this is not a disability-related inquiry. But Pezza said that supervisors "are not permitted to ask any follow-up questions, especially if an employee answers, 'no.' "

If a worker has not been vaccinated, a supervisor may not ask why or whether the worker plans to get vaccinated in the future. That's the case even though a supervisor might be tempted to ask follow-up questions as part of the natural flow of the conversation, Pezza added. "The bottom line is that an employee's vaccine status is confidential medical information and whoever needs to know should treat it as such."

Employees shouldn't be asked to disclose why they are or aren't vaccinated, because such reasons might reveal disability-related information, explained Emily Harbison, an attorney with Baker McKenzie in Houston.

John Rodgers, an attorney with Bradley in Nashville, Tenn., added, "You sometimes don't want your supervisors knowing too much about a direct report's medical information."

## Wearing Badges

Employees should not be required to wear badges indicating their vaccination status, as this would effectively be the employer forcing employees to disclose their vaccine status, Coburn said.

"While employees can certainly voluntarily choose to disclose their own vaccination status to others in the workplace, I still recommend against the concept of employee badges," he said. "I think badges, even if voluntary, likely do more harm than good."

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Badges might cause others to feel pressure to disclose their own vaccination status. And badges may exacerbate existing tensions in some workplaces between those who are vaccinated and those who aren't.

But Marian Zapata-Rossa, an attorney with Snell & Wilmer in Phoenix, said that while employees should not be required to wear badges indicating their vaccination status, they may do so voluntarily.

Whether employees are allowed to wear badges indicating their vaccination status largely depends on the employer's dress code, Pezza said.

"An employer may have policies stating employees cannot wear buttons or any clothing with words on it. However, if the company does not have a policy, there is nothing preventing employees from indicating to others that they have been vaccinated," he said. "Think of it like an 'I voted' sticker you get on election days. Someone can wear it voluntarily as long as it is consistent with company policy."

"If employees elect to do so voluntarily, risk relating to breach of privacy is lowered," said Emily Litzinger, an attorney with Fisher Phillips in Louisville, Ky. "However, it is still recommended to have employees acknowledge [in writing] the voluntary nature of the disclosure of their own vaccine status."

Nonetheless, Randi Kochman, an attorney with Cole Schotz in Hackensack, N.J., said, "I do not recommend that employees be required or encouraged in any way to wear badges to indicate their vaccination status. ... There are other ways to ensure compliance with the CDC [Centers for Disease Control and Prevention] guidelines and state and local laws without disclosing employees' status."

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### Alternatives

Employers could provide badges or wristbands that indicate that someone has been cleared to not wear a mask in those jurisdictions that allow fully vaccinated employees to not wear facial coverings, assuming the jurisdiction has not passed a vaccination passport law that prohibits such activity by an employer, said Patricia Pryor, an attorney with Jackson Lewis in Cincinnati. Vaccinated employees could then choose whether to identify themselves in that manner.

The badge or band would not identify vaccination status. "Although most will be due to vaccination status, there may be some where this is provided as a reasonable accommodation," she said.

Employees should be informed they may choose to wear a mask for a variety of reasons, so if someone is wearing a mask, that doesn't mean they are unvaccinated, Pryor noted. In addition, employees should have the choice whether to wear the badge or band and be informed that doing so may suggest their vaccination status to others.

If they want to remove their mask, "then the badge or band must be worn," she said.

As a less risky alternative, many employers are publishing policies outlining rules for face coverings and requiring employees to certify that they understand the rules and consequences of violating them, and agree to abide by the rules, Pryor said. "This may be a more prudent and measured approach."

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