

Keeping track: vaccination tracking in the wake of COVID-19

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As the pace of vaccinations continues to pick up steam across the U.S. and other parts of the world, we're feeling a gradual shift away from the panic and uncertainty of a year ago, and toward reengagement with hopes that this summer will look quite different than the last.

Some employers are working through how best to address their employees' fear or hesitancy around getting vaccinated, while others are weighing the benefits and potential pitfalls of requiring their employees to be vaccinated. Still others are including [vaccine tracking programs](#) to support their COVID-19 response plans. Vaccine tracking provides a view into the collective vaccination status of employees and helps employers prioritize and monitor employees' health and safety — and not just for COVID-19; this program can also track for the flu, hepatitis and other diseases.

Tracking vaccination progress has quickly become an important part of the pandemic recovery. It holds a heightened importance for employers working to get [back to business](#) — those who are eager to return their workforce to on-site offices, plants, schools, etc. Fully understanding vaccination trends among their workforces will allow employers to best serve the needs of their people, while keeping the workplace running.

Most employers are opting to promote the vaccine as a health and safety consideration for their workforce, and for the customers and communities they serve and operate within. Fewer are focusing on mandating the vaccine, recognizing that there are a myriad of reasons people may choose not be vaccinated, from historical mistrust in the process to those taking a “wait and see” approach until more time has passed.

HOW IT WORKS

Vaccine tracking — initiated through a brief questionnaire for employees that is voluntary, secure and private — notes which employees have or haven't received a vaccine, who is in need of a second dose, who does not plan to be vaccinated and who is experiencing side effects as a result of vaccination. A strong tracking program includes:

- Reporting on workplace vaccination status
- Monitoring and providing reminders for second doses
- Tracking checkpoints for incentive programs
- Providing prompt communications
- Is your insurance adequate?

Ultimately, in order to address the health and safety of their workforce, the data will be used by employers to support employee paid time off (PTO), stipend pay, vaccine-related incentives, and excusing absences if an employee has adverse side effects from the vaccination.



THE LEGAL PERSPECTIVE

The Equal Employment Opportunity Commission (EEOC) has acknowledged that employers may ask if an employee has had a vaccination, plans to receive a vaccination, or will opt out. They may also request validation that the employee has received a vaccination.

Under the previous administration, the EEOC considered vaccination details as health data, which holds a status of 'special category data' under data protection laws and therefore requires extra protection. We're currently waiting to see how or whether the Biden administration will make any changes to that status.

In terms of employee rights, consent is critical, as is sensitivity to the imbalance of power that often exists between employer and employee. Any vaccine tracking requests should include a clear acknowledgment that the employee's information will be shared with their employer — transparently ensuring that employees understand what will happen with their information promotes heightened awareness and greater acceptance. Communications regarding vaccine tracking are best sent in a way that's consistent with how the employer has been sharing other news and information related to COVID-19 and preparations for returning to on-site work.

For employers with a global presence, monitoring their employees in Europe or the U.K. may require an E.U. and, following Brexit, a U.K. representative. Any vaccine-tracking program with international implications should follow each applicable country's data storage and COVID-19 employer tracking compliance.

Transparency is key: If an employer determines it is justified to record whether their employees have had the vaccine, they also need to make sure each employee understands why they're collecting the information, and what they're using it for.

SECURITY OBLIGATIONS

- **Data minimization:** Only collect data appropriate for the purpose. Being able to customize what is collected is key.
- **Secure storage:** The collection and storage needs to be secure (e.g., password protected, encrypted, assigned hierarchy of access). Respect any duty of confidentiality owed to employees; don't routinely disclose vaccine status among other employees unless there's a legitimate and compelling reason to do so.
- **Continued legitimate grounds:** Regularly review whether you still have grounds for the collection and retention of this information as the vaccination roll-out progresses and more people receive the vaccine. This should include monitoring the latest government and scientific advice on the vaccine roll-out and coronavirus restrictions.

Of course, there will be questions and concerns when it comes to collecting and processing employee health data. It's up to each employer to assess the need for, and to decide if they'll request or require, collecting this kind of personal information. Be sure that you've taken all the necessary steps to ensure the data is safeguarded and not in conflict with local regulatory requirements.

