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| Information Privacy and Security relating to Covid-19 Vaccination Disclosure Requests  William Jones  Syracuse University  IST 618: Information Policy |

**Introduction**

The COVID-19 virus began to spread in early 2020 and subsequently dominated the news cycle. The world waited many months in isolation while scientists worked on a vaccine that would help protect individuals from the COVID-19 virus. On December 11, 2020, the much-anticipated Pfizer-BioNTech COVID-19 vaccine was finally released for use of individuals 16 years of age and older (FDA Approves First Covid-19 Vaccine, 2021). At first the vaccine was limited to only those deemed with high-risk medical conditions or essential workers, but has now been approved and available to anyone above five-years old in the United States.

As the vaccine, and booster shots became more widely disseminated, an individual’s vaccination status became something of great interest to employers, politicians, news outlets, and even friends and family. Some employers have required their workforce to become vaccinated, while others have highly recommended their employees to get the vaccine and disclose their vaccination status. Many companies, organizations and governments have put rigorous testing requirements in place for those who chose to not get vaccinated or disclose their status. These requirements and requests have often been met with backlash by some employees and consumers who are advocates for the right to privacy as well as the right to make their own choices.

The intent of this paper is to review if employers can mandate their employees to disclose their vaccination status. Additionally, this study will review how these employers must handle this data once their employees have shared their vaccination status.

**Section 1 – Privacy**

In November 2021, the company I work for sent around a survey requiring every employee disclose their vaccination status. When I received the email requesting disclosure of my vaccination status, I remember I didn’t particularly enjoy it as it felt like a bit of an invasion of privacy. I thought “I am a CPA and data scientist for an accounting firm, and I work from home every day. I don’t work in a field that was deemed essential at the beginning of the pandemic and I don’t interact face to face with anyone I work with outside of very rare occurrences. Why does my company need to know my vaccination status?” As someone who is strongly principled, the basis for this request felt off. Ultimately, I completed the survey as requested by my employer. As someone who is vaccinated and will speak openly about my vaccination status, it seemed silly to fight completing the survey, but I felt the request was unwarranted and I waited until the last day of the survey to fill it out.

Should my employer have been able to request this information? Did they have the right to make this a required survey or was this really a “highly recommended and if you don’t you will be on a naughty list” situation? To answer these questions, I wanted to see what the Equal Employment Opportunities Commission (“EEOC”) had to say.

The EEOC, which is the federal agency that was established to interpret and enforce civil rights laws relating to workplace discrimination which includes the American Disabilities Act (“ADA”), did not see things as I did, recently stating “EEO laws do not prevent employers from requiring their employees to provide documentation or other confirmation of vaccination” In addition to this, the EEOC stated “The federal EEO laws do not prevent an employer from requiring all employees physically entering the workplace to be fully vaccinated against COVID-19, subject to reasonable accommodation” (Coronavirus and Covid-19, 2022).

There are two key takeaways from these EEOC interpretations. First, the EEOC interpretation states laws do not prevent employers from inquiring about vaccination status, not that laws explicitly allow for the asking of one’s vaccination status. This absence of prohibitive or affirmative legal language have led to various legal battles around the absence of guidance on the topic. Second, the EEOC interpretation is focused on the fair treatment of employees by employers by requiring employers to provide adequate accommodations for when vaccination is not an option. This is in line with EEOC’s mission is to interpret and enforce civil rights laws specific to workplace discrimination and these interpretations aim to address workplace discrimination based upon vaccination status. Per Fisher Phillips, there have been 2,876 total COVID-19 employment related cases between the period of February 14, 2021, to February 14, 2022. These cases have been spread across varying company size and industry but have been primarily focused on topics of Employment Discrimination, Remote Work/Leave, Retaliation/Whistleblower, Wage Disputes, Wrongful Discharge, and Vaccination. These figures demonstrate how the absence of legal language on this topic has led to significant legal activity to adjudicate COVID-19 related issues over the last year. This does not appear to be slowing down with 307 new cases beginning during the first 45 days of 2022 (Health Insurance Portability and Accountability Act of 1996, 2018).

**Section 2 – Security**

It is quite clear that the EEOC has concluded that your employer is currently not prohibited in requesting disclosure of one’s COVID-19 vaccination status. But that is not all the EEOC had to say on the matter. The EEOC continued the statement from above skating “EEO laws do not prevent employers from requiring employees to provide documentation or other confirmation of vaccination” … “this information, like all medical information, must be kept confidential and stored separately from the employee’s personnel files under the ADA” (Health Insurance Portability and Accountability Act of 1996, 2018). While I may not see eye to eye with the EEOC on disclosing my vaccination status to my employer, this statement and conclusion is something I agree with. This personal, private, sensitive health information about one’s vaccination status should not be kept with rest of the employee master file and be held to a higher standard for record retention and security.

There are strict rules defining how medical data including vaccination status should be managed. In 1996 the US Congress passed the Health Insurance Portability and Accountability Act, better known as “HIPAA”, which stipulated how personally identifiable information was maintained by covered entities (health plans, health care clearinghouses, and health care providers that transmit health care data). Additionally, under HIPAA Personal Health Information is held to a higher standard of record retention and security due to its sensitive nature under the Privacy Rule. The Privacy Rule “standards address the use and disclosure of individuals’ health information (known as “protected health information”) by entities subject to the Privacy Rule. These individuals and organizations are called “covered entities.” The Privacy Rule also contains standards for individuals’ rights to understand and control how their health information is used. A major goal of the Privacy Rule is to ensure that individuals’ health information is properly protected while allowing the flow of health information needed to provide and promote high quality health care and to protect the public’s health and well-being. The Privacy Rule strikes a balance that permits important uses of information while protecting the privacy of people who seek care and healing” (Phillips, 2022).

In addition to the Privacy Rule, which governs how covered entities must keep personal health data, HIPAA has the Security Rule which sets guidelines for how entities must store this data. The Security Rule has 3 fundamental aspects for covered entities to remain compliant, which are 1) administrative, 2) physical, and 3) technical. Administrative refers to the clearly documented processes that show how a covered entity is compliant. Physical refers to ensuring access to the data is limited to those who have appropriate authority to view the data and have been trained on how to appropriately handle the data. Technical refers to the surrounding infrastructure around the data to ensure the data is maintained in a secure and safe manner. If I were to rephase these principals it would be 1) documentation, 2) access and passwords, and 3) technology (Phillips, 2022).

HIPAA standards are only applicable to covered entities, such as hospitals, insurance providers, etc.. Non-covered entities do not have to follow HIPAA standards, unless their product is based around health related data (ie. fitbit). These companies must “ensure their products or services do not compromise patient privacy” (Phillips, 2022).

**Conclusion/Recommendation**

To conclude, my company had every right to ask me for my COVID-19 vaccination status and now that they have that data they must follow a set of rules on how to handle it. I am pretty confident my company has done all the right things with this data, I know the team who actually administered the survey and they are top notch as well as my company’s business is to audit processes and report compliance or non-compliance to investors. I am not sure that can be said for all companies in the US. I believe the smaller and less sophisticated a company is has an inverse relationship to the risk of mishandling COVID-19 relating personal health information. Additionally, I believe if a company lacks a formal or sophisticated human resources department this increases the risk of mishandling COVID-19 relating personal health information. The disclosure and documentation of COVID-19 related personal health information has a high bar for data privacy and retention standards, if you are a company that wishes to know your employees COVID-19 vaccination status you must meet these standards or risk government oversight and action for your non-compliance.

**Resources - https://www.scribbr.com/apa-citation-generator/**

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