

FAKE VACCINE CARDS MAY BECOME EMPLOYERS' NEXT NEW HEADACHE: 5 STEPS TO PROTECT YOUR COMPANY

Insights
Oct 25, 2021

As vaccine mandates increase, employers may face yet another headache in the continuing stream of pandemic-related concerns: employees presenting fake cards when asked to establish proof of vaccination. What can you do if you believe an employee has presented a fake vaccine card? And can your company be liable for relying on such falsified records?

How Widespread Is the Practice?

There are a growing number of Americans who are attempting to avoid vaccine mandates by using fake or bogus vaccination cards. As with the fake IDs used by underaged students to obtain alcohol, the internet has spawned a cottage industry marketing the bogus cards. The fake cards are increasingly available for vaccine hesitant customers, students, and employees who are willing to pay for the cards.

Fake vaccination documents can be purchased through a variety of social media sites, the black market, and other internet platforms. Vaccine-hesitant employees and customers have also been caught making homemade versions of vaccine cards.

Bogus vaccination cards are illegal under federal and certain state laws. Indeed, workers using counterfeit vaccine cards are running a significant legal risk. The use and forgery of government seals such as the CDC vaccination card is illegal, with violations ranging from a fine of up to \$5,000 or

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up to five years imprisonment. Many state laws also prohibit such activity.

Unfortunately, there is increasing evidence that many vaccine-hesitant people are willing to take the risk of criminal prosecution.

- One high profile example of the growing problem was evidenced by the recent [21-game suspension of an NHL player](#) who was alleged to have used a fake vaccination card in response to the league's COVID-19 policy. As a result of his actions, he will forfeit over a million dollars in pay.
- Three Vermont state troopers were forced to resign from their jobs after they were accused of playing a role in [manufacturing counterfeit vaccination cards](#).
- In another reported case, [a New Jersey woman calling herself the "AntiVaxMomma" on Instagram](#) was arrested for selling hundreds of fake vaccine cards online for \$200 apiece.
- The increasing demand for false documentation is also evidenced by a recent report that [U.S. Customs agents in Tennessee and Alaska seized thousands of fake vaccination cards](#) that came from China.

There have been increasing demand by some leaders, including Senator Chuck Schumer (NY), for law enforcement to step up efforts to shut down internet or online sales of fraudulent certification cards.

What's at Risk?

Regardless of how many counterfeit vaccine cards are floating around, the key question is whether you may face safety or legal exposure if any of your employees have falsified or misrepresented their vaccination status.

From a workplace safety standpoint, there is no doubt that someone who has skirted your rules can present a threat to other workers, members of the public, and other third parties at the worksite. If you have eased safety and social distancing measures for employees who are vaccinated, and/or discontinued any COVID-19 testing requirements for inoculated workers, an unvaccinated person who slips through the cracks could pose a danger to those around



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them. This concern alone requires you to take this emerging problem seriously.

Fortunately, your company's legal liability in such a scenario is most likely low. As long as you have taken reasonable measures to check the vaccination status of your workforce, someone who has misled you by using a fake vaccine card is unlikely to subject the company to a high level of legal exposure. Certainly, your company could be sued, but your odds of successfully defending such a claim would hinge on the reasonableness of your verification process. This means that you should establish reasonable parameters to check vaccine cards, not simply allowing managers or other gatekeepers to give them a quick, cursory glance without reviewing key details. The more reliable your verification system, the better your odds of defeating any negligence claims relating to an employee's use of a phony vaccine card. The obvious implication is that simply using an "honor system" appears less likely to withstand challenges, from plaintiffs' lawyers or agencies such as OSHA.

What Can You Do About It?

If you suspect that an employee has presented a falsified vaccine card – what can you do about it? You can certainly take serious action, up to and including termination of employment. If you are concerned about this issue, the following five steps can put your company in a much stronger position:

- 1. Identify factors that reasonably indicate the need for further inquiry.** Develop a list of factors that would lead you to make additional inquiries. This tool can save time, improve the effectiveness of your process and ensure consistency. Factors should include things like the absence of information called for on the now-familiar CDC Vaccination Record card, such as the manufacturer, lot number, date and identification of the vaccine provider. Other red flags could be misspellings (such as the woman who was arrested after presenting [a counterfeit card saying she received the "Maderna" vaccine](#)); inconsistent dates; the name of an unfamiliar manufacturer or provider; apparent "corrections" or illegible portions of the card; thin-cut paper rather than a card; a card that appears to have been cut with scissors; a card that appears to be fully *printed* instead of being at least partially handwritten; handwriting that appears to be entirely uniform (in an environment where shots were

given on more than one date); or other objective information that would reasonably raise questions about the authenticity of a card. At the same time, avoid acting on speculation or unsubstantiated rumors. OSHA, CMS or other regulators may promulgate additional guidance on this process, which you should of course incorporate into your policies.

2. **Apply to your practices consistently.** When making additional inquiries, recognize the inherent risk of taking an action toward one employee (or group of employees) without treating others the same way. Singling out individuals or groups by asking more questions, seeking further documentation, or taking additional other steps raises the potential for discrimination or retaliation claims. Claims could of course be based on differences in gender, age, race, disability, sexual orientation, gender identity, religion, or any other protected categories. This makes consistent application of your process especially important.
3. **Document the reasons why you are seeking more information about a specific card.** If one or more factors lead you need more information or to question the authenticity of a vaccine card, clearly and objectively document your specific concerns. Such documentation not only reflects legitimate non-discriminatory reasons for making further inquiry, it also demonstrates that the company is exercising reasonable care before accepting vaccination cards, in the event OSHA or another agency challenges the integrity of your process.
4. **Recognize the sensitivity of the subject matter.** In posing questions about a card, you should of course respect the personal, confidential nature of each employee's vaccination status. Also keep in mind that the pandemic and vaccine issues often stir strong feelings. Thus, make it a point to seek clarifying information in a respectful, non-accusatory manner. Staying focused on the objective factors that led to your inquiry and give the employee a fully opportunity to explain. Assure the employee of the confidentiality of your discussion and safeguard all information obtained in the process.
5. **Ensure that your policies are clear.** As we have discussed many times, it is important to clearly communicate your company's approach to vaccines and workplace safety, in the form of policies, postings,

meetings and emails. You should also confirm that your policies are up-to-date regarding the requirement that all employees must be truthful and accurate in all communications with the company, spelling out that dishonesty or other violations of this policy may result in termination, even for a first offense. Policies should leave no doubt as to how serious the company is about its commitment to workplace safety and honest, accurate communications.

Conclusion

We will monitor these developments and provide updates as events warrant. Make sure you are subscribed to [Fisher Phillips' Insight system](#) to get the most up-to-date information. If you have questions about how to ensure that your vaccine policies comply with workplace and other applicable laws, visit our [Vaccine Resource Center for Employers](#) or contact your Fisher Phillips attorney, the authors of this Insight, or any attorney on our [FP Vaccine Subcommittee](#).