

Labor & Employment Alert
October 13, 2021

**Understanding the Privacy Rule Under HIPAA as an
Employer Requiring Proof of Vaccination**

The Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) recently published a [new guidance](#) on disclosures and requests for information regarding a person's receipt of the COVID-19 vaccination in relation to the Health Insurance Portability and Accountability Act (more commonly known as HIPAA). As employers continue to develop COVID-19 vaccination policies in the workplace, this guidance may be important.

In short, HHS's guidance outlines how HIPAA's "Privacy Rule", the regulatory provisions that limit the uses and disclosures of protected health information (PHI), is limited to "covered entities" only. The definition of "covered entities" includes health plans, health care clearinghouses, health care providers that conduct standard electronic transactions, and, to some extent, their business associates (e.g., health care claims processing services, medical transcriptionists, and accounting firms that have access to protected health information). For example, a doctor's office, as a covered entity, would generally be limited by HIPAA's Privacy Rule from disclosing to a third party an individual's COVID-19 vaccination status without the individual's authorization.

HIPAA does **not** prohibit employers, including covered entities acting as employers, schools, stores, restaurants, entertainment venues, or any other individual from requesting or obtaining PHI, such as proof of COVID-19 vaccinations. This is so even for covered entities or their business associates acting in the capacity of employers.

Of course, as OCR points out, other state or federal laws may impact whether an employer can require an employee to be vaccinated and provide proof of the vaccination. Thus, for example, the Americans with Disabilities Act (ADA) requires that an employee's proof of vaccination be stored separately and maintained confidentially, and treats such proof as a confidential medical record as that term is defined under the ADA.

For more federal guidance in drafting a COVID-19 vaccination policy, please check out MHTL's [Toolkit of Federal Guidance for Developing a Workplace COVID-19](#). Given the EEO laws which may be implicated as well as other potential wage and hour obligations that may arise in drafting a workplace vaccination policy, employers are well-advised to consult with legal counsel as they roll out and implement vaccine policies.

This Client Alert was prepared by Brendan Collins, and was reviewed with Nan O'Neill, Kier Wachterhauser and Felicia Vasudevan. If you have any questions, please contact Brendan Collins, Nan O'Neill, Kier Wachterhauser or the attorney assigned to your account, or call (617) 479-5000.

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