

The logo for the U.S. Department of Veterans Affairs, consisting of the letters 'VA' in a bold, black, sans-serif font.

U.S. Department of Veterans Affairs

Office of the Chief Human Capital Officer

VA Central Office
Washington, DC

October 26, 2021

OFFICE OF THE CHIEF HUMAN CAPITAL OFFICER (OCHCO) BULLETIN

SUBJECT: Mandatory COVID-19 Vaccination Frequently Asked Questions – Version 2

This updated OCHCO Bulletin notifies Human Resources (HR) offices about updated information in the frequently asked questions (FAQ) developed to support the [VA Handbook 5019 Policy Notice](#), Mandatory Coronavirus Disease 2019 (COVID-19) Vaccination Program for VA Employees and OCHCO Bulletin, [Mandatory COVID-19 Vaccination Program for all VA Employees](#).

The intent of the FAQs is to assist HR offices in answering the most common questions employees may have regarding Executive Order 14043 and the mandate for all Federal employees to be vaccinated against COVID-19, other than in limited circumstances where the law requires an exception.

Employees should contact their HR office with questions. HR offices with questions regarding this bulletin may be referred to Worklife and Benefits Service at vaco058worklife@va.gov.

Issued by: VA/OCHCO/Worklife and Benefits Service

Attached:

COVID-19 Vaccination Frequently Asked Questions – Version 2

COVID-19 Vaccination Frequently Asked Questions

The information below is based on guidance from the Office of Management and Budget (OMB), Safer Federal Workforce Task Force (Task Force), and Office of Personnel Management (OPM). In implementing the guidance received, the Department of Veterans Affairs (VA) must comply with all collective bargaining agreements, local supplemental agreements, and memoranda of understanding.

General Information

Q: Am I required to comply with the requirements in the VA Handbook 5019 Notice, published October 4, 2021?

A: Yes. All VA employees are required to comply with the requirements in 5019. These requirements include being fully vaccinated for COVID-19 (and submitting proof of vaccination) or requesting an exception by the deadlines outlined in 5019.

Q: What is the authority that allows the agency to require I comply with the 5019 requirements?

A: On September 9, 2021, President Biden signed Executive Order (EO) 14043. The EO requires Federal agencies to establish a program requiring COVID-19 vaccination for all employees, with exceptions as required under law. Additionally, the Task Force issued guidance that requires agencies to collect documentation to prove vaccination.

Q: What if I decide not to comply with the requirements in 5019?

A: If you do not comply with the requirements in 5019, you will be subject to disciplinary action up to and including removal for failing to follow lawful orders.

Q: Will Contract employees have to be vaccinated?

A: Yes, in accordance with the terms and conditions of particular contracts when modified to include this requirement. The Safer Federal Workforce Task Force COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors [webpage](#) states that, pursuant to Executive Order 14042, [Ensuring Adequate COVID Safety Protocols for Federal Contractors](#).

Q: The Texas Governor issued an [executive order](#) indicating that “no governmental entity can compel any individual to receive a COVID-19 vaccine.” If I live in Texas, does this mean I don’t have to get the COVID-19 vaccine?

A: No. Federal employees who live in Texas are still required to follow Federal mandates. The Supremacy Clause of the U.S. Constitution, Article VI, Paragraph 2, which provides that federal law generally preempts or takes precedence over state laws, including any state executive orders prohibits states from interfering with the federal government's exercise of its constitutional powers. Thus, no state laws or executive orders can prevent VA from requiring its employees to get the COVID-19 vaccination.

Veterans' Health Administration Healthcare Personnel

Q: I meet the definition of VHA Healthcare Personnel (VHA HCP). What is the date by which I need to be fully vaccinated or request an exception?

A: VHA Directive 1193 was issued on August 13, 2021 and required all covered VHA HCP to receive the vaccine series within eight weeks of publication of the Directive (i.e., by October 8, 2021). VA Handbook 5019 maintains the October 8, 2021, deadline for VHA HCP to receive a full series of vaccine shots (i.e., two shots for Pfizer or Moderna and one shot for Johnson & Johnson (J&J)). You are considered fully vaccinated two (2) weeks after your last shot. If not fully vaccinated, VHA HCP must submit a request for an exception by October 18, 2021.

If you do not meet the definition of VHA HCP in VHA Directive 1193, you will be required to meet the deadline for all other VA employees of being fully vaccinated or you must request an exception by November 22, 2021. To be fully vaccinated by November 22, 2021, you must receive the full series of vaccine shots by November 8, 2021.

Note: If you have not been successful in updating your vaccination status in LEAF, please update your information as soon as possible at the [VA LEAF Vaccination Portal](#). If helpful, more instructions can be found [here](#). If you are still not able to update your vaccination status, please let your supervisor know as soon as possible. Your supervisor needs to know you are trying but have not been successful in entering your vaccine data. Although LEAF is preferred and should be the means by which employees submit this information, there is an option for employees who have difficulty accessing LEAF to use VA Form 10230.

Q: How do I know if I am considered a VHA HCP covered under the October 8th deadline from VA Handbook 5019 Notice?

A: The definition of VHA HCP is listed below. If you are in a position covered by the definition you must receive your vaccination series by October 8, 2021.

VHA HCP refers to all paid and unpaid persons who work in or travel to VHA locations who have the potential for direct or indirect exposure to patients or infectious materials, including body substances (e.g., blood, tissue, and specific body fluids); contaminated medical supplies, devices, and equipment; contaminated environmental surfaces; or contaminated air. These HCP may include, but are not limited to, emergency medical service personnel, nurses, nursing assistants, physicians, technicians, therapists, phlebotomists, pharmacists, health professions trainees (HPTs), and persons (e.g., clerical, dietary, environmental services, laundry, security, maintenance, engineering and facilities management, administrative, billing, and volunteer personnel) not directly involved in patient care but potentially exposed to infectious agents that can be transmitted from HCP and patients. HCP include all VA licensed and unlicensed, clinical and administrative, paid and without compensation, full- and

part-time, intermittent, fee basis employees who are expected to perform any or all their work at these locations. HCP also includes VHA personnel and contractor personnel providing home-based care to Veterans and drivers and other personnel whose duties put them in contact with patients outside VA medical facilities.

Q: What does “fully vaccinated” mean?

A: Individuals are considered fully vaccinated two (2) weeks after receipt of the second dose in a two-dose series, or two (2) weeks after receipt of a one-dose series.

Q: Why are there two deadlines for VA employees to be fully vaccinated?

A: To protect the health and safety of our employees and Veterans, the Secretary of Veterans Affairs initially required the COVID-19 vaccine for only VHA HCP. VHA Directive 1193 was issued on August 13, 2021 and a deadline of eight weeks from publication established October 8, 2021, for compliance. This deadline is maintained in VA Handbook 5019.

On September 9, 2021, Executive Order (EO) 14043 was issued mandating the COVID-19 vaccine for all Federal employees and established November 22, 2021 as the date by which all Federal employees must be fully vaccinated. When the EO was issued, VA and other Federal agencies who had already mandated vaccines were allowed to complete implementation of their previously announced vaccination requirements.

Q: How do I know if I have complied with requirements for VHA HCP from VA Directive 5019?

A: If you completed VA Form 10-263 confirming you received all vaccine doses by October 8, 2021 or were seeking an exception and submitted it to VHA Employee Occupational Health (EOH) with all required documentation and signatures, you were compliant with the requirements of VHA Directive 1193. With the publication of VA Handbook 5019, VHA HCP must complete a vaccination series by October 8 and submit the documentation outlined in VA Handbook 5019 or request an exception within 14 days of publication (October 18, 2021) in order to be compliant with the new Handbook, dated October 4, 2021, which superseded VHA Directive 1193, dated August 13, 2021.

Q: If I fully complied with VHA Directive 1193, why do I now have to fill out more paperwork?

A: To implement the requirements in EO 14043, all VA employees (including VHA HCP) are required to comply with VA Handbook 5019. VHA Directive 1193 has been superseded by the new process in VA Handbook 5019. Therefore, documentation is required from all employees, even those VHA HCP who already submitted the required documentation under VHA Directive 1193.

[If you are a VHA HCP and do not complete a Release of Information \(ROI\) form in LEAF or submit a completed VA Form 10230 with attached documentation showing](#)

proof of vaccination to your supervisor by October 18, 2021, you may be subject to disciplinary action up to and including removal.

Note: If you have not been successful in updating your vaccination status in LEAF, please update your information as soon as possible at the [VA LEAF Vaccination Portal](#). If helpful, more instructions can be found [here](#). If you are still not able to update your vaccination status, please let your supervisor know as soon as possible. Your supervisor needs to know you are trying but have not been successful in entering your vaccine data. Although LEAF is preferred and should be the means by which employees submit this information, there is an option for employees who have difficulty accessing LEAF to use VA Form 10230.

Q: Now that the President has required all Federal employees to be fully vaccinated will VA continue to have two COVID-19 vaccine policies?

A: No. VHA Directive 1193 is [replaced](#) by VA Handbook 5019, which was published on October 4, 2021. VA Handbook 5019 maintains the October 8, 2021 deadline for VHA HCP to complete a vaccination series which is listed in VHA Directive 1193.

Executive Order 14043

Q: What if I am a VA employee but not a VHA HCP as defined in VA Handbook 5019?

A: As noted above, EO 14043 mandates all Federal employees be fully vaccinated for COVID-19. The SFWTF issued implementation guidance requiring all Federal employees to be fully vaccinated or request a medical or religious accommodation by November 22, 2021, to comply with the EO 14043 requirement. All VA employees (except VHA HCP with earlier deadlines) must receive their last dose of their COVID-19 vaccine no later than November 8, 2021 to meet the November 22, 2021, deadline to be fully vaccinated against COVID-19.

Q: I am a remote worker. Does this apply to me?

A: Yes. Every Federal employee, to include remote employees, virtual employees, and employees on maximum telework, are required to receive the COVID-19 vaccine or request a medical or religious exception by October 18, 2021 but no later than November 22, 2021.

Section 3 of [Executive Order 14043](#), Requiring Coronavirus Disease 2019 Vaccination for Federal Employees defines “employee” based on the definition in [5 U.S.C. 2105](#), which is to say it covers all VA employees regardless of whether an individual is working from home or an approved alternate worksite.

In addition, implementing guidance from the Safer Federal Work Force Task Force [frequently asked questions](#) specifies that maximum telework employees and those working remotely were not excused from the requirement because such employees may

interact with members of the public as part of their duties and employees may be recalled back to the office. In addition to the circumstances mentioned in the guidance, an employee may need to be onsite for required training, to repair computer equipment, or renew PIV badges, etc.

Q: What are the timeframes for me to become fully vaccinated?

A: The timeframes for non-VHA HCP are dependent upon which vaccine you receive:

- Pfizer-BioNTech COVID-19 vaccine: requires two shots three (3) weeks (or 21 days) apart.
 - First dose: No later than October 18.
 - Second dose: 21 days after first dose but no later than November 8.
- Moderna COVID-19 vaccine: requires the shots four (4) weeks (or 28 days) apart.
 - First dose: No later than October 11.
 - Second dose: 28 days after first dose but no later than November 8.
- Johnson & Johnson vaccine: requires only one shot
 - First (and only) dose: No later than November 8.

For VHA HCP, they must receive a complete COVID-19 vaccine series by October 8, 2021, as previously outlined in VHA Directive 1193, now reflected in VA Handbook 5019.

Q: Where can I get the vaccine?

A: Employees can find information on locations where they can receive the COVID-19 vaccine at www.vaccines.gov. Employees interested in receiving the vaccine through VA can find their local [COVID-19 Vaccination Coordinator](#) to schedule an appointment.

Q: How does EO 14043 impact new hires?

A: Human Resources will notify prospective employees of the mandatory COVID-19 vaccination program in job opportunity announcements and tentative and final offer letters. All individuals who start their government service after November 22, 2021, need to be fully vaccinated prior to their start date, except in limited circumstances where a reasonable accommodation is legally required. Prospective employees will be asked to provide proof they are fully vaccinated or will be advised to request a medical or religious exception after receipt of a tentative offer. If a prospective employee does not provide the required proof of vaccination status or request an exception, the prospective employee may not be extended a final offer of employment or onboarded.

Q: What about urgent hiring needs after November 22, 2021?

A: Should VA have an urgent, mission-critical hiring need to onboard new staff prior to those new staff becoming fully vaccinated, the agency head may approve an exception. This authority has been delegated in VA Handbook 5019 Notice 22-01, dated October 4, 2021, from the VA Secretary to Under Secretaries, Assistant Secretaries, Other Key Officials, Deputy Assistant Secretaries, and field facility heads. In the case of such limited hiring exceptions, new hires need to be vaccinated within 60 days of their start

date and follow safety protocols for not fully vaccinated individuals until they are fully vaccinated.

Vaccination Status Documentation

Q: How is VA tracking vaccination status of employees?

A: VA has developed an electronic system to collect employee vaccination status and vaccination proof information: [VA LEAF](#) Vaccination Portal. Employees who do not have regular, routine access to a VA computer and network can complete a paper copy of the form ([VA Form 10230](#)) and submit the form and appropriate documentation to their supervisor.

Q: How do I submit proof of vaccination?

A: Employees may submit proof in the [VA LEAF](#) Vaccination Portal or through submission of a paper form (VA Form 10230) to their supervisor. Employees must certify under penalty of perjury that the documentation they are submitting is true and correct.

- To submit the required documentation, go to:
https://leaf.va.gov/NATIONAL/101/vaccination_data_reporting/.
- Employees may request a paper copy of [VA Form 10230](#) from their supervisor, if they do not have regular, routine access to a VA computer or network.

Q: When should employees use the paper VA Form 10230?

A: Employees are highly encouraged to use LEAF when submitting their vaccination response. VA Form 10230 should only be used when employees do not have regular or routine access to a VA computer and network may use the paper form to submit proof of vaccination. Additionally, employees who have (or who are subsequently granted) a reasonable accommodation because they are unable to use a computer should complete the paper VA Form 10230.

Employees who submit a paper VA Form 10230 and select option 2 (authorizing VHA to disclose their vaccination record) must also complete and sign a [VA Form 10-5345](#), authorization to release information form, to accompany the VA Form 10230.

Q: What is considered acceptable proof of vaccination?

A: Employees may provide a digital copy of such records, including, for example, a digital photograph, scanned image, or PDF of such a record that clearly and legibly displays the information outlined below. Employees may provide a copy of:

- the record of immunization from a health care provider or pharmacy,
- the COVID-19 Vaccination Record Card,
- medical records documenting the vaccination,
- immunization records from a public health or state immunization information system, or
- any other official documentation containing required data points.

The data that must be on any official documentation are: the type of vaccine administered, date(s) of administration, and the name of the health care professional(s) or clinic site(s) administering the vaccine(s). Employees must certify under penalty of perjury that the documentation they are submitting is true and correct.

Q. If an employee was vaccinated by VA but has lost their vaccine card and doesn't have a record of it, what does the employee use as "proof" of vaccination?

A: The employee can obtain a copy of their vaccination records from EOH (or primary care if vaccinated as a veteran) with a release of information to themselves. To obtain the record, the employee must complete and sign a [VA Form 10-5345a](#), Individual's Request for a Copy of Their Own Health Information, then provide it to EOH.

Note: The VA Form 10230 is not a substitute for providing proof of vaccination. Employees who choose to complete the form in lieu of submitting their response in LEAF will be required to attach the proof of vaccination record when the VA Form 10230 is submitted.

Q: If an employee was vaccinated outside VA but has lost their vaccine card and doesn't have a record of it, what does the employee use as "proof" of vaccination.

A: Employees who have lost their vaccine card can obtain a replacement vaccination card or at least obtain a digital copy of their record. Most vaccine providers and state health departments have already put in place measures to help individuals obtain a copy of their COVID-19 vaccination record. Employees should contact the place where they were vaccinated first to see if they may access their vaccine records online. Most retail pharmacies allow customers to look up their vaccine records on their website or through a smartphone application. Employees may also contact [their state's health department](#) for a copy of the vaccination record. Some states have registries (Immunization Information Systems) that include adult vaccines. Once the employee has gotten a new card or a digital record of the vaccination, they should store it safely. Among the easiest ways is to take a picture of the vaccination card with a smartphone.

Note: The VA Form 10230 is not a substitute for providing proof of vaccination. Employees who choose to complete the form in lieu of submitting their response in LEAF will be required to attach the proof of vaccination record when the VA Form 10230 is submitted.

Q: My vaccination card shows the last four digits of my social security number. Can I redact or otherwise mark this out before submitting it in LEAF?

A: Yes. Employees do not need to provide any part of their social security number with their vaccination card.

Q: Who will have access to the information I provide?

A: Each VA Administration and Staff Office will designate an official to monitor and track compliance with the COVID-19 vaccine mandate. Supervisors will otherwise ensure information is entered in the [VA LEAF](#) Vaccination Portal or receive paper copies of [VA Form 10230](#) with appropriate documentation. The information is protected by the Privacy Act and will be shared only with those VA employees who have a need to know for the information to perform their duties. The information is maintained separate and apart from the employee's personnel record.

Q: Why am I receiving a reminder message if I completed my submission in LEAF?

A: Employees initially received reminder emails until the system was able to verify the information submitted. However, due to latency issues experienced in the system, the reminder messages are no longer being sent to employees.

Q: What should the supervisor do with the paper copies of the VA10230 (and VA 10-5345) forms received from employees?

A: Supervisors should follow the [LEAF Job Aid](#) for uploading the employee's documents into LEAF. Prior to entering information in LEAF, the supervisor should use the [Authorization Requirements Checklist](#) to ensure the employee has completed all required information on the VA Form 10-5345.

Hours of Duty

Q: Do I have to take leave to get vaccinated?

A: No. Employees who receive the COVID-19 vaccine during duty time remain in a duty status for the time it takes to receive the vaccine (including travel and wait time), not to exceed four hours, per dose.

In the rare circumstance that an employee is unable to receive the vaccine during duty time, they are authorized overtime for the time it takes to receive the vaccine (including travel and wait time), not to exceed four hours, per dose. Employees must receive supervisory approval prior to requesting overtime to receive the vaccination outside of duty hours.

Additional information on leave availability can be found in the OCHCO Bulletin, [Authorized Absence for Individuals and Family Members who Receive the COVID-19 Vaccine](#), dated September 21, 2021.

Q: What if I experience side effects from the vaccine? Am I required to use my accrued leave?

A: Employees who experience severe, adverse reactions to the vaccine are eligible for up to two days of authorized absence (AA) to recover from any side effects experienced after each dose of the vaccine. Employees may also use sick leave if incapacitated for duty.

Additional information on leave availability following a severe, adverse reaction can be found in the OCHCO Bulletin, [Authorized Absence for Individuals and Family Members who Receive the COVID-19 Vaccine](#), dated September 21, 2021.

Employees who elect workers' compensation benefits for injury or illness, may be entitled to leave under the Federal Employees' Compensation Act (FECA), if FECA requirements are met. Contact your local workers' compensation specialist for assistance.

Q: May I file a Workers' Compensation claim related to receiving the COVID-19 vaccine?

A: The Federal Employees' Compensation Act (FECA) covers injuries that occur in the performance of duty. The FECA does not generally authorize provision of preventive measures such as vaccines and inoculations, however, care can be authorized by the Office of Workers Compensation Programs (OWCP) for complications of preventive measures which are provided or sponsored by the agency, such as adverse reaction to prophylactic immunization. Given that COVID-19 vaccination is now a requirement for Federal employees under EO 14043, employees who receive COVID-19 vaccinations after September 9, 2021 (the date the EO was signed) may be afforded coverage under FECA for adverse reactions to the vaccine or injuries sustained while obtaining vaccination (see FECA Bulletin 22-01 for full coverage requirements). Employees who received COVID-19 vaccinations prior to September 9, 2021, and sustained adverse reactions, are eligible to file a FECA claim only if the inoculation was furnished or sponsored by the Employing Establishment. Workers' compensation claims for vaccinations should be filed on a form CA-1, *Notice of Traumatic Injury and Claim for Continuation of Pay*. Employees should contact their supervisor or local workers' compensation specialist for assistance with submitting a workers' compensation claim.

Q: I have heard about Authorized Absence (AA) upon becoming fully vaccinated, am I eligible?

A: If an employee who accrues leave has been fully vaccinated or received an approved exception, they may receive up to four (4) hours of AA (also known as administrative leave) subject to normal leave approving procedures. For additional information see the OCHCO Bulletin, [Paid Time Off for VA Employees Fully Vaccinated Against COVID-19](#), dated August 31, 2021.

Discipline

Q: I do not intend to get the COVID-19 vaccine by November 22, 2021, and I do not have an approved exception, will I be fired?

A: You may be subject to disciplinary action, up to and including removal, for failure to follow a lawful order.

Q: Is discipline different for employees covered under VHA Directive 1193 and VA Handbook 5019?

A: All employees are now covered by VA Handbook 5019. The procedures for addressing misconduct related to non-compliance for VHA HCP and all other VA employees in VA Handbook 5019 are the same. However, the date for initiating such actions may be different because of the different requirements outlined in the two documents. Under VA Handbook 5019, an action may be initiated after October 18, 2021 for VHA HCP, when a supervisor confirms an employee has not submitted a request for an exception or submitted an ROI or VA Form 10230. For all other VA employees, counseling and education actions may be initiated after November 22, 2021, which is the deadline to be fully vaccinated or have an exception request submitted.

Q: What steps will be taken to address non-compliance for an employee who is not serving a probationary period and has no prior discipline?

A: VA will follow the relevant regulations and policies related to misconduct. It will consider the relevant Douglas Factors for title 5 and hybrid title 38 employees and aggravating and mitigating factors for title 38 employees in determining the appropriate penalty for non-compliance with the COVID-19 vaccine mandate. As reflected in OPM's guidance, the first step should be counseling. Employees should receive education and information about the vaccine's benefits and be encouraged to get vaccinated. If an employee does not make a good faith effort to get vaccinated or request an exception and they are not taking steps to comply with the requirement to get vaccinated after counseling, VA may engage in progressive discipline, which could include a 14-calendar-day or less suspension without pay. The employee would continue to work as scheduled during the notice period while continuing to take necessary safety precautions such as wearing a mask and social distancing, if appropriate. If the employee takes steps to comply with the requirement to be vaccinated during the notice period, the disciplinary action may be held in abeyance in order to demonstrate compliance. If, after counseling and after any discipline for the initial non-compliance with the policy, the employee does not take steps to comply with the requirement, further progressive discipline will be taken, which could include removal from Federal service. Each case will be assessed independently, based on the facts and circumstances surrounding that case and any extenuating and mitigating circumstances.

Q: What if an employee has prior discipline and now fails to comply with the requirement to get vaccinated?

A: As reflected in OPM's guidance, the first step should be counseling. Employees should receive education and information about the vaccine's benefits and be encouraged to get vaccinated. If an employee does not make a good faith effort to get vaccinated or request an exception and they are not taking steps to comply with the requirement to get vaccinated after counseling, VA will follow the relevant regulations

and policies related to misconduct. It will consider the relevant Douglas Factors for title 5 and hybrid title 38 employees and aggravating and mitigating factors for title 38 employees in determining the appropriate penalty for non-compliance with the COVID-19 vaccine mandate.

Q: What if I decide to resign or retire instead of getting vaccinated or requesting an exception?

A: VA employees are permitted to voluntarily resign or retire at any time for any reason. If an employee remains employed by VA after the prescribed date for providing evidence of vaccination or being denied a request for an exception, and they continue to be non-compliant with the COVID-19 vaccine mandate, then they may be subject to discipline up to removal.

Exceptions

Q: May I request an exception to the requirement to be fully vaccinated?

A: Yes. Employees may request a medical or religious exception to the requirement to be fully vaccinated. Initial requests should be submitted via [VA LEAF](#) Vaccination Portal or through submission of a paper copy of [VA Form 10230](#) to the employee's supervisor. Once the exception request is received, supervisors will initiate the appropriate reasonable accommodation process for addressing the employee's request depending on whether the exception is for medical or religious reasons.

Q: What is the timeframe for submitting exceptions under VA Handbook 5019?

A: VHA HCP should submit requests for medical or religious exception by October 18, 2021. Non-VHA HCP and all other employees are strongly encouraged to submit requests for a medical or religious exception by October 18, 2021, but no later than November 22, 2021.

Note: If you have not been successful in updating your vaccination status in LEAF, please update your information as soon as possible at the [VA LEAF Vaccination Portal](#). If helpful, more instructions can be found [here](#). If you are still not able to update your vaccination status, please let your supervisor know as soon as possible. Your supervisor needs to know you are trying but have not been successful in entering your vaccine data. Although LEAF is preferred and should be the means by which employees submit this information, there is an option for employees who have difficulty accessing LEAF to use VA Form 10230.

Q: What do I do while my request for an exception is pending approval?

A: While a request for medical or religious exception is being reviewed, the employee will remain in a duty status and will wear a face mask, physically distance, be subject to Government-wide travel restrictions, and comply with any additional mitigation measures such as COVID-19 testing.

Q: Who will have access to my documentation?

A: Personally Identifiable Information (PII) in such documentation is protected by the Privacy Act. VA may not share the information except with VA employees with a legitimate need to know for the information in the performance of their duties or as otherwise permitted by law.

Q: What if my exception is denied?

A: Upon denial, you must receive your first (or, if a one-dose series, only) dose within two weeks of the final determination to deny the accommodation. If receiving a two-dose series, you should receive the second dose within six (6) weeks of receiving the first dose.

If you received a first dose of a two-dose series prior to seeking an accommodation, and the request for accommodation is denied, you must receive the second dose within two weeks of the final determination to deny the accommodation (or within a week of the earliest day by which you can receive the second dose), whichever is later.

Q: For what reason(s) might my request for an exception be denied?

A: Requests will be reviewed, and the relevant criteria considered based on the law when issuing a written determination on the exception request. Determining whether an exception is legally required will include consideration of relevant factors such as the basis for the claim, nature of the employee's job responsibilities, and the reasonably foreseeable effects on the agency's operations, including protecting other agency employees and the public, including our Veterans, from COVID-19.

Q: What are my rights if my exception request is denied?

A: Employees have several avenues of redress if a request is denied. Information regarding filing a complaint, grievance, or appeal will be included in any written denial decision given to the employee.

Q: What if I have a contraindication covered under the Centers for Disease Control and Prevention (CDC) guidance?

A: A contraindication may delay but not prevent your ability to be fully vaccinated. You may receive an extension of time to be fully vaccinated if you have a documented contraindication. The designated management official, in consultation with the reasonable accommodation coordinator, will determine if a time limited accommodation is appropriate in these circumstances.

Q: What am I required to do if I receive an approved exception?

A: You are required to adhere to the following safety protocols for other than fully vaccinated employees which include wearing a face mask, physical distancing, restrictions on travel, regular testing, and also implement any other measure agreed upon during the reasonable accommodation process.

Privacy

Q: Will my COVID vaccination information in LEAF be in my employee health record?

A: Yes. Employee health records in the Employee Medical Folder are in different places and the location of the record determines which laws are applicable.

The COVID vaccination information in LEAF will be part of Privacy Act system of records notices (SORN) for “Employee Medical Folders”, OPM/GOVT-10 (Title 5) and “Title 38 – Employee Medical Folders”, 08VA05 maintained at the Department. While some portions of the Employee Medical Folder for employees is maintained by VHA, such as in OHRS 2.0, other information, such as the COVID vaccination information in LEAF, is maintained by the Department and is not under the purview of VHA.

Q: Why is my COVID vaccination information in LEAF part of my employee health record?

A: The Task Force and OMB have indicated all COVID vaccination information on Federal employees are to be part of the appropriate Privacy Act SOR for the Employee Medical File System Records. VA is required to follow this mandate on placement and location of the COVID vaccination information in the Employee Medical File System Records on federal employees. Therefore, the COVID vaccination information being collected through the LEAF tool must be maintained in OPM/GOVT-10 or 08VA05. The Privacy Act Statement, which is required for this data collection and provided in the LEAF tool, references these Privacy Act SORs.

Q: Is my COVID vaccination information in LEAF protected by the HIPAA Privacy Rule?

A: No. However, the information is protected by the Privacy Act as it is covered under the Privacy Act SORs for “Employee Medical File System Records” (OPM/GOVT-10) for title 5 employees and “Employee Medical File System Records” (08VA05) for title 38 employees.

Q: Why is my COVID vaccination information in LEAF not protected by the HIPAA Privacy Rule?

A: Protected health information (PHI) is individually identifiable health information created, received, or maintained by a HIPAA covered entity, as a health care provider or health plan. At VA, only health information that is maintained by or on behalf of VHA – whether in OPM/GOVT-10, 08VA05, or another Privacy Act SOR – is considered PHI and protected by the HIPAA Privacy Rule.

The COVID vaccination information in LEAF is individually identifiable health information but is not PHI because it is created, received, or maintained by VA as an employer, not by VHA as a HIPAA covered entity. This is true even when VHA employees provide the information in LEAF. Therefore, the COVID vaccination information in LEAF is not

protected by the HIPAA Privacy Rule as it is not PHI in the possession of a HIPAA covered entity.

Q: Will VHA Employee Occupational Health (EOH) have access to my COVID vaccination information in LEAF?

A: Employee Occupational Health in VHA has access to COVID-19 vaccination in occupational health records, such as OHRS 2.0, but does not currently have access to COVID-19 vaccination information in LEAF, unless explicitly designated by the facility. Future enhancements may include communicating the information in LEAF to Employee Occupational Health to update vaccination records or to aid with ordering required COVID-19 testing, as applicable. Since the COVID-19 vaccination information in LEAF is under the purview of the Department, any policy around access will be governed by the Department, subject to the Privacy Act, which authorizes the sharing of the information where there is legal authority for VA employees who have a need for the LEAF COVID vaccination information in the performance of their official VA duties (5 U.S.C. 552a(b)(1)). **The Department will determine who has access based on “need to know” and official VA duties.**

Release of Information

Q: When is an Authorization for ROI required to share my COVID vaccination information?

A: An Authorization for ROI is required from an individual when an agency maintaining individually-identifiable information on the individual needs to release the information to another organization and no other legal authority under privacy laws for the disclosure exists. In order for VHA to release COVID vaccination information on individuals in health records in OHRS 2.0 or VistA/CPRS to VA for the Mandatory COVID Vaccination Program for Federal Employees, an Authorization for ROI from the individuals is required.

The authorization must be in writing and contain certain required content including the following information:

A statement that individually-identifiable health information disclosed pursuant to the authorization may no longer be protected by the same Federal laws or regulations and may be subject to re-disclosure by the recipient.

Q: Why does the ROI state, “I acknowledge the potential for information disclosed pursuant to this authorization to be redisclosed and no longer protected by Federal confidentiality provisions”?

A: The HIPAA Privacy Rule requires a statement be included on the authorization to release information that the information once disclosed by the HIPAA covered entity may no longer be protected from re-disclosure. If the release form does not contain this information, it will be considered invalid.

Note: In accordance with the Privacy Act and guidance from the Task Force, information obtained from VHA Employee Occupational Health and placed in the Department's Employee Medical File System Records continues to be protected by the Privacy Act and may only be disclosed to VA employees with a need to know in the performance of their official VA duties (5 U.S.C. 552a(b)(1)).

Disclosures of records outside the agency are prohibited unless authorized by the employee pursuant to their prior written consent or a specific statutory exception.