

Fake IDs Once Got You Shots, Now They Are to Avoid a Shot

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With the unwavering spread of COVID-19 through variants such as Delta, and most recently Omicron, federal and state mandates have established requisites to present proof of vaccination or, in some cases, proof of a negative coronavirus test. As covered in previous blogs, [New Jersey's Executive Order 271](#) and [federal Executive Order 14042](#) have led employers to implement documentation of COVID-19 vaccination for employees and contractors. Mandates requiring proof of vaccination are on the rise, leading unvaccinated employees to attempt to circumvent policies by succumbing to a new underground for counterfeit COVID-19 vaccination cards. In this blog, we examine the legal repercussions of using fake "vax cards" and the liability employers may face.

Forging COVID-19 Vaccination Cards

In March 2021, the FBI published a [public service announcement](#) to clarify that the falsification of a government seal is a federal crime. COVID-19 vaccination cards have two seals, in the corner of the card, the seal of the Centers for Disease Control, and the other of the United States Department of Health and Human Services. Since COVID-19 vaccination cards contain these two government seals, making, selling, or buying fake vaccination cards is a federal crime, in violation of [Title 18 U.S. Code § 1017](#).

Moreover, forging vaccination cards is also a violation of the criminal laws in virtually every state. In October 2021, a [New York man was arrested after his employer reported](#) that he had provided a forged COVID-19 vaccination card. The individual was charged with second-degree possession of a forged instrument, which qualifies for a Class D felony in NY.

New Jersey has pending legislation, [Assembly No. 5734](#), which would establish criminal penalties for knowingly selling, transferring, or possessing with the intent to sell, offer, or expose for sale, a document which falsely purports to be a verification issued by a governmental agency of a person having received one or more doses of vaccination against COVID-19. The pending bill would also require the NJ Attorney General to establish a COVID-19 vaccination fraud prevention program, to "focus on preventing and prosecuting the production, sale, distribution, and use of counterfeit COVID-19 vaccination cards."

Although there currently is not a specific New Jersey criminal statute intended to prosecute COVID-19 vaccination card fraud, there are a number of existing laws that would apply, and anyone thinking about manufacturing, selling, or using a fake vaccination card should be forewarned. New Jersey's present forgery laws and existing [false government document statutes](#) can easily be relied upon to prosecute those who engage in misconduct involving COVID-19 vaccination cards.

Despite the penalties, fake vaccination cards are being produced and distributed. On August 16, 2021, it was reported that [U.S. Customs and Border Protection agents seized 121 packages](#) containing more than 3,000 fake vaccine cards passing through Memphis, Tennessee, a major shipping hub. In addition, Tammy McDonald, a [South Carolina nurse was recently indicted](#) on multiple counts by a federal grand jury, for producing fake COVID-19 vaccine cards and lying to federal investigators. "She was granted a \$10,000 bond. [McDonald faces up to 15 years in prison for each count](#) of producing a fraudulent COVID-19 Vaccination Record Card, and five years in prison for lying to federal investigators."

In New Jersey, University Hospital became the state's first hospital to mandate vaccinations for all employees, with exemptions allowed for religious or medical reasons. In September, the hospital [fired several employees who used fake COVID-19 vaccination cards](#) in an attempt to comply with the employer's policy.

More recently, Jasmine Clifford, a [New Jersey woman, was charged with criminal conduct](#) for offering and selling fake COVID-19 vaccination cards. In addition to conspiring with another woman to fraudulently enter at least 10 people into New York's immunization database, all of which she advertised through her now-inactive Instagram account. According to the Manhattan District Attorney's Office, she was charged with criminal possession of a forged instrument in the second degree and conspiracy in the fifth degree for offering and selling over 250 fake vaccination cards, for which she charged buyers \$200 apiece. Of the 250 individuals who bought her fake cards, at least 13 were believed to be frontline employees in hospitals and nursing homes, all of whom were charged with one count of criminal possession of a forged instrument in the first degree.

Employer Liability

Regardless of how many counterfeit vaccine cards are floating around or how many people have been arrested or prosecuted, a key question is whether an employer will face exposure if any of their employees have falsified or misrepresented their vaccination status.

Employers that 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 is acting as if they are vaccinated could pose a danger to those around them. Fortunately, an employer's legal liability in such a scenario is most likely low provided that the employer has taken reasonable measures to check the vaccination status of its workforce. An employee who has misled the employer by using a fake vaccine card is unlikely to subject an employer to a high level of legal exposure. An employer could be sued, but the odds of successfully defending such a claim would hinge on the reasonableness of its verification process.

Takeaway: Employers should establish reasonable protocols to check COVID-19 vaccination cards, and request managers or other personnel to thoroughly inspect vaccination cards by reviewing key details. Employers with a reliable verification system, have better odds of defeating any negligence claim related to an employee's use of a forged COVID-19 vaccination card.

If you are an employer with questions regarding an employee's use of a forged COVID-19 vaccination card or the criminal penalties involved, please contact [Tracy Armstrong](#) or [Darren Gelber](#).

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