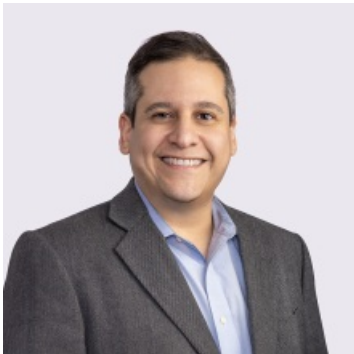


Are Adverse Reactions to COVID-19 Shots Recordable to OSHA? It Depends.

By Raymond Perez &

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The Occupational Safety and Health Administration (OSHA) has determined that it will consider an adverse reaction to the COVID-19 vaccine “work-related” recordable illnesses if an employee is required to take the vaccine as a condition of employment.

In its online [Frequently Asked Questions \(FAQs\)](#) about COVID-19, on April 20, 2021, the agency stated that an adverse reaction to the vaccine would be recordable if the reaction meets the definition of a recordable injury or illness:

1. It is work-related, which OSHA presumes if the vaccine is mandated by the employer;
2. It is a new case; and
3. The illness meets at least one of the general recording criteria in 29 CFR 1904.7 (*e.g.*, days away from work, restricted work or transfer to another job, or medical treatment beyond first aid).

OSHA distinguishes between mandatory vaccines and those that are recommended by an employer. If the vaccine is truly voluntary, the agency does not require the employer to record an adverse reaction on the employer’s OSHA 300 log. On the other hand, if the employer mandates the vaccine, the employer must record it if it otherwise meets recording criteria. OSHA states that this current position on vaccines is an exercise of its enforcement discretion, but it means the agency could change course in the future.

The FAQs detail factors OSHA will consider in determining whether an employee’s vaccination is truly voluntary. Primarily, the choice to accept or reject the vaccine cannot affect the employee’s employment or professional advancement and they cannot suffer any negative repercussions from choosing not to receive the vaccine. On the other hand, if employees are not free to make this decision and would face adverse action if they do not take it (*e.g.*, the employee cannot return to work or is terminated for refusing vaccination), then OSHA would not consider it as merely recommended. In that case, an employer would need to follow the guidance in terms of assessing recordability for any adverse reactions to the vaccine.

OSHA clarifies situations in which employers recommend but do not require vaccination. For example, the agency will view a vaccination as voluntary and recommended even if the employer makes the vaccine available at work, if the employer makes arrangements for employees to get the vaccine at an offsite location (*e.g.*, pharmacy, hospital, or local health department), or if the employer offers the vaccine as part of a voluntary health and wellness program at the workplace.

Unfortunately, the FAQs do not address employer incentive programs to encourage employee vaccination, such as offering financial incentives, eligibility for raffle drawings to win prizes, or paid time off to receive or recover from the vaccine. At times, OSHA has viewed incentive plans as potentially punitive to employees who miss out on benefits

offered to others. At this point, it is unclear what enforcement position OSHA will take in these situations. Interestingly, [Chicago enacted an ordinance](#) to protect employees from adverse employment actions if they take and recover from vaccines during working hours.

As businesses continue to reopen and employees return to work, employers will have to decide whether to mandate or simply encourage vaccination for its workforce. Based on OSHA's FAQs, employers should assess whether they are requiring vaccination or whether they are making it truly voluntary for their employees, as this will determine whether they will need to record adverse reactions on OSHA 300 logs.

If you have questions or need assistance with OSHA inspections and citations, please reach out to the Jackson Lewis attorney with whom you often work, or any member of our [Workplace Safety and Health Practice Group](#).

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