

WORKERS' COVID-19 VACCINE REACTIONS MIGHT BE RECORDABLE ON YOUR OSHA 300 LOGS

Insights
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If an employee has a reaction to the COVID-19 vaccine, do you need to record that illness on your 300 log? The Occupational Safety and Health Administration (OSHA) recently provided guidance on this issue, one that many employers have been contemplating since the COVID-19 vaccine became available. According to the agency in a series of answers to [frequently asked questions](#), the key issue in this analysis is whether you are requiring the vaccine or merely encouraging it.

OSHA states that if you require employees to obtain a COVID-19 vaccine, any side effects from the vaccine will create a recordable event and you have an obligation to include that information on your OSHA 300 log. If you only encourage the vaccine, you will not have that obligation.

When Does Your Recordkeeping Obligation Kick In?

OSHA recordkeeping requirements mandate covered employers record certain work-related injuries and illnesses on their OSHA 300 log. According to the agency, reactions to the COVID-19 vaccine must be recorded if:

1. The reaction is work-related;
2. The reaction is a new case; and
3. The reaction meets one or more of the general recording criteria as outlined by OSHA: if it results in death, days away from work, restricted work or transfer to another job, medical treatment beyond "first aid," or loss of

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Nicholas S. Hulse

Partner

704.778.4183

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consciousness (OSHA provides a specific and complete definition of what constitutes “first aid” in 29 C.F.R. § 1904.7(b)(5)(ii)).

Required Vaccinations

In OSHA’s latest guidance, the safety agency explains that if an employer requires their employees to be vaccinated as a condition of employment, then any adverse reaction to the COVID-19 is work-related. Therefore, whether a reaction to a mandated COVID-19 vaccine is recordable turns on prongs two and three.

The reaction must be treated as a “new case” if the employee has not previously experienced a recorded injury or illness of the same type that affects the same part of the body, or the employee previously experienced a recorded injury or illness of the same type that affected the same part of the body but had recovered completely (all signs and symptoms had disappeared) from the previous injury or illness and the mandated COVID-19 vaccine caused the signs or symptoms to reappear.

Accordingly, if you mandate the vaccine and an employee has an adverse reaction meeting the definition of a “new case,” the reaction must be recorded if one or more of the general recording criteria are met, such as if the employee misses a day of work or has restricted job duties due to the illness or injury.

Recommended Vaccinations

OSHA’s guidance provides that the agency is exercising its enforcement discretion to not require the recording of adverse effects from COVID-19 vaccines that employers recommend but do not require. OSHA notes that the vaccine must be truly voluntary and explains that “an employee’s choice to accept or reject the vaccine cannot affect their performance rating or professional advancement. An employee who chooses not to receive the vaccine cannot suffer any repercussions from this choice.” Therefore, you should ensure that you are not taking actions that may cause OSHA to conclude that you are not merely recommending that employees receive the COVID-19 vaccine.

Conclusion

OSHA's new guidance not only provides the answer to the question of when you must record an adverse reaction to the COVID-19 vaccine, but also provides an additional consideration in your decision whether to require that your employees receive the COVID-19 vaccine. If you are requiring that your employee receive the COVID-19 vaccine, you must track any adverse reactions that your employees may have to the vaccine and, when appropriate, record those reactions on your OSHA 300 log. If you are only recommending that your employees receive the vaccine, make sure that it truly is a voluntary decision.

Fisher Phillips will continue to monitor the rapidly developing COVID-19 situation and provide updates as appropriate. Make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information. If you have questions about any aspect of this new law and its impact on your workplace, contact your Fisher Phillips attorney or visit our [Vaccine Resource Center for Employers](#).