

Employee Adverse Reactions to COVID-19 Vaccines. Are They OSHA Recordable?

Provided by IRMS/ICT

April 2021

IRMS/ICT contacted OSHA requesting they provide an opinion in regards to whether cases in which employees had adverse reactions to the COVID-19 vaccinations must be recorded on the OSHA 300 Log.

This week we received a response to our questions through our OSHA Safety & Compliance Officer contact in the Peoria, IL office. The following are the answers as we received them from OSHA. Below is our short summary of OSHA's response.

IRMS/ICT Summary of OSHA's answers to questions submitted: Employee adverse reactions to the COVID-19 vaccinations **ARE NOT** to be recorded on the OSHA 300 Log unless the following applies:

1. The adverse reaction is work related
2. The adverse reaction is a new case (not a continuation of an old work related injury or illness)
3. The adverse reaction meets one or more of the general recording criteria in 29 CFR 1904.7 (e.g. days away from work, restricted work or transfer to another job, medical treatment beyond first aid)
4. The employee was required to take the vaccination
5. Alternatively to item #4, the employee's choice of not taking the vaccination affected their performance rating or professional advancement

The following is the actual Q&A responses to the questions we received from OSHA:

Q: Are adverse reactions to the COVID-19 vaccine recordable on the OSHA recordkeeping log?

A: In general, an adverse reaction to the COVID-19 vaccine is recordable if the reaction is: (1) work-related, (2) a new case, and (3) meets one or more of the general recording criteria in 29 CFR 1904.7 (e.g., days away from work, restricted work or transfer to another job, medical treatment beyond first aid).

Q: If I require my employees to take the COVID-19 vaccine as a condition of their employment, are adverse reactions to the vaccine recordable?

A: If you *require* your employees to be vaccinated as a condition of employment (i.e., for work-related reasons), then any adverse reaction to the COVID-19 vaccine is work-related. The adverse reaction is recordable if it is a new case under 29 CFR 1904.6 and meets one or more of the general recording criteria in 29 CFR 1904.7.

Q: I do not require my employees to get the COVID-19 vaccine. However, I do *recommend* that they receive the vaccine and may provide it to them or make arrangements for them to receive it offsite. If an employee has an adverse reaction to the vaccine, am I required to record it?

A: No. Although adverse reactions to *recommended* COVID-19 vaccines may be *recordable* under 29 CFR 1904.4(a) if the reaction is: (1) work-related, (2) a new case, and (3) meets one or more of the general recording criteria in 29 CFR 1904.7, OSHA is exercising its enforcement discretion to only require the recording of adverse effects to *required* vaccines at this time. Therefore, you do not need to record adverse effects from COVID-19 vaccines that you *recommend*, but do not require.

Note that for this discretion to apply, the vaccine must be truly voluntary. For example, 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. If employees are not free to choose whether or not to receive the vaccine without fearing adverse action, then the vaccine is not merely "recommended" and employers should consult the above FAQ regarding COVID-19 vaccines that are a condition of employment.

Note also that the exercise of this discretion is intended only to provide clarity to the public regarding OSHA's expectations as to the recording of adverse effects during the health emergency; it does not change any of employers' other responsibilities under OSHA's recordkeeping regulations or any of OSHA's interpretations of those regulations.

Finally, note that this answer applies to a variety of scenarios where employers recommend, but do not require vaccines, including where the employer makes the COVID-19 vaccine available to employees at work, where the employer makes arrangements for employees to receive the vaccine at an offsite location (e.g., pharmacy, hospital, local health department, etc.), and where the employer offer the vaccine as part of a voluntary health and wellness program at my workplace. In other words, the method by which employees might receive a recommended vaccine does not matter for the sake of this question.

If you have questions please contact Mike Benedeck at 630-276-5646 or Deidre Harris at 630-276-5414 and we will be glad to assist you.