

FREQUENTLY ASKED QUESTIONS

Regarding Adverse Reactions to COVID-19 Vaccinations

Q1. Can an employee's adverse reaction to a COVID-19 vaccination result in a compensable workers' compensation claim?

A1. Yes, depending on the circumstances. Generally speaking, when an employer requires an employee to submit to a vaccination as a condition of employment, any injury resulting from the vaccination will usually be deemed to be compensable. A finding of compensability may also occur when an employer strongly urges an employee to undergo a vaccination and vaccination of the employee represents a direct benefit to the employer (e.g. – lessened absenteeism, avoidance of disruption of production, etc.).

If, on the other hand, the vaccination is neither mandated nor encouraged or sponsored by the employer and is rather solely at the discretion of the employee, an adverse reaction claim may be deemed non-compensable. Further, where the vaccination is mandated by state law or public authority (such as a state board of health) adverse reactions may similarly fall outside of the scope of compensability.

Importantly, as is true with all workers' compensation claims, in order for the alleged adverse reaction to be compensable, it is necessary that the alleged reaction be causally associated with the vaccination. This is a medical determination that will be influenced by a number of factors, including the claimant's medical history, the type of vaccine administered, the symptoms experienced, the timing of onset of symptoms, and other unrelated medical conditions that might explain these symptoms.

Q2. Is an employer responsible for paying the costs of a COVID-19 vaccination under workers' compensation?

A2. In most instances, workers' compensation will not be responsible for paying the costs associated with administration of a COVID-19 vaccination. From a practical perspective, in most cases, there will be no charge associated with the vaccine itself and costs associated with administration of the vaccine will be covered by private health insurance. Workers' compensation will normally not cover these costs, as vaccine administration is preventative medicine and does not involve treatment of a work-related injury.

Q3. What steps can an employer take to limit business and legal uncertainty surrounding employee COVID-19 vaccinations?

A3. In developing a sound approach to employee COVID-19 vaccinations, an employer must consider a number of factors including employee health and safety imperatives, liability considerations, applicable law, and the ability to recruit and retain valued employees. In weighing these factors, each employer's priorities and risk assessments will be different.

Regardless of the approach ultimately adopted by an employer (mandatory vaccination, voluntary vaccination, employer sponsorship, etc.), it is a best practice for employers to adopt a written policy that spells out the employer's approach. This is particularly true for employers who choose to mandate employee vaccination. Such written policies should be discussed with a lawyer specializing in employment law and should provide exemptions for such factors as employee disabilities or applicable medical conditions and sincerely held religious beliefs. This will help employees understand their rights and responsibilities and may help the employer avoid allegations for failure to accommodate the employee or for discrimination based upon disability or religious affiliation.