

Should Employers Encourage or Require COVID Vaccinations?

Employers with vaccinated employees are safer workplaces. Vaccinated employees are [95%](#) less likely to catch COVID-19 than unvaccinated employees. Every vaccinated employee brings employers another step closer to responsibly returning to pre-pandemic business. Only 2 to 5 people per million who have received the vaccine have suffered from allergic reactions.

While there is [very little accurate information](#) about vaccine related deaths, the [Vaccine Adverse Event Reporting System \(“VAERS”\)](#) has not detected any patterns that would indicate a safety problem with vaccination. All of this would tend to suggest that “requiring” vaccinations is the right policy for most employers. Other considerations must also be factored into the decision.

For example, the Occupational Safety and Health Administration (“OSHA”) requires most employers to [keep a record](#) of all work-related fatalities, injuries, and illnesses. With availability of the COVID-19 vaccination, this obligation has been of special concern to employers who have questioned whether an employee’s adverse reaction to the COVID-19 vaccine constitutes a “work-related injury or illness”. On April 20, 2021, OSHA added new guidance to its [COVID-19 frequently asked questions](#) (FAQs) offering employer’s clarity on this issue.

Under the new guidance, 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).

From a purely numerical perspective, employers are much less likely to have to record an employee's adverse reaction to the COVID-19 vaccination than they are to record an employee who suffers a COVID-19 related injury. As such, employers with a strong interest in avoiding reporting injuries or illness to OSHA would be best served by requiring employee vaccination. Chicago employers should take note, however, that effective [April 21, 2021](#), they are prohibited from requiring employees to obtain their vaccinations during non-working hours.

Employers who do not require employee vaccination do not have an obligation to record an employee's adverse reactions to the vaccine. Employers may merely encourage employees to get vaccines without running afoul of OSHA's recording obligations. On the other hand, employers who require employees to get the COVID-19 vaccine, must record adverse reactions to the vaccine as "work-related".

Employers who merely encourage employee vaccinations do not have to address the thorny issue of accommodating religious objections and disabilities. These employers should continue to adhere to the [CDC's workplace safety guidelines](#) (i.e. social distancing and requiring facemasks) to avoid liability for COVID-19 infections and to reassure employees of their safety. Employers with unvaccinated workforces should also

continue limiting the number of people or customers allowed into the workplace at any given time.

Employer Takeaways

Our advice to most clients is to incentivize vaccinations through education, peer support, and gift cards. Requiring vaccinations is probably too authoritarian for most workplace cultures. As banal as it is to say, every employer is different, and the decision to merely encourage vaccinations rather than require them should be made on a case by case basis.

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