

## OSHA's Obligations for Employers Requiring Vaccines

PUBLISHED ON  
**April 22, 2021**

---

The U.S. Department of Labor Occupational Safety and Health Administration has released [a new FAQ sheet](#) to guide employers recommending or requiring employees to receive COVID-19 vaccines.

When a vaccine is required as a condition of employment, any adverse reaction is considered "work-related." Required vaccines resulting in hospitalization therefore trigger an employer's obligation to notify OSHA within 24 hours (or eight hours in the case of an employee death). Likewise, any adverse action is recordable on an OSHA log if the employer is subject to recording requirements and the incident meets the other recordable criteria - such as days away from work or medical treatment beyond first aid. As an aside to the OSHA reporting: In the case of a worker's adverse reaction where an employer required the vaccine, the employee will not be able to sue the company outright because the workers' compensation immunity protects the employer from a lawsuit. A workers' compensation claim, however, could be brought against the company.

Employers who recommend and/or facilitate access to the vaccine rather than require it are not subject to these requirements. For this discretion to apply, the vaccine must be truly voluntary, and an employee's choice to accept or reject the vaccine cannot affect performance ratings or professional advancement and cannot result in adverse action.

Also, President Joe Biden has announced the [availability of tax credits](#) for employers who provide additional PTO to employees for vaccine-related reasons. Under the OSHA guidance, provision of PTO is unlikely to be seen as making vaccination into a "requirement."

The [Barley Snyder Employment Practice Group](#) can assist you in creating or evaluating COVID-19 protocols or evaluating whether a specific proposal constitutes a "requirement" for OSHA purposes. If you have any questions or concerns, please [contact me](#) or [reach out to anyone in the group](#).

### READ MORE

[OSHA Launches Program to Address COVID-19 Safety](#)

[New DOL Guidance on Cybersecurity and Retirement Plans](#)

**DISCLAIMER:** The information in this alert should not be construed as legal advice to be relied upon nor to create an attorney/client relationship. Please note that the reader's or an industry's specific situation or circumstances will vary and, thus, for example, an approach that is advisable in one industry may not be appropriate in another industry. If you have questions about your situation or about how to apply information contained in this alert to your situation or industry, you should reach out to an attorney.

The views expressed in this alert are those of the individual author and do not necessarily reflect the views of the firm

or the firm's clients. The response to the COVID-19 pandemic is particularly challenging, evolving and, in many cases, can be controversial. Any views expressed in this alert are not intended to advocate for or endorse a particular governmental response to the pandemic.

## WRITTEN BY:

---



**Joshua L. Schwartz**

Partner

Tel: (717) 399-1535

Email: [jschwartz@barley.com](mailto:jschwartz@barley.com)