

## OSHA Flip Flops on Adverse Reactions to COVID Vaccine

The Occupational Safety and Health Administration (“OSHA”) reversed its position on recording employees’ adverse reactions to the COVID-19 vaccine. This reversal is one of many for OSHA throughout the pandemic.

Only a month ago [we wrote](#) about OSHA’s requirement to record adverse reactions to the COVID-19 vaccine as workplace injuries. On April 20, 2021, OSHA updated their COVID Frequently Asked Questions (“FAQs”) and said that employers who require their employees to get a COVID-19 vaccine must record adverse reactions. Meanwhile, employers who simply recommended that employees get vaccinated had no such obligation.

Employers were warned, however, that to avoid recording adverse reactions, employee vaccinations had to be “truly voluntary”. The “truly voluntary” standard caused confusion among employers trying to avoid liability for workplace injuries while still incentivizing vaccination.

OSHA recently withdrew its previous guidance and issued a new statement. In [OSHA’s updated FAQ](#), OSHA emphasizes that it does not want its guidance to disincentivize employers from facilitating worker vaccination. It states “OSHA will not enforce 29 CFR 1904’s recording requirements to require any employers to record worker side effects from COVID-19 vaccination through May 2022.”. This new position applies regardless of

whether an employer requires, advises, or incentivizes employee vaccinations.

OSHA's revised position may have something to do with the fact that while about [40%](#) of the U.S. population is fully vaccinated, the rate of vaccination has stalled. Since mid-April, the number of people getting their first doses is [down almost 50%](#).

OSHA said it will "reevaluate" its position on vaccine reaction recording next spring to "determine the best course of action moving forward." Until then, OSHA and [other government agencies](#) will likely continue to issue policies designed to encourage vaccination.

### **Employer Takeaway**

OSHA's revised mandate should come as a relief to employers who may have wanted to require vaccines but were concerned about liability. Whether OSHA should be issuing guidance to employers in an effort to encourage vaccinations in the first place is an entirely separate matter.

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