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OSHA'S ABRUPT CHANGE TO RECORDING ADVERSE REACTIONS TO COVID-19 VACCINES

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Fortunately, for employers, on May 21, 2021, OSHA issued updated FAQs which were inconsistent with its April 20, 2021 guidance concerning the recordation of certain adverse reactions to COVID-19 vaccines and thereby overrode its April 20th guidance.

Formerly, the April 20th guidance stated that an adverse reaction to the vaccine would be recordable if it met the definition of a recordable injury or illness under 29 C.F.R. 1904.4(a). However, OSHA then went on to distinguish between voluntary/recommended vaccine programs by employers and mandatory ones. Vaccine programs that were truly voluntary/recommended were not required to record an adverse reaction; whereas, mandatory vaccine programs were required to record such.

In an about face, the newly issued guidance provides that no reaction to the vaccine, regardless of whether it meets a recordable event, is required to be reported. Specifically, the new guidance states:

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

DOL and OSHA, as well as other federal agencies, are working diligently to encourage COVID-19 vaccinations. OSHA does not wish to have any appearance of discouraging workers from receiving a COVID-19 vaccination, and also does not wish to disincentivize employers' vaccination efforts. As a result, OSHA will not enforce 29 CFR 1904's recording requirements to require any employers to record worker side effects from a COVID-19 vaccination through May 2022. We will reevaluate the agency's position at that time to determine the best course of action moving forward.

This is obviously welcome news for employers who wish to implement a vaccine program and avoid any negative repercussions of reporting adverse reactions on their OSHA 300 logs.

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