

LEGAL UPDATES

PUBLISHED: APRIL 28, 2021

Services

Labor & Employment
Workplace Safety &
Health

Professional

DONNA V. PRYOR
DENVER:
303.749.7283
DONNA.PRYOR@
HUSCHBLACKWELL.COM

OSHA Update: Recording Vaccine Reactions at Worksites and COVID-19 ETS Budget Draft

On April 20, 2021, the Department of Labor Occupational Safety and Health Administration (OSHA) issued guidance related to adverse reactions after receiving a COVID-19 vaccination. According to the guidance, an adverse reaction to the COVID-19 vaccine is recordable in the OSHA record-keeping log if the reaction is: 1) work-related, 2) a new case, and 3) meets one or more of the general recording criteria described in 29 CFR 1904.7 such as,

- a) results in an employee missing more than one day of work;
- b) results in restricted work or transfer to another job; or
- c) requires medical treatment beyond first aid.

An adverse reaction is work-related if an employer **requires** employees to be vaccinated as a condition of employment. At this time, OSHA is exercising its enforcement discretion to not require an adverse reaction to be recorded if an employer recommends but does not require the COVID-19 vaccination. This exercise of discretion applies only if the vaccination is truly voluntary and applies regardless of whether the employees may receive the vaccine at the worksite or at an offsite location arranged by the employer, or where the vaccine is offered as part of a voluntary health and wellness program at the workplace.

In other news, OSHA formally submitted to the Office of Management and Budget, Office of Information and Regulatory Affairs (OIRA) a draft of the COVID-19 Emergency Temporary Standard (ETS) designed to protect workers from the transmission of COVID-19 in the workplace. Review of the ETS by OIRA is the final step in the approval process before the rule is released to the

public. It's unclear how long the review process may last. We will continue to monitor the status of the ETS and provide updates as they become available.

Contact us

If you have questions about OSHA guidance regarding COVID-19 or other issues regarding workplace safety, contact Donna Pryor or your Husch Blackwell attorney.

Tracey Oakes O'Brien, Legal Content and Knowledge Manager is a co-author of this content.

Your Comprehensive COVID-19 Legal Resource

Since the pandemic's onset, Husch Blackwell has continually monitored state-by-state orders regarding capacity, masking, vaccines, and more. We regularly address your FAQs and provide you with easy-to-use COVID-19 tools about returning to work and navigating federal programs. Contact our industry-specific legal teams or your Husch Blackwell attorney to plan through and beyond the pandemic.