



Q&A – WORKERS’ COMPENSATION LIABILITY FOR COVID-19 VACCINE REACTIONS – WISCONSIN

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1. What if an employer mandates the COVID-19 vaccination for its employees and an employee develops an allergic reaction that requires medical care and time off from work? Is the employee entitled to workers’ compensation benefits in Wisconsin?

If an employer mandates the COVID 19 vaccine for its employees, and an employee develops an allergic reaction that requires medical care and time off work, this will likely be a compensable injury and the employee will be entitled to worker’s compensation benefits. If the COVID-19 vaccine is entirely voluntary and uncompensated, probably not. Wisconsin worker’s compensation law excludes injuries resulting from uncompensated and voluntary participation in workplace wellness programs from benefits. Under Wis. Stat. 102.03(1)(c)(3), an employee is not performing services growing out of and incidental to employment while engaging in a program, event or activity designed to improve the physical well-being of the employee, whether or not the program, event or activity is located on the employer premises, if participation in the program, event or activity is voluntary and the employee receives no compensation for participation.

The key issue, though, is that the program must be truly voluntary and uncompensated, regardless of whether it is on or off premises in order for an employer to avoid liability. Wisconsin courts are liberal in determining that workplace events are involuntary or “expected”. Wisconsin courts have held that if an employer “expectation” of participation in a wellness program exists, the program is not voluntary. For example, an injury sustained while practicing push-ups for a mandatory fitness test was determined compensable by a Wisconsin court. In another claim, Wisconsin courts held that an on-duty firefighter suffered a compensable injury while playing basketball at an off premises park because he was being paid when he suffered the injury.

The Wisconsin legislature is currently considering legislation that would create a new statute prohibiting an employer from mandating that an employee or prospective employee, receive a COVID-19 vaccine, or show proof of having received a vaccine, as a condition to an offer of employment or continued employment. Additionally, legislation is being considered that would create a new statute prohibiting the Department of Health Services and local health officers from mandating that individuals receive a COVID-19 vaccine.

2. What if an employer does not mandate COVID-19 vaccination for employees, but offers it to employees who choose to get it, with an on-site COVID-19 vaccine clinic?

Is there workers’ compensation liability if the employee develops a reaction?



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An injury resulting from a voluntary on-site vaccination is most likely compensable because it is probable that employees will be compensated for their participation. Most employers do not require employees to “punch out” or discount their time for participation in vaccine clinics. Compensability is particularly likely if the employee is expected to get the vaccine at the onsite vaccine clinic. To avoid liability, an employer must be clear that participation in an on-site COVID-19 vaccination program is not required for an employee’s ongoing employment and that employees are not compensated during the vaccination process. In reality, it will be very difficult for Wisconsin employers to deny liability for injuries resulting from on-site COVID-19 vaccinations.

3. What if an employer does not mandate the COVID-19 vaccine, but strongly encourages employees to get it by offering an incentive, and offers it to employees who choose to get it, with an on-site COVID-19 vaccine clinic?

An injury resulting from an onsite work COVID-19 vaccine clinic, where the employer “strongly encourages” participation will most likely be compensable. Wisconsin courts would most probably construe strong employer encouragement and incentives as creating an “expectation”. In this situation, employers would need to make clear that employees are not compensated for time spent during the vaccination process and that participation is voluntary. It will be difficult for Wisconsin employers to avoid liability for vaccine reaction injuries from an on-site COVID-19 vaccination clinic.

4. What if an employer mandates the COVID-19 vaccine for employees and three years later the employee develops cancer or some other consequential condition or illness because of the COVID-19 vaccine?

Is there workers’ compensation occupational exposure liability?

If an employee develops cancer or sterility three years after receiving an employer mandated COVID-19 vaccine, that injury would be compensable so long as there is evidence of a causal connection. Wisconsin has a six year statute of limitations for specific work injuries. Consequential injuries resulting from a single incident are compensable if the claim is brought at any point during the six year statute of limitations. If cancer, infertility or another consequential injury arises during this period, the injuries would likely be compensable, provided there is a clear causal connection.

Arthur Chapman’s [Workers Compensation Group](#) is available to answer additional questions on this topic.