

Was Injury From Flu Shot at Employer Clinic Compensable?



SITUATION

An employer that provides emergency services arranges for a [flu vaccine clinic](#) to be held at its campus during work hours, with vaccines being provided and dispensed by contracted nurses. The employer doesn't make flu vaccinations mandatory but aggressively advertises the clinic and strongly encourages workers to get a flu shot. It stresses that workers need to be healthy and fit to perform their jobs working in close contact with the general public and providing first response emergency services. But of nearly 3,000 employees, only 500 take advantage of the employer's clinic to receive the flu vaccine. (In contrast, the employer always gives every new employee vaccinations for Hepatitis B and C.) A worker gets a flu shot at the employer's clinic during her shift and in between her work tasks, and later develops a shoulder strain as a result of the vaccine. The worker had previously received the flu vaccine only two or three times during her 11 years with the employer. Although the employer agrees that her injury was the result of getting the vaccine, it argues that the injury isn't compensable.

QUESTION

Is the worker's shoulder injury compensable'

A. Yes, because it was caused by a flu shot performed at the employer's clinic, in the workplace and during the worker's

shift.

B. Yes, because the worker was required to be healthy to perform her duties.

C. No, because the injury didn't arise out of her employment.

D. No, because the flu isn't an occupational illness.

ANSWER

C. The worker's shoulder injury isn't compensable because it didn't arise out of her employment.

EXPLANATION

This hypothetical is based on an Alberta workers' comp appeals commission decision, which upheld a workers' comp board decision that a worker's shoulder injury resulting from a flu shot didn't arise out of the worker's employment. The commission found that the employer didn't require the worker to get the vaccine, she'd inconsistently gotten the vaccine in prior years and most employees didn't get the vaccine from the employer's clinic. By contrast, all workers *did* receive a Hepatitis B and C vaccination from the employer. The flu vaccine also wasn't administered by the employer or with materials supplied by the employer. Finally, the worker wasn't performing work duties when she went to the clinic but took a break from work to do so. Therefore, the vaccination didn't arise out of or relate to her employment and so the resulting injury wasn't compensable.

WHY THE WRONG ANSWERS ARE WRONG

A is wrong because not every injury that occurs in the workplace and during work hours is automatically compensable. A compensable injury is one that arises out of and occurs in the course of employment, and is caused by a workplace hazard. Although the fact an injury occurred on the employer's premises and during work hours may be evidence that the injury

relates to or arises out of employment, it isn't sufficient by itself to render the injury compensable. If the worker's conduct takes her out of the course of employment, such as because the injury occurred while she was on a break attending to a personal errand or while she engaged in [horseplay](#) even during work hours, the injury won't be compensable regardless of its timing or location. In this case, the worker got the vaccine in the workplace but during a break from her duties and in a different building than her worksite. She also wasn't required to get the vaccine and in the past had gotten it from another source than her employer. Therefore, the injury from getting the vaccine didn't arise out of her employment.

Insider Says: For more information about compensable injuries, visit the [Workers' Compensation Compliance Centre](#).

B is wrong because although it may be important for workers to be healthy in order to perform their jobs, that fact doesn't render compensable any injury a worker suffers while trying to stay healthy. For example, if a worker gets hurt while exercising to stay in shape for her job, she may not be eligible for workers' comp. The injury must still arise out of and in the course of employment and be caused by an employment-related hazard. In other words, 'but for' the worker's employment, the injury wouldn't have happened. Here, unlike the hepatitis vaccines, the worker wasn't required to get the flu vaccine, so it can't be said that 'but for' her employment, she wouldn't have gotten a flu shot and so wouldn't have been injured.

D is wrong because the flu *could* indeed be considered an occupational illness, particularly in this case, where the worker is an emergency services first responder and could be exposed to flu-infected individuals as part of her job. And workers' comp covers not only injuries but also illnesses workers contract from their jobs. However, in this case, the worker isn't claiming that she came down with the flu because of workplace exposure to it. Rather, she's claiming that the

flu vaccine she received in an attempt to avoid getting the flu caused her to suffer a shoulder strain. Therefore, the worker doesn't have a valid workers' comp claim for an occupational illness.

SHOW YOUR LAWYER

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