

# Workers Compensation Claims for Adverse Reactions to COVID-19 Vaccine Possible



WorkSafeBC recently published its position on COVID-19 vaccinations, making it clear that workers compensation claims related to adverse vaccine reactions can be successful. Such reactions 'either injury or death' would have to arise 'out of and in the course of the workers' employment'. That means that getting the vaccine would need to be a requirement of employment.

Where an employee receives a vaccination voluntarily, there is likely no right to workers compensation benefits.

When WorkSafeBC will consider vaccination to be an employment requirement is based on WorkSafeBC's existing policy on adverse reactions to inoculations and injections. WorkSafeBC says that the COVID-19 vaccine would be considered a requirement of employment if one of the following criteria is met:

1. The vaccination is required by the employer, either as a condition of employment or as a condition of continued employment. For example, the employer advises the worker that they cannot work unless they have the vaccination.
2. Although the employer has advised that the vaccination is not a condition of employment, without the vaccination, the worker would not be permitted at work, if there was an outbreak on the employer's premises. Examples would include:
  - If there is an outbreak of COVID-19, the employer will not permit their non-vaccinated employees to work until the outbreak has passed while vaccinated employees are allowed to continue to work.
  - Without the vaccination, the worker is not able to access available extra shifts or duties. For example, a nurse is not able to take shifts on a specific ward (i.e., emergency room or COVID-19 unit) unless vaccinated.
3. The worker is convinced that it was necessary to receive the vaccination, in spite of objective evidence from the employer that the process was not compulsory. If a worker contends that it was mandatory, WorkSafeBC will investigate the individual merits and circumstances as to why the worker felt the vaccination was a requirement of their employment. The following are examples where it may be reasonable to conclude that the worker was convinced that it was necessary:

- The worker is employed in an industry as outlined in the British Columbia's Ministry of Health COVID-19 Immunization Plan and high risk category of worksites as outlined in the March 15, 2021, Joint Statement on the First Deployment of AstraZeneca Vaccine in B.C. (or as designated through similar or successor mechanisms or authorities) and the worker felt compelled to receive the vaccination to protect people they work with.
- The worker is convinced they were strongly encouraged by their employer and/or the public health officer to receive the vaccination to protect the high-risk patients, residents, or staff at their place of employment.

Simply because an employee receives a vaccine through a program put on by an employer does not mean the vaccination is an employment requirement.

While WorkSafeBC does not say whether or not it considers that employers can require employees to be vaccinated as a condition of employment, we caution employers against implementing mandatory vaccination policies, without seeking legal advice. At the present time, it will be rare that an employer has the right to make the vaccine mandatory for employees, due to privacy and human rights laws.

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