
From: The_Liversidge_Letter <the_liversidge_letter@laliversidge.com>
Sent: April 26, 2021 4:07 PM
To: the_Liversidge_letter@laliversidge.com
Subject: Message from L.A. Liversidge - COVID-19 vaccine adverse reactions and WSIB claim eligibility

Good afternoon,

I am writing to provide you with details of an issue that we introduced to the Board and which the Board addressed and remedied quickly.

Working with the Construction Employers Coalition (for WSIB and Health & Safety and Prevention) [“CEC”] we introduced our concern that WSIB policy directs that an adverse COVID vaccine reaction will likely be compensable if: a) the vaccine was an employment requirement, or b) the employer arranged for an on-site vaccination clinic. We expressed that in the context of the COVID-19 emergency and the government’s push for all people to be vaccinated as soon as they are eligible, this policy template is unfair to Ontario employers. Ontario employers should not face the burden of the costs and allocation of such claims when such adverse reactions are not in the control of an employer to prevent. (see a copy of the CEC letter to the Board dated April 13, 2021 [here](#)).

The Board was swift to react and fulfill our request that employers not be held individually financially accountable for such claims (the costs will be allocated at the Schedule level), nor would such a claim be shown against the employer’s record and such claims will not impact premium rates.

The Board’s Frequently Asked Questions page ([here](#)) has been updated to reflect these changes. I have also excerpted them below for your immediate reference:

I had a reaction to a COVID-19 vaccine. Can I get WSIB benefits/file a claim?

If you received a vaccine as a **compulsory part of your employment** and experienced an **adverse reaction**, you may be eligible for ben

Expected reactions to a COVID-19 vaccine, per public health guidance, may include fever, chills, pain at the injection site, fatigue and he should resolve on their own in a few days. These do **not** generally constitute an **adverse reaction** for the purposes of entitlement to WS adverse reaction is a serious, unexpected reaction to a vaccine.

When determining whether a reaction to a COVID-19 vaccination is work-related, the WSIB considers:

1. Whether the **vaccination was a compulsory part of your employment**

- A vaccination will generally be a compulsory part your employment if your employer has a rule or policy that requires employees to b your employer uses some element of coercion for vaccination (e.g. threat of termination of employment, job changes or penalties).

2. Whether the **reaction is adverse, e.g. serious and unexpected**, such as the types of events that should be reported to a local pu

- If the reaction requires medical treatment beyond first aid and/or requires your absence from work for more than a few days, this indi reaction – in its severity or duration – has likely gone beyond the expected reaction from vaccination.

If the Ontario COVID-19 vaccination roll-out includes a vaccination clinic on one of my work sites, this means that any reactions to a COVID-19 vaccine experienced by an employee are work-related.

If an employer holds a vaccination clinic on their premises, this **will not** automatically lead to a determination that any reaction to a COVID-19 vaccine experienced by an employee is work-related.

When determining whether a reaction to a COVID-19 vaccination is work-related, the WSIB considers:

1. Whether the **vaccination was a compulsory part of employment**

- A vaccination will generally be a compulsory part of employment if the employer has a rule or policy that requires employees to be vaccinated and the employer uses some element of coercion for vaccination (e.g. the threat of termination of employment, job changes or penalties).

2. Whether the **reaction is adverse, e.g. serious and unexpected**

- This would include the types of events that should be reported to a local public health unit, require medical treatment beyond first aid, require absence from work for more than a few days, and require absence from work for more than a few days.

My employee says they had a reaction to a COVID-19 vaccine and can't come to work. Do I have to report the illness to the WSIB?

If an employee received a vaccine as a **compulsory part of their employment** - despite the location of the clinic - and you learn they experienced an **adverse reaction** that required medical treatment beyond first aid and/or required absence from work for more than a few days, you must report the injury or illness to the WSIB.

Normal expected reactions to a COVID-19 vaccine, per public health guidance, may include fever, chills, pain at the injection site, fatigue which should resolve on their own in a few days. These do not generally constitute an adverse reaction for the purposes of entitlement and do not need to be reported if the vaccine was a compulsory part of their employment.

If you are unsure about whether you need to report, we encourage you to report in the normal way. It is the WSIB's responsibility to determine the relatedness of claims.

What is considered an adverse reaction to a COVID-19 vaccine?

An adverse reaction is a serious unexpected reaction to a vaccine. These are the types of events that should be reported to a local public health unit.

For example, if the reaction requires medical treatment beyond first aid and/or requires absence from work for more than a few days, the reaction - in its severity and/or duration - has gone beyond the common mild expected reactions from immunization (fever, chills, pain at the injection site, fatigue and headaches which should resolve on their own in a few days).

If my employee has an adverse reaction to a COVID-19 vaccine that is a compulsory part of their employment, will the costs be charged against the employer?

No, Costs associated with COVID-19 vaccination claims will not be allocated at an employer or class level. Instead, they will be allocated on a wide basis. No incident would be shown against the employer's record and there will be no change in premium rates.

Do you have a policy for adjudicating claims for adverse reactions to a COVID-19 vaccine?

In adjudicating claims related to adverse reactions from a COVID-19 vaccine, we are guided by our policy on Immunization Against Infection which specifically provides for entitlement for adverse reactions to immunization where the immunization is a compulsory part of employment.

If you received a COVID-19 vaccine as a **compulsory part of your employment** and experienced an **adverse reaction**, you should report the reaction to your employer and file a claim so the WSIB can determine if you are eligible for benefits.

What is considered an adverse reaction to a COVID-19 vaccine?

An adverse reaction is a serious unexpected reaction to a vaccine. These are the types of events that should be reported to a local public health unit.

For example, if the reaction requires medical treatment beyond first aid and/or requires absence from work for more than a few days, the reaction - in its severity and/or duration - has gone beyond the common mild expected reactions from immunization (fever, chills, pain at the injection site, fatigue and headaches which should resolve on their own in a few days).

LAL

L.A. Liversidge, LL.B.
L.A. Liversidge, Barrister & Solicitor,
Professional Corporation
5700 Yonge Street, Suite 200
Toronto, ON M2M 4K2
Direct Line: 416-986-1166

Fax: 416-590-9601
email: lal@liversidge.com

To unsubscribe from The Liversidge Letter simply reply to this e-mail
(The_Liversidge_Letter@liversidge.com noting "un-subscribe" in the subject line of the e mail, or call us at
416-986-0064.