

Subject: Coverage for Injuries Resulting from the COVID-19 Vaccination Mandate for Federal Employees.

Background: On September 9, 2021, President Biden issued an executive order mandating COVID-19 vaccination for most Federal employees. The order directed each agency to implement a program to require COVID-19 vaccination for all of its employees, with exceptions only as required by law.

The Federal Employees' Compensation Act (FECA) covers injuries that occur in the performance of duty. The FECA does not generally authorize provision of preventive measures such as vaccines and inoculations, and in general, preventive treatment is a responsibility of the employing agency under the provisions of 5 U.S.C. 7901. However, care can be authorized by OWCP for complications of preventive measures which are provided or sponsored by the agency, such as adverse reaction to prophylactic immunization. See PM 3-0400.7(a).

Further, deleterious effects of medical services furnished by the employing establishment are generally considered to fall within the performance of duty. These services include preventive programs relating to health. See PM 2-0804.19.

However, this executive order now makes COVID-19 vaccination a requirement of most Federal employment. As such, employees impacted by this mandate who receive required COVID-19 vaccinations on or after the date of the executive order may be afforded coverage under the FECA for any adverse reactions to the vaccine itself, and for any injuries sustained while obtaining the vaccination.

Purpose: To provide guidance on coverage for claims for injury on or after September 9, 2021, resulting from receipt of the mandated COVID-19 vaccination for Federal employees.

Applicability: All FECA Program Staff and Other Stakeholders.

Reference: Federal (FECA) Procedure Manual, Part 2 Claims, Chapter 2-0804 Performance of Duty, and Part 3 Medical, Chapter 3-0400 Medical Services and Supplies; 20 CFR § 10.313; Executive Order on Requiring Coronavirus Disease 2019 Vaccination for Federal Employees.

Actions::

1. Because COVID-19 vaccination is a specific event occurring during a single day or work shift, any adverse reactions or injuries should be reported on Form CA-1, Notice of Traumatic Injury and Claim for Continuation of Pay / Compensation. Where two vaccinations are required several weeks apart, reactions to each are considered separate claims.

2. When a claim is received for injury due to receipt of the COVID-19 vaccination, the claims examiner should determine if the vaccine was received prior to September 9, 2021. If the vaccination was received prior to this date, coverage is afforded only if the vaccine was administered or sponsored by the employing agency. See PM 2-0804.19.

3. The claims examiner should then confirm that the employee is covered by the September 9, 2021 executive order. The order applies to any executive agency as defined in 5 U.S.C. 105 – agencies that fall under the executive branch of the government (excluding the Government Accountability Office). The order does not apply to employees of the United States Postal Service. If there is any question regarding applicability of the executive order, the claims examiner should query the employing agency. If the employee is not covered by the executive order, coverage is afforded only if the vaccine was administered or sponsored by the employing agency. See PM 2-0804.19.

4. If the employee is covered by the executive order and vaccination was received on or after September 9, 2021, coverage may be afforded for (1) adverse reactions to the COVID-19 vaccination and (2) injuries sustained as the direct result of an employee receiving their mandated vaccination. Examples of such injuries include but are not limited to accidents while commuting a reasonable distance to and from the vaccination site and slip and fall injuries occurring at the vaccination site.

5. The claims examiner should, however, ensure that the employee followed any employing agency policy with respect to obtaining their mandatory vaccination. The executive order directs each agency to implement, to the extent consistent with applicable law, a program to require COVID-19 vaccination for all of its Federal employees.

a. If an employing agency requires employees to receive their mandatory vaccination at specific times and/or at a specific location(s), coverage is only afforded if the employee follows the agency's vaccination policy.

b. If any employing agency allows employees to obtain their mandatory vaccination at any time or location, coverage is afforded regardless of where or when the employee receives their vaccination, with the only limitation being for that of reasonableness.

6. The executive order requires full vaccination, which is considered to be two shots of the Pfizer-BioNTech COVID-19 Vaccine, also known as Comirnaty, two shots of the Moderna COVID-19 Vaccine, or one shot of the Janssen COVID-19 Vaccine. The order does not cover or mandate booster vaccinations. Should there be any changes regarding approved vaccination brands or mandated vaccination frequencies, the FECA program will publish additional guidance.

Disposition: This bulletin should be retained until incorporated into Chapter 2-0804, Performance of Duty, of the FECA Procedure Manual.

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Distribution: All FECA Program Staff