

Standard Interpretations / OSHA's position on mandatory flu shots for employees.

OSHA requirements are set by statute, standards and regulations. Our interpretation letters explain these requirements and how they apply to particular circumstances, but they cannot create additional employer obligations. This letter constitutes OSHA's interpretation of the requirements discussed. Note that our enforcement guidance may be affected by changes to OSHA rules. Also, from time to time we update our guidance in response to new information. To keep apprised of such developments, you can consult OSHA's website at <http://www.osha.gov>.

November 9, 2009

The Honorable Marcy Kaptur
One Maritime Plaza 6th Floor
Toledo, OH 20515-4146

Dear Congresswoman Kaptur:

Thank you for your letter enclosing correspondence from your constituent Mrs. Tara Fisher. Specifically, Mrs. Fisher would like to know whether her employer can mandate that she accept a flu shot. Her employer has threatened the employees with mandatory time off if they do not accept the flu shots.

In April 2009, a Novel H1N1 influenza A (genetically distinct from seasonal flu virus) strain of swine origin was identified. Unlike previous seasonal influenza viruses, this pandemic influenza virus disproportionately infects a wider age-range of people. Based on the Centers for Disease Control and Prevention's (CDC's) recommendations, the Occupational Safety and Health Administration (OSHA) has guidelines for employers to assist them in the development of a framework in preparing their workplaces in order to minimize transmission of a pandemic virus.

OSHA does expect facilities providing healthcare services to perform a risk assessment of their workplace and encourages healthcare employers to offer both the seasonal and H1N1 vaccines. It is important to note that employees need to be properly informed of the benefits of the vaccinations. However, although OSHA does not specifically require employers to take the vaccines, an employer may do so. In that case, an employee who refuses vaccination because of a reasonable belief that he or she has a medical condition that creates a real danger of serious illness or death (such as serious reaction to the vaccine) may be protected under Section 11(c) of the Occupational Safety and Health Act of 1970 pertaining to whistle blower rights.

In addition, OSHA recommends that Mrs. Fisher visit both CDC's and OSHA's websites for additional information on the flu vaccine at: <http://www.cdc.gov/h1n1flu> and <https://www.osha.gov/dsg/topics/pandemicflu/index.html>. Also, enclosed is the OSHA Fact Sheet on Section 11(c).

We hope your constituent finds this information helpful. If you have any further questions, please feel free to contact Janna Bergquist in the Department

10/14/2019

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of Labor's Office of Congressional and Intergovernmental Affairs at (202) 693-4600.

Sincerely,

Jordan Barab
Acting Assistant Secretary

UNITED STATES
DEPARTMENT OF LABOR

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