ELECTRONICALLY FILED AUG 19, 2026 CLERK OF SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 25-1236
Filed August 19, 2026

Larry Driscoll,
Petitioner–Appellant,
v.
City of Cedar Rapids,
Respondent–Appellee.

Appeal from the Iowa District Court for Polk County,
The Honorable Heather Lauber, Judge.

AFFIRMED

Thomas D. Wolle of Simmons Perrine Moyer Bergman PLC, Cedar Rapids, attorney for appellant.

Jason P. Wiltfang of Scheldrup Wiltfang Corridorlaw Group Iowa P.C., Cedar Rapids, attorney for appellee.

Considered without oral argument
by Ahlers, P.J., and Buller and Sandy, JJ.
Opinion by Buller, J.

BULLER, Judge.

Larry Driscoll appeals from a judicial-review proceeding arising out of a contested workers' compensation case. Driscoll argues the district court and the workers' compensation commissioner erred by rejecting a proposed standard to determine whether a vaccine reaction occurred in the course of employment and finding his injury non-compensable. For the reasons discussed below, we affirm.

BACKGROUND FACTS AND PROCEEDINGS

Most of the material facts in this case are not disputed. Driscoll worked as a water distribution manager for the City of Cedar Rapids (the City) from 2019 until 2021—encompassing the height of the COVID-19 pandemic. Early in the pandemic, the City published a weekly newsletter for its employees addressing COVID-19 safety guidelines and vaccine updates. Once the COVID-19 vaccine was available, these publications encouraged employees to get vaccinated and announced that employees could use two hours of their work time for a vaccine appointment. The City also sent emails discussing COVID-19's impact on the City's operational capacity in terms of sick employees in each department. In management meetings, supervisors would discuss amongst themselves the need to vaccinate, and Driscoll said he felt "a little bit of peer pressure" and that he "owed it to [his] department to get vaccinated." A former manager described the City's encouragement on vaccines as "a continuous message that was routinely recited, but not overbearing."

On April 5, 2021, the COVID-19 vaccine became available to all Iowans over the age of sixteen. The City sent out an email announcing a local hospital was hosting a vaccination clinic open to city employees. Using the hyperlink the City provided, Driscoll set up an appointment and got

vaccinated. Two weeks later, he woke up to his arm feeling limp and the back of his knees hurting. When his symptoms persisted and escalated, he went to urgent care. Driscoll was eventually diagnosed with an acute autoimmune syndrome that progressed into a chronic inflammatory autoimmune condition. As a result, his lower extremities have atrophied and he has mobility issues. Driscoll also suffered from Bell's palsy for about six months and continues to exhibit some symptoms. Driscoll continues to have tremors in his hands and spends a significant amount of his time in physical therapy.

Driscoll sought workers' compensation benefits in 2021. Following arbitration, a deputy workers' compensation commissioner determined Driscoll's injury arose out of and in the course of his employment, citing a standard for compensability of non-mandatory vaccine injuries adapted from 3 Arthur Larson, Lex K. Larson & Thomas A. Robinson, *Larson's Workers' Compensation Law* § 27.03[2] (2025) (hereinafter *Larson's Workers' Comp.*). The City appealed to the commissioner, who reversed the deputy's award. The commissioner found that the section 27.03[2] standard was incompatible with Iowa law and Driscoll was not entitled to relief.

Driscoll petitioned for judicial review in the district court, urging the commissioner erred in rejecting the section 27.03[2] standard. The district court affirmed the commissioner, and Driscoll appeals.

STANDARD OF REVIEW

"Judicial review of the decisions of the workers' compensation commissioner is governed by Iowa Code chapter 17A." *Neal v. Annett Holdings, Inc.*, 814 N.W.2d 512, 518 (Iowa 2012). "It is well settled that the interpretation of workers' compensation statutes and related case law has not been clearly vested by a provision of law in the discretion of the agency. We

therefore do not defer to the commissioner's interpretation of the law." *Larson Mfg. Co. v. Thorson*, 763 N.W.2d 842, 850 (Iowa 2009) (cleaned up). "Factual determinations in workers' compensation cases, on the other hand, are clearly vested by a provision of law in the discretion of the agency." *Id.* (cleaned up). "The application of the law to the facts is also an enterprise vested in the commissioner." *Id.*

DISCUSSION

To prevail, Driscoll must show his injury "arose out of" and "in the course of" his employment. *Koehler Elec. v. Wills*, 608 N.W.2d 1, 3 (Iowa 2000); *accord* Iowa Code § 85.3(1) (2021). Whether a non-mandatory vaccine injury is compensable under our workers' compensation law is an issue of first impression. We turn to the same workers' compensation treatise as the commissioner and deputy, which discusses the issue:

> When the inoculation is not . . . strongly tied to the employment either by employer compulsion or by the special risks of the assignment, it may still be covered if there is a combination of strong urging by the employer and some element of mutual benefit in the form of lessened absenteeism and improved employee relations.

Larson's Workers' Comp. § 27.03[2]. Driscoll urges that this section 27.03[2] standard is compatible with existing Iowa law and that the facts here satisfy the standard. We consider each argument in turn.

I. Compatibility under Iowa Law

The commissioner rejected the section 27.03[2] standard—looking for the existence of "strong urging by the employer and some element of mutual benefit"—and found it "establishes an exception to [the arising-out-of and in-the-course-of employment] requirement[s]." Driscoll argues the standard doesn't change the arising-out-of requirement but is instead "merely a lens

through which to view that requirement." On this narrow issue of compatibility with existing Iowa law, we agree with Driscoll.

The "arising out of" element requires the injury to "in some way be caused by or related to the working environment or the conditions of the employment." *Lakeside Casino v. Blue*, 743 N.W.2d 169, 174 (Iowa 2007) (cleaned up). "When one speaks of an event 'arising out of employment,' the initiative, the moving force, is something other than the employment; the employment is thought of more as a *condition* out of which the event arises than as the force producing the event in affirmative fashion." *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 223 (Iowa 2006) (citation omitted) (differentiating workers' compensation and tort law causation standards). We agree with Driscoll that the section 27.03[2] standard does not inherently violate the arising-out-of or in-the-course-of elements for workers' compensation liability.

II. Application of the Facts to Section 27.03[2]

Driscoll advocates that we should adopt the section 27.03[2] standard to make non-mandatory vaccine injuries compensable. But we decline to do so today because we find that, even on his proposed standard, Driscoll would not be owed relief. Focusing on the "strong urging" language of the section 27.03[2] standard, we conclude the facts in this record do not rise to that level or warrant liability.

The facts here establish routine encouragement: the City emailed newsletters that suggested vaccination, emailed updates about its operational capacity, and allowed employees to use two hours of work time to get vaccinated. We recognize Driscoll said he felt "a little bit of peer pressure" to get vaccinated and thought he owed it to his department to do so. But that pressure was largely internal, not something generated by the City. In any

event, the City did not offer a financial incentive for vaccination or a disincentive for those who declined. It only offered a hyperlink to a third-party clinic operated off-site, after the vaccine was available to all adult Iowans. We do not think allowing employees the option to use work time to get vaccinated changes the analysis. And, outside of an emergency temporary Occupational Safety and Health Administration order, the City never collected the names of those who did take advantage of the clinic.

After reviewing this record and deferring to the commissioner where appropriate, we affirm that the City's actions did not rise to "strong urging" that "strongly tied" the vaccine to employment. *See Larson's Workers' Comp.* § 27.03[2]. We think a former manager characterized the City's encouragement aptly: "a continuous message that was routinely recited, but not overbearing." Because Driscoll did not establish "strong urging," he would not be entitled to relief even if Iowa law embraced section 27.03[2] fully. We leave for another day the question of whether to affirmatively adopt the section-27.03[2] standard.

AFFIRMED.

Ahlers, P.J., concurs; Sandy, J., dissents.

SANDY, Judge (dissenting).

I agree with the majority that the compensability standard drawn from 3 Arthur Larson, Lex K. Larson & Thomas A. Robinson, *Larson's Workers' Compensation Law* § 27.03[2] (2025), does not offend the "arising out of" or "in the course of" requirements of our workers' compensation law. *See Koehler Elec. v. Wills*, 608 N.W.2d 1, 3 (Iowa 2000); *accord* Iowa Code § 85.3(1) (2021). I depart from my colleagues in two respects. I would adopt that standard rather than reserve doing so for another day, and I would reverse and remand to the commissioner for application of the correct section 27.03[2] standard, which I believe we cannot fully resolve on the factual record before us. I thus respectfully dissent.

I begin where the majority ends. Having agreed that section 27.03[2] is consistent with Iowa law, we should say so and adopt it. Courts confronting issues of first impression in this field have long looked to *Larson's Workers' Compensation Law* for guidance. There is no reason to withhold that guidance from the commissioner who must decide the next case and the employers and employees who must order their affairs in the meantime. I would hold that where an employer does not compel vaccination but strongly urges it, and where the urging yields a mutual benefit in the form of lessened absenteeism and improved employee relations, an adverse reaction to the vaccine arises out of the employment.

Adopting that standard is an application of the actual-risk doctrine. Under that doctrine, an injury is compensable so long as the employment subjected the claimant to the risk that caused it, and it makes no difference that the same risk was shared by the general public. *See Lakeside Casino v. Blue*, 743 N.W.2d 169, 176 (Iowa 2007); *Hanson v. Reichelt*, 452 N.W.2d 164, 168 (Iowa 1990). In *Lakeside Casino*, the stairs were an ordinary feature of

daily life, yet because they were also a condition of the claimant's workplace, her fall arose out of her employment. 743 N.W.2d at 174. So too here. The vaccine was available to the public at large, but Driscoll did not encounter it as a member of the public. He encountered it as an employee—through a scheduling link his employer secured and reserved for City employees alone; at a clinic his employer arranged, during work hours, as his employer's leave policy expressly allowed; and after months of his employer's insistence that "it takes everyone" and that "you are key." The employment did not merely coincide with the risk; it delivered it. That is the causal connection our workers' compensation statute requires. *See Miedema v. Dial Corp.*, 551 N.W.2d 309, 311 (Iowa 1996) (discussing the necessary causal connection "between the conditions of . . . employment and the injury").

Because I would adopt section 27.03[2], I cannot join the majority's alternative holding that, even under that standard, the record fails to show strong urging. The difficulty is that the commissioner rejected § 27.03[2] outright. He therefore never applied the correct legal standard, and his conclusion is not entitled to the deference we reserve for an agency's application of the law we have given it. The commissioner is not vested with authority to interpret our workers' compensation statute, and we review his legal determinations for correction of errors. *Larson Mfg. Co. v. Thorson*, 763 N.W.2d 842, 850 (Iowa 2009). Having identified the governing standard, we owe no deference to a decision that declined to use it. *See id.*

Even if we treated the commissioner's finding as an application of section 27.03[2] rather than a rejection of it, that finding could not stand. I disagree with the majority's suggestion that the commissioner's compensability finding is reconcilable with the commissioner's own findings

of fact. So I do not agree that Driscoll would not be entitled to relief even if section 27.03[2] is fully embraced.

The commissioner found that the City assembled a vaccine task force to see its employees vaccinated as soon as possible; that eleven of the thirteen newsletters in evidence urged vaccination while only one mentioned that it was not mandatory; that the City repeated its "vaccinate" flyer at least eight times; and that the City's messaging—"it's our turn," "join us in protecting your community," "we all play a part in this effort, and you are key"—was, in the commissioner's words, "exactly what 'strong urging' looks like." A conclusion that this same conduct was not strong urging does not follow from those findings; it contradicts them. On an undisputed record, that conclusion is wholly unjustifiable. *See Lakeside Casino*, 743 N.W.2d at 173; Iowa Code § 17A.19(10)(m).

The majority, like the commissioner and the district court, ultimately rests on the vaccine's voluntariness—Driscoll was free to keep his job unvaccinated, so his choice was personal. But voluntariness has never been the dividing line in our workers' compensation law. The professor in *Briar Cliff College v. Campolo* was under no obligation to join the intramural game that killed him, yet his death "arose out of" employment because the activity served the college's interests. 360 N.W.2d 91, 94 (Iowa 1984). The pertinent question is not whether the employee was compelled, but whether the employer strongly urged the activity and drew a benefit from it. Here the benefit is undisputed and was documented by the City: its March 19 message to employees tied vaccination directly to keeping its workforce healthy. The weight of persuasive authority applying the *Larson* treatise's principles agrees. *E.I. duPont De Nemours & Co. v. Faupel*, 859 A.2d 1042, 1053 (Del. Super. Ct. 2004), *aff'd*, 860 A.2d 810 (Del. 2004); *Saintsing v. Steinbach Co.*,

64 A.2d 99, 101 (N.J. Super. Ct. App. Div. 1949) *aff'd,* 66 A.2d 158 (N.J. 1949); *Monette v. Manatee Mem'l Hosp.*, 579 So. 2d 195, 197 (Fla. Dist. Ct. App. 1991).

I am mindful that our workers' compensation statute is to be construed liberally, within reason, for the benefit of the worker it was enacted to protect. *Barton v. Nevada Poultry Co.*, 110 N.W.2d 660, 662 (Iowa 1961). Larry Driscoll took the vaccine because he believed, in his words, that it was "the proper thing to do" and that he "owed it to [his] department." He led his people as his employer asked him to lead them, and he has paid for it with the normal use of his legs. I would reverse and remand to the commissioner for the commissioner's application of the correct section 27.03[2] standard.



IOWA APPELLATE COURTS

State of Iowa Courts

Case Number	**Case Title**
25-1236	Driscoll v. City of Cedar Rapids

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