

FAQ: Mandatory COVID-19 vaccination policies

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This document answers some of the most common questions about mandatory vaccination policies for COVID-19 in unionized workplaces.

Frequently Asked Questions

Please note that it is difficult to predict how the rules surrounding workplace vaccination policies will apply in the COVID-19 context, particularly since the law on mandatory vaccination is not yet settled. While we expect that any such policies will be subject to the considerations set out below, much will depend on future provincial and national health directives. Accordingly, the following information is subject to change.

Can my employer implement a mandatory vaccination policy?

Possibly. Under the occupational health and safety regime in each province, employers have a duty to protect employees from work-related illness or injury. To fulfill this duty, employers must take certain precautions to meet minimum health and safety standards, which can include policies to limit the spread of infectious diseases. In the context of COVID-19, if the presence of an unvaccinated employee presents a threat to the health and safety of persons in the workplace, employers may be within their right to require vaccination as a condition of returning to, or remaining in, the workplace.

Does a vaccination policy mean my employer can force me to get the vaccine?

Employers who impose mandatory vaccination policies will not be permitted to force employees to be vaccinated against their will, but rather, to impose restrictions on employees who refuse the vaccine.

For instance, an employer may direct an employee who refuses the vaccine to:

- work remotely (where possible);
- wear a face mask;
- adopt different work conditions to ensure physical distancing;
- undergo regular COVID-19 tests; and/or
- take a leave of absence, possibly a leave without pay.

Note that as new and more contagious variants of the COVID-19 virus proliferate, the acceptability of even masked close-contact may be reconsidered.

Can my employer discipline or dismiss me if I refuse to get the vaccine?

Currently, it is unlikely that an employer would be within their right to discipline or dismiss an employee based on their refusal to get the COVID-19 vaccine. Blanket

policies requiring that all workers be vaccinated on the threat of discipline or dismissal have generally been deemed unreasonable in the unionized context. However, once the vaccine is readily available, if an employee refused to get the vaccine, an employer could potentially remove the employee from the workplace until the COVID-19 pandemic is contained, possibly without pay. Those employers will likely need to explain why alternative measures, such as mask-wearing, hand-washing, physical-distancing, and work-from-home (where possible), would be inadequate in the circumstances.

Are certain employers more likely to impose mandatory vaccination policies?

The argument in favour of mandatory vaccination policies is stronger in certain workplaces than others. For instance, in food and retail, where workers interact with the public, or hospitals and long-term-care homes, where workers deal with vulnerable populations, the employer is more likely to be within its rights to require employees to be vaccinated, and to exclude employees from the workplace if they refuse vaccination. On the other hand, employers in lower-risk workplaces, such as those with limited public contact, or where employees are able to practice social distancing at work, may not be justified in imposing even minimally invasive vaccination policies.

Are there considerations specific to construction employers?

A vaccination policy in the construction industry will need to consider the risks posed by the specific worksite weighed against the extent to which vaccination can mitigate those risks. For example, a construction employer is more likely to be permitted to impose mandatory vaccinations if they are involved in high-risk projects, such as those in hospitals, residential care facilities, or other sites with congregated or vulnerable populations. On the other hand, it will be more difficult to justify mandatory vaccination if the employer is solely involved in lower risk sites, such as construction projects that are entirely outdoors where physical distancing can be maintained.

Since many construction employers are involved in multiple worksites over the course of the year and are not solely engaged in outdoor work, construction employers will most likely be able to justify a mandatory vaccination policy if they can show that there is a high probability of high-risk projects in the future.

Are there alternatives to mandatory vaccination in construction workplaces?

Construction employers will likely need to consider non-disciplinary alternatives to vaccination, such as modified duties, masking, and/or undergoing regular COVID-19 tests, before imposing mandatory vaccination. Whether a proposed alternative to vaccination is reasonable and protects the health and safety of workers will depend on the nature of the worksite and the worker's duties. For example, masking may suffice for an office worker who is able to maintain physical distancing, while it would likely be inadequate for an on-site worker who is frequently in close contact with other workers.

Can my employer ask for proof of vaccination?

Certain employers may be permitted to request proof of vaccination. Those employers will likely need to justify the degree of intrusion into employee privacy based on the harm associated with not requiring the disclosure of such information. Even if the employer can justify requiring proof of vaccination, privacy laws require that the information be used and stored purely to serve the narrow purpose of the vaccination policy.

What if I have a medical condition that makes the vaccine unsafe?

Human rights legislation imposes a duty on employers to accommodate employees who cannot comply with workplace policies due to medical conditions or disabilities. To fulfill that duty, employers must make efforts to provide an accommodation that is reasonable in the circumstances, unless it would cause “undue hardship.” Undue hardship can arise if an accommodation would be too costly, burdensome, or if it would compromise the health and safety of other employees.

What constitutes reasonable accommodation and undue hardship will depend on the specific circumstances of each case. For instance, if an employee with a valid claim for accommodation can complete their work remotely, a work-from-home accommodation may be reasonable. On the other hand, if the employee’s tasks must be completed in the workplace, and the employer cannot adapt the work to facilitate a work-from-home arrangement, the same accommodation may cause undue hardship.

An employee may need to provide the employer with proof of disability from a medical professional to support their accommodation request.

What if I am prohibited from taking the vaccine because of my religion?

Likewise, employers also must accommodate employees whose sincerely-held religious beliefs prevent them from receiving the COVID-19 vaccine, unless doing so would cause undue hardship. As with disabled employees, an employer must accommodate the employee unless it would cause undue hardship. Similarly, an employee may need to support their accommodation request by providing their employer with verification of the nature of their religious belief.

What if I am worried about the vaccine due to pregnancy?

There is currently limited data regarding the impact of the COVID-19 vaccine on pregnancy. Accordingly, it is unclear whether individuals who refuse the vaccine on the basis of pregnancy will receive human rights protections. If evidence emerges indicating that the vaccine is harmful to pregnant individuals or individuals who wish to become pregnant, employers will need to accommodate those individuals, unless doing so would cause undue hardship.

What if the employer cannot provide an accommodation?

If the employer can prove that vaccination is necessary for all workers and that accommodation is not possible without undue hardship, then it would be lawful for the employer to exclude an employee from the workplace even if they have a valid claim for human rights protections. This does not mean that the employer can automatically dismiss the worker. Rather, the employer will likely be permitted to temporarily place the employee on a leave of absence until the pandemic is contained.

What if I am worried about the safety of the vaccine for other reasons?

Human rights legislation will not protect employees who refuse the vaccine based on personal preference or other reasons not covered by human rights legislation.