

VACCINATION DISCLOSURE AND PRIVACY FAQ

Q. What are the general rules around privacy and personal health information?

- All personal health information is private and is subject to significant protection at law.
- However, an employee's right to privacy is not absolute, and employers are entitled to request employee health information if it is necessary to meet the employer's legal obligations or for other legitimate operational needs. The scope and amount of personal health information an employer is entitled to will depend on the circumstances.
- When employers seek disclosure of health information, it should be done using a 'least intrusive, non-punitive approach', meaning disclosure obligations should respect privacy as much as possible, and employees should not be disciplined for not disclosing.
- There is however a difference between discipline and consequences. Because employers have a legal obligation to ensure a safe workplace, a refusal to disclose vaccination status may result in some adverse employment consequences.
- To date, school boards have not yet released vaccination disclosure policies. The OSSTF/FEESO continues to seek clarification from the Ontario government on its direction to school boards and will review school board policies as they are disseminated.

Q. What is the basis for seeking disclosure of an employee's vaccination status?

- School boards have a legal obligation under the *Occupational Health and Safety Act* to provide a safe workplace for all workers. Similarly, under the *Education Act*, School Boards are required to provide a safe learning environment for students.
- School boards must try to reduce the spread of COVID in the workplace, and the science on COVID transmission indicates that in a school setting, a workers' choice not to get vaccinated will impact upon the health and safety of others in the workplace.
- Consequently, school boards have a legitimate basis to request information about an employee's vaccination status to meet their obligations to provide a safe workplace.

Q. How should information about vaccination status be collected?

- Vaccination disclosure policies must ensure confidentiality is maintained in how the Employer collects, uses, and retains information about an employee's vaccination status, consistent with the "least-intrusive, non-punitive" approach.

- Two of the least intrusive means for verifying vaccination status include:
 - Requiring the employee to solemnly attest to the fact of their vaccination status;
 - Requiring proof of vaccination status from a pre-existing recognized source such as a pharmacy or hospital receipt, or official provincial confirmation of status.
- OSSTF/FEESO will be reviewing Employer immunization policies to ensure attestation and / or proof of vaccination are collected from employees in a manner that protects the confidentiality of the information .Other security measures around the collection of information will also be reviewed on a policy-by-policy basis

Q. How should information about vaccination status be used?

- Generally speaking, employees are entitled to know how and for what purposes the Employer intends to use their personal health information. Vaccination status disclosure policies must respect this foundational right.
- Employer vaccination disclosure policies should set out the steps taken to treat the information disclosed as confidential, including specifying which employer officials could access the information, and for what purpose each will be entitled to use the information.
- Once disclosed to the Employer, access to personal health information should be limited to only those officials necessary to implement the policy. If, for example, a school board intends to provide this information to specified staff (eg. a Principal), or to outside entities (eg. The Ministry of Education) the policy should make this clear, including when and/or in what situation(s) (eg. outbreaks) they would have access to the information. Disclosure rules will be assessed by OSSTF/FEESO on a policy-to-policy basis.

Q. How should information about vaccination status be retained?

- Policies should clarify the time period for which the Employer intends to retain vaccination information and where that information will be stored. Like all other medical information, the Employer should take all reasonable steps necessary to ensure the information is securely maintained.

Q. What about Rapid Antigen Rights and Privacy Rights?

- Requiring unvaccinated workers or those who will not disclose their status to submit to regular antigen testing is a reasonable measure to protect all workers and students in an education worksite when testing is recommended or required by public health authorities.
- Such tests should be conducted and the results maintained and used by the employer in a manner which respects employee privacy and confidentiality. For example, if done on site, it is in a private space, out of the view of others in the workplace.

- Policies should set out how rapid antigen tests will be provided, administered and results reported, as well as clear procedures for workers who receive a positive antigen test.

Q. Can employers disclose a workers' vaccination status to parents or students?

- To date, the Ministry of Education has not suggested that its immunization disclosure policy will require education workers to disclose vaccination status to parents or students, or that Employers will be making such disclosure. Policies should specify how the Employer will communicate/respond to requests for employee vaccination status from students, parents, and other community members. OSSTF/FEESO will review all policies.

Q. Can employers disclose individuals' vaccination status to their employees?

- There are limited situations where adjudicators have recognized that employers may be required to disclose personal health information of students to workers to meet their OHS obligations (for example students who have a history of being violent in the workplace).
- These principles that could apply to the vaccination status of others in a workplace, particularly where workers work in close proximity in a high-risk setting. There is no clear legal precedent in this area and requests of this nature should be reviewed on a case-by-case basis.