

VACCINATION EXEMPTION FAQ

Q. Are mandatory vaccination policies reasonable?

- OSSTF/FEESO believes that mandatory vaccination policies that contain the design features supported by the OSSTF/FEESO, including but not limited to disclosure, vaccination subject to legal requirements and testing are likely to be upheld under the *Human Rights Code*, the *Charter* and in arbitral jurisprudence as reasonable exercises of management rights.
- In assessing the legality and/or reasonableness of a policy, these factors are important:
 - The consequences of an unvaccinated employee transmitting COVID-19 in the workplace, including the health risks to other workers and students, the negative education consequences if exposure disrupts in-person learning, and the mental health impacts on those required to isolate.
 - The need to increase vaccination rates due to more transmissible variants, including Delta, given the insufficiency of voluntary efforts to up vaccination rates.
 - The rate of community spread and other COVID-related public health indicators.
 - Accommodations made for those with medical needs or religious objections.
 - The consideration given to and availability of alternative assignments.
- In addition to the factors above, any analysis of a vaccine policy will also require an examination of a number of public health indicators, including but not limited to transmission rates, hospitalization rates, ICU admission rates, and vaccination rates in the community and workplace population.

Q. On what basis can people be exempted from mandatory vaccination policies?

- The *Human Rights Code* and the *Charter* place an obligation on governments and employers to accommodate individuals with genuine disability-related inability or religious or conscientious objection to become vaccinated.
- The *Immunization of School Pupils Act (ISPA)* has similar exemptions and may provide guidance about how a mandatory vaccination policy with exemptions would operate.

Q. What does someone need to prove to get a religious exemption?

- As a starting point, an individual must identify the basis for their request for exemption or accommodation. The forms required under the *ISPA* may provide helpful guidance.

- **Religion/Conscience** based exemptions under the *ISPA* require a sworn affidavit attesting that “immunization conflicts with the sincerely held convictions [of the parent] based on [the parent’s] religion or conscience”.
- Assessing the sincerity of that conviction may include reviewing:
 - The consistency of the individual’s vaccination practices, including whether the individual received other vaccinations recently, and if so, how the distinction between those and the Covid vaccination is consistent with their religious beliefs.
 - The individual’s articulation of their religious or conscientious belief – in order to determine the sincerity of the belief, an adjudicator will assess the credibility of the individual when describing and explaining their beliefs.
 - a connection between the opposition to vaccination and the individual’s spiritual, religious, moral or ethical worldview.

Q. What does someone need to prove to get a medical or disability exemption?

- **Disability** based exemptions under the *ISPA* require a statement written by a physician or nurse practitioner with respect to each designated vaccine identifying either (a) that vaccination may be detrimental to the health of the person; or (b) for certain but not all vaccinations, the vaccination is unnecessary because of recent infection, and the manner in which that recent infection was confirmed.
- Under the *Code* or *Charter*, a person would need to provide sufficient information to justify a disability-related need for accommodation in relation to a vaccine policy. What information is sufficient will depend on individual circumstances, and an employer may be entitled to a physician’s report, particularly where there are reasonable grounds to suspect that the claim is not *bona fide*.

Q. What about people politically opposed, or skeptical of vaccine science?

- Most people opposed to vaccination because of a skepticism of or disbelief in the science of vaccination, or political opposition to public health measures, are not entitled to exemption to mandatory vaccination under the *Human Rights Code* or the *Charter*.
- This is because such opposition is not related to a person’s moral views or spirituality and therefore not be protected by the freedom of religion or conscience under the *Charter* or the *Human Rights Code* protections against discrimination based on creed.

Q. What accommodations might be appropriate for those with an exemption?

- For employees with a legal right to accommodation, the law requires employers to accommodate to the point of undue hardship. This is an individualized assessment, and what a reasonable accommodation may be will depend on the circumstances. In the education sector, a number of potential accommodations exist, including:
 - Assignment to virtual learning environments for teachers/educational assistants;
 - Remote work for other education workers;

- Having shift times changed to avoid/reduce contact with others;
- Reassignment to worksites where more students are vaccinated;
- Reassignment from working with medically fragile students, and students who are unable to mask due to disability;
- Mandatory use of higher quality PPE, such as fit-tested N95 respirators;
- Placement on a paid leave of absence, or on a medical leave of absence.

Q. What consequences exist for unvaccinated employees without an exemption?

- Unvaccinated employees without a legal right to accommodation are still protected by arbitral limitations on the unreasonable exercise of management rights.
- Policies should set out the consequences for those who do not vaccinate but who do not have a legal right to accommodation, including potential exclusion from the workplace for certain periods, but should also consider the possibility of alternative assignments.
- There are reasonable limits to reassignment, including availability of such positions, however, and priority should be given to those with a legal right to accommodation.
- Where reassignment is not an option, exclusion from the workplace will likely be upheld as reasonable, including being placed on unpaid leave.
- The duration of that exclusion will likely be dependent on community spread and other public health indicators.