

SCHOOL BOARD VACCINATION POLICY FAQ

Q. Are school board employees subject to ‘mandatory vaccination’ policies?

- They are not currently subject to Government-required mandatory vaccination, nor does it appear that the Government is contemplating making vaccinations mandatory.
- However, school boards and private school employers will be required by the Government to introduce their own vaccination policies.
- Minimum policy standards will likely be set out in a regulation, which is not yet available.
- Some school boards have already introduced policies requiring employees be vaccinated subject to human rights requirements.
- It will be very important to know and to track your own employer’s policy.

Q. What will the Ontario Government’s vaccination regulation require?

- The Government has said it intends to require that employees in public education:
 - Voluntarily disclose their vaccination status to their employer;
 - Those who decline to disclose or who are unvaccinated will be subject to mandatory education about the importance and benefits of being vaccinated;
 - Those who decline to disclose their status or are unvaccinated will be subject to mandatory rapid testing at least weekly; and,
 - There will be mandatory isolation and/or quarantining for those employees whose rapid tests indicate they have COVID-19 or its variants.

Q. Does the Government’s plan subject unvaccinated employees to adverse employment consequences?

- To date, indications from the Government are that unvaccinated employees will not be subject to adverse employment consequences such as discipline, transfer, or temporary lay off, but this does not mean that there will be no changes to their employment.
- **However**, individual employers will be introducing their own policies, and some of these may require mandatory vaccination. Few details of these policies are yet available.

Q. What are the legal sources for requirements for vaccines in employment?

- Existing laws, including the *Occupational Health and Safety Act*, which requires employers to maintain safe workplaces and the *Education Act*, which creates obligations around the safety and welfare of students, can provide the basis for vaccine policies.
- Additionally, governments can enact new laws and regulations mandating vaccination policies, and those laws and regulations would be binding on affected employers.
- Regulations regarding vaccination requirements in public education workplaces are anticipated in early fall 2021, and this FAQ will be updated accordingly.

Q. Are there any current laws about “mandatory vaccination” in employment?

- No Ontario laws currently mandate COVID vaccines in employment or otherwise.
- However, there are also no prohibitions on employers implementing mandatory vaccination policies that meet all other legal requirements.

Q. What does case law say about mandatory vaccination policies in employment?

- Most vaccination policy case law deals with influenza vaccines in hospitals, where the policies require workers to vaccinate or mitigate risk in other ways, eg. enhanced PPE, transfers to positions of less risk, or being placed on leave for the length of an outbreak.
- In all these cases, the policies provided exemptions or alternatives for those unable to vaccinate for medical or religious reasons. See the exemption FAQ.
- Some influenza policies were upheld at arbitration, others were not. In each case, a “balancing of interests” analysis was used to assess whether a policy was reasonable.
- To date, there have been no cases about a COVID vaccination policy. However, recent decisions have upheld policies requiring employees to submit to COVID rapid testing.

Q. What if my employer decides to require COVID vaccination?

- Each policy must be assessed on its own merits. The Government will likely pass a regulation setting minimum requirements for education sector vaccination policies, meaning that employers may have some latitude in creating their policies.
- In assessing policies, consideration will be given to what an arbitrator will likely decide.

Q. What factors will an arbitrator consider when assessing COVID policies?

- It is critical to appreciate that COVID-19 is more lethal and transmissible than the flu and that COVID vaccines are significantly more effective than influenza vaccines.
- As such, COVID poses a serious risk to the worker, their co-workers, and in the context of a school, students, others in the building and the families of all these people.

- Arbitrators will also have to consider the science of COVID transmission and the unique transmission risks and vulnerabilities of those in the specific school or workplace. This will be more important where students are not vaccinated or have low vaccination rates.
- Community realities are also relevant: the higher the rates of community transmission, school infections and outbreaks, hospital admissions, ICU admissions and/or fatalities, the more likely that stricter policies on vaccination will be found to be reasonable.

Q. What about human rights and mandatory vaccination policies?

- The *Human Rights Code* applies to employer policies, including those on vaccination, and requires that those policies not discriminate against employees on specified grounds.
- Individuals who cannot take the vaccine based on medical or religious objections are entitled to be accommodated, but what that accommodation is could include:
 - Allowing employees to continue to work, but subject to additional PPE and/or other health and safety measures that only unvaccinated workers must adopt;
 - Allowing employees to work remotely if possible;
 - Transferring employees to positions or shifts where they are less likely to put others at risk (such as moving a custodian to a night shift); and,
 - Putting the unvaccinated employee on paid or unpaid leave.

Q. Don't employees have protection under the Code on the basis of 'creed'?

- Protection on the ground of 'creed' is very limited and generally seen as analogous to religious belief, which must be sincerely and deeply held, and integral to a person's identity; a personal preference does not appear to be protected under the *Code*.