

# Employment Update: Reopening Workplaces and Vaccination Policies

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As Ontario continues to reopen and with virtually all employees eligible for COVID-19 vaccines, many employers are moving forward with a gradual return to the workplace. As variants of concern continue to impact the roll-out of return-to-work plans, employers should address what steps they can take to ensure they meet their obligations under occupational health and safety legislation. This includes whether they will require their workforce to be vaccinated notwithstanding the absence of any provincial government-mandated vaccination or proof of vaccination requirement.

On August 20, 2021, Toronto's Medical Officer of Health (TMOH) issued a recommendation for local employers to institute a workplace vaccination policy to protect their employees and the public from COVID-19. This advice has since been updated and other public health authorities have followed suit. TMOH strongly recommends that workplace vaccination policies require at minimum:

- Employees to provide proof of their vaccination series approved by Health Canada or the World Health Organization
- Unvaccinated employees to provide written proof of a medical reason from a physician or nurse practitioner that includes whether the reason is permanent or time-limited
- Unvaccinated employees to complete a vaccination education course on the risks of being unvaccinated in the workplace.

Although the provincial government has not gone so far as mandating vaccination for all workplaces, the City of Toronto, the Government of Canada, and various federally regulated employers have announced their intention to require vaccination of all employees by a specified date.

Occupational health and safety legislation imposes an obligation on all employers to take every precaution reasonable in the circumstances to protect the health and safety of employees. It is up to each employer to consider its health and safety obligations in the context of their

workplaces in respect of whether to mandate vaccination as part of the employer's vaccination policy.

Over the last number of weeks employers in many settings, not just the federal sphere, have announced an intention to mandate vaccination for those employees who are returning to the physical workplace. Some of these vaccination policies are not strictly speaking mandatory vaccination policies, as they include alternatives for those who are unwilling or unable to be vaccinated to comply with other measures, such as regular COVID-19 testing. The exact precautions that an employer elects to implement to protect their employees from COVID-19 may therefore depend on the level of risk posed by COVID-19 in each workplace setting.

Overall, while a vaccination policy should be introduced, subject to health and safety, employee privacy and human rights considerations and limitations, an employer must weigh and consider the nature of the policy it will adopt in the context of what makes sense for its workplace.

Mandatory vaccination or not, any vaccination policy that is implemented should address the factors addressed by the TMOH as listed above, but should also include:

- The process for requesting proof of vaccination taking into account privacy considerations
- Discussion about the process an employee may take for requesting accommodation if the employee is unable to receive a COVID-19 vaccine for reasons related to a human rights ground, such as disability or creed. The policy should contemplate accommodation requests being addressed on an individual, case-by-case basis, and accommodation being provided to the point of undue hardship. Examples of accommodation may include remote work, the use of PPE or physical distancing, regular COVID-19 testing, or unpaid leaves of absence
- Dates by which employees must comply with the policy, including any requirements on being fully vaccinated if that requirement is ultimately adopted by the employer
- The steps the employer will take in the event of non-compliance with the policy
- The additional measures in place to protect employees from COVID-19 in accordance with public health measures, which may be augmented or relaxed as the fourth wave continues or dissipates in concert with public health direction

The vaccination policy should clearly state that it will be reviewed on a regular basis and that it will be subject to revision based on changing circumstances, including updated federal, provincial and local public health guidance relating to the COVID-19 pandemic. Employers should expect that new issues will continue to arise that need to be addressed in their vaccination policy, either relating to new stages of the pandemic (e.g. rising or falling COVID-19 case counts) or to new methods of responding to the pandemic (e.g. vaccine booster shots).

The vaccination policy itself is but one part, albeit an important part, of an employer's overall comprehensive health and safety response to the pandemic in this period of gradual return to work. The pandemic and vaccination landscapes are changing rapidly. Employers must continue to be vigilant about their health and safety obligations.

This article reflects our current environment with respect to reopening workplaces and vaccination policies in Ontario. If you have any questions or would like assistance with developing and/or reviewing your vaccination policies, please contact a member of our [Employment Law Group](#).

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