



FAQ's on vaccination policies and more

General

1. Just clarification please, if an employer cannot force staff to get vaccinated, then why have a vaccination policy?

Under a properly worded Vaccination Policy, in order to meet an employer's obligation under section 25(1) of the **Occupational Health & Safety Act** to ensure that the workplace is safe and to comply with Public Health and government directives an employer may take measures, including requiring vaccination for safety purposes in employment, mandatory symptom reporting, mandatory testing, and adjusting an employee's duties and place of work up to and including putting the employee on temporary leave without pay under the **Employment Standards Act's, Infectious Disease Emergency Leave**. By introducing a vaccination policy an employer is tangibly supporting vaccination and encouraging employee vaccination.

2. Is it legal to mandate employees to get vaccinated?

As per the answer above, it is legal to require an employee to be vaccinated in order to carry out their employment duties or persons to receive services, provided the requirement is reasonable and the employer accommodates employees and those who are not able to receive the vaccination due to a protected standard covered in the **Human Rights Code**.

3. We can have a vaccination policy recommending vaccination, but we cannot make it a requirement. If a recommendation, can we legally not hire someone if they aren't double vaccinated?

Flowing from the answer in question 1 above, an employer can mandate that a person must be vaccinated as a condition of hiring, provided they must be accommodated if the person is not able to receive the vaccination due to a protection covered in the **Human Rights Code**.



4. Can different job roles be treated differently? For instance, front-line workers need to be in the office. Not as true for management/admin employees.

Yes - while as a general position, a Vaccination Policy should state in recognition of Public Health information, that vaccination is the most effective way of responding to the COVID-19 virus that vaccination is recommended for all employees, an employer must assess and determine what are the reasonable requirements for the different components of its workplace.

5. Wouldn't it be illegal to disclose someone's personal health information to anyone?

A Vaccination Policy should state that the employer will maintain the protection of employee health information, subject to the situation where the ensuring of workplace and workers health and safety in preventing the spread of the COVID-19 virus supersedes the importance of an individual's privacy.

6. What happens if they decline one of the three requirements and refuse to disclose?

Subject to current Public Health and government directives in place at the time an employer can put the employee on temporary unpaid leave under the ***Employment Standards Act's; Infectious Disease Emergency Leave.***

7. At the food bank, should we be asking visitors/users if they're vaccinated?

Yes, as you can make being vaccinated a requirement in order to receive service, subject to the protections under the ***Human Rights Code.*** In the alternative, although not as effective, or used as an accommodation for persons who validly cannot be vaccinated, you could require visitors/users to complete a COVID-19 symptom pre-screen form prior to entry.

8. Are there or should there be requirements to conduct contact tracing with users and volunteers?

Yes, ideally users and volunteers are using the COVID Alert contact tracing app on their phone - alternatively, you can record contact information for all users/volunteers who are coming and going.



Employees

9. Can you require an unvaccinated employee to get regular COVID testing? Does the employer have to incur the cost of the test?

Yes. If you inquire with your local Public Health, they should be able to help you get either low cost or free tests.

10. How can you legally mandate that staff receive rapid tests as a part of their job duties since the person's health is personal and the job is professional?

It can be legally mandated because a Policy's objective of preventing the spread of COVID-19 outweighs the minimal intrusiveness of the test. Ontario's **Occupational Health & Safety Act (OHSA)** mandates that employers must maintain a safe work environment for their employees.

11. How would requiring additional PPE, that will easily identify the staff person as non-vaccinated, be a potential violation of an employee's privacy and therefore their human rights?

In the case of a pandemic, the importance of the health of individuals and the community supersedes the importance of one's privacy. Ontario's **Occupational Health & Safety Act (OHSA)** mandates that employers must maintain a safe work environment for their employees.

12. If we accommodate unvaccinated employees by letting them work from home, how do we make sure other vaccinated employees don't say they're unvaccinated in order to continue working from home?

An employer maintains the right to direct where an employee will perform their work. If an employer can demonstrate that it is complying with the workplace safety Public Health protocols an employee can be required to attend at the workplace. The employee must provide satisfactory information from a doctor that vaccination is medically contraindicated. If the employee is unable to meet this threshold, accommodation is not required to be provided.



Proof of vaccination

13. In order to mandate vaccination, can the employer ask for proof of vaccination?

Yes. At the present time, an employer can require the vaccination confirmation that the employee received at the time of being vaccinated

14. Does a person have to prove medical exemption? Can I ask for evidence of health reasons not to be vaccinated?

Yes. An employer can ask for a doctor's note. You are not permitted to inquire as to the specific health reasons why the person cannot receive a vaccine. The employee must provide satisfactory information from a doctor that vaccination is medically contraindicated. If the employee is unable to meet this threshold, accommodation is not required to be provided.

15. What about staff, who have contracted the virus but are not vaccinated, can they be exempted?

No, a Vaccination Policy should apply to all employees. If the staff member is able to provide information from their doctor stating that receiving the vaccination is medically contraindicated they would need to be accommodated.

Volunteers

Comment not a question: Our PHU defined workers as including volunteers and students. We look at protocols as being the same for everyone. We also concluded that due to close contact with tutoring and small group classes that in order to receive in person service fully vaccinated would be required. If that is not possible - no matter what the reason is - we will try to find a tutor that will work remotely.

Response: An excellent, helpful comment. Your process complies with Public Health directives.



16. Can the administration impose masks for those who do not want to be vaccinated included the distancing from other volunteers they may work with?

Yes. An employer in compliance with current Public Health protocols for responding to the virus can require employees to wear masks and employees to be tested. See the answers above

17. What are the implications if you are working with the vulnerable sector, in a one to one teaching/learning scenario?

Since the webinar presentation, public health and government have implemented making vaccination a requirement in healthcare, and specified other sectors in regard to employment and receiving services. Setting out the requirements of your organization in a Vaccination Policy is recommended.

18. I'll just throw in, I'm also interested in implications / application of a policy to volunteers and clients/program participants.

An organization's requirements for vaccination for volunteers and clients/program participants should be included/set out in its Vaccination Policy.

*The answers above were prepared by James LeNoury of LeNoury Law. He can be contacted via email at jalenoury@lenourylaw.com or by phone at P: 416-926-1107 ext. 234.