

Ontario Human Rights Commission Releases Policy Statement on COVID-19 Vaccine Mandates and Proof of Vaccine Certificates That Provides Guidance to Employers

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Overview of Policy and Requirements Regarding Mandatory Vaccination

As the highly contagious Delta variant of COVID-19 continues to spread, and following a whirl of announcements from federal, provincial, and municipal governments on vaccination policies, employers across Canada are instituting mandatory COVID-19 vaccination policies in their workplaces.

On August 13, 2021, the Government of Canada announced that it will require all federal public servants and all employees in the federally regulated air, rail, and marine transportation sectors to be vaccinated no later than the end of October.^[1] On August 20, 2021, the Medical Officer of Health for the City of Toronto issued a press release strongly recommending that Toronto employers institute workplace vaccination policies.^[2] Then, on August 24, 2021, the Ontario government filed O. Reg. 577/21, which requires businesses and organizations to operate “in compliance with any advice, recommendations and instructions” issued by either the Office of the Chief Medical Officer of Health or by a medical officer of health after consultation with the Office of the Chief Medical Officer of Health.^[3] Medical officers of health in a number of public health units in Ontario have since issued various recommendations on workplace vaccination policies.^[4]

More recently, on September 1, 2021, the Ontario Government announced that it will require Ontarians to be fully vaccinated (two doses plus 14 days) and provide proof of their vaccination status along with photo ID to access certain businesses and settings.

By October 22, the Ontario government will implement an enhanced digital proof-of-vaccination system that will allow people to download a QR (Quick Response) code to their phone that will verify vaccination status when scanned.

Human Rights Implications

Since the outbreak of the pandemic in early 2020, responses to COVID-19 have raised several issues and challenges related to human rights. In implementing mandatory vaccination policies in the workplace, employers must continue to comply with human rights legislation, which requires, at its most basic, that employers accommodate employees who are unable to comply with its vaccination policies for reasons protected by human rights legislation. Indeed, before mandatory vaccine policies or vaccine certificates were at the centre of public discourse, the Ontario Human Rights Commission (the “Commission”) released a policy statement in March 2020, urging Ontarians to keep human rights principles at the “centre of decision-making” during the COVID-19 pandemic.^[5]

On September 22, 2021, the Commission issued a new policy statement entitled *OHRC policy statement on COVID-19 vaccine mandates and proof of vaccine certificates* (the “Policy”). In the Policy, the Commission sets out its position on the various issues that

vaccine mandates and proof of vaccine certificates present.^[6]

The following is a summary of the Commission's Policy:

- Mandating and requiring proof of vaccination is generally permissible under the *Human Rights Code (Code)*.
- Organizations must reasonably accommodate people who are unable to be vaccinated due to *Code*-related reasons unless the accommodation would significantly interfere with people's health and safety. A reasonable accommodation might include exempting individuals with a documented medical inability to receive the vaccine.
- Digital proof of vaccine certificates should be fully accessible to adaptive technology, including for smart phone users with disabilities, in accordance with *Accessibility for Ontarians with Disabilities Act*
- COVID-19 testing can be an alternative to vaccine requirements for organizations that are not subject to the mandatory requirements (*i.e.*, those settings that are not considered a high-risk indoor public setting) or as an option for accommodating people who are not able to receive a vaccine for medical reasons.
- Vaccine mandate policies and proof of vaccination requirements that result in people being denied equal access to employment or services on *Code* grounds may only be justifiable during a pandemic or shorter periods.
- Governments and organizations should be proactive in ensuring that enforcement of vaccine mandates and proof of vaccination policies do not disproportionately target or criminalize marginalized groups.
- Personal preferences or singular beliefs about COVID-19 vaccinations or masks are not protected under the *Code*, as they do not amount to a "creed." Therefore, as stated in the Policy, "Even if a person could show they were [denied employment] because of a creed-based belief against vaccinations, the duty to accommodate does not necessarily require they be exempted from vaccine mandates, certification or COVID testing requirements. The duty to accommodate can be limited if it would significantly compromise health and safety amounting to undue hardship – such as during a pandemic."

It is important to note that the Commission's policies are not legally binding. However, the Human Rights Tribunal of Ontario (the "HRTO") may consider the policies and if specifically requested by a party or an intervenor in a proceeding, the HRTO is required to consider the policies if they are relevant to the subject matter.^[7] Furthermore, if the Commission is a party or an intervenor in a proceeding and believes that an HRTO decision or order is inconsistent with its policies, the Commission can ask the HRTO to refer the decision to the Divisional Court.^[8] Therefore, while the Policy is not binding, employers can still look to this Policy for guidance on how the HRTO may view workplace vaccine mandates and proof of vaccine certificates.

For more information on the topic discussed in this update, or for legal advice regarding this topic or any other employment law matter, please contact a member of [WeirFoulds' Employment Law Group](#).

^[1] Government of Canada, "Government of Canada to require vaccination of federal workforce and federally regulated transportation sector" (13 August 2021), online: <https://www.canada.ca/en/treasury-board-secretariat/news/2021/08/government-of-canada-to-require-vaccination-of-federal-workforce-and-federally-regulated-transportation-sector.html>.

^[2] City of Toronto, "Toronto Medical Officer of Health strongly recommending Toronto employers institute COVID-19 vaccination policy and support workplace vaccination" (20 August 2021), online: <https://www.toronto.ca/news/toronto-medical-officer-of-health-strongly-recommending-toronto-employers-institute-covid-19-vaccination-policy-and-support-workplace-vaccination/>.

^[3] WeirFoulds LLP, "New Ontario Regulation: Employers Must Comply with the Advice of the Chief of Medical Officer of Health Regarding COVID-19 Vaccination Policies" (27 August 2021), online: <https://www.weirfoulds.com/new-ontario-regulation-employers-must-comply-with-the-advice-of-the-chief-of-medical-officer-of-health-regarding-covid-19-vaccination-policies>.

[4] See e.g., Region of Peel, “Peel Public Health strongly recommends businesses include employee vaccination policies in their COVID-19 workplace safety plan” (25 August 2021), online: <https://peelregion.ca/news/archiveitem.asp?year=2021&month=7&day=25&file=2021725.xml>; City of Ottawa, “Ottawa Public Health releases guide to support workplace vaccination policies” (2 September 2021), online: <https://ottawa.ca/en/news/ottawa-public-health-releases-guide-support-workplace-vaccination-policies>.

[5] Ontario Human Rights Commission, “OHRC policy statement on the COVID-19 pandemic” (13 March 2020), online: http://www.ohrc.on.ca/en/news_centre/ohrc-policy-statement-covid-19-pandemic.

[6] Ontario Human Rights Commission, “OHRC policy statement on COVID-19 vaccine mandates and proof of vaccine certificates” (22 September 2021), online: http://www.ohrc.on.ca/en/news_centre/ohrc-policy-statement-covid-19-vaccine-mandates-and-proof-vaccine-certificates.

[7] *Human Rights Code*, RSO 1990, c H.19, s 45.5.

[8] *Ibid*, s 45.6(1).

The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.

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