

Mandatory Vaccination

Your rights and mandatory Covid vaccination policies



Directive 6 of Ontario’s Chief Medical Officer of Health orders the mandatory vaccination of hospital staff

Employees with medical or religious exemptions are protected under the Ontario Human Rights Code, up to the point of “undue hardship” for employers. Employees without those medical or religious exemptions are expected to comply with the policies. For more information, please see our comprehensive guide to mandatory vaccination, posted at www.ochu.on.ca

Must the employer accommodate people with a medical or religious reason not to be vaccinated.

Yes, to the point of “undue hardship” for the employer.

Can you be fired if you won’t be vaccinated & haven’t a medical or religious objection?

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Can you be put on an unpaid leave if you won’t be vaccinated?

Answer on page 2

MEDICAL EXEMPTION

Requires a doctor to certify that vaccination is contra-indicated. Reasonable accommodation is then required.

RELIGIOUS EXEMPTION

If a religion or creed legitimately prevents a person from being vaccinated, they are entitled to reasonable accommodation.

PRIVACY RIGHTS

Are not infringed in disclosing vaccination status as long as record of employee vaccination is kept confidential and info used just for this purpose

OUR COMPREHENSIVE GUIDE FOUND AT:

www.ochu.on.ca

Consequences of choosing not to be vaccinated without a medical or religious exemption



Each employer Covid vaccination policy must be assessed individually to determine if it is reasonable.

However, arbitrators have upheld **influenza vaccine** policies that have placed unvaccinated workers on modified job duties that reduce their interactions with patients or other workers, as well as policies that place unvaccinated workers on unpaid leaves of absence for the duration of outbreaks.

It is important to recognize that the COVID pandemic is not just another flu season. Arbitrators will view COVID as being more serious and may be willing to accept even more significant consequences for workers as “reasonable”.

For example, in flu vaccine cases, unpaid leaves of absence tended to last only for a relatively short period of time (i.e. until a flu outbreak in the workplace resolved).

In the context of the COVID pandemic, arbitrators may accept that even if there is no outbreak in the workplace, workers may be placed on unpaid leaves of absence. Those leaves of absence may be for long periods of time, as there is no clear “end” in sight to the COVID pandemic.

Can the employer fire a worker who refuses to be vaccinated?

We do not know. The law here is not certain. Arbitrators in flu vaccination cases have emphasized that the policies they upheld as reasonable did not result in discipline. This suggests that it is important for a policy to be non-disciplinary to be reasonable.

A policy that terminates an employee for non-vaccination would be very different. There is a good argument that this type of policy would not be reasonable because it does not adequately respect the workers’ right to choose what medical treatment to undertake.

There is also a risk that an arbitrator would view COVID as being so serious to the well-being of patients and staff that it would justify this type of policy.

Members in workplaces with policies that threaten termination should understand that, if they refuse to become vaccinated, the employer might terminate them.

If this happens, if the union grieves the termination, it cannot guarantee a particular outcome.