



VACCINE POLICY FAQ

1) What is the School Board requiring me to do?

ANSWER:

So far, the Board has only announced a vaccine disclosure policy. They are required to do this by the Ministry of Education, and they are required to submit anonymized aggregated data about the rate of vaccinations to the Ministry.

The Board is likely to implement a policy requiring people who are not vaccinated to submit to testing and to attend an educational program about vaccines. This is also going to be a requirement of the Ministry of Education.

We have no information about a policy requiring employees to be vaccinated as a condition of employment, but that may come in the future.

2) What legislation gives the School Board the right to ask for my medical information?

ANSWER:

This is actually the wrong question: you need to look for legislation that says they CAN'T do that.

The School Board has the right to do most things, like make rules for attending at work, unless the collective agreement restricts that right. The collective agreement does not prevent them from asking for vaccine status, or other medical information in appropriate circumstances.

The School Board is required by legislation to take all reasonable steps to keep workers and students safe, and this includes all reasonable steps to prevent exposure to COVID-19. This obligation likely makes the collection of information about vaccine status reasonable.

The Ministry of Education and the Medical Officer for Health have confirmed that determining vaccine status is necessary and they have required to School Board to do it.

The School Board is required by law to do what the Ministry of Education and the Medical Officer for Health require them to do, and if they make rules consistent with that, unless the collective agreement specifically restricts their right to do it, they are permitted to do it.

3) *Can an employer make rules for mandatory vaccination?*

ANSWER:

Yes.

Not all mandatory vaccine policies will be consistent with collective agreements, however. Employers can make reasonable rules, as long as they do not violate statutory or contractual rights. In many cases, the community spread of COVID-19, combined with the established efficacy of vaccines, is likely to be found to justify a rule requiring vaccination as a condition of continued employment.

In order to be legal, mandatory vaccine policies will need to consider accommodation of employees who cannot be vaccinated due to a disability, or another prohibited ground of discrimination. Employees seeking this kind of accommodation will likely be required to submit compelling evidence supporting their need for accommodation.

Accommodation could include alternative measures such as frequent testing, remote work, isolation, or other means to protect employees, their coworkers, and students and others in schools. If these measures are found to be inadequate or unavailable, it is possible that employees could be placed on sick leave or other leaves, with or without pay, depending on the terms of collective agreements.

4) *Don't I have a right to choose whether I want to be vaccinated?*

ANSWER:

You do have a right to choose to be vaccinated or not.

But you do not have a right to come to work if the employer makes a reasonable rule requiring that you be vaccinated to do so.

Right now, there is no rule requiring vaccination, but there might be one in the future, and we will review the policy when it is released to see if it is reasonable.

The requirement for testing of unvaccinated employees is legal. You can choose not to be tested or vaccinated, but the employer may then refuse to let you come to work and can refuse to pay you.

5) *Can Employers make rules for mandatory testing for COVID-19?*

ANSWER:

Yes.

The Supreme Court of Canada has held that random testing for things such as drug or alcohol use can be reasonable in circumstances where there is an established risk of serious harm to employees or others in the workplace. It is reasonably certain that the community spread of COVID-19 would be found to justify mandatory testing of employees who have not been vaccinated.

6) *Does the employer have to pay for tests?*

ANSWER:

At present, it appears that the Ontario Government intends to pay for testing in the education sector, but this has not been clearly established, and it could change.

There is currently no requirement that employers pay for COVID-19 tests.

Where testing requirements are the result of a prohibited ground of discrimination, such as a proven disability, it is possible that a grievance could succeed for a specific individual.

7) *Can I be disciplined if I refuse to be vaccinated or to be tested?*

ANSWER:

Yes.

The Union will grieve any discipline that results from the breach of unreasonable rule, but if the rule is found by an arbitrator to be reasonable, the discipline will be upheld.

Right now, the only rule that has been formally imposed is the requirement to disclose your vaccination status. The Union may be able to challenge some aspects of this rule, including the short notice provided, but there is no guarantee that we will succeed.

If the School Board imposes mandatory vaccination or testing rules, we will review them and challenge them. Again, there is no guarantee that the Union will succeed in these challenges.

Refusing to comply with employer rules can result in discipline, including termination of employment. It may also result in an unpaid suspension. Because no grievance is certain to succeed, employees take serious risks if they refuse to comply with employer rules.

8) *What about my constitutional rights?*

ANSWER:

There is no constitutional right to a specific job or pay.

You have rights under the *Charter of Rights and Freedoms* and *the Human Rights Code* to a workplace free from discrimination on specific grounds, like disability or religion, but this does not guarantee a right to choose not to be vaccinated for other reasons.

All constitutional and statutory rights are limited, and even prohibited discrimination may be permitted if it is necessary for compliance with other laws or for the safety of other employees or students.

The bottom line is, if you are fired for refusing to comply with employer rules, it is very unlikely that you would get your job back because of your constitutional rights. If you refuse to comply with these policies, you take a big risk that you could lose your job.

9) *What is the Union going to do for me?*

ANSWER:

The Union will challenge any policy that is illegal or contrary to the collective agreement. We are monitoring the development of these policies and will get advice about legal responses to them.

Individual complaints will be dealt with on a case-by-case basis, and we will file grievances where appropriate, based on the facts and the law at the time.

The Union will challenge discipline in the grievance procedure. If a rule is found to be unreasonable, or if an employee has been subjected to illegal discrimination, these grievances may succeed. Success is not certain, however, and it will be difficult to challenge discipline for insubordination based on personal choice or beliefs about vaccines.

Grievances can take a long time to get resolved in the grievance procedure or at arbitration. Because of this, and the uncertainty of the success of any specific grievances, there are considerable risks involved with refusing to comply with employer rules. Members should be careful about taking legal advice from the internet, or other unofficial sources, because the people giving that advice are not the ones who will suffer the consequences.