



Frequently Asked Questions about mandatory vaccinations



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With the fourth wave of the COVID-19 crisis upon us, many employers in Ontario have been developing workplace policies calling for mandatory vaccines and testing. The Ford government has also announced a vaccine passport will be brought in this month.

As members continue to navigate these challenging times and, in many cases, plan their own return to the traditional workplace, they have asked OPSEU/SEFPO about these policies, and their impact on workers' personal health choices and working conditions.

Here are some of the most commonly-asked questions and answers about mandatory vaccinations:

Mandatory vaccinations: Frequently Asked Questions (FAQs) from OPSEU/SEFPO members

Question: Can my employer implement mandatory vaccination against COVID-19 in my workplace?

Answer: Yes. Employers are entitled to implement rules in the workplace, including rules about vaccinations, so long as they meet certain criteria. Employer rules must be reasonable and they must not violate the explicit provisions of a Collective Agreement or any statutes.

Vaccine policies in many OPSEU/SEFPO workplaces are likely to be considered reasonable due to the ongoing health crisis, the nature of our work, and the recent government mandates requiring vaccine policies for many of the workplaces we represent.

Employers still have an obligation to comply with the Human Rights Code, and to accommodate members under its provisions, if they cannot receive a vaccine because of a medical condition or other grounds that are protected by the Code. Much like the obligation to wear masks, we fully expect that the Human Rights Tribunal of Ontario (HRTO) and Labour Arbitrators will require evidence of a need for accommodation beyond an applicant simply disagreeing with the safety or efficacy of the vaccine.

Question: Can my employer implement mandatory testing for COVID-19?

Answer: Yes. Testing for COVID-19 is very likely to be considered a reasonable health and safety measure for the foreseeable future, especially in workplaces where employees have any significant contact with the public, with colleagues or with supervisors.

Question: Will employees be forced to pay, out-of-pocket, for their testing?

Answer: This will depend on several factors, including the provisions of the Collective Agreement and the contents of the employer's own policy. For example, if employers require all employees to get tested at regular intervals, the union would have a strong argument against members having to pay. The same applies to a medical accommodation. However, that argument isn't as strong if someone simply does not want to get vaccinated.

Currently, the directives from Ontario's Chief Medical Officer of Health do not require employers to pay for the testing of employees who do not wish to be vaccinated.

Question: Can employees be disciplined for refusing the vaccine, or testing?

Answer: Yes, under certain circumstances. If the employer has implemented a reasonable rule, an employee may be disciplined if they refuse to follow it, including rules about vaccines and especially rules about testing.

In addition to potential disciplinary consequences, there could be other, non-disciplinary consequences, including being placed on leave without pay, the obligation to wear enhanced Personal Protective Equipment (PPE), and the obligation to maintain physical distancing.

Question: Will OPSEU/SEFPO members be able to grieve disciplinary actions that result from their refusal to get vaccinated, or be tested?

Answer: Yes. Members may grieve disciplinary or other consequences, just as they would for all other forms of discipline. However, filing a grievance does not guarantee success, and the grievance and arbitration process takes time to complete.

Question: Will OPSEU/SEFPO support members who are subjected to discipline?

Answer: Yes. OPSEU/SEFPO will pursue grievances filed by members, and represent them at grievance arbitrations.

However, OPSEU/SEFPO may be unable to make arguments that are insupportable, that have a negative effect on the membership as a whole, that are contrary to the Human Rights Code, or that create an antisocial outcome. If a member files a grievance that relies exclusively on such arguments, and OPSEU/SEFPO cannot pursue them in good conscience, the grievance may be less likely to succeed.

Question: What about the Charter of Rights and Freedoms - don't I have the right to refuse the COVID-19 vaccine?

Answer: The Charter applies to government action and legislation only. Many of our employers are not subject to the provisions of the Charter, and applying the Charter to workplace rules is a complex matter.