



VACCINE POLICY FAQ

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

ANSWER:

The Board has now introduced a vaccination disclosure policy and a mandatory vaccine 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 disclosure policy has been in place since September 7, 2021 and requires all employees to make an attestation that they have or have not had a COVID-19 vaccine. Employees who are not vaccinated are required to participate in rapid antigen testing. These tests are currently supposed to be available at participating pharmacies, but the Board will begin to provide take-home kits to employees in the future.

The Board has told employees that they are required to attend at work at this time, even if they have been unable to access tests.

The Board has also introduced a mandatory vaccination policy that requires all employees whose work involves in-person interaction to have completed full vaccination by November 1, 2021. This policy will not apply to employees working remotely.

There may be exemptions based on prohibited grounds of discrimination under the Human Rights Code. This means that if you cannot take the vaccine because of a disability or religious belief, you may ask for accommodation. The Board is required to provide accommodation if it does not impose an undue hardship, but it has signaled that it may treat exposure of other employees and students to unvaccinated people as an undue hardship.

If you are not accommodated under the Human Rights Code, you will be required to be vaccinated as a condition of employment.

The policy specifies that violations will have disciplinary consequences, including termination of employment in some cases.

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 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 or tested in order to do so.

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.

There have not been any court or arbitration decisions considering mandatory COVID-19 vaccination rules. It is expected that there will be some decisions in coming months or years, but we cannot say for certain whether any particular policy will be upheld.

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.

Questions have been raised about safety concerns associated with chemicals used in the manufacture of some tests. The Joint Health and Safety Committee is examining this question, and we expect that the Ministry of Labour will make a determination in the future.

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 legal 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 taken effect 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.

You have a right to refuse work that you believe is unsafe. If you genuinely believe that vaccination or testing is dangerous, you can refuse. If you choose to do this, you need to contact your steward coordinator and your health and safety representative. The Ministry of Labour will ultimately determine whether your refusal can continue.

The School Board's mandatory vaccination rules will be challenged, as will those of other employers. 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.

10) *Liability: if I get sick or injured from the vaccine, who can I sue?*

ANSWER:

Probably nobody, but you should consult a lawyer about any claims you think you may have.

Illness or injury resulting from a compulsory vaccination program that is a condition of employment is compensable under the Workplace Safety Insurance Act. That means that you can get WSIB benefits if the vaccine injures you or makes you sick.

Section 26 of the WSIA bars any action for damages in respect of a workplace illness or injury covered by the Act:

Benefits in lieu of rights of action

(2) Entitlement to benefits under the insurance plan is in lieu of all rights of action (statutory or otherwise) that a worker, a worker's survivor or a worker's spouse, child or dependant has or may have against the worker's employer or an executive officer of the employer for or by reason of an accident happening to the worker or an occupational disease contracted by the worker while in the employment of the employer.

You may also be entitled to benefits under the Canada Vaccine Injury Support Program (VISP): <https://vaccineinjurysupport.ca/en>