

Member's Quarterly

Spring 2022 Edition

Feature

Vaccinating Workplaces

Is your comprehensive vaccination policy in place?

With the steady increase of vaccination rates across the country, many employers have hope for a return to normal. For some, this will mean transitioning employees back to the office from remote work. For others, this will involve a more widescale reopening and recalling employees from layoff/leave. Whatever the situation, many employers are asking the same questions, especially on the topic of vaccinations.

Can we make vaccinations mandatory for our employees?

Under the Ontario Occupational Health and Safety Act, employers have a duty to take all reasonable precautions to protect the health and safety of their workers. Some have taken the position that this allows them to implement a mandatory vaccination policy, particularly when employees are required to work in close proximity to each other or a vulnerable population. In such circumstances, vaccination against COVID-19 is being declared an essential condition of employment, and employment contracts and policies are being updated to reflect this.

Having said that, without clear legislation or public health guidelines stating otherwise, it is unlikely that employers will be able to force employees to be vaccinated. Companies will have to be prepared to implement measures in the event that an employee cannot be or chooses not to be vaccinated. A comprehensive vaccination policy that addresses these situations and also provides employees with appropriate incentives and resources to promote vaccination will serve employers well in navigating the months to come.

What if an employee cannot or will not be vaccinated?

If an employee is unable to be vaccinated due to a medical reason, an employer has a duty to accommodate the individual under Ontario Human Rights Code. Appropriate accommodation may include ongoing use of personal protective equipment, modifying work duties, work from home or a leave of absence.

The Ontario Human Rights Commission has stated that a singular belief or personal preference against vaccinations does not appear to be protected under the Ontario Human Rights Code. Accordingly, if an employee chooses not to be vaccinated due to their personal preference, the Company does not have an obligation to accommodate them. Nevertheless, in most situations, an employer could undertake to find a non-disciplinary alternative to vaccination. A comprehensive vaccination policy should reserve the right to take the necessary steps to protect the health and safety of its workers if an employee refuses to receive the COVID-19 vaccine. This may include modifying work duties, a leave of absence or the cessation of the employment relationship.

Can we ask for proof of vaccination?

An employee's medical information is private and generally considered confidential. However, an employer could have a right to such information when necessary for a bona fide occupational reason. In the present circumstances, employers have a genuine reason for requesting the vaccination status of their employees. However, employers must take all reasonable steps to ensure that this information is maintained in a secure and confidential manner. The employer must not share the vaccination status of its employees without their written consent, unless required by law. The medical information must also be destroyed as soon as the information is no longer necessary in accordance with applicable privacy legislation.



Ruben Goulart
LL. B
Founder,
Goulart Workplace
Lawyers

Ruben Goulart is the founder of the firm Goulart Workplace Lawyers and can be reached via email at rgoulart@goulartlawyers.ca.