



# MANDATORY VACCINATION FAQ

## YOUR RIGHTS AND MANDATORY VACCINATION POLICIES

*Can I be fired if I refuse to get the vaccine?*

*What if I have an adverse reaction to the vaccine?*

*What if I can't get the vaccine because of my religion?*

*What if I am worried about the vaccine due to pregnancy?*

*What if I have a medical condition that makes the vaccine unsafe?*

*Will I be eligible for EI if I'm placed on an unpaid leave?*



## Frequently Asked Questions

*This document was prepared for the SEIU and contains information relevant to SEIU workplaces. Please note that it is difficult to predict how the rules surrounding workplace vaccination policies will apply in the COVID-19 context, particularly since the law on mandatory vaccination is not yet settled. While we expect that any such policies will be subject to the considerations set out below, much will depend on future provincial and national health directives. Accordingly, the following information is subject to change.*

### **Can my employer implement a COVID-19 vaccination policy?**

Yes. Under the occupational health and safety regime in each province, employers have a duty to protect employees from work-related illness or injury. To fulfill this duty, employers must take certain precautions to meet minimum health and safety standards, which can include policies to limit the spread of infectious diseases.

In the context of COVID-19, the presence of an unvaccinated employee puts that employee's rights into conflict with the collective rights of their co-workers and the people they provide care to. In such cases, employers will be permitted to require vaccination as a condition of returning to, or remaining in, the workplace, absent a valid medical or religious reason for not being vaccinated.

Further, on August 17, 2021, the Chief Medical Officer of Health issued Directive 6, which requires hospitals, long term care homes, and community care employers to enact vaccination policies for their employees. It imposes a number of minimum rules for what these policies need to contain, and gives employers significant flexibility in what to put into their policies.



## Frequently Asked Questions

### **Can my employer force me to get the vaccine?**

Employers will not be permitted to force employees to be vaccinated against their will, but rather, to impose restrictions on employees who refuse the vaccine. For instance, an employer may direct an employee who refuses the vaccine to work remotely (where possible), wear a face mask, adopt different work conditions to ensure physical distancing, undergo regular COVID-19 tests; and/or take a leave of absence without pay.

In some cases, employees who refuse the vaccine absent a valid medical or religious reason may face discipline or dismissal, as discussed further below.

Note that as new and more contagious variants of the COVID-19 virus proliferate, the acceptability of even masked close-contact may be reconsidered.

### **Can my employer ask for proof of vaccination?**

Employers will be permitted to request proof of vaccination. However, privacy laws require that the information be used and stored purely to serve the narrow purpose of the vaccination policy.

### **What if I'm working from home?**

It is unclear whether employers can require proof of vaccination from employees who complete all their work from home. Employers may be able to rely on the fact that they have the right to call the employee into work at any time to enforce the vaccine requirement even on those currently working from home. However, if the employee's work from home arrangement arose out of human rights accommodations, the employer will have less justification for requiring proof of vaccine. To be safe, we recommend that employees working from home comply with the policy to avoid possible discipline.



## Frequently Asked Questions

### **Can my employer discipline or fire me if I refuse to get the vaccine?**

Possibly. It is still unclear whether an employer would be within their right to discipline or dismiss an employee based on their refusal to get the COVID-19 vaccine. Blanket policies requiring that all employees be vaccinated on the threat of discipline or dismissal have generally been deemed unreasonable in the context of the seasonal flu. While this suggests that it is important for a policy to be non-disciplinary to be reasonable, most likely, arbitrators will view COVID as being more serious than the flu, and may be willing to accept more serious consequences for employees. After all, COVID-19 is much more infectious and deadlier, with evidence that the vaccine is 95% effective—a stark difference when compared to the seasonal flu vaccine, which ranges between 40%-60% effectiveness.

It is likely that if an employee does not eventually receive the vaccine after a period of time on a leave of absence, the employer can claim that the employee cannot be kept on and ultimately terminate their employment.

An employer's right to discipline or fire an employee for refusing to comply with the vaccine policy will be limited where the policy explicitly states that the employer will take a "non-disciplinary" approach to enforcing the policy.

Employees may also be disciplined for:

- Faking a vaccination record as proof of vaccination
- Refusing to attend a vaccine education session where required by the policy
- Attending work without a negative COVID-19 test, and/or faking a negative COVID-19 test, where required by the policy



## Frequently Asked Questions

### **What about the Charter of Rights and Freedoms?**

One of the most common objections to mandatory vaccination policies relate to the doctrine of informed consent and the right to be free from coerced medical treatment. In Canada, these rights are captured under section 7 of the Canadian *Charter of Rights and Freedoms*, which guarantees the life, liberty, and personal security of all Canadians.

In all likelihood, the Charter does not apply to health care employers' relationships with its workforce. Even if it did apply, section 1 of the *Charter* states that all of its rights can be subject to “reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.”

In the case of COVID-19 vaccine mandates, healthcare employers will very likely be able to justify an invasion of section 7 rights on the basis that the vaccine mandate is reasonable and “demonstrably justified” due to the public safety threat of COVID-19.



## Frequently Asked Questions

### **What if I have a medical condition that makes the vaccine unsafe?**

Human rights legislation imposes a duty on employers to accommodate employees who cannot comply with workplace policies due to medical conditions or disabilities. To fulfill that duty, employers must make efforts to provide an accommodation that is reasonable in the circumstances, unless it would cause “undue hardship.” Undue hardship can arise if an accommodation would be too costly, burdensome, or if it would compromise the health and safety of other employees.

What constitutes reasonable accommodation and undue hardship will depend on the specific circumstances of each case. For instance, if an employee with a valid claim for accommodation can complete their work remotely, a work-from-home accommodation may be reasonable. On the other hand, if the employee’s tasks must be completed in the workplace, and the employer cannot adapt the work to facilitate a work-from-home arrangement, the same accommodation may cause undue hardship.

An employee will need to provide the employer with proof of disability from a medical professional to support their accommodation request.

### **What if I can’t take the vaccine because of my religion?**

Likewise, employers must accommodate employees whose sincerely-held religious beliefs prevent them from receiving the COVID-19 vaccine, unless doing so would cause undue hardship. An employee may need to support their accommodation request by providing the employer with verification of the nature of their religious belief, proof of long-standing practice, and documentation from their spiritual leader. A singular belief against vaccinations or COVID vaccines in particular does not amount to a religion or creed under human rights legislation. Similarly, beliefs about the safety or efficacy of COVID vaccines or the dangers of COVID-19 are not creeds.



## Frequently Asked Questions

### **What if I am worried about the vaccine due to pregnancy?**

Those who refuse the vaccine due to pregnancy will most likely not be granted human rights protections absent medical complications that preclude them from being vaccinated. Evidence about the safety and effectiveness of COVID-19 vaccination during pregnancy has been growing. Data shows that the benefits of receiving a COVID-19 vaccine outweigh any known or potential risks of vaccination during pregnancy. Individuals should speak with their doctors if they are worried in their particular circumstances.

### **What if the employer cannot provide an accommodation?**

If the employer can prove that vaccination is necessary for all employees and that accommodation is not possible without undue hardship, then it would be lawful for the employer to exclude an employee from the workplace even if they have a valid claim for human rights protections. This does not mean that the employer can automatically dismiss the employee. Rather, the employer will likely be permitted to temporarily place the employee on a leave of absence.

### **What if I don't want the vaccine for other reasons?**

Human rights legislation will not protect employees who refuse the vaccine based on personal preference or other reasons not covered by human rights legislation. Employees who refuse the vaccine, absent a valid human rights reason, may be placed on an unpaid leave or be dismissed.



## Frequently Asked Questions

### **What if I have an adverse reaction to the vaccine?**

Data strongly supports that vaccine injuries are extremely rare. In any event, the Federal Government recently launched the Vaccine Injury Support program to provide financial support to those who experience a no-fault “serious and permanent injury” after receiving a vaccine.

For employees with short-term injuries, it seems likely that an adverse reaction may be compensable under workers’ compensation regimes if the employee was vaccinated after being required to do so by their employer as a condition of continued employment.

### **If I’m placed on an unpaid leave of absence after refusing the vaccine will I be eligible for Employment Insurance?**

Most likely not. Employees who take an unpaid leave of absence after deciding not to receive the vaccine will not be considered unemployed and will be ineligible for EI.