



What's New in HR Law

Ontario Human Rights Commission Issues Policy Statement on COVID-19 Vaccine Mandates and Proof of Vaccine Certificates

Date: September 30, 2021

Bottom Line

On September 22, 2021, the Ontario Human Rights Commission (“OHRC”) issued a policy statement on COVID-19 vaccine mandates and proof of vaccine certificates. The policy statement brings welcome clarity to the Government of Ontario’s provincial vaccination certificate program (which came into effect on the same date), in addition to providing useful guidance for employers on the topic of mandatory vaccination policies.

Summary

The policy statement clarifies the OHRC’s position that mandating and requiring proof of vaccination to protect people at work or when receiving services is generally permissible under the Ontario *Human Rights Code* (*Code*), provided protections are put in place to accommodate those who are unable to be vaccinated for *Code*-related reasons. This guidance applies to all organizations (*i.e.* not just those who are required to participate in the Government of Ontario’s provincial vaccination certificate program), meaning that the OHRC’s position is that mandatory vaccination policies implemented by employers will be generally permissible under the *Code*.

This update is for general discussion purposes and does not constitute legal advice or an opinion.

The policy statement stresses that organizations must attempt to balance the rights of people who have not been vaccinated due to a *Code*-protected ground, such as disability, while ensuring individual and collective rights to health and safety. To this end, the OHRC's position is that exempting individuals with a documented medical inability to receive the vaccine is a reasonable accommodation within the meaning of the *Code*. The OHRC states that it is consistent with the duty to accommodate that those who are unable to receive a vaccine must provide a written document, supplied by a physician or by a registered nurse in the extended class or nurse practitioner, stating that they are exempt for a medical reason from being fully vaccinated and the length that this exemption would apply.

For those organizations with a proven need for COVID-related health and safety requirements, the policy statement indicates that COVID testing can be put in place as an alternative to mandatory vaccinations, or as an option for accommodating people who are unable to receive a vaccine for medical reasons.

Significantly, the issue of whether individuals who choose not to be vaccinated based on personal preference was also addressed by the OHRC. Its position is that while the *Code* prohibits discrimination based on creed, personal preferences or singular beliefs do not amount to a creed for the purposes of the *Code*. According to the OHRC, individuals who have decided not to be vaccinated based on personal preference alone therefore do not have a right to accommodation under the *Code*.

Check the Box

While it does not carry the weight of law, the OHRC's policy statement on COVID-19 vaccine mandates and proof of vaccine certificates provides useful guidance to employers that have existing mandatory vaccination policies or are seeking to implement one. However, employers should note that while mandatory vaccination requirements may generally be permissible, any such policies and programs must include appropriate accommodation measures for people who are unable to be vaccinated for reasons relating to a protected ground under the *Code*.

Need more information?

For more information on vaccination policies or workplace management amidst the pandemic, contact [Mark Van Ginkel](#) at [416.408.5560](tel:416.408.5560), or your regular lawyer at the firm.



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