



What's New in HR Law

Proof of Identification and Vaccination to be Required in Select Settings

September 16, 2021

Bottom Line

The Ontario Government [announced](#) a number of weeks ago that effective September 22, 2021 it would require people to be fully vaccinated and provide proof of their vaccination status in order to access certain businesses and settings. Subsequent to this initial announcement, the Ontario Government has now released the enacting [regulatory amendment](#) and a [Guidance Document](#) to support affected businesses and organizations in ensuring compliance with the new requirements.

Affected Businesses and Organizations

As a result of the amendments made to [O. Reg. 364/20, Rules for Areas at Step 3 and at the Roadmap Exit Step](#) ("Regulation"), starting on September 22, 2021 the new proof of identification and vaccination requirements will apply to the following businesses and organizations:

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- Indoor areas of meeting and event spaces, including banquet halls, conference and convention centres (with limited exceptions)
- Indoor and outdoor areas of food or drink establishments with dance facilities, including nightclubs and restoclubs and other similar establishments (excluding delivery and takeout)
- Indoor areas of restaurants, bars, and other food and drink establishments without dance facilities (excluding outdoor areas such as outdoor patios, as well as delivery and takeout)
- Indoor areas of facilities used for sports and recreational fitness activities, including gyms, fitness/sporting/recreational facilities, pools, leagues sporting events, waterparks and indoor areas of facilities where spectators watch events (with limited exceptions)
- Indoor areas of casinos, bingo halls, and other gaming establishments
- Indoor areas of concert venues, theatres, and cinemas
- Indoor areas of bathhouses, sex clubs and strip clubs
- Indoor areas of horse racing tracks, car racing tracks and other similar venues
- Indoor areas where film and TV productions take place with studio audiences (excluding cast and crew members)

There are limited exceptions where the proof of identification and vaccination requirements will **not** apply in the above-listed settings. These include where a patron is accessing the indoor area solely for the purposes of: using a washroom; accessing an outdoor area that can only be accessed through an indoor route; placing, picking up, or paying for an order; or as may be necessary for purposes of health and safety.

Proof of identification and Vaccination Requirements

The Regulation requires the above-listed businesses and organizations to mandate that each patron who enters an area of the premises listed above show proof of identification and proof of being fully vaccinated against COVID-19.

The Regulation also prohibits patrons from entering areas of affected businesses without providing the requested proof of identification and proof of vaccination, and likewise requires patrons to ensure that any information provided is complete and accurate.

There are a few items to note about these requirements. The first is that the proof of identification and vaccination do **not** apply to employees of affected businesses or organizations. However, the Guidance Document makes clear that the Regulation establishes baseline requirements only, and that affected businesses and organizations have the discretion to establish their own additional policies that apply to patrons as well as other workplace parties.

The second item of note is that the Regulation makes clear that proof of identification and vaccination is to be requested at the point of a patron's entry on the business or organization's premises.

And lastly, the Regulation also provides a person shall be considered "fully vaccinated" where they have, at least 14 days prior, received:

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1. the full series of a COVID-19 vaccine authorized by Health Canada, or any combination of such vaccines;
2. one or two doses of a COVID-19 vaccine not authorized by Health Canada, followed by one dose of a COVID-19 mRNA vaccine authorized by Health Canada; or
3. three doses of a COVID-19 vaccine not authorized by Health Canada.

The Regulation makes clear that an affected business or organization shall not retain any information provided by a patron. Rather, as is made clear in the Guidance Document, affected businesses and organizations are required only to review and confirm the proof of identity and vaccination provided.

Exemptions

The proof of identification and vaccination requirements set out above do not apply to patrons who:

- a) are under the age of 12 years;
- b) are under the age of 18 years of age who are entering the indoor premises of a facility used for sports and recreational fitness activities solely for the purpose of actively participating in an organized sport;
- c) provide a written document, completed and supplied by a physician or registered nurse in the extended class, that sets out: (i) a documented reason for not being fully vaccinated against COVID-19; and (ii) the effective time period for the medical reason;
- d) are entering the indoor premises of a meeting or event space, including a conference centre or convention centre, solely for the purposes of attending a wedding service, rite or ceremony or a funeral service, rite or ceremony, but not an associated social gathering;
- e) are entering the indoor premises of a meeting or event space that is located in a place of worship or in a funeral establishment, cemetery, crematorium, or similar establishment that provides funeral, cemetery or cremation services and that is operated by a person licensed under the *Funeral, Burial and Cremation Services Act, 2002*, for the purposes of attending a social gathering associated with a funeral service, rite or ceremony; or
- f) are entering the indoor premises of a meeting or event space other than a place described in clause e), including a conference centre or convention centre, for the purposes of attending a social gathering associated with a wedding service, rite or ceremony or a social gathering associated with a funeral service, rite or ceremony, on or after September 22, 2021, but before October 13, 2021, as long as the patron produces the results of an antigen test administered within the previous 48 hours establishing that the person is negative for COVID-19 to the person responsible for the establishment.

Guidance Document

The Ontario Ministry of Health has published a [Guidance Document](#), which provides helpful direction and instruction to affected businesses and organizations on how to meet the various

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obligations set out above. In addition to being a helpful guide and resource, the Regulation makes it mandatory for affected businesses and organizations to comply with guidance published in the Guidance Document regarding what constitutes proof of identification and of being fully vaccinated, as well as the manner for confirming proof of vaccination.

The Guidance Document provides instruction on how patrons can access their vaccination receipt until such time as the enhanced digital vaccine certificate and corresponding scanning application that were previously announced have been developed and are readily available to the public. It is expected that this quick response code system will be available beginning on October 22, 2021.

Until that time, patrons are required to provide their vaccination receipt along with an acceptable form of identification (see the Guidance Document for further instruction on what constitutes acceptable identification) at the point of entry of an affected business or organization. Once presented, the business or organization will then have the obligation to:

- check the name and date of birth information on the vaccination receipt against the name and date of birth on the patron's identification documents;
- verify the receipt is either: (a) an Ontario receipt issued at the time of vaccination or any format of receipt downloaded from Ontario.ca that shows the holder is fully vaccinated against COVID-19; (b) a receipt signed by an Indigenous Health Provider; or (c) a receipt from another jurisdiction that shows the holder is fully vaccinated against COVID-19;
- verify the receipt shows the patron is fully vaccinated; and
- verify that the date of administration of the final vaccine dose is at least 14 days prior to the date the patron is seeking access to the area.

As noted above, there are a number of circumstances in which a patron may qualify for an exemption from the vaccination requirement. Patrons who claim to have a medical exemption will be required to provide the affected business or organization with a written document stating that they are exempt for a medical reason. Once presented with such written document, the business or organization will then have the obligation to:

- check the name of the person identified in the written document matches the identification provided;
- verify that the document includes: (i) the name and contact information of the physician or registered nurse who authored the document; (ii) a logo or letterhead that identifies the physician or registered nurse; (iii) a statement that there is a medical reason for the patron's exemption from being fully vaccinated against COVID-19; and (iv) any effective time-period for the medical reason which includes the date the patron is seeking access to the area.

Enforcement

The Guidance Document provides that these new proof of identification and vaccination requirements will be enforced through existing provisions under the *Reopening Ontario Act* ("ROA"). Failing to comply with requirements of the Regulation can result in charges under the ROA. If charged under part I of the *Provincial Offences Act* ("POA"), set fine amounts are \$750

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for individuals and \$1,000 for corporations. Maximum penalties based on a prosecution under Part I or Part II of the *POA* include fines of up to \$100,000 and up to a year in jail for an individual; up to \$500,000 and up to a year in jail for an individual who is a director or officer of a corporation; and up to \$10 million for a corporation.

Check the Box

These new proof of identification and vaccination requirements mark the latest in an onslaught of change and regulatory requirements amidst the ongoing COVID-19 pandemic. Affected businesses and organizations will want to ensure they familiarize themselves with their new obligations, update their policies and communications accordingly; and train staff members thoroughly on how to verify patrons' identification and vaccination status in compliance with the Regulation and Guidance Document.

Need more information?

For more information or assistance with workplace management amidst the COVID-19 pandemic, contact [Ashley Brown](#) at 416-408-5563 or your regular lawyer at the firm.



Toronto
Bay Adelaide Centre
333 Bay Street, Suite 2500,
PO Box 44
Toronto, Ontario M5H 2R2
tel: 416.408.3221
fax: 416.408.4814
toronto@filion.on.ca

London
620A Richmond Street, 2nd Floor
London, Ontario N6A 5J9
tel: 519.433.7270
fax: 519.433.4453
london@filion.on.ca

Hamilton
1 King Street West, Suite 1201
Box 57030
Hamilton, Ontario L8P 4W9
tel: 905.526.8904
fax: 905.577.0805
hamilton@filion.on.ca

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