

COVID-19 Vaccination Policies and Human Rights Considerations



The Role of CCOHS

The Canadian Centre for Occupational Health and Safety is the national centre for workplace health and safety information and resources. We are not an enforcement or regulatory agency for human rights, public health, or health and safety.

While we are unable to provide a legal interpretation of any existing or proposed legislation, we are able to provide a general resource to help employers and workers navigate the subject of vaccination policies.

The CCOHS [Safety Info-Line](#) can answer workplace health and safety questions and help direct you to legislation and guidance that applies to your situation.

Regulatory and Legal Guidance and Assistance

If you require further guidance or assistance, it is recommended to refer to or contact your jurisdictional (federal, provincial, or territorial) authorities and commissions:

- [Occupational Health and Safety Authorities](#)
- [Employment and Labour Authorities](#)
- [Canadian Human Rights Commission](#) or provincial-territorial [Human Rights Commissions](#)
- [Public Health Agency of Canada \(PHAC\)](#) or local [Public Health Authorities \(PHAs\)](#)

For legal aid or representation, it is recommended to contact [Legal Aid](#) services or a local lawyer specializing in employment and human rights law.

If applicable, you may also wish to consult with your Union representatives to ensure consideration of collective agreements.

Vaccination Policies

Many jurisdictions and workplaces are implementing COVID-19 vaccination policies.

Benefits include:

- Limiting the spread of COVID-19 in the community and workplace.
- Reducing the numbers of critically ill patients in the healthcare system.
- Supporting easing of other public health measures and restrictions.
- Meeting legal occupational health and safety obligations to protect workers and others who access the workplace.
- Less financial and operational impacts due to absent workers.
- Better access to domestic and international travel (e.g., rail, ship, air).

Policies might require:

- Workers to be fully vaccinated as a condition of employment.
- Workers to be fully vaccinated as a condition of entering the workplace.
- Routine testing of all workers or only those who are unvaccinated.
- Documented proof of vaccination (hardcopy or electronic) for an individual to access a private or public location, service, or event.

Vaccination policies have been proposed or implemented for sectors where the workers are at higher risk of COVID-

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19 exposure, such as healthcare, long-term care, transportation, education, etc.

Some jurisdictions have also proposed or implemented a “vaccine passport” system and determined where the passport must be used. In general, vaccine passports may be mandatory for establishments that provide non-essential, voluntary, or luxury products and services (e.g., indoor dining at restaurants, entertainment venues, etc.). Establishments that provide basic food, medicine, and other essential goods and services may be exempt (e.g., groceries, pharmacies). Refer to your local jurisdiction to know which establishments and activities are mandated and exempted.

In jurisdictions where vaccination policies and passports are voluntary or do not yet exist, the employer may decide to implement a vaccination policy for their workers (e.g., full-time and part-time employees), and others who are performing work for them (e.g., volunteers, temporary workers, contractors). The employer may also choose to restrict public entry to their establishment based on vaccination status.

When considering or drafting a policy, employers should make sure that:

- It is necessary (e.g., first explore if other measures can achieve the same degree of protection in the public or workplace setting).
- It is evidence-based and proportional to the risks.
- Stakeholders including human resources, health and safety committee or representative, and the union (if applicable) are consulted.
- If found to be necessary, that the ‘bona fide justification or [bona fide occupational requirement](#)’ for the policy is fully explained to workers.
- The policy is time-limited or has criteria to remain in effect (e.g., case numbers, vaccination rates, presence of variants of concern, etc.).
- There is a confidential process in place for individuals to disclose their personal information and documents, such as signed attestations of vaccination status, proof of vaccination, proof of a valid exemption, and disclosure consent forms.
- Privacy and personal information are protected during collection, storage, and destruction of records.
- [Accommodation](#) is provided to workers and others (e.g., students, residents, customers) who cannot receive the vaccine as a result of valid exemptions that are recognized and require accommodation by applicable human rights legislation.
- Workers are protected from [stigma, violence and harassment](#) in the workplace due to their own vaccination status, or due to enforcement of a vaccination policy or passport system on behalf of the workplace.
- It addresses how to overcome barriers and support accessibility (see below).

Understand that some individuals may experience significant challenges accessing vaccination services and proof of vaccination documents (e.g., apps, printouts, vaccine passports, QR codes, attestations, etc.). Barriers to equitable access include language, technology, lack of transportation, physical or mental disabilities, holding multiple jobs, caregiving responsibilities, being a temporary foreign or undocumented worker, precarious or low-wage employment, or experiencing homelessness. Provide support to overcome these barriers, such as paid leave to attend clinics, paid sick leave to recover from side-effects, hosting in-house vaccination clinics, providing funds for transportation to a clinic, assisting with online registration, printing vaccine passport documents, etc.

Here is an example [Vaccination Policy Template](#) that can be modified as needed. When drafting a vaccination policy, you should obtain independent legal advice as what is permissible will largely depend on your specific workplace factors and your jurisdiction.

Canadian Human Rights Laws

There may be concerns that vaccination policies or use of vaccine passports could violate the Canadian Charter of Rights and Freedoms or human rights laws, and legal challenges may be raised. Here is a summary of Canadian human rights laws:

The [Canadian Charter of Rights and Freedoms](#) protects [seven categories](#) of rights and freedoms, including fundamental, democratic, mobility, legal, equality, and languages.

These rights and freedoms are not absolute. There may be limits, including when an individual’s personal opinions and beliefs (such as about vaccination and other public health measures) could infringe on the rights of other individuals, or undermine complex public programs and policies.

The Charter only applies to governmental decisions, actions, or laws. Examples include federally regulated workplaces, workers in the public service, national public health laws, and international transportation and travel

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(e.g., border closures and restrictions, and pre/post travel testing, vaccination, quarantine).

The [Canadian Human Rights Act \(CHRA\)](#) applies to federally regulated workplaces and workers.

The CHRA prohibits [discriminatory practices](#) (CHRA, Part 1, s.5-11) against individuals based on [prohibited grounds](#) (CHRA, Part 1, s.3). These prohibited grounds are “race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability, or conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.” With respect to vaccination policies, exemptions will most commonly be sought on the basis of disability and religion.

As with the Charter, there are legal exceptions and these rights are not absolute. The duty to accommodate a valid exemption ends if that accommodation would reach the threshold of ‘undue hardship’ for the employer. (CHRA, Part 1, s.15(1) and s.15(2)).

The **Provincial and Territorial Human Rights Acts or Codes** apply to workplaces that are regulated under their respective provincial and territorial jurisdictions.

These laws provide equal access with respect to services, goods, and facilities, and also prohibit discrimination based on personal characteristics. Often referred to as ‘protected grounds’, these include race, colour, ancestry, nationality, place of origin, religion, creed, political belief, language, sex, sexual orientation, gender identity or expression, age, physical or mental disability, social condition, marital status, and family status. Each jurisdiction may use slightly different words to describe similar protected grounds.

Refer to your jurisdiction for details:

[Alberta Human Rights Act](#)

[British Columbia Human Rights Code](#)

[Manitoba Human Rights Code](#)

[Newfoundland and Labrador Human Rights Act](#)

[New Brunswick Human Rights Act](#)

[Northwest Territories Human Rights Act](#)

[Nova Scotia Human Rights Act](#)

[Nunavut Human Rights Act](#)

[Ontario Human Rights Code](#)

[Prince Edward Island Human Rights Act](#)

[Quebec Charter of Rights and Freedoms](#)

[Saskatchewan Human Rights Code](#)

[Yukon Human Rights Act](#)

Personal Preference to Remain Unvaccinated

Canada is currently offering the COVID-19 vaccine on a voluntary basis to anyone in Canada who is eligible and would like to receive the vaccine. If a person chooses to not receive the vaccine, it is important for them to understand that they might not be able to fully participate in activities and gatherings where proof of vaccination is required.

Individuals should be aware that without a valid exemption recognized by applicable human rights legislation, experiencing restrictions due to a personal preference to remain unvaccinated might not be considered discriminatory.

Disclaimer: As public and occupational health and safety information is changing rapidly, local public health authorities should be consulted for specific, regional guidance. This information is not intended to replace medical advice or legislated health and safety obligations. Although every effort is made to ensure the accuracy, currency and completeness of the information, CCOHS does not guarantee, warrant, represent or undertake that the information provided is correct, accurate or current. CCOHS is not liable for any loss, claim, or demand arising directly or indirectly from any use or reliance upon the information.