



## **Vaccination Policies in Ontario: What Employers Need to Know**

In an effort to decrease workplace COVID-19 outbreaks, and stem the spread of COVID-19 generally, public health officials in many municipalities across Ontario are recommending that employers develop and implement workplace vaccination policies. Under Ontario's pandemic regulations, employers must follow recommendations from local public health officials. Accordingly, employers in many parts of Ontario are required to implement vaccination policies.

Even in municipalities where the requirement for employers to implement vaccination policies is less clear, many employers are choosing to implement such policies in view of the requirement imposed on employers under the *Occupational Health and Safety Act* (“**OHSA**”) to provide employees with a safe workplace.

### **What Must be Included in a Vaccination Policy**


In certain municipalities, the recommendations from local public health officials set out some of the measures that should be included in a vaccination policy. For example, in the City of Toronto, workplace vaccination policies must require employees to either present proof of vaccination, or provide proof – from a doctor or a nurse practitioner – that they are medically exempt from being vaccinated. The policy must also require unvaccinated employees to attend at an educational seminar on vaccine safety and the risks of being unvaccinated.

In other municipalities, the recommendations take a different approach. Peel Region, for instance, has recommended that employers assess the level of risk in their workplaces and decide if it is necessary to collect information on their employees' vaccination status.

However, we note that employers that do not implement a robust vaccination policy may be in breach of their obligations under the OHSA to provide a safe workplace.

### **Considerations**

- **Privacy.** Confirming an employee's vaccination status will necessarily involve collecting personal health information. Employers must be careful with how this information is collected, recorded and stored. Mishandling employees' personal health information could constitute a violation of privacy laws and result in liability.

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- **Medical exemptions.** While medical exemptions from vaccination are extremely rare, if an employee presents documentation from a doctor or nurse practitioner saying they cannot be vaccinated, an employer must accommodate that employee. This may include additional precautions such as masking or rapid-testing, but employers must be careful not to treat the exempt employee adversely and risk a claim of discrimination.
  - **Non-compliance.** This is one of the biggest challenges for employers. If the workplace requires vaccination, what do you do with an employee who refuses to be vaccinated? For many employers, the answer is to terminate the employment relationship. However, it is not yet clear whether refusing vaccination would constitute just cause for dismissal. If an employer decides to terminate an employee who refuses to be vaccinated, the option that carries the least risk is to terminate on a without cause basis. However, that would mean that the employee would be entitled to termination pay.

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*We encourage you to reach out to your Aird & Berlis contact for support in preparing a vaccination policy and more broadly.*

## Contacts



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Fiona has extensive experience advising international businesses entering the Canadian market. To date, she has advised more than 100 companies expanding into Canada. Fiona advises clients in this space all day, every day. She has been practising for more than a decade and is a regular speaker and writer on market expansion matters. Fiona is proud to have been recognized by *The Best Lawyers in Canada*, *The Canadian Legal Lexpert Directory* and *Benchmark Canada*.

A proactive and comprehensive approach is required to succeed in a new market. Fiona manages teams of other lawyers and patent agents to provide her clients with a full range of legal services to help their businesses grow. She acts as project manager to ensure her clients receive seamless legal services in all relevant areas.

Fiona takes great care to understand her clients' businesses and deliver advice that is tailored to meeting their specific needs. Her responsiveness, dedication to clear communication and hands-on approach show that she is personally invested in the success of her clients.



### Sanj Sood

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Employing a creative and strategic approach, Sanj works with clients to resolve their most complex matters by providing practical, business-minded solutions. From the outset of a file, he identifies strengths and weaknesses to deliver best outcomes. As new facts and issues arise, Sanj reacts effectively using his strong advocacy and negotiation. He strives to alleviate his clients' stress and concerns by providing them with support, knowledge, and an understanding of their internal and external dynamics.

Sanj is a member of the firm's Litigation, Financial Services and Transportation Groups. His practice encompasses all aspects of commercial litigation with a major focus on competition law, insolvency, commercial lease, shareholders' disputes and class actions. Sanj has appeared as counsel on motions, applications and trials on the Commercial List and in the Superior Court of Justice, and as counsel on appeals in the Divisional Court and before the Court of Appeal.

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