

Mandatory Vaccine Information

Relating to Employment

August 2021

The Human Rights Commission recognizes the importance of an individual's right to non-discrimination with public health and safety. This balancing act includes the need to address evidence-based risks and treatment associated with COVID-19. The right to be free from discrimination can be limited where health and safety risks are serious and can amount to undue hardship. **Every case is unique and requires a balancing of the issues given the case-specific context.**

At the same time, when employers are developing policies, they need to consider the possibility that some individuals may not be able to get a vaccination due to a characteristic protected under the *Human Rights Act (Act)* such as age or disability. Employers and employees have an obligation to work together to explore alternative ways for these individuals to continue to safely work unless doing so would create an undue hardship to the employer.

The *Act* does not provide protection to individuals who choose not to be vaccinated as a matter of personal preference.

Q: Can an employer require their employee to get the Covid-19 vaccine?

A: Maybe. Some employers may require employees to get the Covid-19 vaccine to return to or continue to work. These requirements should be justified by scientific evidence, should be time limited (i.e., during the pandemic) and be necessary in the context of the workplace, because less-intrusive alternatives are not available.

Even where an employee vaccination policy is mandatory, employers may have to consider what special arrangements can be made for an employee who is not able to be vaccinated due to a characteristic protected under the *Act*. They must accommodate those who cannot receive a vaccine to the point of undue hardship. (add link)

Q: Can an employer ask for proof of Covid-19 vaccination?

A: Yes. If an employer can justify the use of a mandatory vaccination policy it follows that they can request proof of the vaccination. Employers, however, should remember that an individual's vaccination status is highly sensitive personal health information. Employers should only request medical information, including proof of vaccination, in a way that intrudes as little as possible on an individual's privacy, and does not go beyond what is necessary. The information should be kept confidential and should be destroyed when the pandemic is declared over by public health officials. Collection of private health information is a Privacy issue.(add link)

Q: Can an employer terminate an employee for refusing to get the Covid-19 vaccine?

A: Maybe. If your reason for refusing the Covid-19 vaccine is related to a characteristic protected under the *Act* and your employer did not provide reasonable accommodation, you should contact the Human Rights Commission. Depending on the specific circumstances, you may be able to file a complaint with the Commission; however, it is not possible to predict what the end result would be as each complaint must be assessed on a case-by-case basis.

Other employment rules outside the *Act* also apply to employment termination so you may need to consult with your union or lawyer.

Q: When filing a Human Rights Complaint about not being accommodated, will I have to provide the Human Rights Commission proof of my characteristic protected under the Act?

A: Yes. As part of the complaint process you will have to provide documentation that you have a characteristic protected under the *Act* which prevents you from taking the COVID-19 vaccine. That is one of the pieces of evidence we need to determine if there has been a breach of the *Act*.