

Questions for the 'centralized COVID Vx FAQ'

Introduction

The global pandemic related to Covid-19 (the "Covid-19 pandemic") presents a distinct situation for worker safety and the protection of public health. Recently, BC's Public Health Officer (the PHO) has issued Orders that require workers in certain work environments to be vaccinated by a particular date (a "PHO Order"). While the PHO Orders to date (as of Oct 4, 2021) are only applicable to workers in facilities such as long term care facilities and assisted living residences for seniors, similar orders may be soon include other work environments. Our union is also aware that some employers that are not subject to a PHO Order are seeking to implement policies that require workers get vaccinated.

Below are responses to 'frequently asked questions' about how a requirement to be vaccinated subject to a PHO Order or under an employer policy can affect a member's employment status.

This information is current to October 4, 2021.

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1. What is the union's role as mandatory vaccination is imposed on worksites?

Our union's role is to protect members' rights as laid out in their collective agreement. This includes fighting for workplace safety, as well as accommodations for workers who cannot get vaccinated for grounds protected by the *Human Rights Code*.

2. What can I do to get vaccinated?

Make an appointment as soon as possible to get vaccinated. Vaccine clinics are being held frequently across the province. You can take up to 3 hours of paid leave to be vaccinated against Covid-19.

More information is available here: <https://www2.gov.bc.ca/gov/content/covid-19/vaccine/register>

3. Can my employer require me to get a vaccine?

An employer does not have the right to make your vaccination choices for you. However, a worker's decision to not vaccinate can have consequences for their employment. Existing legal decisions are clear that an employer can make workplace rules about vaccination and other health measures like masking and rapid testing under its duty to ensure workplace health and safety. This can include imposing consequences on an employee who decides not to get vaccinated.

Employer rules must be reasonable in the circumstances and must allow for accommodation where possible. Generally, it is reasonable that employer health and safety policies will consider alternative measures for unvaccinated workers, such as temporary reassignments where possible, mandatory masking, or rapid testing.

The Covid-19 pandemic presents a distinct situation on the protection of public health and worker safety. An employer rule that complies with a PHO Order is likely to be considered reasonable grounds for that rule. Employers in health care and long term care will most likely be legally permitted to place unvaccinated workers on unpaid leave while COVID-19 continues to be a hazard. Requiring workers to be vaccinated may be a reasonable requirement in other circumstances, in light of the effectiveness of Covid-19 vaccines and the serious risk that Covid-19 presents to workers and the public.

4. Does the Public Health Officer have the authority to require workers to be vaccinated?

The BC Public Health Officer gets its authority to make orders from the legislature through the *Public Health Act*. The PHO has determined the Covid-19 pandemic is currently a health hazard, and an immediate and significant risk to public health throughout a region or the province. The *Public Health Act* authorizes the PHO to make orders in response to these conditions. The Chief Public Health Officer of Canada is similarly empowered for federally regulated workplaces.

British Columbia courts have accepted that the Covid-19 pandemic poses a hazard to public health, and endorsed that the PHO is authorized to rely on its authority under the *Public Health Act* to make orders to contain the spread of Covid-19 and protect public health. There is also pre-pandemic case law supporting that vaccination requirements in healthcare settings are lawful when those requirements are responsive to a serious threat to patient health.

5. Don't I have the choice to get vaccinated or not?

Yes, but there may be repercussions for your employment if you are not vaccinated.

If your workplace is subject to a PHO or CPHO Order that requires employees to be vaccinated (e.g. long term care facilities) and you are not vaccinated, your employer will not be permitted to allow you in the workplace. Your employer will most likely be able to place you on an unpaid leave while Covid -19 continues to be a public health hazard.

Some Collective Agreements, such as the Facilities Bargaining Association Collective Agreement for healthcare, may allow an employer to dismiss an employee who is not vaccinated when it is required.

If your workplace is not subject to a PHO that requires employees to be vaccinated, an Employer may still be able to make workplace rules about vaccination. Those rules must be reasonable in the circumstances and must allow for reasonable accommodation where possible. In light of the

effectiveness of Covid-19 vaccines and the serious risk that Covid-19 presents to workers and the public, requiring vaccinations may be considered a reasonable requirement for employment.

6. Can I request an accommodation on medical or religious grounds?

For the *Human Rights Code* to apply, a person must have a protected characteristic that is negatively impacted by a rule, policy, or requirement. Employers have a duty to accommodate people with protected characteristics under the *Human Rights Code* to the point of undue hardship.

Where workers are required to get vaccinated, there are few circumstances in which an accommodation based on medical grounds may be available. For worksites subject to a PHO Order requiring vaccination, there are very limited medical circumstances in which the PHO will consider an individual exemption from vaccination under a PHO Order, and specific, recently-dated medical documents are required. However, if you believe you qualify for an accommodation, you should obtain supporting medical documentation and work with our union and your employer to determine if your circumstances can be accommodated in your workplace.

An accommodation for non-medical grounds will only be available in extremely limited circumstances. The BC Human Rights Tribunal has confirmed that a personal desire not to get vaccinated is not protected by the *Human Rights Code*. For worksites subject to a PHO Order requiring vaccination, the PHO does not address an exemption from vaccination on religious grounds. For worksites that are not subject to a PHO Order, eligibility for an accommodation based on religious belief will require showing that your decision to not get vaccinated is linked to your sincerely held belief in an acceptable religious practice that requires you to not get a COVID-19 vaccination.

The employer's duty to accommodate ends at the point of undue hardship. Examples of undue hardship may be if the accommodation would create health and safety risks for others, or would significantly harm the employer's business such as operating in violation of a public health order. A leave without pay may be considered a reasonable accommodation in certain circumstances. Each case will be different and will be assessed on the specific facts of that case.

If you believe you are eligible for an accommodation, please contact your shop steward or your local area office.

7. What happens if I am not fully vaccinated by the PHO deadline?

The current PHO Orders require that workers in long-term-care homes and seniors' assisted living facilities must be fully vaccinated as of October 12, 2021; and that workers in health authority facilities must be vaccinated as of October 26, 2021.

Those PHO Orders define "vaccinated" as "a person who is at least 7 days post-receipt of the full series of a World Health Organization approved vaccine against infection by SARS-CoV-2, or a combination of approved WHO vaccines."

In practical terms, if you have not received two doses of a COVID-19 vaccine at least 7 days before the deadline in a PHO Order, you will not be considered "vaccinated" under the PHO Order. Employers are obligated to operate in accordance with public health orders. If you work in one of the worksites included in a PHO Order, and you are not vaccinated by the deadline, your employer will not be legally

permitted to allow you in to the worksite. If you are not able to legally enter your workplace, your Employer may be able to put you on an unpaid leave or terminate your employment.

If you intend to get vaccinated and need more time to be considered vaccinated under a PHO Order, you can work with our union and your employer to submit a request for an extension to the Medical Health Officer.

8. If I don't get vaccinated, can the Employer put me on unpaid leave?

Probably yes. If you are not vaccinated, your employer will most likely be able to place you on an unpaid leave while Covid -19 continues to be a hazard to public health if:

- a. your workplace is subject to a PHO Order requiring employees to be vaccinated; or,
- b. your workplace is not subject to a PHO Order, but your employer has implemented a reasonable policy requiring employees to be vaccinated.

9. If I don't get vaccinated, can the Employer terminate my employment?

Maybe. The law has supported mandatory vaccination policies, such as influenza immunization, as a condition of employment in seniors' health care settings.

Before an employer takes a step that adversely affects a worker, it is reasonable to expect that an employer can show it has explored alternative measures for unvaccinated workers, such as temporary reassignments where possible, mandatory masking, and regular rapid testing.

The Covid-19 pandemic presents a distinct situation for the protection of public health and the safety of workers. In light of the effectiveness of Covid-19 vaccines and the serious risk that the Covid-19 virus presents to workers and the public, requiring vaccinations may be considered a reasonable requirement for employment. Employers are obligated to act in accordance with public health orders that apply to them. Compliance with a PHO Order may be considered reasonable grounds to uphold a termination in some cases. Some collective agreements, like the Facilities Bargaining Association Collective Agreement, may allow an employer to dismiss an employee who is not vaccinated when it is required.

If a worker is terminated or disciplined by their employer for not being vaccinated, or if the employer is not accommodating a worker who has a medical or religious reason for not being vaccinated, they can file a grievance. The grievance will be considered with reference to rights under the relevant collective agreement, and the specific circumstances of the termination.

10. What can I do if I am terminated because I am not vaccinated?

One option is to avoid this possible consequence is by getting vaccinated. Vaccine clinics are being held across the province, and further information is available online at:

<https://www2.gov.bc.ca/gov/content/covid-19/vaccine/register>

You have the right to file a grievance. The grievance will be considered with reference to your rights under your collective agreement, and the specific circumstances of the termination. Contact your shop steward or your local area office for assistance in filing a grievance.