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MANDATORY VACCINATION FOR FEDERALLY REGULATED WORKPLACES COMING EARLY 2022

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On December 7, 2021, Employment and Social Development Canada (ESDC) released a statement that the Government of Canada will be proposing regulations under Part II of the *Canada Labour Code* (the "**Code**") to make COVID-19 vaccination mandatory in all federally regulated workplaces covered by Part II of the Code (the "**Proposed Regulations**").

The Proposed Regulations

As of today's date, vaccinations are mandatory for certain federal employees, in particular federal public sector employees and employees working in the federally regulated air, rail, and marine transportation sectors. Once the Proposed Regulations come into effect, **all** employees working in a federally regulated workplace covered by Part II of the Code will have to be vaccinated against COVID-19. This is a significant step by the Federal Government, given that approximately 1,300,000 employees across Canada work in federally regulated workplaces (both private and public sector employees).

The ESDC statement indicated that the Proposed Regulations will come into effect in early 2022 following a consultation process with key stakeholders (see further comments below with respect to the consultation process), including small and medium-sized employers. Resources will also be made available to assist employers with implementing the vaccination requirement in consultation with their workplace health and safety committees or representatives.

The Proposed Regulations will complement existing occupational health and safety measures, such as masking, handwashing and physical distancing, to provide further protection against the risk of transmission of COVID-19 in the workplace.

Consultation Paper: Covid-19 Vaccination Regulations

The Labour Program of ESDC has published a *Consultation Paper: Covid-19 Vaccination Regulations* and has invited stakeholders to participate in the consultation process with respect to the Proposed Regulations (the "**Paper**"). According to the Paper, employees who are not vaccinated "might be a hazard in the work place"

from a health and safety perspective. The Paper also notes a risk of increased transmission as employees start to gradually return to work.

Employer responsibilities under the Proposed Regulations

The Paper outlines the following anticipated employer responsibilities under the Proposed Regulations:

- Ensure employers obtain an attestation of vaccination or proof of vaccination from all employees;
- Employers should not ask employees who can't get vaccinated due to legitimate human rights reasons to swear an attestation or provide proof of vaccination;
- In consultation with the policy committee, or if there is no policy committee, with the work place committee or the health and safety representative, conduct a work place assessment to identify whether any additional measures are necessary to prevent the transmission of COVID-19 in the work place before an exempted employee attends a work place controlled by the employer;
- When necessary, take additional measures to prevent the transmission of COVID-19 in the work place before an exempted employee attends a work place controlled by the employer;
- In consultation with the policy committee, or if there is no policy committee, with the work place committee or the health and safety representative, identify the limited circumstances when employees who are not required to attend the workplace are excluded from having to provide an attestation of vaccination or proof of vaccination; and,
- Keep a record of:
    - The COVID-19 vaccination status of employees, including the attestations of vaccination or proofs of vaccination; and,
    - The completed work place assessments and any preventive measures taken.

The Paper also indicates that amendments will be made to the *Administrative Monetary Penalties (Canada Labour Code) Regulations* under Part IV of the Code to ensure the Proposed Regulations are enforceable.

Key questions for discussion during consultation process

The Paper also lists the below key questions that will be considered during the consultation process.

- "Will the proposed Regulations help employers respond to the COVID-19 pandemic?
- Based on our summary of the Regulations, what feedback do you have?
- Following the publication of the Regulations, how long do you think it will take employers to ensure their employees are fully vaccinated against COVID-19?
- How do you anticipate employers supporting employees unable to become fully vaccinated for reasons protected under the Canadian Human Rights Act?

  - How well do you know, or believe employers and employees know, how the Canadian Human Rights Act applies in this context?
- What criteria should employers and health and safety committees consider in determining which other employees not required to enter the workplaces may, in certain limited circumstances, be excluded from having to provide an attestation of vaccination or a proof of vaccination?
  - What documentation should employers keep to support these decisions?
- How do you anticipate employers managing employees unwilling to become fully vaccinated?
- The Regulations are expected to be time-limited. Given the uncertainty surrounding the COVID19 pandemic, how long do you think these Regulations should remain in place?
- How prepared do you feel employers and employees are to implement the proposed requirements?
- When employees are required to return to the work place, do you believe the Regulations may help employees to feel safe at work?"

Conclusion

Mandatory vaccination will soon be a reality in **all** federally regulated workplaces. We will continue to monitor developments and will provide further updates as more information becomes available.

by Dianne Rideout and Michelle McKinnon

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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