

THE FEDERAL GOVERNMENT AND BRITISH COLUMBIA ANNOUNCES MANDATORY VACCINATIONS

Posted on August 17, 2021

Categories: [Insights](#), [Publications](#)

Vaccination has been a hot topic for employers across Canada since a Covid-19 vaccine became reality in late 2020, with many employers wondering whether an employer could mandate its employees to be vaccinated prior to attending at the workplace. Recently, in light of the Delta variant and the rise in Covid-19 cases, the Government of Canada and British Columbia's (BC) Provincial Health Officer announced mandatory vaccination for certain workers.

On August 12, 2021, BC's Provincial Health Officer, Dr. Bonnie Henry, announced that a new Public Health Order (which has not yet been published) will make it mandatory for all long-term care and assisted living workers to get vaccinated before October 12, 2021. The mandatory vaccination Order will apply to workers, as well as volunteers and personal service workers who are required to enter these facilities. Long-term care and assisted living facilities will also be required to provide vaccination information to the BC Ministry of Health regarding the vaccination of their staff and residents to assess risk and outbreak potential. Until October 12, 2021, any unvaccinated staff will be required to wear masks and be regularly tested for Covid-19.

A day after BC's announcement on mandatory vaccinations, Canada's Transport Minister, Omar Alghabra, announced that all federal public servants, those working in federal Crown corporations, and the federally regulated air, rail and marine transportation sectors must be vaccinated by the end of October, if not sooner.

An Update on Mandatory Vaccinations in British Columbia

We continue to receive a significant number of queries regarding the implementation of mandatory vaccination policies in BC workplaces. Given that the Covid-19 pandemic is unprecedented, it is currently unclear how a court would view a truly mandatory vaccination policy. While there is in our view nothing that currently precludes an employer from implementing a mandatory vaccination policy (subject to our comments below), there are risks associated with such a policy and employers are advised to obtain legal advice before implementing a mandatory vaccination policy. Employers should also bear in mind that they may, in appropriate cases, have a legal obligation to accommodate employees who are unable to get vaccinated based on ground(s) protected under the British Columbia *Human Rights Code*, such as medical and religious

grounds.

On July 13, 2021, the BC Human Rights Commissioner weighed in on the issue of mandatory vaccination policies and indicated that employers can in “limited circumstances” implement a mandatory vaccination policy if other less intrusive means of preventing Covid-19 transmission are inadequate for the particular workplace and if due consideration is given to the human rights of everyone involved.

The BC Human Rights Commissioner provided the following guidance with respect to the criteria that a mandatory vaccination policy should meet:

“Vaccination status policies should be justified by scientific evidence relevant to the specific context, time-limited and regularly reviewed, proportional to the risks they seek to address, necessary due to a lack of less-intrusive alternatives and respectful of privacy to the extent required by law. In applying such a vaccination status policy, duty bearers must accommodate those who cannot receive a vaccine to the point of undue hardship”.

This guidance from the BC Human Rights Commissioner emphasizes that whether a mandatory vaccination policy will be justified in a particular workplace will depend on the circumstances and the context of each workplace and the extent to which less intrusive measures are inadequate to address the risk of transmission in the workplace. The guidance also emphasizes the need for scientific evidence to support the necessity and effectiveness of a mandatory vaccination policy, and it is arguable that current medical data is insufficient to demonstrate that such a policy would reduce harm by limiting transmission of the virus in the workplace. We continue to monitor medical data as it becomes available.

For employers who decide to implement such a policy, we recommend that consideration be given to the above guidance, and in particular that a mandatory vaccination policy should provide for less intrusive alternatives to vaccination and address how employees who are unable to get vaccinated may be accommodated.

Implementing a mandatory vaccination policy should be carefully considered with a full understanding of the legal risks and after obtaining legal advice. Please contact Dianne Rideout or Michelle McKinnon if you have any questions on the above or if you require advice regarding the implementation of a mandatory vaccination policy for your workplace in British Columbia.

An Update on Mandatory Vaccinations for Federal Employers

The federal government has taken its first major step in favour of vaccinated workplaces by announcing that it will require workers in the federally regulated air, rail and marine transportation sectors to be vaccinated. Employers will continue to have an obligation to accommodate those who cannot be vaccinated for *bona fide*

reasons.

The federal government intends to make vaccines mandatory in air, rail and marine transportation workplaces by no later than October 2021. These sectors include all commercial air travel, interprovincial train transportation, and certain marine transportation (including cruise ships).

As part of its announcement, the government stated that it will engage with stakeholders, including employers and bargaining agents in affected sectors, in implementing the vaccine requirement. We will keep federally regulated employers updated on any consultation process or other avenue for delivering input to the Government of Canada on workplace vaccinations.

For now, while the federal government has signalled an intention to require other federally regulated employees to be vaccinated in order to enter the workplace, employers should not expect changes to the status quo until later in the Fall. With Parliament now disbanded and a federal election called, additional vaccination requirements are unlikely to be more than campaign promises for the time being.

Employers should continue to consider ways in which to ensure that their workplaces are safe, as well as accommodation measures that can be put in place for those with *bona fide* reasons for which they cannot be vaccinated.

Please contact Kyle Lambert if you have any questions on the above or if you require advice regarding the implementation of a mandatory vaccination policy in federally regulated workplaces.

by [Dianne Rideout](#), [Kyle Lambert](#), [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.

© McMillan LLP 2021