

YOU CAN'T GET THERE FROM HERE: VACCINATION MANDATES IN THE TRANSPORTATION SECTOR

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On October 30, 2021, the Government of Canada's COVID-19 vaccination mandate for all employees and travelers in the federally regulated air, rail, and marine transportation sectors took effect.^[1] On November 30, 2021, the transition period will end, meaning that a negative COVID-19 molecular test will no longer be accepted as an alternative to vaccination.

As discussed further below, this mandate has important implications for federal transportation sector employers and employees, as well as for all employers who require employees to engage in air or rail travel as a component of their employment.

Requirements for Employers

As of November 1, 2021 all employers in the federally regulated air, rail and marine sector were required to have a vaccination policy in place making COVID-19 vaccination mandatory for all employees. Specifically, this requirement affects:

- Airlines and airports, and other employers who have employees who enter restricted areas of airports, such as concession and hospitality workers;
- Federally regulated railways, and their rail crew and track employees; and
- Marine operators with Canadian vessels that operate with at least twelve crew members.

Employers are allowed a short phase-in period to implement the policy. Unvaccinated employees who do not meet the criteria for a legitimate exemption, such as a medical exemption or other exemption under the *Canadian Human Rights Act*, will be unable to work if they are not vaccinated during the phase-in period.

Requirements for Travelers

As of November 30, 2021 all travelers over the age of twelve years must provide proof of full vaccination in order to travel on:

- Domestic, transborder, or international flights departing from an airport in Canada;

- VIA rail gold Rocky Mountaineer trains, gold; and
- Non-essential passenger vessels, such as cruise ships, on trips of twenty-four hours or more.

There are limited exceptions to the traveler vaccination mandate. Currently, the federal government has extended the transition period until February 28, 2022 for unvaccinated foreign nationals leaving the country who normally reside outside of Canada and who entered Canada before October 30, 2021. In addition, certain remote communities, some of which are not accessible by road, will be accommodated to ensure access to essential services. Medevac flights and private flights that do not enter restricted areas of airports, as well as travelers only briefly transitioning through Canada to reach another country, are also excluded.

Notably, technicians traveling on an emergency basis, who have been exempt from past mandates such as mandatory quarantine when entering the country, are not currently exempt from the traveler vaccination mandate. This means that bringing an unvaccinated technician into Canada from the United States or elsewhere is going to be very difficult and require careful planning.

Enforcement

To ensure compliance, Transport Canada has authority to impose enforcement tools including Administrative Monetary Penalties. Administrative Monetary Penalties are sanctions imposed through an administrative process for non-compliance with a regulatory regime. Failure to comply with the transportation sector vaccination mandates may result in penalties including:

- For railway companies, compliance actions up to \$ 250,000 per violation, per day, under the *Railway Safety Act*;
- For the air sector, travelers and employees could be fined up to \$ 5,000 per violation under the *Aeronautics Act*, and operators could be fined up to \$ 25,000 per violation; or
- For the marine sector, employees and travelers could be fined for not providing proof of vaccination up to \$ 250,000 per violation, per day; and operators could be fined up to \$ 250,000 per violation, per day, for non-compliance to the Interim Order made pursuant to the *Canada Shipping Act, 2001*^[2]

What Employers Should Know

Employers both in federal transportation sectors and working within that sector should take heed of the above requirements and ensure that they are in a position to meet them. For those in federal transportation sectors, this includes implementing vaccination policies immediately if not already done. Suppliers to federally regulated transportation entities should also be aware of applicable travel requirements and vaccination demands that will be imposed by transportation entities on those using or accessing their premises.

However, even if you are not an employer in that sector, the new rules may cause significant challenges for

your operations if you have an employee who is required to frequently travel as part of their duties or if you are trying to bring in a traveler who is not vaccinated (though that has been a challenge throughout this pandemic). The new rules may lead to a frustration of employment if, for example, a sales representative is no longer to travel to customer locations or attend meetings for the employer. Employers should carefully look at their employees' roles and responsibilities to determine what impact the new mandates will have on their employee populations.

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[1] Transport Canada, “ [Mandatory COVID-19 vaccination requirements for federally regulated transportation employees and travelers](#) ” (October 6, 2021); Canada Gazette, Vol 155, No 46, November 13, 2021.

[2] Transport Canada, *supra* note [1](#).

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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