

Vaccine Mandate & Employers Rights: Your Questions Answered

Webinar | October 4, 2021

1. What are the liabilities with WCB, and other insurance, if we mandate vaccines for our company?

- a. Employers should provide an option for negative testing – this is considered ‘accommodating’ the employee if they are unable or unwilling to show proof of vaccination.
- b. Explain to employees why the company had to put this policy in place, and don't be afraid to show some vulnerability to your employees. Listen to their concerns while communicating why the company simply cannot avoid it.
- c. If an employee chooses to do neither, then they are not complying with company policy, and will likely be denied insurance coverage.

2. Is the employer responsible to pay for COVID testing and time?

- a. No. The choice to cover testing costs and time away are at the discretion of the employer.

3. There has been some confusion around the approved testing. Why was rapid testing removed as an approved testing option?

- a. An antigen test or a PCR test comes from an approved provider to ensure that the record keeping is up to par. Information on the types of tests that are considered acceptable can be found on page 2 of the Q&A – Vaccination Requirements in the Workplace document here:
- b. <https://www.saskatchewan.ca/government/health-care-administration-and-provider-resources/treatment-procedures-and-guidelines/emerging-public-health-issues/2019-novel-coronavirus/covid-19-information-for-businesses-and-workers/proof-of-vaccination-information-for-businesses>
- c. Approved providers can be found here:
<https://www.saskatchewan.ca/government/health-care-administration-and-provider-resources/treatment-procedures-and-guidelines/emerging-public-health-issues/2019-novel-coronavirus/public-health-measures/public-health-orders/proof-of-vaccination-faq>
- d. The other tests are a good screening tool, but it doesn't determine to who or when the test applies.
- e. However, if employers already have a system in place that works, such as rapid testing staff on a regular basis, the Government has left language in the emergency regulations that allow for that in section 5.

- 4. What if the employer does not give an option for testing as an alternative? Are there legal rights for the employee here?**
 - a. We strongly suggest providing a negative test as an alternative for your own workplace. If you are entering a site that does not provide this option, you must abide by that worksite's policy. There is currently no legal precedent for this.
- 5. Is there a sample proof of vaccination or negative test (PVNT) policy available anywhere?**
 - a. Yes, CODC has produced some excellent PVNT policy templates available for download on their website below and are offered on an unwarranted basis.
 - b. <https://www.codc.ca/downloads>.
- 6. Since we know the virus is carried and transmitted by everyone, wouldn't it be better to require testing of ALL individuals so unvaccinated employees aren't singled out and potentially discriminated against? Thereby retaining confidentiality. Because isn't the point to identify positive individuals?**
 - a. The vaccine policy has been implemented to encourage unvaccinated people to get vaccinated, as the health professionals have determined this is the best protection against lots of people getting seriously ill from the virus.
- 7. Is a company allowed to put in a policy that all new hires are to be vaccinated or the company will not hire them?**
 - a. We recommend that employers treat vaccination status as a bonus. For example, if all your candidates are unvaccinated, but willing to show proof of a negative test, this is a fair compromise.
- 8. How can we share vaccination information with partners, such as a general contractor, without sharing too much information on employees?**
 - a. We recommend that employees indicate their vaccination status by way of a simple checkbox system, that is then verified by a supervisor (by viewing their vaccination card or QR code). This minimizes the amount of information shared, while capturing what is important.
 - b. If a client insists on seeing PVNT results, there must be a policy in place that outlines who has access to that information, how it will be stored, and when it will be destroyed.
- 9. If an employer does not put in a policy regarding proof of vaccination or negative test, what are the possible legal ramifications if there is an outbreak at a worksite?**
 - a. An employer will not be legally penalized, but the workplace would likely have to follow COVID-19 cleaning and temporary shut down protocols.
- 10. If an employee reacts negatively to the vaccine and is required to be away from work is this now considered a lost time/workplace related illness?**
 - a. No. This would be regular sick time.

11. If an employee suffers serious injury or death due to the vaccines who takes legal liability for damages to the person suffering death or disability?

- a. The federal government is taking responsibility for any vaccine related injuries: <https://www.canada.ca/en/public-health/services/vaccination-children/safety-concerns-side-effects.html#a5>
- b. Vaccines are approved after a thorough and independent review of the scientific evidence. More information on the safety of the vaccine, and any side effects, can be found here: <https://www.canada.ca/en/public-health/services/diseases/coronavirus-disease-covid-19/vaccines/safety-side-effects.html>

12. Would it be at the expense of the employer or employee to pay for testing if they chose to not get vaccinated?

- a. That decision is up to the employer, but the employer is well within their rights to pass that cost and time loss on to the employee.

13. As a builder/contractor do we have responsibility to inform trades that certain individuals that are also working on site have not been vaccinated if we know?

- a. This will depend on your policy, and theirs.

14. Do we need to report a positive test result for an employee to WCB? Even if they were not in contact with any workers?

- a. Yes. They would like all positive cases reported to them through an E1 for tracking purposes. It's rare that it would cause a WCB claim, however.

15. We have a PVNT policy now, and our customers do too (we are a service company). How can I inform my scheduling staff who they can/can't send to certain customers without affecting my employees' privacy rights in terms of their medical records?

- a. We recommend using the checklist method outlined in Q8a, and only providing that on a need-to-know basis. All your scheduler needs to know is that Employee 1 can work on Jobsite A, but not Jobsite B, for example, and not why.

16. If an employee is required to be vaccinated to go on a jobsite, but a person has no vaccine, can we send the employee home without pay and be on leave until the employer has work for them?

- a. Your policy should give the employee the option to provide a negative test. If it is another jobsite's policy, then the employee must follow their rules.
- b. If they are in violation of your company policy, this would likely result in a layoff or possibly a dismissal.

17. What status of unemployment insurance will employees have with the Government if they have been laid off without pay or terminated due to vaccine status?

- a. If it is a breach of company policy, there would be no special treatment. It would be the same if an employee refused to wear company PPE
- b. Each case will be dealt with individually. Generally, someone who quits their position is not eligible to collect EI, but each situation may be different. The same would be true for terminations. It will be the EI program that determines their eligibility.

18. If an employee says that they can't get vaccinated for religious reasons, what type of proof would be accepted?

- a. This shouldn't be an issue because it is recommended that you have an "off-ramp" in your policy, meaning if you do not have your vaccine (for any reason varying from religion, to medical, to personal beliefs), you must provide regular negative COVID tests.

19. Regulations say the employer shall provide reasonable notice of new requirements. What would be considered a reasonable notice period before asking for PVNT?

- a. While a notice period is not necessary, a week's notice would be sufficient.

20. Is the vaccine passport here to stay in place forever?

- a. We cannot say for certain at this time. However, these are intended to be temporary measures.

21. Is there an exit plan in place for the current Government policies?

- a. The Government will watch the epidemiological situation and decide based on that.

22. As a prime contractor can we ask for PVNT from our sub trades on specific worksites?

- a. Yes, but it is not required.

23. Genetic Characteristics are prohibited grounds, does that or could that not fall under the refusal of Genetic testing or disclosing the results of a Genetic test?

- a. No.

24. Under the Occupational Health and Safety regulations, there is a provision for employees to be able to refuse “unusually dangerous work”. Some may take the view that the vaccine is unusually dangerous. How does an employer deal with this approach?

- a. On the other hand, some would say being forced to work with unvaccinated people is “unusually dangerous”. In either case, OH&S does not consider obtaining or declining the vaccine to be “unusually dangerous” and this claim would not hold up.
- b. There are other safety measures in place to protect, i.e., masks, distancing, sanitizing etc.

25. If an employee can provide PVNT, does that not create a "forced or coerced," disclosure of personal information?

- a. No.

26. So, we can implement a policy that violates another policy or act?

- a. Yes. COVID-19 is a special circumstance, and these are unprecedented times.

27. Could the annual booster be here forever?

- a. It is unknown at this time if and when booster shots may be necessary.

28. As you know this has been a very controversial public topic, many business owners are feeling extremely trapped, confused, and frustrated with these mandates, who best should we contact with any further concerns, questions, and frustrations?

- a. The Government of Saskatchewan’s Business Response Team at supportforbusiness@gov.sk.ca or 1-844-800-8688.

29. If a vaccine policy is implemented by a customer midway through a contract (assumed standard CCDC lump sum) and imposed upon their trades, are you able to apply for extras to cover off testing costs of unvaccinated employees?

- a. We are not aware of any subsidies, etc. that exist for that purpose.

30. Are employers / business owners held to the same standards as a policy? Are there any potential repercussions with introducing a policy, with the owner or office staff vs. field staff being exempt?

- a. The company policy should apply to every single employee, and the owner.

31. Is there not a "duty to accommodate?" for employers in situations like this?

- a. Accommodation is being provided in the form of negative tests, or alternate work until the point of undue hardship.

32. Where can we obtain rapid tests for our own internal usage?

- a. <https://www.canada.ca/en/public-health/services/diseases/coronavirus-disease-covid-19/testing-screening-contact-tracing/rapid-tests-employees/small-medium-organizations.html>

33. Can the SCSA check the policies to see if they are worded correctly?

- a. Members are encouraged to approach their construction associations with questions. Even if they cannot answer, they will find the right expert who can on your behalf.

34. A company's policy on vaccinations may be considered legal if the government that regulates the workplace (provincial or federal) mandates vaccinations for that workplace or sector of employment. At this time, what sectors have mandated vaccines?

- a. We currently do not have a list of this.

35. If we have employees that are not vaccinated and choose to do the testing, is there something in place to help them pay for the tests?

- a. No.

36. What if an existing employee refuses to sign the new policy the company is trying to implement?

- a. Employees do not need to sign off on the new policy, they need to abide by it or accept the consequences.

37. Do you need to do a workplace hazard assessment to determine and provide proof that a vaccine/testing mandate is required for your workplace?

- a. No.

38. Are private businesses required to implement a PVNT policy?

- a. No, but it is strongly recommended.

39. How do you handle a fraudulent vaccination card?

- a. If a PVNT is found to be fraudulent, and the employee is found in breach of company policy, the employer is entitled to reprimand the employee.

40. Where is the line drawn from collecting all medical history of employees now? For example, HIV, Hep A, B, C. Do we have the right to terminate those individuals based on the health risk they can have on everyone around them in the workplace?

- a. PVNT falls under an unusual situation as a pandemic, but this line of thinking is not unreasonable.

41. Will the RCMP still help enforce these mandates?

- a. Police should only be contacted in an emergency.

42. Is there a link to the current regulations?

- a. <https://www.saskatchewan.ca/government/health-care-administration-and-provider-resources/treatment-procedures-and-guidelines/emerging-public-health-issues/2019-novel-coronavirus/covid-19-information-for-businesses-and-workers/proof-of-vaccination-information-for-businesses>.

43. As employers, are we liable for forcing undue costs on to employees to pay for their own negative tests?

- a. No.

44. We want to keep our clients safe too. Do we have the right to ask our non-vaccinated employees to share their status with clients, or is up to the client to ask?

- a. You do not have a right to share that information with clients.
- b. If you wish to advertise that your company is doing all that it can to be safe, we recommend sharing that you have a strict PVNT policy in place.

45. Some specialized PPE is reimbursable under a federal tax credit percentage. Would testing for negative COVID-19 results fall under this category as well?

- a. No.

Thank you to all our partners who made this webinar possible!

