

MANDATORY VACCINATIONS IN THE WORKPLACE

By Andrea M. Marsland

One of the most common questions employers are asking at this point in time during the pandemic is this: "**Can we require our employees to be vaccinated before allowing them to return to work?**" The answer has been this: "*it depends*", followed by an explanation of human rights' considerations, privacy considerations, health and safety considerations, etc. On August 13, 2021, the federal government made an announcement that suggests the pendulum might be swinging towards a "yes" on that question. On August 17, 2021, the provincial government made an announcement that suggests the same swing.

What were the announcements?

On August 13, 2021, the **Government of Canada** issued a press release informing the public of its intention to require employees in the federal public service to be vaccinated as early as the end of September, 2021. Accommodations will be available for those who are not able to get vaccinated (e.g. rapid testing and screening).

In addition, the Government of Canada advised that it will require employees in the federally regulated sectors of air, rail, and marine transportation to be vaccinated. The vaccination requirements would also extend to certain travellers, which would include commercial air travellers, passengers on inter-provincial trains, and passengers on large marine vessels with overnight accommodations, such as cruise ships.

The Government of Canada also advised that it expects that crown corporations and other federally regulated employers will require their employees to be vaccinated and has indicated an intention to work with these employers to ensure this result. The Government of Canada called on all organizations beyond the federally regulated sector to put in place their own vaccination strategies.

On August 17, 2021, the **Province of Ontario** announced that the Chief Medical Officer of Health had issued a directive mandating hospitals and home and community care service providers to have a COVID-19 vaccination policy in place for employees, staff, contractors, students and volunteers, and for ambulance services to have a COVID-19 vaccination policy in place for paramedics. The vaccination policy must be effective no later than September 7, 2021, and at a minimum require these individuals to provide proof of one of three things: (i) full vaccination against COVID-19; (ii) a medical reason for not being vaccinated against COVID-19; or (iii) completion of a COVID-19 vaccination educational session. Individuals who do not provide proof of full vaccination against COVID-19 will be required to undertake regular antigen testing.

The province also announced that the Ministry of Education intends to introduce a vaccination disclosure policy for all publicly-funded school board employees, and staff in private schools as well as for all staff in licensed child care settings for the



[Andrea Marsland](#)

Partner

t: 416.365.3703

amarsland@foglers.com

2021-22 school year, with rapid antigen testing requirements for staff who are not immunized against COVID-19.

In addition, the province announced that vaccination policies will be implemented in other higher-risk settings such as: (i) post-secondary institutions; (ii) licensed retirement homes; (iii) women's shelters; and (iv) congregate group homes and day programs for adults with developmental disabilities, children's treatment centres and other services for children with special needs, and licensed children's residential settings.

What does this mean for employers?

The good news is that it looks like guidance on this very difficult issue is finally on its way. The announcements provide a significant push for many employers to start implementing some form of vaccination policy. But, the announcements do not address how implementation will occur nor do they address what will (or should) happen to those who simply refuse to get vaccinated. Whether you are a federally regulated or provincially regulated employer, it is time to start thinking about whether you need a vaccination policy, what your vaccination policy might look like and it is also time to reach out to your trusted legal advisors for advice on creating and implementing a policy suitable for your workplace and workforce.