

Consultation Paper: *COVID-19 Vaccination Regulations*

Introduction

As a stakeholder of interest, the Labour Program of Employment and Social Development Canada (the Labour Program) invites you to participate in consultations on a new regulatory initiative related to COVID-19 vaccination of federally regulated employees.

Issue

According to the Public Health Agency of Canada, as of December 3, 2021, more than 86% of individuals (12 years and older) in Canada were fully vaccinated, with numbers continuing to rise daily. Vaccination of employees against COVID-19 is the best solution to help protect employees from the risk of COVID-19, help prevent outbreaks, and build confidence in the health and safety of the work place. Protecting employees is just as important as ever as we continue to face new variants of concern.

From an occupational health and safety perspective, a person who is not vaccinated against COVID-19 might be a hazard in the work place and is more at risk of negative health outcomes relative to other employees who are fully vaccinated against COVID-19 if they contract COVID-19. As more non-essential employees begin their gradual return to the work place there could potentially be an increase in the risk of transmission.


Background

The COVID-19 pandemic continues to significantly impact the lives and livelihoods of Canadians, as the public health situation constantly changes. According to PHAC, “Vaccination is one of the most effective ways to protect our families, communities and ourselves against COVID-19”, and COVID-19 vaccines in Canada are effective at providing protection against known COVID-19 variants.

COVID-19 vaccination policies, requirements and limitations for individuals not vaccinated are becoming common place across Canada as several jurisdictions across Canada implement COVID-19 vaccination passports or similar programs, and, many public and private employers of all sizes across the country are voluntarily establishing COVID-19 vaccination requirements for their employees.

As part of its ongoing response to the COVID-19 pandemic, on [August 13, 2021](#), the Government of Canada announced plans to require COVID-19 vaccinations across the federal public service and the federally regulated transportation sector (i.e., air, rail, and marine), including certain travelers.





On [October 6, 2021](#), the Prime Minister reaffirmed this commitment. In addition, the announcement stated that Crown corporations and agencies are being asked to implement vaccine policies and that the government will keep working with employers in other federally regulated work places to ensure vaccination is prioritized for workers in these sectors.

What We Have Heard

In response to the Government of Canada's announcements on August 13 and October 6 to require COVID-19 vaccinations across the federal public service and the federally regulated transportation sector, the Labour Program conducted limited and targeted outreach at the working level with stakeholders in the federally regulated private sector to gain initial reactions and feedback.

Stakeholders from the banking sector, road transportation sector, other sectors (including telecommunications) and employee representative groups all expressed concerns around employee refusals to be vaccinated leading to labour shortages and impacts on operations. Stakeholders from each of these groups also mentioned concerns about meaningful engagement, guidance, and clarity from the Government.

Stakeholders from the road transportation sector, specifically, emphasized the importance of a cohesive Canada-United States approach to vaccination requirements as to not negatively affect supply chains and labour force.

Several large federally regulated employers (such as some banks and telecommunication companies) have already implemented their own vaccination policies.

Indigenous partners shared that vaccine hesitancy in some communities may come from historical trauma and raised questions about the Government of Canada's authority to mandate vaccinations. Mandatory vaccination requirements would likely elicit negative reactions from First Nations partners and meaningful engagements would be important for the implementation of such requirements.

Regulatory Initiative

Policy Intent

In response to the announcement, the Labour Program is developing the *COVID-19 Vaccination Regulations* (the Regulations) under Part II of the *Canada Labour Code* (the Code) for application to federally regulated employers covered by that Part.

Through the new standalone Regulations, it is expected that the Labour Program will require vaccination of federally regulated employees.

The new 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 work place.

It is expected that employers will have the following responsibilities to ensure the proper application of the above mentioned requirement:

- Ensure employers obtain an attestation of vaccination or proof of vaccination from all employees;
- Exempt employees who, for reasons protected by the *Canadian Human Rights Act* (CHRA), are unable to provide an attestation of vaccination or 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.

To ensure these requirements are enforceable through administrative monetary penalties (AMPs), it is expected that consequential amendments will be made to the *Administrative Monetary Penalties (Canada Labour Code) Regulations* (AMPs Regulations) made under Part IV of the Code.

The Regulations are anticipated to be directly published in [Canada Gazette](#) Part II, and come into force early in 2022. The Labour Program will provide guidance regarding the Regulations, and resources will be developed to help federally regulated work places implement the COVID-19 vaccination requirements.

Objectives

The objective of the Regulations is to help protect the occupational health and safety of federally regulated employees by requiring employers to obtain confirmation of full COVID-19 vaccination status from their employees.

Discussion Objectives and Questions

Given compressed timelines, stakeholders participating in the consultations process will have the opportunity to provide their feedback on the following policy questions during the upcoming virtual consultation session. The Labour Program requests all stakeholders nominate a spokesperson to share their organizations' comments during the consultation session.

Key Questions

1. Will the proposed Regulations help employers respond to the COVID-19 pandemic?
2. Based on our summary of the Regulations, what feedback do you have?
3. 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?
4. How do you anticipate employers supporting employees **unable** to become fully vaccinated for reasons protected under the *Canadian Human Rights Act*?
 - a. How well do you know, or believe employers and employees know, how the *Canadian Human Rights Act* applies in this context?
5. 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?
 - a. What documentation should employers keep to support these decisions?
6. How do you anticipate employers managing employees **unwilling** to become fully vaccinated?
7. The Regulations are expected to be time-limited. Given the uncertainty surrounding the COVID-19 pandemic, how long do you think these Regulations should remain in place?
8. How prepared do you feel employers and employees are to implement the proposed requirements?

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9. When employees are required to return to the work place, do you believe the Regulations may help employees to feel safe at work?

Next Steps

A second virtual consultation meeting may occur soon to focus on the implementation of the proposal.

Following consultations, the Labour Program will have greater insight into how a vaccination regulatory initiative could be implemented in the federally regulated sector and will inform the Labour Program's policy. When the Regulations are published, the Labour Program will inform stakeholders and provide links to the new Regulations and Labour Program's guidance material, as well as other resources available.