



ONTARIO MUNICIPAL EMPLOYEES COORDINATING COMMITTEE
COMITÉ DE COORDINATION DES EMPLOYÉES ET
EMPLOYÉS MUNICIPAUX DE L'ONTARIO

Vaccination policies for municipal employers – FAQ

Last updated: September 20, 2021

As a result of rising COVID-19 cases and hospitalizations due to the Delta variant of COVID-19, municipal employers in Ontario are quickly introducing COVID-19 vaccination policies for their employees. These policies outline what will happen to employees if they are unvaccinated, or if they do not disclose their vaccination status to the employer by a certain date. In this FAQ we provide advice to frequently asked questions about vaccination policies.

On September 2, 2021, OMECC hosted a town hall about employer vaccination policies – [you can watch the recording here](#).

Please feel free to encourage members who have questions about COVID-19 vaccine safety to attend nightly Zoom discussions (with phone-in options) from 8-9pm EST every Monday, Thursday, and Saturday, hosted by [COVID-19 Resources Canada](#) (a group of volunteer scientists, physicians and pharmacists). They can ask questions anonymously and confidentially. [Registration for the sessions can be found here](#).

If you have further questions, please forward them to: OMECC Chair, David Petten, dpetten@cupe543.ca and OMECC Coordinator, Matthew Cronin, mcronin@cupe.ca.

Q: Which employers have a COVID-19 vaccination policy?

Many municipalities have released details to employees about how to show proof of vaccination, how to request accommodation (in cases where employees are unable to be vaccinated for a medical reason, or would like to request accommodation under the [Ontario Human Rights Code](#)), and what will happen to employees if they remain unvaccinated. Note that employers can create workplace policies like these even though they are not covered by a collective agreement or legislation.

One of the first major announcements came on August 19, 2021, from Toronto Mayor, John Tory, who said that [all City of Toronto staff will be required to be fully vaccinated against COVID-19 by October 30](#). Tory said that the city will “comply with its human rights obligations” and accommodate employees with medical exemptions. Shortly after Tory made his announcement, [Hamilton City Council passed a vaccination policy for its employees](#). Please see below, for further information about ambulance services and other health care settings.

Q: Are all municipalities in Ontario requiring municipal staff to be vaccinated?

At this time, no. There is no directive from the provincial government to require that municipalities have vaccination policies for their employees. But every day we are learning that more municipal councils are planning to implement workplace vaccination policies.

We expect municipal employers to take guidance from the Ministry of Health and their local Medical Officer of Health for their vaccination policies. On August 17, 2021, [the Ministry of Health announced the following directive for workers in health care](#):

- Workplace vaccination policies will apply to public hospitals (covered under the *Public Hospitals Act*), LIHNs (covered under the *Local Health Integration System Act*), service providers (under the *Home and Community Care Act*), and ambulance services (covered under the *Ambulance Act*). **Note: this directive applies to paramedics and community paramedics only — ambulance communications centre staff and back-office staff are excluded.**
- Employees will need to provide proof of vaccination (i.e., a printed or electronic receipt from a vaccine clinic, approved by the Ministry of Health), or written proof of medical reason for not being vaccinated against COVID-19, and the effective time for the medical reason. Written proof must be provided by either a physician or a nurse practitioner that states, (1) a documented medical reason for not being fully vaccinated against COVID-19, and (2) the effective time-period for the medical reason.
- The Ministry of Health defines medical exemptions to include severe allergic reactions or anaphylaxis to a previous dose of a COVID-19 vaccine and other health conditions. [More details on medical reasons for not being vaccinated can be found here.](#)
- Where an employee chooses not to be vaccinated, or they do not disclose their vaccination status to their employer, they will need to participate in: (1) An education course about COVID-19 and vaccinations; **and**, (2) A regular antigen testing program (i.e., testing for COVID-19) where they will have to demonstrate continued negative test results. However, if an employee has an approved medical exemption, they will only be required to participate in regular testing for COVID-19.

Q: When are municipal employees expected to be fully vaccinated?

Of the municipalities who have announced their vaccination policy so far, most have said that they will require municipal employees to be fully vaccinated against COVID-19 between late October to early November 2021. Many are asking employees to disclose their vaccination status earlier than that. We expect other municipalities to follow this pattern. Please see chart below of recent announcements.

Q: Will municipal workplace vaccination policies differ from other public service sectors?

Based on what we know from the health care and school board sectors, we believe that many municipal employers will create similar vaccination policies to them. We expect that

municipal employers will also require unvaccinated employees to participate in an education course (with the exception of employees who have an approved medical exemption). Unvaccinated employees are often being required to undergo rapid COVID-19 testing until they may face termination.

Q: What is OMECC’s opinion of these vaccination policies?

OMECC views vaccinations and testing as important tools in the fight against COVID-19 to decrease the overall severity and duration of the illness. OMECC also believes that vaccination policies must accommodate the small number of workers who cannot be vaccinated for medical or religious (creed) reasons. Please see more information about accommodations below.

We also continue to support strong workplace health and safety measures to keep our members as safe as possible. All employers are obligated under the [Occupational Health and Safety Act](#) to take every precaution reasonable in the circumstances for the protection of workers’ health and safety, including protection from the spread of infectious diseases.

In addition, we know that a lot of information is being produced online, so it can be hard to know what information can be trusted. [CUPE has addressed some of the most frequently asked questions about COVID-19 vaccinations, available here](#). We also have advice below about speaking with members who do not want to be vaccinated.

Q: What can Locals do right now in response to these policies?

Locals should reach out to employers proactively and make it clear that the union expects to be consulted about any policy changes. Locals should also negotiate solutions that protect the health and safety of all workers in the workplace, while minimizing any negative impacts on workers requiring accommodation. Employers must bear the monetary costs of any accommodation up to the point of undue hardship.

Vaccination policies are not a replacement for PPE, proper ventilation, and thorough cleaning regimes at work. Joint Health and Safety Committees should continue to regularly meet with employers to ensure COVID-19 occupational health and safety procedures, and infection prevention protocols, are being carried out. You can view [CUPE’s guidance for COVID-19 health and safety practices by CUPE’s Health and Safety Branch here](#).

Q: Can Locals grieve these policies?

Grievances with merit will be filed by Locals, with assistance from CUPE National Servicing Representatives. Note that because COVID-19 is so unprecedented, it is very uncertain how arbitrators will rule on terminations of employees who are required to be vaccinated to maintain employment.

Locals should try to seek alternate work arrangements for unvaccinated employees (such as working from home). When such an arrangement is not possible, Locals should argue that such employees be put on administrative leave, rather than be

terminated (if they have not sought accommodation and are refusing to be vaccinated for a reason other than that protected by human and medical rights legislation). Putting employees on leave opens the possibility they could return to work in the future if COVID-19 recedes, or if they change their mind and decide to be fully vaccinated. If a member is removed from the workplace, they should be able to access lieu time, vacation, and sick leave before being placed on leave.

Q: Does CUPE Ontario support these policies?

Note that these are employer policies, not policies created by unions like CUPE. COVID-19 vaccines are currently the best defences we have against the COVID-19 virus, and virologists around the globe are working to develop ones which are more effective against the evolving strains. At the same time, CUPE also supports members to make their own decisions and exercise their rights to accommodation under protected grounds outlined in the [Ontario Human Rights Code](#) and [Canadian Human Rights Act](#).

Q: Will CUPE represent members when they face discipline and/or termination for refusing vaccination?

Yes, CUPE represents all of its workers and will forward grievances with merit.

Q: How can we talk to members who do not want to be vaccinated?

We know that it can be difficult to talk to our colleagues at this time. The following points are potential guidance for speaking with members who are refusing vaccination.

Locals must consider the circumstances of each individual case — each of these points may not apply depending on the specific vaccination policy and the member in question.

1. CUPE encourages COVID-19 vaccination as a tool to help protect members' health.
2. We encourage members to speak with a medical provider regarding the benefits of vaccination and vaccination options. (Note: employers should accommodate members' appointments to see their medical providers.)
3. Some people cannot be vaccinated against COVID-19 for medical reasons. Others may have objections based on their religion (creed). If members believe that they fall into one of these categories, there is a process for requesting an accommodation and supporting it with required documentation.
4. The vaccination policy provides for the following consequences for not being vaccinated, if members do not have a medical or religious (creed) accommodation.
5. The best way to avoid loss of earnings, termination, or other negative employment consequences, is for members to comply with the vaccination policy (with the exception of members with an approved accommodation).

6. The Local will try to convince the Employer to make alternate work arrangements if it is possible to do so, or put employees on administrative leave instead of terminating them. If the Employer proceeds with termination regardless, the Local's recourse is to file a grievance.
7. If members are terminated, the Local will file a grievance if they want to file one. It will investigate the circumstances of the termination.
8. The Local will consult with members about grievances and take their interests into account in its decision-making, along with the interests of the other members of the bargaining unit. The Local retains carriage of the grievance and will ultimately decide how to proceed.
9. If a grievance goes before an arbitrator, it is far from guaranteed the arbitrator will uphold it. It is highly uncertain how arbitrators will handle terminations arising from breaches of vaccination policies.
10. Even if a grievance goes to arbitration and the arbitrator reinstates the member(s), they may not receive any damages. They may also not be allowed to attend work in person until they are vaccinated.

Q: Can employers ask for the vaccination status of employees? Is this a violation of privacy rights?

Implementing vaccination policies will require employers to gather personal health information about employees with regard to vaccination status. Many municipal vaccination policies have specified what will happen to employees if they do not disclose their vaccination status by a certain date.

Employers are permitted to gather personal health information for a legitimate employment purpose. Requiring employees to disclose their vaccination status to employers as part of an otherwise reasonable vaccination policy would very likely be found reasonable by an arbitrator. The information gathered is for the purpose of applying the policy. Gathering COVID-19 test results has also been considered to be reasonable.

Employers must treat all personal health information provided to them as strictly confidential. This includes information on an employee's vaccination status, COVID-19 test results, and medical accommodation information. All employers should already have mechanisms to safeguard confidential medical information, since they routinely gather it in other contexts, like leave and accommodation requests. We encourage Locals to ask questions about how that data will be stored.

Employers must ensure that vaccination, testing, and medical accommodation data gathered is kept confidential and that their data collection and storage procedures comply with all relevant privacy legislation. If the employer is using an app owned by a third-party to store data (e.g., to upload employee vaccination records), the Local should

be finding everything out they can about this third-party app. Please let CUPE National representatives know if you need assistance.

Q: How do members apply for a medical exemption?

Most municipal employers have outlined how to apply for a medical exemption in their vaccination policies. We expect that most employers will ask for written proof from a physician or nurse practitioner for the medical reason of being unvaccinated. We also expect that unvaccinated employees will have to undergo rapid COVID-19 testing until a point where the employer may terminate them.

Q: How do members apply for human rights related accommodations?

Members who are unvaccinated due to a religious (creed) reason and who would like to apply for a workplace accommodation will have to go through the proper process of requesting one.

The [Ontario Human Rights Code](#) says that “Under the Code, employers, unions... have a legal duty to accommodate people’s sincerely held creed beliefs and practices to the point of undue hardship, where these have been adversely affected by a requirement, rule or standard”¹. The OHRC also states that objective evidence of religious beliefs may be required to show that a workplace rule or practice adversely affects a person based on their religious beliefs; thus, we expect that employees will need to show documentation in an application for an accommodation. [The OHRC has responded to frequently asked questions pertaining to human rights obligations and COVID-19 here](#). In addition, [the Canadian Human Rights Commission has information about the duty to accommodate here](#).

If a member’s application for accommodation is substantiated, the employer will have to accommodate them to the point of undue hardship. However, what that accommodation will look like will be based on an *individualized* analysis of the employee’s restrictions, duties, and workplace.

Keep in mind that judicial decision makers have not accepted that any individual personal belief constitutes a creed. In the context of COVID-19, the Human Rights Tribunal of Ontario rejected a claim by an employee that his anti-mask beliefs were a creed. See: *Sharma v. City of Toronto*, 2020 HRTO 949 (CanLII). Some employees who oppose COVID-19 vaccines may try to claim a personal belief that vaccines are ineffective or harmful amounts to a creed. But without a clear connection between such views on COVID-19 vaccines and a broader religious or analogous belief system (rather than a political ideology), such claims are unlikely to be successful.

Q: What can we do when members encourage each other to refuse vaccination?

We are aware that there is very unreliable information being spread about COVID-19 and this is difficult to deal with. Members may want to ask questions to health care providers anonymously and confidentially, which they can do by attending Zoom discussions hosted by [COVID-19 Resources Canada](#) (a group with volunteer

¹ In this context “creed” is interpreted to mean “religious creed” or “religion”.

physicians). [Registration for the sessions can be found here](#). Locals can reach out to CUPE National representatives to clarify CUPE's position, send communications with the latest information about vaccination policies from CUPE Ontario, and encourage members to listen to past town halls or to attend future ones.

Q: There are versions of a COVID-19 vaccination “liability form” going around which asks the employer to take personal liability should employees fall ill after immunization. How should we respond to this?

We can say that these forms do not have any merit. They are being ignored by many employers because they are not manufacturing the vaccines or administering them to employees. Therefore, there is no need to engage in these so-called “liability forms”.

Q: How often will unvaccinated employees be tested for COVID-19?

Note that mandatory testing has been upheld by the Ontario Labour Relations Board and by multiple arbitrators as a reasonable measure for employers to use as part of a COVID-19 prevention program. Some employers have announced that they will require rapid COVID-19 testing for unvaccinated employees a few times per week, but we are waiting for announcements with more details about testing.

We are also waiting for more information about how municipal employers will deliver their education courses; how privacy will be ensured; who is collecting and tracking information about employees and how will it be stored.

Q: Can employers charge employees for COVID-19 tests?

We have seen that some employers will require employees to pay for rapid COVID-19 testing if they remain unvaccinated at a certain date, with some limited information about what will be required of unvaccinated employees with accommodations. We do not think it is reasonable for employers to charge employees for testing. We recommend pushing back on the employer if they are downloading this cost to members.

Q: Why are only unvaccinated employees being asked to do testing when both those who are vaccinated and not vaccinated can transmit COVID-19?

The process is evolving daily. Employer vaccination policies may extend to testing for all employees as COVID-19 variants continue to become a problem. We know that COVID-19 vaccinations lower the opportunities for people to spread the virus, which is why it is beneficial. This is because a vaccinated individual with COVID-19 has reduced duration of infectiousness and viral loads (i.e., live virus) quickly diminish after infection.

Q: Can employers provide COVID-19 tests other than the nasal swab (such as saliva tests)?

At this time, we are unsure because there is limited information from employers. We have also heard some concerns about chemicals on the nasal swab of the rapid antigen test. Although some swabs are sterilized using hazardous ethylene oxide gas (a known human carcinogen) Health Canada has adopted international standards to ensure manufacturers demonstrate that residual chemicals are negligible or completely

removed during the sterilization process. Other sterilization processes exist. Concerns about swab materials can also be explained by health care providers.

Q: What if members are medically unable to take a COVID-19 test?

An employee who is medically unable to take a COVID-19 test, or who is otherwise unable to test on the basis of a ground set out in the *Ontario Human Rights Code*, will also have to request an accommodation. We should also keep in mind that, although regular testing may be new for some of our members, there is a great deal of precedent around testing for COVID-19. For instance, in long-term care and health sectors, testing has been a longstanding practice for both visitors and staff. It has only been on proof of COVID-19 vaccination that our members in these sectors have been able to cease testing.

Q: If an employee suffers an adverse reaction from vaccination will the employer be held liable for it?

It is not clear who is liable because employers are not manufacturing the vaccines or administering them. Please stand by for updates as more information becomes available.

Q: Would a Charter challenge be successful?

A court can overturn a government regulation or directive if it determines the relevant government actor exceeded its statutory authority. Yet, in the context of COVID-19, such a finding is generally unlikely when it comes to vaccination policy requirements. There are many existing statutes giving broad latitude to different parts of government to take actions relating to health and safety. Governments looking to firmly ground vaccination in statutes have options—and legislatures can also choose to amend statutes.

Constitutional arguments would focus on alleged breaches of the *Charter of Rights and Freedoms*. A challenger may try to invoke section 7, which provides that: “Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.”

Our legal experts believe that a *Charter* challenge relying on section 7 is likely to fail. Any challenge would have to overcome all the following hurdles:

1. The party challenging the action would have to show the action in question was one to which the *Charter* applied, which may or may not be the case depending on who created the policy or measure and how.
2. The party challenging the action would have to show the policy in question fell within the scope of section 7 by virtue of impacting someone’s life, liberty, or security of the person.
3. The party challenging the action would have to show that the action in question constituted an infringement of section 7. This could prove difficult because the

consequences of not adhering to a workplace vaccination policy are economic (in the form of losing earnings or employment), and there is case law indicating section 7 does not apply to purely economic (i.e., monetary) interests.

4. The party challenging the action would have to show that any infringement of section 7 rights was not in accordance with the principles of fundamental justice. A government actor could defend a mandatory vaccination requirement by demonstrating that there was no equivalent alternative measure reasonably available to it that would be as effective.
5. If the party challenging the action succeeded on points 1-4, the government could still save the measure under section 1 of the *Charter*, which says that *Charter* rights are guaranteed “subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.” The government could rely on the exceptional circumstances of the COVID- 19 pandemic as providing it a wider berth to implement measures designed to stop the spread of the virus.

Even if a *Charter* challenge did succeed (which would take a few years to see through) we also must consider that the federal parliament or provincial legislature could invoke section 33 (the “notwithstanding clause”) to re-enact a particular measure, as the provincial government recently did with changes to election finance legislation.

Municipal workplace vaccine policy announcements (as of September 20, 2021)

| Municipality/ workplace | Vaccination policy details | Date employees expected to be vaccinated |
|------------------------------------|---|---|
| Ambulance services | Policy passed by Ministry of Health (August 17, 2021) | N/A |
| Ajax | Policy in development – Press release (August 31, 2021) | N/A |
| Aurora | Policy sent to staff (September 13, 2021) | October 30, 2021 |
| Barrie | Policy passed (September 9, 2021) | October 29, 2021 |
| Brampton | Policy in consideration – Media (September 1, 2021) | N/A |
| Burlington | Draft policy sent to staff (September 2, 2021) | October 4, 2021 |
| Cambridge | Policy passed (September 16, 2021) | N/A |
| Cochrane EMS | Policy sent to staff (September 7, 2021) | October 30, 2021 |
| Cornwall | Policy in consideration – Media (August 25, 2021) | N/A |
| Durham Region EMS | Policy sent to staff (August 20, 2021) | N/A |
| Elgin County | Policy sent to staff (September 14, 2021) | October 22, 2021 |
| Essex County | Policy sent to staff (August 23, 2021) | October 30, 2021 |
| Grey Bruce County | Policy sent to staff (August 27, 2021) | N/A |
| Guelph | Policy sent to staff (September 7, 2021) | N/A |
| Hamilton | Policy passed by council (August 26, 2021) | November 1, 2021 |
| Hamilton Public Library | Policy sent to staff (September 14, 2021) | N/A |
| Hastings-Quinte EMS | Policy sent to staff (August 25, 2021) | N/A |

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|----------------------------------|---|-------------------|
| Kingston | Policy in consideration – Media (August 23, 2021) | N/A |
| Leeds & Grenville EMS | Policy sent to staff (August 27, 2021) | N/A |
| London | Policy sent to staff September 10, 2021) | November 1, 2021 |
| Markham | Policy in development, sent to staff (August 30, 2021) | November 1, 2021 |
| Middlesex London Health Unit | Policy sent to staff (August 27, 2021) | N/A |
| Middlesex County | Employer does not intend to implement a policy soon | N/A |
| Mississauga | Policy in development – Press release (August 26, 2021) | October 31, 2021 |
| Newmarket | Policy in development – Media (August 24, 2021) | N/A |
| Niagara Region | Policy sent to staff (September 7, 2021) | October 31, 2021 |
| North Bay | Policy in development – Media (August 26, 2021) | N/A |
| Oakville | Policy sent to staff (September 14, 2021) | October 31, 2021 |
| Oshawa | Policy in development – Media (August 27, 2021) | N/A |
| Ottawa | Policy passed (September 7, 2021) | November 1, 2021 |
| Peel Region | Policy in development – Press release (August 26, 2021) | N/A |
| Peterborough County | Policy in consideration – Media (August 20, 2021) | N/A |
| Peterborough County EMS | Policy sent to staff (August 24, 2021) | N/A |
| Pickering | Policy sent to staff (August 31, 2021) | November 1, 2021 |
| Renfrew EMS | Policy sent to staff (August 24, 2021) | N/A |
| Richmond Hill | Draft policy sent to staff (August 30, 2021) | November 1, 2021 |
| Sarnia | Policy passed (September 13, 2021) | N/A |
| Sudbury | Policy in development – Media (August 26, 2021) | N/A |
| Thunder Bay | Policy in development – Media (August 22, 2021) | N/A |
| Toronto | Policy passed (September 7, 2021) | October 30, 2021 |
| Toronto Public Library | Policy and FAQ sent to staff (August 30, 2021) | October 30, 2021 |
| TTC | Policy in development – Press release (August 19, 2021) | October 30, 2021 |
| Vaughan | Policy in development – Media (August 20, 2021) | N/A |
| Waterloo Region | Policy in development – Media (August 20, 2021) | N/A |
| Wellington County | Policy passed (September 9, 2021) | October 23, 2021 |
| West Lincoln | Policy sent to staff (September 13, 2021) | October 30, 2021 |
| Windsor | Policy sent to staff (September 14, 2021) | November 15, 2021 |
| Windsor-Essex County Health Unit | Policy sent to staff (August 26, 2021) | N/A |
| Whitby | Policy in development – Press release (August 26, 2021) | N/A |
| Woolwich Township | Policy passed (September 16, 2021) | N/A |
| York Region | Policy in development, notice and FAQ sent to staff (August 24, 2021) | November 1, 2021 |
| York Region EMS | Policy sent to staff (September 7, 2021) | November 1, 2021 |