



Covid Update October 2021

There have been some interesting developments recently that are worthy of some attention. As mandatory vaccination policies and vaccine passports become more prevalent, we anticipate legal challenges in the Courts, at arbitration and before human rights tribunals. A [court in Saskatchewan](#) recently dismissed a challenge to the vaccine passport requirement in that province. Unions are [opposing the collection](#) of vaccine information and [filing grievances](#) opposing mandatory policies.

In this article, we review the recent [policy statement from the Ontario Human Rights Commission](#) and then summarize vaccination requirements across the provinces. We finish with other initiatives around [Deemed IDEL](#), [free health and safety training](#) and tools for preparing [safety plans](#).

The Ontario Human Rights Commission Takes a Position

On September 22, 2021, the Ontario Human Rights Commission (“OHRC”) published a [policy statement](#) taking a long-awaited position on COVID-19 vaccine mandates and proof of vaccine certificates. The OHRC took the position that:

Mandating and requiring proof of vaccination to protect people at work or when receiving services is **generally permissible under the *Human Rights Code*** (*Code*) as long as protections are put in place to make sure people who are unable to be vaccinated for *Code*-related reasons are **reasonably accommodated**.

The OHRC advises that organizations must make efforts to **balance the rights** of people who have not been vaccinated due to *Code*-protected grounds, while ensuring individual and collective rights to health and safety.



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Duty to Accommodate

The OHRC acknowledged that some people are unable to be vaccinated due to **medical or disability-related reasons**, and under the *Code*, organizations have a duty to accommodate them *unless* “it would significantly interfere with people’s health and safety”. With respect to **creed-based reasons**, the OHRC clarifies that personal preferences or singular beliefs do not amount to a creed for the purposes of the *Code*. A person who chooses not to be vaccinated based on personal preference **does not have the right to accommodation under the Code**. Even if a person can show that they were denied a service or employment because of a creed-based belief against vaccinations, the duty to accommodate them may be limited **if it would significantly compromise health and safety amounting to undue hardship, such as during a pandemic**.

Cross Canada Review of Vaccination Requirements (as of October 4, 2021)

Some provinces across Canada have chosen to mandate the implementation of COVID-19 vaccination policies for all businesses in their province, and some have selectively mandated the implementation of vaccination policies for certain industries. The following table and detail that follows summarizes the requirements to show proof of vaccination for work and when accessing non-essential services.

Province	COVID-19 Vaccination Policy for <u>All</u> Employers	COVID-19 Vaccination Policy for Health Care Sector	COVID-19 Vaccination Policy for Other Sectors	Medical Exemptions Expressly Recognized	Do patrons have to provide proof of vaccination?
Alberta	NO	YES	YES	YES	YES
British Columbia	NO	YES	YES	YES	YES
Manitoba	NO	YES	YES	-	YES



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New Brunswick	NO	YES	YES	YES	YES
Newfoundland and Labrador	NO	NO	NO	-	NO
Nova Scotia	NO	YES	YES	YES	YES
Ontario	YES -if recommended by local public health	YES	YES	YES	YES
Prince Edward Island	NO	YES	YES	YES	YES
Quebec	NO	YES (effective October 15, 2021)	NO	-	YES
Saskatchewan	NO	YES	YES	-	YES

Alberta

Businesses are encouraged to adopt best practices for infection prevention as part of their normal operating procedures, including:

- Supporting staff to stay home when they are sick;
- Providing information on vaccines, and their role in workplace health and safety;
- Encouraging frequent hand hygiene and making hand sanitizer available throughout the workplace;
- Encouraging attendees to follow respiratory etiquette; and
- Frequent cleaning and disinfecting.



Employers that implement COVID-19 testing for their employees, contractors, or clients should also develop a COVID-19 testing policy.

Health Care:

All employees and contracted healthcare providers (including physicians and other frontline healthcare workers) **must be fully immunized** against COVID-19 by **October 31, 2021**.

Public Sector:

Public sector workers must submit proof of full vaccination by **November 30, 2021** or produce a negative PCR or rapid COVID-19 test result within 72 hours of every scheduled workday or shift.

Do patrons have to provide proof of vaccination?

Specified businesses must implement the **restrictions exemption program** (vaccine passport) or **adhere to COVID-19 restrictions** (per physical distancing).

Specified Businesses:

- Hospitality
- Media & Entertainment
- Sports & Recreation

When do patrons NOT have to provide proof of vaccination?

- If the individual is less than 12 years old.
- The individual has a documented medical exemption (a signed letter from a physician or nurse practitioner).
- The individual has a negative COVID-19 test **within 72 hours** of service (paid for by the individual).



British Columbia

Employers have a duty to establish occupational health and safety policies and programs and should monitor the workplace and public health recommendations. Employers should also update any measures, practices and policies as required.

Health Care:

Effective **October 26, 2021**, all healthcare workers, including physicians, contractors and volunteers in health facilities, **must be vaccinated**.

Additionally, all staff in long-term care and seniors assisted living facilities **must be fully vaccinated** against COVID-19 by **October 12, 2021**.

Forestry, Mining, Oil & Gas:

The Provincial Health Officer issued a [statement](#) *strongly recommending* the full vaccination of all workers.

Do patrons have to provide proof of vaccination?

To access certain events, services and businesses, persons 12+ must be **fully vaccinated** by **October 24, 2021**, and provide proof of vaccination.

Certain Events, Services & Businesses:

- Weddings
- Parties
- Conferences
- Meetings & Workshops
- Indoor and outdoor dining at restaurants, pubs and bars



- Indoor ticketed concerts, theatre, dance, and symphony
- Movie theatres
- Nightclubs and Casinos
- Indoor organized group recreational classes and activities like pottery and art
- Indoor ticketed sporting events
- Gyms, pools and recreation facilities
- Indoor high intensity group exercise
- Post-secondary on-campus student housing

Hospitality:

Restaurants, coffee shops, cafes, cafeterias, and licensed premises, including bars, lounges, night clubs and tasting rooms, owners/operators that collect information from patrons for the purpose of making reservations or seating patrons must ensure:

- They collect: (1) first and last names of patrons; (2) telephone numbers or e-mail addresses of at least one member of every party of patrons; and
- Retain this information for 30 days.

When do patrons NOT have to provide proof of vaccination?

- If the individual is less than 12 years old.
- If accessing K to 12 school and before and after school programs.
- If accessing youth recreational sports.



Manitoba

Manitoba does not appear to have a stand-alone COVID-19 vaccination policy requirement for all employers, but the [Restoring Safe Services Guide](#) indicates that employers should:

- Review sick leave and return to work policies
- Consider continuing pay for employees in isolation
- Assign higher risk employees to tasks that lower their risk of COVID-19 exposure
- Allow employees to work from home where possible

All provincial employees that have ongoing contact with **“vulnerable populations”** must be fully immunized by **October 17, 2021** or undergo regular rapid testing. Employers must not allow these persons to attend the workplace without **proof of vaccination or a negative COVID-19 test**. This includes:

Health Care:

- Physicians
- Nurses
- Allied health professionals
- Health care aides
- Cleaning staff
- Support services staff
- Volunteers
- Home care workers
- Persons who have direct contact with patients, residents and clients at: hospitals, northern nursing stations, personal care homes, supportive housing facilities, specified health and addiction treatment facilities

Education:

2 Pardee Avenue, Suite 300, Toronto, Ontario, Canada M6K 3H5
Tel: 416-534-7770 Fax: 416-534-7771 hunterliberatore.ca



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- Persons who have direct and ongoing or prolonged contact with pupils at a public or independent school
- Staff, practicum students and persons volunteering at a childcare facility

Public Sector:

- Civil servants who regularly have direct and ongoing or prolonged contact with children, seniors, persons with disabilities, persons experiencing housing insecurity, or persons with addictions.
- Civil servants working in congregate living facilities such as group homes or correctional facilities, who have direct and ongoing or prolonged contact with persons residing in those facilities
- Funded agency personnel in direct contact with vulnerable populations

Ambulance:

- Paramedics
- Emergency medical responders

Do patrons have to provide proof of vaccination?

Members of the public cannot access specified activities and services unless they provide proof that they are fully vaccinated.

Specified Activities and Services:

- Movie theatres
- Concert Halls
- Indoor/outdoor performing arts events
- Gyms
- Fitness centres



- Yoga studios
- Ticketed sporting events
- Indoor recreational businesses
- Bingo halls
- Casinos and gaming centres
- Restaurants

When do patrons NOT have to provide proof of vaccination?

- If the individual is less than 12 years old.
- If the individual has proof from the government that there is a medical reason that they are not vaccinated.

New Brunswick

Employers should develop a **communicable disease plan** which covers:

- Risk assessment
- Physical distancing
- Hand and respiratory hygiene
- Screening and monitoring
- Building ventilation
- Work from/stay at home policy for sick workers
- Cleaning and disinfection
- Employee communications
- Ongoing evaluation of risk and updating as required

Health Care:



Workers in health care **must be vaccinated** against COVID-19, subject to exceptions for certain workers who undergo regular testing. This includes workers in facilities that provide mental health or addiction services and assisted living.

Public Sector:

Public sector workers **must be vaccinated** against COVID-19, subject to exceptions for certain workers who undergo regular testing.

Do patrons have to provide proof of vaccination?

Patrons must show proof of vaccination when accessing certain events, services, and businesses in Hospitality, Media & Entertainment and Sports and Recreation industries. This includes:

- Indoor sporting events
- Gyms
- Indoor pool and recreation facilities
- Indoor group exercise facilities
- Indoor organized group recreational sports, classes and activities
- Indoor and outdoor dining and drinking at restaurants, pubs, and bars
- Indoor organized gatherings including weddings, funerals, parties (**excluding parties in a private dwelling**), conferences and workshops
- Indoor festivals, performing arts events
- Movie theatres, nightclubs, amusement centres, pool halls, bowling alleys and casinos

Employers/owners must record names and contact information of persons who attend venues for eating, drinking, socializing, celebrating, ceremonies or entertainment. Where a group of patrons are seated together, it is sufficient for the venue to record the name of one person in the party.



To access long-term care facilities, everyone 12+ must have proof of vaccination.

When do patrons NOT have to provide proof of vaccination?

- If the individual is less than 12 years old
- If an individual has written proof of a medical exemption

Newfoundland and Labrador

Employers *should* develop the necessary policies to manage their workplace, including policies about:

- Who can be at the workplace
- How to manage illness that arises in the workplace
- How workers can be kept safe

Employers *should* also:

- Incorporate COVID-19 transmission and prevention into all job hazard analyses and pre-task safety planning
- Continually evaluate hazards as they relate to the spread or transmission of COVID-19
- Have a workplace illness policy that aligns with COVID-19 recommendations

Do patrons have to provide proof of vaccination?

The Newfoundland and Labrador government is currently working on a vaccine passport system that they hope to implement soon. For now, a proof of vaccination requirement for non-essential services does not appear to be in place.

Nova Scotia

All businesses that were required to close must develop a [Workplace COVID-19 Prevention Plan](#) addressing:



- Physical distancing requirements
- Gathering limits
- How to work/interact with customers
- Cleaning
- Equipment
- Preparing employees to return to work
- Preparing for customers or clients
- Monitoring and communication the plan

Health Care, Education, and Corrections & Probation:

Subject to medical exemptions, workers must be **fully vaccinated** by **November 30, 2021**. Employees who fail to do so will be placed on an unpaid administrative leave.

Do patrons have to provide proof of vaccination?

Persons 12+ have to provide **proof of full vaccination** to access events and activities in Hospitality, Media & Entertainment and Sports & Recreation industries.

When do patrons NOT have to provide proof of vaccination?

If the individual is less than 12 years old.

Ontario

Employers must comply with any public health advice, recommendations and instructions:

- Requiring them to establish, implement and ensure compliance with a **COVID-19 vaccination policy**; or
- Setting out the precautions and procedures that must be included in their COVID-19 vaccination policy



Health Care & Ambulance:

Hospitals, ambulance services, and homes/community care service providers must have a **COVID-19 vaccination policy** for employees, staff, contractors, students and volunteers, which requires these persons to provide:

- Proof of full vaccination against COVID-19;
- A medical reason for not being vaccinated against COVID-19; or
- Completion of a COVID-19 vaccination education session (organizations may remove this *option* from their policy, but they must provide an educational session).

Individuals who do not provide proof of full vaccination must undergo regular antigen testing.

Health care organizations must track and report on the implementation of their policies to the government.

Do patrons have to provide proof of vaccination?

Specified businesses must obtain **proof of full vaccination and identification** from each person seeking access to the business' indoor areas, subject to exceptions.

This includes:

- Indoor areas of meeting and event spaces, including conference and convention centres
- Indoor areas of restaurants, bars, and other food or drink establishments without dance facilities
- Indoor and outdoor areas of food or drink establishments with dance facilities, including nightclubs and restoclubs
- Indoor areas of facilities used for sports and recreational fitness activities, including waterparks and personal fitness training
- Indoor areas of casinos, bingo halls and gaming establishments



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- Indoor areas of concert venues, theatres and cinemas
- Indoor areas of bathhouses, sex clubs and strip clubs
- Indoor areas of horse racing tracks, car racing tracks and other similar venues
- Indoor areas where commercial film and TV productions take place, where there is a studio audience

When do patrons NOT have to provide proof of vaccination?

- If the individual is less than 12 years old.
- Individuals who have a medical exemption set out in writing by a physician or nurse practitioner
- If seeking entrance as may be necessary for health and safety purposes
- If under age 18 and entering the indoor premises of a sports or recreational fitness facility solely for the purpose of actively participating in an organized sport

To access the indoor areas of certain specified settings solely to:

- Use a washroom
- Access an outdoor area that can only be accessed through an indoor route
- Make a retail purchase
- Place, pick up or pay for an order
- Purchase admission

Prince Edward Island

Employers must develop a plan to mitigate the risk of transmission and must include an **illness/exclusion policy** which requires:

- Employees to attest to not being required to self-isolate each day
- Employees to self-monitor for symptoms and report any concerns about possible exposure or symptoms



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- Employees who develop COVID-19 symptoms at work to perform hand hygiene, report to their manager, avoid contact with staff and leave work as soon as it is safe to do so
- Symptomatic staff to self-isolate until tested and results are confirmed
- Employees who are negative for COVID-19 but ill to remain on sick leave

Health Care:

Testing and vaccination measures are required in community care and long-term care facilities.

- Employers have to provide vaccination information for all of their staff to the Chief Public Health Officer (CPHO)
- All unvaccinated staff have to wear a mask and be tested for COVID-19 on every shift (up to three times per week)
- Staff have to take specified steps if they test positive (i.e., notify their employer, leave the facility, etc.)
- Employers have to record testing information to provide to the CPHO on request
- Employers have to provide COVID-19 transmission information to the CPHO each week

Public Sector:

Every public service provider identified in the [Vaccination Information and Testing Policy Order for Front-line Public Service Providers](#) (the “Order”) must establish a **COVID-19 Vaccination Information and Testing Policy** for front-line staff that is in-keeping with the Order. “Public Service Provider” includes:

- Correctional facilities
- Provincial group homes
- Public and private schools
- Day care centres
- Residential institutions for persons in need

The providers must ensure their policy requires staff persons to:



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- Provide proof they are fully vaccinated; or
- Submit to regular testing and provide verification of a negative test

The policy must also set out steps to be followed should a staff person test positive for COVID-19.

All of the information set out above must be provided to the Chief Public Health Officer.

Do patrons have to provide proof of vaccination?

The Prince Edward Island government has released a Vax Pass that is now required for entry into several public places, such as restaurants and concerts. For more information regarding where proof of vaccination is and is not required, visit the Prince Edward Island government's [Vax Pass information page](#) for Businesses, Services and Events.

Quebec

Health Care:

Employees of Quebec's health and social services network must provide their employers with **proof of a COVID-19 vaccine or at least 3 screening tests per week**. This applies to salaried persons working in:

- Emergency units, except psychiatric emergency units
- Intensive care units, except psychiatric intensive care units
- Clinics specific to COVID-19, including screening, evaluation, and vaccination clinics
- Units identified by an institution as reserved for persons with a positive COVID-19 diagnosis
- Residential and long-term care centres
- Other residential units
- Pneumology units

Employees who do not provide proof of a vaccine or testing must be reassigned to other duties.



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Where an employee refuses a reassignment or reassignment is not possible, they will receive **no remuneration**. They can rejoin the workforce when they provide a negative COVID-19 screening test or proof of a vaccine.

Employees who have contracted COVID-19 are not required to have a screening test for 90 days after their first symptom or positive test.

Effective **October 15, 2021**, **all workers must provide proof of vaccination**. Workers who do not provide proof will be reassigned to other duties, where possible. When this is not possible or if workers refuse, **they will not be allowed to return to work** and will receive **no compensation**.

Do patrons have to provide proof of vaccination?

A COVID-19 **vaccination passport** is required to access non-essential services.

This includes:

- Indoor organized gatherings such as conventions
- Outdoor events and festivals where the number of attendees exceeds that allowed for gatherings in an outdoor public space
- Performance venues
- Movie theatres
- Casinos and gambling halls, including bingo
- Arcades
- Pool halls
- Indoor/outdoor activities at theme parks, amusement parks and centres, fun and recreation centres, water parks, zoos
- Sports venues



- Bowling alleys
- Outdoor team sports or physical activities involving frequent or prolonged contact, including extracurricular activities
- Indoor sports or physical activities
- Bars and restaurants, including patios
- Fast food restaurant dining rooms
- Nightclubs
- Microbreweries
- Distilleries
- Shopping mall food courts
- Those visiting hospitals and long-term care facilities

Passport holders will also be required to provide **proof of their identity**.

When do patrons NOT have to provide proof of vaccination?

If the individual is less than 13 years old.

Saskatchewan

Employers must establish a [written exposure control plan](#) and should continually monitor and update their plans/policies.

Health Care:

By **October 15, 2021**, health care workers must submit a declaration form regarding their vaccination status, intention to be vaccinated or receive an accommodation or to take part in a monitored testing program. Visit the [Saskatchewan](#)



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[Health Authority's](#) website for more information. They will be required to submit their proof of full COVID-19 vaccination status in early **November 2021**.

Public Sector	Private Sector
<p>Public sector employees are required to verify that their workers are fully vaccinated <u>or</u> provide a negative COVID-19 test result from the previous 7 days before entering the workplace.</p>	<p>Private sector employers <u>may</u> require their workers to:</p> <ul style="list-style-type: none"> ▪ Be fully vaccinated; or ▪ Provide evidence of a negative COVID-19 test result from the previous 7 days before entering the workplace. <p>The employer shall provide reasonable notice of the requirements to every worker by:</p> <ul style="list-style-type: none"> ▪ Personally giving it to the worker ▪ Posting it in the workplace ▪ Posting it online on a secure website to which the worker has access ▪ Providing it in any other manner that informs the worker of the requirements
<p>Both private and public sector <i>workers</i> are not required to provide evidence of a negative COVID-19 test result while on vacation or leave, until returning to the workplace.</p> <p>Both public and private* <i>employers</i> <u>must</u> establish a verification process for confirming an employee's vaccination or negative COVID-19 test result.</p> <p>Both public and private* <i>unvaccinated employees</i> must:</p>	



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- Arrange COVID-19 tests on non-work hours; and
- Pay the costs associated with taking a COVID-19 test.

*Referring to private employers that have chosen to implement a vaccination policy.

Do patrons have to provide proof of vaccination?

Everyone who is 12+ must provide **proof of COVID-19 vaccination or a negative test** to access establishments, businesses and event venues that bring groups of people together.

This includes:

- Indoor dining at restaurants
- Nightclubs
- Bars, taverns and other licensed establishments
- Conference centres
- Casinos
- Movie theatres
- Concert venues
- Live-music venues
- Museums
- Indoor facilities hosting ticketed sporting events
- Indoor fitness centres and gyms

When do patrons NOT have to provide proof of vaccination?

If the individual is less than 12 years old.

2 Pardee Avenue, Suite 300, Toronto, Ontario, Canada M6K 3H5
Tel: 416-534-7770 Fax: 416-534-7771 hunterliberatore.ca



Ontario Government Extends Deemed IDEL

On September 19, 2021, the Ontario government published [Regulation 650/21](#) amending the [Infectious Disease Emergency Leave Regulation](#) under the [Employment Standards Act, 2000](#) (ESA).

The amendments extends the COVID-19 Infectious Disease Emergency Leave until January 1, 2022.

This means that, during the COVID-19 period (which is now March 1, 2020 to January 1, 2022), non-unionized employees:

- are deemed to be on job-protected infectious disease emergency leave where their employer has temporarily reduced or eliminated their hours of work for reasons related to COVID-19;
- are not considered to be laid off if their employer temporarily reduces or eliminates their hours of work or wages for reasons related to COVID-19; and
- are not considered to be constructively dismissed under the ESA if their employer temporarily reduces or eliminates their hours of work or wages for reasons related to COVID-19.

Free Health & Safety Training and Safety Plan Builder

On September 27, 2021, the Ontario Government published new tools and educational resources, including a new [Workplace Safety Plan Builder](#). They also announced the hiring of additional inspectors to help educate workers and businesses about the newly launched vaccine certificate.

The safety plan builder was created to help employers create and update an online safety plan suitable for their workplace. The Government stated that this tool was designed with the input of small businesses and with an intention to help small businesses comply with evolving health and safety measures. Employers can also sign up to be notified when there are new changes to health and safety guidance and requirements. **Having a written safety plan is mandatory for businesses to remain open** under the [Reopening Ontario Act](#).



Free Training for Health and Safety Representatives

The Government has also provided access to free training for business' health and safety representatives through Ontario's [Small Business Health and Safety Training Program](#). To provide additional support, the Government will also reimburse small businesses with \$150 for the training time of their representatives.

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