



## Novel Coronavirus (COVID-19)

### Health Law

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# Mandatory Vaccination Policies Required for Ontario Retirement Homes

By Lisa Corrente

On August 17, 2021, Ontario's Chief Medical Officer of Health issued Directive #6 pursuant to the *Health Protection and Promotion Act* mandating hospitals and home and community care service providers to implement COVID-19 vaccination policies for employees, staff, contractors, students and volunteers. We informed our clients of this legislative development in my last Bulletin.

Yesterday, our Chief Medical Officer of Health issued instructions to establish mandatory COVID-19 vaccination policies in retirement homes across the province (the "**Instructions**"). The Instructions were issued pursuant to O.Reg. 364/20 under the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020*, which requires businesses and organizations to operate in compliance with any advice, recommendation and instructions issued by the Office of the Chief Medical Officer of Health.

The Instructions require every Ontario retirement home to establish, implement and ensure compliance with a COVID-19 vaccination policy requiring staff (e.g. employees and agency workers), contractors, volunteers and students to provide **one** of the following:

1. Proof of full vaccination against COVID-19;
2. Written proof from either a physician or nurse practitioner of a medical reason that prevents the person from being vaccinated against COVID-19 and the effective time period for the medical reason; or
3. Proof of completion of an education session approved by the retirement home about the benefits of COVID-19 vaccination prior to declining vaccination for any reason other than a medical reason. The approved session must, at a minimum, addresses how COVID-19 vaccines work, vaccine safety related to the development of the COVID-19 vaccines, the benefits of vaccination against COVID-19, risks of not being vaccinated against COVID-19 and possible side effects of COVID-19 vaccination.

Retirement homes may decide to remove the option for staff, contractors, volunteers and students to complete an educational session, and simply require proof of full vaccination or a medical reason that

prevents the individual from being vaccinated. However, in such cases, retirement homes must still make the requisite education session available.

According to the Instructions, a retirement home's vaccination policy must require staff, contractors, volunteers and students who do not provide proof of being fully vaccinated against COVID-19 to submit to regular antigen testing for COVID-19 and demonstrate a negative test result. Antigen testing for COVID-19 will occur at intervals as determined by the retirement home, which must be at minimum once every seven days. Also, proof of a negative test result is to be provided to the retirement home in a manner determined by the home which enables it to confirm the result at its discretion.

Retirement homes will also be required track and report statistical information regarding overall immunization rates amongst staff, contractors, volunteers and students. Statistical information will be reported to the Ministry for Seniors and Accessibility and the Retirement Homes Regulatory Authority in the manner and within timelines specified by these bodies.

Public health measures including active screening, masking, physical distancing and hand hygiene will continue to be required of all staff, contractors, students, volunteers, residents and visitors, in addition to mandatory COVID-19 vaccination policies.

Retirement homes must have their COVID-19 vaccination policies established by **September 7, 2021** and implemented by **September 21, 2021**.

When creating and implementing COVID-19 vaccination policies, retirement homes will need to give proper consideration to the following:

- Their obligations to accommodate employees under the *Human Rights Code*. Under the Code, employers have a duty to accommodate employees who may be unable to receive a COVID-19 vaccine, for reasons related to disability, pregnancy or creed, unless it would amount to undue hardship;
- Employee entitlements to up to three paid sick days under the *Employment Standards Act, 2000*, and any contractual entitlements to paid sick leave, related to getting vaccinated and recovery from any associated side effects;
- Privacy issues which may emerge from the collection and use of medical documentation from staff, contractors, students and volunteers. For instance, the Human Rights Commission has taken the position that employers should only request and share medical information, including proof of vaccination, in a way that intrudes as little as possible on an individual's privacy, and does not go beyond what is necessary to ensure fitness to safely perform work, protect residents receiving services in a home, and accommodate any individual needs;
- Duties under the *Occupational Health and Safety Act* to protect workers who are not vaccinated from workplace harassment and to take reasonable precautions to protect workers which would include complying with public health and other statutory directives;
- In unionized workplaces, the terms of any collective agreements in place and any obligations to consult with the union or the joint health and safety committee; and
- An effective and efficient process for collecting and storing proof of vaccination, medical notes, verification of completion of an educational session and proof of negative antigen test results, as well as for reporting statistical information.

Retirement homes seeking assistance with preparing mandatory COVID-19 vaccination policies or who have questions related to COVID-19 and their workplace may contact Lisa Corrente or a member of our firm's Employment and Labour Relations Group. More information about dealing with COVID-19 is available by visiting our COVID-19 Resource Centre.

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