



Novel Coronavirus (COVID-19)

Health Law

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Ontario Expands Mandatory COVID-19 Vaccination Policies For High-Risk Settings

By Lisa Corrente

On July 1, 2021, a Directive issued by the Minister of Long-Term Care pursuant to the *Long-Term Care Homes Act, 2007* required Ontario long-term care homes to implement COVID-19 vaccination policies to apply to all staff, student placements and volunteers.

Yesterday, the Ministry of Health announced an expansion of COVID-19 vaccination policies to other high-risk settings. Specifically, the Chief Medical Officer of Health has issued **Directive #6** pursuant to the *Health Protection and Promotion Act* mandating hospitals and home and community care service providers to have a COVID-19 vaccination policy for employees, staff, contractors, students and volunteers. This includes Local Health Integration Networks with respect to the provision of long-term care home placement services.

The vaccination policy mandated by Directive #6 must be in place by no later than **September 7, 2021**, and at a minimum must require employees, staff, contractors, students and volunteers to provide proof of one of the following:

- Full vaccination against COVID-19;
- A medical reason, confirmed by a physician or nurse practitioner, for not being vaccinated against COVID-19 and the effective time-period for the medical reason; or
- Completion of a COVID-19 vaccination educational session which, at a minimum, addresses how COVID-19 vaccines work, vaccine safety, benefits of vaccination, risks of not being vaccinated, and possible side effects of vaccination.

Individuals who do not provide proof of full vaccination against COVID-19 will be required to undertake regular antigen testing and provide verification of a negative test result to the organizations covered by Directive #6. The frequency of antigen testing will be determined by the covered organizations, but must occur at least once a week. Covered organizations will also be required to track and report on the

implementation of their policies to the Provincial Government. These vaccination policy requirements are similar to those currently mandated for long-term care homes.

According to the Ministry, vaccination policies will also be implemented in other higher-risk settings such as licensed retirement homes, 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 (e.g. group homes and foster homes).

When creating and implementing COVID-19 vaccination policies, high-risk settings 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 employees, 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; and
- 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.

As an additional precaution due to the rapid transmission of the Delta variant, the Provincial Government has also decided to pause the exit from the Roadmap to Reopen. This means that the majority of public health and workplace safety measures currently in place (e.g. limits for social gatherings and organized public events, requirements such as active screening of patrons and workers) will remain until health experts determine that it is safe to lift them.

Torkin Manes LLP will provide additional details regarding mandatory COVID-19 vaccination policies as they are made available by the Ministry.

Organizations 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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