

VACCINE POLICY FAQs FOR ALBERTA CUPE MEMBERS

CUPE National has developed vaccine mandate guidelines. The guidelines are [available here](#).

CUPE has always encouraged our members to get vaccinated at their earliest opportunity for the protection of ourselves, our co-workers, and the members of the public accessing the services our members provide. Everyone who can, should get vaccinated against COVID-19.

Vaccinations against COVID-19 are safe and effective. Alberta Health Services, the Alberta Medical Association, the College of Physicians and Surgeons of Alberta and the faculties of medicine at the University of Calgary and the University of Alberta recently penned an [open letter in response to vaccine concerns and information](#).

CUPE has compiled a [response to frequently asked questions on COVID-19 Vaccines](#).

For more detailed information about the legality of workplace vaccine mandates, you can read a [legal opinion obtained by the Alberta Federation of Labour](#):

The COVID-19 crisis is not over. COVID-19 is not the seasonal flu. It is much more deadly and has inflicted far greater damage on our health system, our economy, our livelihoods and the individual health of Canadians. The vast majority of COVID-19 patients in hospital in Alberta are people who are unvaccinated. Vaccinations have proven to be the most effective way to fight COVID-19.

CUPE strongly believes members have a right to correct information, including a realistic assessment of the current situation and potential consequences that might flow from their choices. To that end, CUPE has produced this FAQ to help ensure that members have accurate information to make meaningful and informed choices.

Can employers introduce vaccination policies without the union's agreement?

Yes. While we strongly believe that not consulting with workers is poor practice, it is well established that employers have the right to unilaterally (i.e., without the agreement of the union or workers) develop and implement workplace policies as an exercise of their "management rights" so long as those policies do not conflict with the collective agreement and are reasonable.

The framework for assessing a unilateral employer policy is set out in *Lumber and Sawmill Workers Union, Local 2537 v KVP Co.* (1965), 16 L.A.C. 73 ("KVP"). Generally, a reasonable vaccination policy will balance the employer's interest in the occupational health and safety of all employees and in protecting clients / members of the public against workers' interests in bodily integrity and privacy.

What types of policies are employers introducing?

Vaccination policies have a range of requirements and consequences for non-compliance. Policies might require disclosure of vaccination status, mandatory rapid testing and / or mandatory vaccination. The consequences for not complying can include some or all of, requiring employees attend education sessions, unpaid leave, discipline or termination.

Each Local is reviewing vaccination policies with the help of CUPE National Representatives and Lawyers as they are introduced.

Can employers enforce vaccination mandates from government or funders like Alberta Health Services?

Yes. In some workplaces, employers may be required to comply with vaccine mandates introduced by legislation or a funder. In other cases, vaccination may be required to access sites operated by third parties that employees attend as part of their job.

To the extent that a vaccination requirement is introduced by a third party, those policies will not be subject to review under the collective agreement except to the extent that the employer's policy goes beyond what is required.

What is the union doing about mandatory vaccination policies?

Every CUPE local is in a different situation, but all are working to ensure their members' voices are being heard. CUPE Locals are carefully reviewing mandatory vaccination policies where they are introduced. While there are significant differences between policies, we have now reviewed a wide range of policies from across the province, and have consistently concluded that policy grievances seeking to overturn these mandatory vaccination policies are unlikely to succeed.

Members are encouraged to reach out to their local executives in a respectful manner with their questions and concerns about any policy or rule. Where employees are disciplined or denied accommodation, CUPE Locals are reviewing on a case-by-case basis.

Can the employer fire an employee who refuses to get vaccinated?

Some employers have introduced vaccination policies that provide alternatives for workers who choose not to be vaccinated. Commonly, these include regular COVID-19 testing (often paid by the employee), or unpaid leave.

Other employers have implemented policies that contemplate discipline up to and including termination for workers who are not vaccinated. Members in workplaces with policies that threaten termination should understand that if they refuse to become vaccinated, the employer might terminate them.

What will the union do if I am fired?

If your employment is terminated, the union will file a grievance if you want to file one. It is important to know that it is far from guaranteed that a grievance will result in getting your job back.

Your Local will consult you about your grievance and take your interests into account in its decision making, along with the interest of other members of the bargaining unit. The Local retains carriage of the grievance and will ultimately decide how to proceed.

If your grievance goes to arbitration, you may be reinstated to employment, or you may lose. At this time, there is some uncertainty about how arbitrators will rule on terminations of employees who are required to be vaccinated to maintain employment but refuse to do so. A lot could depend on how the pandemic unfolds over the coming months. The longer COVID-19 remains a serious threat in workplaces, the less likely arbitrators are to see it as a temporary event justifying a leave of absence instead of a termination.

Even if your grievance goes to arbitration and the arbitrator reinstates you, you may not receive any damages and you may not be allowed to return to work immediately. Regardless of outcome, members need to know that this type of litigation often takes a long time.

I thought medical information is private, how can employers require workers to disclose whether they are vaccinated?

Privacy rights are not absolute. Employers have legitimate interests in determining whether or not their employees are vaccinated. At minimum, information about whether a worker is vaccinated and proof of vaccination might be needed to implement or develop a reasonable vaccination policy. These are legitimate reasons for employers to require disclosure and collect vaccination records.

Employers must protect workers' privacy when they collect this type of personal medical information. They should ensure, like with other medical information, that it is stored securely, access is limited to those who need it, and that the information is only used for the purposes for which it was collected.

Can an employer require workers to disclose their vaccine status if there is no policy mandating vaccination?

Yes. An employer can ask an employee if they are vaccinated even if they do not have a policy mandating vaccination as long as the request is reasonable, and as long as the employer keeps the information confidential.

In the current context, a requirement that employees disclose COVID-19 vaccination status would almost certainly be considered reasonable.

Employers have legitimate reasons for wanting to know whether employees are vaccinated even if vaccination is not currently mandated in the workplace. Knowing the number of employees who are or are not vaccinated can help employers determine whether to introduce a policy mandating vaccination or it can provide employers with information they need to plan for possible vaccination mandates that might be introduced by a government or third party.

Can a worker be disciplined for refusing to disclose vaccination status?

Yes. A worker who refuses to disclose vaccination status where the policy requires employees to disclose vaccination status could be disciplined.

Can a worker be disciplined for not complying with other aspects of a vaccine policy?

There may be other aspects of COVID policies that, if not complied with, would be grounds for discipline. Possible examples include:

- A worker who forges a fake vaccination record as proof of vaccination and provides it to the employer where the policy requires workers to provide proof of vaccination,
- A worker who refuses to attend a vaccine education session that is held during work hours where the policy requires unvaccinated workers to attend such training;
- A worker who provides forged or outdated negative COVID-19 test results, if the policy requires unvaccinated workers to provide such test results;
- A worker who attends the workplace without a negative COVID-19 test if the policy requires unvaccinated workers to provide such test results.

Can employers require that workers are tested for COVID-19?

Yes. There have been several arbitration cases considering mandatory rapid COVID-19 testing in workplaces. Arbitrators have upheld mandatory COVID-19 testing policies, concluding that they fairly balance employee privacy and bodily autonomy interests with the objectives of public / customer safety and occupational health and safety. Given this, it is increasingly unlikely that an arbitrator would overturn a requirement for regular COVID-19 testing.

Can employers require that workers pay for COVID-19 testing if they are not vaccinated?

Policies that mandate vaccination and provide employees who choose not to be vaccinated with the option of regular COVID-19 testing at the employees' expense are likely to be deemed reasonable. Under these policies, employees can avoid paying for rapid testing by choosing to be vaccinated.

Mandatory vaccination policies that do not offer employees this choice are considered reasonable. So, policies that offer the additional flexibility of rapid testing are likely also reasonable even where tests are at the employees' expense.

Where employees cannot be vaccinated (for medical or religious reasons) and regular rapid COVID-19 testing is an accommodation, testing should be at the employer's expense.

Do Employers have to accommodate employees who cannot be vaccinated?

The *Alberta Human Rights Act* applies, and employers are required to accommodate employees who cannot be vaccinated because of protected grounds under the *Act*. The *Act* protects against discrimination only on those listed grounds. The two grounds that are most likely to be relevant with respect to vaccination policies are "physical disability", "mental disability", and "religious beliefs".

Human rights legislation does not require that employers accommodate employees who choose not to be vaccinated or who object to vaccination for personal or political reasons.

Members who are unable to be vaccinated for medical or religious reasons must be accommodated in accordance with the *Act*. A worker cannot be disciplined for not being vaccinated if the reason that they are not vaccinated is protected by the *Act*.

Reasonable accommodation is an individualized process and employers should assess each accommodation request on a case-by-case basis. This does not mean that every member who requests an accommodation will be exempted from the vaccination requirement.

So, what you are saying is that all an employee would have to say is “I cannot be vaccinated because of my religion”?

No. Simply claiming a religious exemption will not be enough to trigger the duty to accommodate.

The Alberta Human Rights Commission says, “Some people may not want to be vaccinated because they do not believe in vaccines. However, not all beliefs are protected under the *Act* in Alberta. Only religious beliefs that are sincerely held and connected to a faith must be accommodated in the areas protected under the *Act*, such as employment, services, or tenancy.” Employees will need to demonstrate that their belief is sincerely held and connected to a faith.

My workplace has introduced a vaccine policy. There have been rumours that if not enough staff are vaccinated, some important programs will be temporarily shut down and staff will be redeployed to fill vacancies. I am concerned about the impact on clients. What can I do?

There are some sectors where staffing shortages that existed prior to the pandemic have become a crisis. You can encourage your co-workers in different departments to get vaccinated, and support CUPE campaigns to adequately fund public services so fix staff shortages in the long-term (<https://www.weworkforalberta.ca/>).

Can employees who are placed on unpaid leave or laid off because they are not vaccinated receive employment insurance payments?

It is not clear that there would be any difference between an employee who is “laid-off” because they are not vaccinated or an employee placed on unpaid leave. Employees are entitled to EI if they have an interruption of earnings through no fault of their own. Typically, a lay-off occurs because of a shortage of work and is involuntary. Employees who have a loss of earnings because they are not vaccinated are making a choice. It is likely that time off because an employee is not vaccinated, whether called a lay-off or an unpaid leave, will not be eligible for EI.

My co-worker has said they do not plan to get vaccinated, how do I respond?

You can share the information in this FAQ, including the resources in the introduction and explain that vaccines are the most effective way to fight COVID-19. You can also explain that their choice may have consequences at work. Try to be understanding; there is a lot of misinformation about the medical and legal aspects of vaccination that has left many people with incorrect information that is negatively influencing their beliefs and choices. While these issues can be frustrating, CUPE believes that harassment and shaming of workers who refuse vaccination is never appropriate and will likely be counterproductive. Convincing others to choose vaccination is not about winning the ‘debate’. Vaccination programs are most effective when they include strong elements of education and encouragement. You can help by educating and encouraging your co-workers while showing empathy and avoiding criticism or mocking their feelings.

My co-worker said they plan to get vaccinated, but they want it to be their choice. How do I respond?

You can explain that individual choices have consequences - both for individuals and for communities. You can also explain that vaccination is an important part of workplace health and

safety and thank your co-worker for choosing to help promote health and safety in the workplace and community.

My employer has not introduced a vaccine policy, or has introduced a policy that applies to staff but not clients and I do not feel safe at work. What can I do?

Employers have obligations under occupational health and safety legislation to take all reasonably practicable measures to ensure the health and safety of employees.

While a vaccination policy can be part of this, on its own a vaccination policy is not a sufficient occupational health and safety response to COVID-19. Vaccination is one tool that can significantly reduce risk for workers, but it is unreasonable for an employer to rely on vaccination alone. Employers must continue to implement other health and safety measures as appropriate, to control COVID-19 and exposure risks in the workplace.

If you are concerned that your employer is not implementing other appropriate health and safety measures, contact your Local for guidance.

For more information on risk analysis and adequate controls for COVID-19, please refer to: [COVID-19 Health and Safety Practices | Canadian Union of Public Employees \(cupe.ca\)](https://www.cupe.ca/covid-19-health-and-safety-practices)

:cope 491