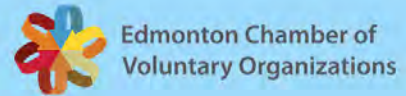


Vaccination Policies for Nonprofit Employers

Webinar: Wednesday, June 16: 1-2pm



1

Facilitator

Kristina Roberts
Legal Initiatives Manager, IntegralOrg
kristina@integralorg.ca



2

Hosted by:



Edmonton Chamber
of Voluntary Organizations



3

Acknowledgement

In the spirit of reconciliation, we acknowledge that Alberta is the traditional and ancestral territory of many peoples, presently subject to Treaties 6, 7, and 8. Namely: the Blackfoot Confederacy – Kainai, Piikani, and Siksika – the Cree, Dene, Saulteaux, Nakota Sioux, Stoney Nakoda, the Tsuu T'ina Nation, and the Métis People of Alberta. This includes the Métis Settlements and the Six Regions of the Métis Nation of Alberta within the historical Northwest Métis Homeland.

4

Event Participation via ZOOM



All participants will be muted.



This event will be recorded.

The recording will be made available to all registrants within a few days of the event.



Questions?

Please use the Chat function. Your questions will be monitored and as many questions as possible will be answered at the end of the session. The Chat will also be recorded.

5

Presenters

Yvonne Chenier, QC
General Counsel, IntegralOrg
yvonne@integralorg.ca

Melissa Rico
Partner, Carbert Waite LLP
rico@carbertwaite.com



6

Overview

- Occupational Health and Safety
- Paid leave for vaccinations
- Human rights implications of COVID-19 vaccination policies
- Privacy Issues
- Q&A

7

OHS Obligations of Nonprofit Employers

Related to COVID-19

8

Amendments to Alberta's *Occupational Health and Safety Act*

- On June 1, 2018, a new *Occupational Health and Safety (OHS) Act* came into effect in Alberta
 - “Employer” includes a charity or a nonprofit organization.
 - “Worker” includes a volunteer.
 - “Work site” means a location where a worker is, or is likely to be, engaged in any occupation and includes any vehicle or mobile equipment used by a worker in an occupation.

9

Most Organizations Must Comply

- Organizations must take all reasonable precautions to protect the health and safety of their employees and volunteers, including necessary measures to reduce the risk of transmission of COVID-19.
- This applies to your organization if you have 5 or more workers (for help check out IntegralOrg's [OHS Toolkit](#)).
- A health and safety program is a coordinated system of procedures and processes used to improve occupational health and safety and prevent injury and illness in the workplace.

10

Participant Poll

Employers have a duty to provide a safe workplace and reduce exposure to COVID-19.

How important is it for your organization to know the vaccination status of its workers?

- a) Very important
- b) Somewhat important
- c) Not important
- d) Unsure

11

Some Essential Steps

- Review and communicate organizational policies and procedures to make sure they are compliant with legislative changes, OHS laws, and government directives.
- Perform a hazard assessment to identify existing and potential hazards at a work site, including the risk of catching COVID-19.
- Use a mix of administrative controls and PPE to protect workers, depending on the kind of work site and tasks to be performed.
- Consider what, if any, screening, testing, and monitoring measures you will take for people entering the organization's space.

12

Prepare for Concerns and Work Refusals

- Develop a process for responding to worker concerns regarding health and safety.
- Review OHS statutory work refusal process and make sure that the process you put in place follows this framework.
- Anticipate specific concerns and refusals and pre-emptively try to address employees' concerns.

13

Paid Leave for Employees to get Vaccinated

14

Amendments to Alberta's *Employment Standard's Code*

- Bill 71 unanimously passed on April 21, 2021.
- Employees are entitled to **3-hour paid leaves** to get their COVID-19 vaccinations **per vaccine dose**.
- Option to provide longer period if employee's individual circumstances warrant.
- Employee is required to give as much notice as is **reasonable and practicable**.
- Employers can request **reasonably sufficient proof** of entitlement.
 - **DOES NOT** require an employee to provide a vaccination certificate or to disclose any underlying medical conditions.

15

Implications of Vaccination Policies

16

Participant Poll

Has your organization implemented a COVID-19 Vaccination Policy?

- a) Yes
- b) No
- c) We are considering it
- d) I don't know

17

Mandatory Vaccination Policies?

- Governments unlikely to legislate mandatory vaccination.
- Vaccination policies in workplace left up to employers.
- Unlikely that all employers will be able to enforce mandatory vaccination policies.
- Significant litigation risk involved – must pay close attention to human rights, accommodation, and privacy considerations.

18

Alberta *Human Rights Act*


- Does a mandatory vaccination policy discriminate?
 - Possibly yes under *Alberta Human Rights Act*.
 - If based on medical contra-indication - age/disability
 - If based on religious/conscientious belief
 - Discrimination is likely if mandatory vaccination is tied to future hiring, continued employment, or compensation.

19

Accommodation Obligations

- Basic starting point = employer has a duty to accommodate employee to the point of undue hardship.
- Employer would have to prove that the requirement to be vaccinated is a **bona fide occupation requirement**:
 - Policy adopted for a purpose **rationaly connected** to the performance of the job.
 - Policy adopted in **honest and good faith belief** that it was necessary to fulfill purpose.
 - Policy is **reasonably necessary** to accomplish purpose.
- Procedural and substantive component.
- Undue hardship determined on case-by-case basis but need object evidence.

20



Vaccination Case Law

- *Re Health Employers Assn. of British Columbia and HSA BC (Influenza Control Program Policy)*, [2013] BCCA 138
 - Vaccinate or mask policy was **reasonable**
- *Sault Area Hospital v Ontario Nurses' Association*, 2015 CanLII 55643
 - Vaccinate or mask policy was **unreasonable**
- Substantial emphasis on expert **evidence** with respect to:
 - Effectiveness of vaccine and masking
 - Transmissibility of virus to patients

21



Privacy Considerations

22

Participant Poll

Has your organization asked employees or volunteers to disclose their vaccination status?

- a) Yes – mandatory disclosure
- b) Yes – voluntary disclosure
- c) No

23



Vaccinations and Privacy

- Vaccination status = personal medical information.
- Subject to privacy legislation, which regulates collection, use, and disclosure of personal information.
- Applicable legislation is silent on vaccination status but presumes an individual's personal medical information is highly sensitive.

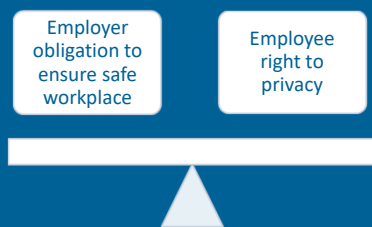
24

Applicable Legislation

- *Personal Information Protection and Electronic Documents Act (PIPEDA)*
 - Applies to **federal** works, undertakings, and businesses, intra-provincial and international transactions.
 - Applies in provinces where no substantially similar legislation.
- *Personal Information Protection Act (PIPA)*
 - Applies to **provincial private** sector.
 - Considered to be substantially similar to PIPEDA.
- *Freedom of Information and Protection of Privacy Act (FOIP Act)*
 - Applies to **provincial public** sector.
- *Health Information Act*
 - Applies to an individual's **health records**.

25

Balancing Rights and Obligations



- Employers must only collect and use employee medical information to the extent that is **reasonable** in the circumstances.
 - Must not unreasonably infringe employee rights.
- Consider: Is vaccine verification **integral** to ensuring a safe workplace?

26

Balancing Rights and Obligations: Vaccination Verification

- Vaccine passports = digital or paper certificates of vaccination status.
- Function as verified proof that a person is vaccinated in order to travel or to gain access to services or locations.
- **May 2021 Joint Statement by Federal, Provincial and Territorial Privacy Commissioners on Privacy and COVID-19 Passports:**
 - Infringement on civil liberties must be necessary, effective, and proportional in order to be justified.
 - Must be based in clear legal authority.
 - Consent alone is insufficient.

27

Policy on Disclosure of Vaccination Status: Key Principles for Nonprofit Employers

- Identify clear purpose and legal authority.
- Develop a written policy.
- Advise employees of the policy.
- Collect only information that is necessary to meet the purpose.
- Share information only with individuals who need know.
- Store, secure, and destroy information when no longer needed.

28



Participant Poll

Do you think it's okay for nonprofit employers to provide an incentive for employees to get vaccinated?


- a) Yes
- b) No
- c) I don't know

29



Key Takeaways

30




Key Takeaways

- Plan and document everything required under OHS legislation
- Know the employer refuse to work framework under OHS legislation
- Policies should be clear
- Mandatory vaccination policies are not without risk
 - Human Rights Implications
- Vaccination status is personal medical information

31

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32

Thank you



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