**Considerations for Development of a Vaccine Policy**

October 29, 2021

The area of mandatory vaccinations for staff is evolving at a rapid pace. Some important points for an employer’s consideration when developing a vaccine policy are captured below and a draft vaccination policy follows. Please note that the information provided in this document and the draft policy does not, and is not intended to, constitute legal advice and is for guidance and informational purposes only. The circumstances of each entity may be and different and require specific consideration.

**Who should the policy apply to?**

The broader the policy’s application, the greater the potential risk. In particular, the employer should consider whether it is preferable to put in place a policy that applies to all employees *or* one that is more focused. The latter should be guided by a review of the risks associated with different roles. For example,employees who will continue to work solely from home or who work mostly outside and independently might be exempt from the policy whereas those who work directly with the public in a health care setting would almost certainly be included. Policies also typically apply to contractors who are not employees of the employer and other relevant third parties (volunteers, students, etc.).

**What should be mandated?**

Generally vaccine policies require that an employee be fully vaccinated and provide proof of vaccination. Normally a deadline is set for when the employee must be fully vaccinated and the date should permit an employee to reasonably meet the deadline to become fully vaccinated assuming they were unvaccinated at the time that they received notice of the requirement.

Some employers have also included in their policies, as an alternative to being fully vaccinated, a requirement to submit to a rapid testing regime for those who are not or cannot be vaccinated. There can be cost implications to this approach but it may result in a more defensible policy in circumstances where there is no third party mandate, like a PHO Order, for the vaccination requirement.

For employers concerned about retention of staff in the face of a vaccination mandate, one option is to first set out a requirement that employees disclose their vaccination status so that this information can be used to support decision making about the particulars of a vaccination policy.

**What should we require as proof of vaccination?**

With the launch of the BC Vaccine Card, it is considerably easier for employers to collect the minimum information necessary in an easily verifiable format. Attestation forms from contractors can be used such that contractors are advised of the requirements that apply to their employees and are required to affirm that they have collected the requested information and verify that only fully vaccinated employees will be on site. A [draft letter to contractors](https://www.fnha.ca/Documents/Contractor-Vaccination-Requirement-Letter-Template.docx) and a [draft attestation](https://www.fnha.ca/Documents/Contractor-Declaration-of-Vaccine-Requirement-Template.docx) letter can be found on the FNHA website.

**How should the information be handled?**

To protect against a potential privacy claim, care should be taken to ensure the information is handled in an appropriate way. The employer should follow any policy it already has in place with respect to privacy, as well as the general principles that guide all collection of personal information:

* Before collecting personal information, carefully consider what you will be collecting and how it will be used. The key is to have a clear purpose and to limit the collection of personal information to only the information needed for that purpose.
* Once the information is collected, only those with a “need-to-know” should have access to it. As the information will be used to manage workplace health and safety, only those staff should access it.
* The stored information e.g. copy of the BC Vaccine card, should be password protected on a secure server so that it cannot be accessed other than for the purposes of the policy.
* Personal information should not be stored for an indefinite period of time and so consideration is needed on whether you need to maintain the information if there are changes made to the disclosure policy or according to any data retention requirements set out in your privacy policy.

**What should we do if someone requests an exemption?**

It is possible that someone may refuse to provide their vaccination status or refuse to be fully vaccinated. If that is the case, an employer can ask why they are refusing and evaluate any human rights obligations you might have to accommodate. There are a few things to keep in mind when considering an employee’s refusal and request for accommodation:

* An employee would need to establish that their claim fits within a protected ground – simply refusing to get vaccinated based on personal preference does not trigger any duty to accommodate.
* An employee who refuses to be vaccinated on the basis of political belief is unlikely to be successful, as the protection only serves to shield the belief itself and not whether they have been vaccinated or not but this may be further tested in circumstances where adherence to the political belief adversely impacts employment status (i.e. results in an unpaid leave of absence or termination).
* For medical accommodation requests, an employee may find it difficult to prove given there are very few circumstances where a medical condition prevents an employee from being vaccinated.
* For request based on a religious belief, the employer would be entitled to request additional information to substantiate that request. In order to establish a religious exemption from being vaccinated, the employee must establish that they sincerely believe that they cannot/should not be vaccinated in order to comply with their understanding of their religious obligations and practice.

**What should we do if someone refuses to comply?**

If an accommodation is not applicable then the employer must make a decision as to how it will address a refusal to comply with the requirements. Some employers are taking the approach of framing the consequences in a flexible way within the policy and then taking the approach of placing employees on a set period of unpaid leave and if they are not able to provide proof of vaccination by a date required by the employer (in the absence of an exemption), the employee is then warned of the potential consequences of failing to comply (termination) and is only able to return to work if the employee becomes vaccinated. During the leave period some employers permit access to available time banks (vacation and overtime pay).

**How should such a policy be rolled out?**

A vaccination policy will need to be communicated to all employees with advance notice where possible in order to increase the likelihood of compliance. Once implemented, the policy must be then consistently applied, subject to exemptions, to all affected employees. As part of implementing such a policy, notice to any impacted unions is advisable.

**Please note: The information provided on this draft policy does not, and is not intended to, constitute legal advice and is for guidance and informational purposes only. The circumstances of each entity may be different and require specific consideration.**

**DRAFT MANDATORY COVID-19 VACCINATION POLICY**

1. **EFFECTIVE DATE OF POLICY**

This policy takes effect on MONTH DATE, 2021

1. **PURPOSE**

[COMMUNITY, NATION, HSO] is committed to providing a safe working environment for our employees, members and the people we serve with whom we interact regularly. The purpose of the Mandatory COVID-19 Vaccination Policy (the “Policy”) is to provide guidelines pertaining to the expectations and requirements of staff with respect to COVID-19 and vaccination.

In our day-to-day site operations, we have a responsibility to protect all workers and the community in which we operate, and it is for this reason that it is critical that the [COMMUNITY, NATION, HSO] and its staff take any and all reasonable precautions to protect against COVID-19.

1. **SCOPE**

This Policy applies to all [COMMUNITY, NATION, HSO] employees, contractors, and any other individuals employed or contracted to provide [e.g. health services, services provided directly to the community and/or public etc.] including relevant third parties (e.g. volunteers, students) to the [COMMUNITY, NATION, HSO], collectively the “Staff”.

1. **OBJECTIVES**

The objectives of this policy are as follows:

To take every precaution reasonable, in the circumstances, for the protection of the health and safety of employees. Vaccination is a key element in the protection of employees against COVID-19

To improve the vaccination rate of [COMMUNITY, NATION, HSO] employees through COVID-19 vaccination.

Given that operational requirements may include occasional or intermittent onsite presence, all employees, including those working remotely and teleworking must be fully vaccinated to protect themselves, colleagues, clients and members from COVID-19.

Expected results of this policy are as follows:

All employees of [COMMUNITY, NATION, HSO] are fully vaccinated unless accommodated or provided with an exemption as noted below (refer to accommodation section)

All departments monitor implementation of this policy and report on its implementation to the [HR department].

Personal information is only created, collected, retained, used, disclosed, and disposed of in a manner that respects the provisions of the applicable legislation.

1. **POLICY**

A. Mandatory Vaccination and Proof of Vaccination

It is the policy position of the [COMMUNITY, NATION, HSO] to require all Staff to become vaccinated against COVID-19 as recommended by the Provincial Health Officer (“PHO”) by no later than [DATE]. For the purpose of this Policy,“vaccinated”means a person who is at least 7 days post-receipt of the full series of a World Health Organization (“WHO”) approved vaccine against infection by SARS-CoV-2, or a combination of approved WHO vaccines.

This policy position was made to ensure the health and clinical services provided by [COMMUNITY, NATION, HSO], and its contractors, are consistent with recent orders issued by the PHO pursuant to the *Public Health Act*. In particular, on October 6, 2021, the PHO issued the [*Residential Care* *COVID-19 Vaccination Status Information* under the *Public Health Act*](https://www2.gov.bc.ca/assets/gov/health/about-bc-s-health-care-system/office-of-the-provincial-health-officer/covid-19/covid-19-pho-order-residential-care.pdf), which requires operators to take steps to ensure that all employees and contractors that work in health care facilities receive all doses of a COVID-19 vaccine. More recently, on October 14, 2021, the PHO issued the [*Hospital and Community (Health Care and Other Services) COVID-19 Vaccination Status Information and Preventative Measures*](https://www2.gov.bc.ca/assets/gov/health/about-bc-s-health-care-system/office-of-the-provincial-health-officer/covid-19/covid-19-hospital-and-community-vaccination-status-information-preventive-measures.pdf) Order which is directed to health care employers and funders, their employees, contractors, subcontractors and health professionals who work for them and requires staff to be vaccinated against COVID-19. While [COMMUNITY, NATION, HSO] is not bound by these recent orders, we have an obligation to maintain a safe workplace for our employees and the people we serve.

Staff of the [COMMUNITY, NATION, HSO] must provide confirmation of their vaccination status through provision of a copy of their BC Vaccine Card. This BC Vaccine Card will be validated by [COMMUNITY, NATION, HSO]. Any Staff found to have falsified or misrepresented their vaccination status will be subject to disciplinary action up to and including termination. For [COMMUNITY, NATION, HSO] Contractors, a letter of Attestation will meet this reporting requirement.

B. Accommodations

A request for an exemption from the requirements of this Policy must be based on a ground protected under human rights legislation. Staff members may make a request by [insert info about process to submit] and requests will be considered on a case by case basis and will be accommodated only as required by law. The [COMMUNITY, NATION, HSO] will require the Staff member to provide information to support any request for accommodation. If an exemption is granted the Staff member must meet any related conditions set out by the [COMMUNITY, NATION, HSO]. Accommodations may include measures such as restricting access to the workplace, placing the individual on an unpaid leave of absence, and/or modifying terms of employment or service and possible cessation of employment or services. Requests for accommodation will be addressed in a timely manner.

*Note: it is recommended that any relevant [COMMUNITY, NATION, HSO] procedures for someone seeking an accommodation be added here.*

C. Consequences of Non-Compliance

Corrective action will attempt to support Staff in meeting the expectation that they will be fully vaccinated unless an approved exemption is applicable.

A violation of this policy by a Staff employed by [COMMUNITY, NATION, HSO] may result in disciplinary action up to and including termination of employment.

*Note: It is recommended to include any relevant information from [COMMUNITY, NATION, HSO] existing progressive discipline policies here.*

1. **CONFIDENTIALITY**

Information relating to an individual’s proof of vaccination and/or the reason(s) for not receiving a COVID-19 vaccination will be securely stored and remain in their confidential Human Resources file and shared on a need to know basis only, consistent with the purposes and objectives of this policy.

1. **REVIEW**

The [COMMUNITY, NATION, HSO] will continue to monitor the circumstances related to COVID-19, and will review this Policy on a period basis.