

COVID-19 VACCINATION POLICY TEMPLATE

We are pleased to provide you with this **COVID-19 VACCINATION POLICY** template to assist you in framing the vaccination conversation within your business.

This sample policy is provided for informational purposes only. The enforceability of a policy will depend on the nature of a business' workplace and the jurisdiction in which it operates. Any business document should be carefully reviewed and take into consideration applicable, provincial legislation including employment standards, human rights and any guidance or recommendations from a local public health authority or appropriate government entity.

Legal advice is strongly recommended prior to implementation.

Recommendations:

- As with any policy, it is best practice to consider how you will present and discuss with your staff any new or amended protocol. As this policy addresses sensitive information, with many unknowns, and the situation continues to evolve, open communication and transparency is the best approach.
- Although a business has the right to implement a reasonable internal policy with proper notice to staff, it is advisable to have a process in place to receive/review feedback and/or questions from staff. This helps avoid conflicts and/or complaints and provides an opportunity for other voices to be heard.
- Should an employee not agree or show litigious signs, consult your lawyer before proceeding.

How to read & customize this template:

- Words highlighted in **grey** must be replaced by information specific to your business and/or province.
- We have included some optional tips in **blue**; they are to be deleted before printing this document, along with this page.

Important notes:

- It is recommended that the final draft of this policy be reviewed with a qualified lawyer.
- The enforceability of a policy will depend on the nature of a business' workplace and the jurisdiction in which it operates.

**NEED ADVICE?
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Your business is unique, and it requires unique advice. CFIB members unlock exclusive access to our advisors ready to help you review and implement this policy—and the dozens more in our resource library. Each year, we support thousands of business owners like you and help them find solutions to complex situations.



This template has been created with the valuable collaboration of SHERRARD KUZZ LLP, Employment & Labour Lawyers.

This template is provided to you for information purposes only. CFIB cannot be held responsible for its final content or for any subsequent use and interpretation thereof by the company or a third party.

GUIDANCE AROUND COVID-19 VACCINATION

Many business owners have had questions for CFIB on how to handle discussions about vaccines with your employees. That's why we worked with lawyers to come up with a vaccination policy template that can help outline your expectations as well as the employee's rights.

As a rule, CFIB does not comment on medical matters or advocate on these issues with government. Many of you have asked us for help in identifying areas of risk and exposure for businesses and providing tools to mitigate these risks as much as possible.

CFIB's goal is to help businesses remain open while reducing their risks of fines, lawsuits and/or future forced closures. This template is to help you, as a business owner, discuss this issue with your employees. It doesn't delve into personal beliefs; it is about clear communications, managing your business, having processes in place and presenting options.

CFIB's surveys show that 77% of our members plan to encourage their employees to become vaccinated. While this draft policy will help the discussion, **it does not suggest to make vaccinations mandatory**. Please note that mandating vaccination in your workplace could expose your business to some important legal risks outlined below. You may want to seek individual legal advice if you wish to implement a mandatory vaccination policy.

The topic of vaccination in the workplace raises four main issues that must be carefully considered: Health & Safety, Human Rights, Privacy and Employment and Labour Relations. The debate has pitted these considerations against each other. Until there is an actual legal precedent set, it is difficult to know how the courts will balance them.

Here is an overview of some of the issues at play:

1. Health & Safety

- Employers are typically required to take every precaution reasonable in the circumstances. Each of the provinces have provided employers with requirements and guidance to address Health and Safety concerns during the COVID-19 pandemic. This includes risk assessments, safety plans, controls and safety protocols, measures and procedures in respect of hygiene, social distancing and masks.
- Having a company vaccination policy is a best practice but ultimately it is up to the business owner to decide whether to put such a policy in place.
- In the future, businesses may be able to reduce their safety protocols (provincially regulated) if all employees are fully vaccinated. However, this will be subject to Public Health guidance. In order to do so, business owners may ultimately need to know the status of each of their employees, but this will need to be balanced against employee privacy rights.

2. Human Rights

- Vaccines are considered a medical procedure and individuals have the right to choose whether to participate or not.
- Vaccines are currently not mandatory in Canada, with a few exceptions in certain sectors.

- Human Rights legislation protects customers and employees from discrimination on the basis of a disability (there may be medical reasons that provide people with a basis for not getting vaccinated) and other protected grounds (such as religion) that may be engaged by a vaccination policy.
- Unless required by government, **CFIB recommends that businesses use caution in considering any policy that would require employees or customers to be vaccinated.** There are considerable Human Rights related risks in establishing such a policy.
- If a business does wish to consider a mandatory vaccination policy, any policy should be careful to provide for exemptions and accommodations for employees or customers who are not able to be vaccinated for a Human Rights related reason.

3. Privacy

- Medical information is private and there are strict laws framing how it is obtained, recorded, stored, and destroyed.
- In some jurisdictions, an employer will need to demonstrate it is reasonable for them to require an employee to share their vaccination status.
- Employees' medical information cannot be shared unless "informed consent" is obtained. This applies both internally (with other staff) and externally (customers, social media, publicity). Consent may not be valid if the employee feels like they have been pressured or coerced into giving it.
- If a business wants to promote a "fully vaccinated workplace" to its customers, it is very important to have all staff (1) consent to sharing the information with their employer and (2) be fully aware and accept that the information will be publicized.

4. Employment and Labour Relations

- In a non-unionized workplace, if an employer mandates vaccination and an employee refuses to comply, this may result in a termination of employment. In many cases, an employer may not have cause to terminate and this will result in the employer being responsible for paying out the employee's termination entitlements.
- In a unionized workplace, an employer may face a policy grievance if it implements a mandatory vaccination policy. It may be difficult for a business to justify a mandatory policy given governments are reluctant to mandate vaccines in settings like hospitals.

NAME OF BUSINESS'S COVID-19 VACCINATION POLICY

Date

Purpose

COVID-19 is a serious condition and has had a devastating impact on Canadians and others across the globe. Company Name adopts this policy to protect the health and well-being of our employees (as defined below) and customers/clients/residents.

Application

This policy applies to the following individuals ("employee" or "employees").

Outline employee groups to whom this policy will apply. Note: It is recommended to keep the application of this policy general rather than list specific employee names.

Effective Date

This policy is in effect as of date.

Note: You will want to provide advance notice and ensure that the policy is not effective until all employees have had the opportunity to obtain a vaccination.

Vaccination Requirement

Subject to the qualifications below, we hope each employee will consider being vaccinated against COVID-19. Vaccination includes any subsequent dose, booster or boosters that may be required or recommended by the appropriate governmental entity. *Here you could have to include the Ministry of Health or guidelines from a Long-Term Care authority as examples.*

Notwithstanding our preference as outlined above, an employee may elect to refuse vaccination and will not be disciplined for this decision. However, if an employee refuses to be vaccinated due to personal choice, an employee must comply with the alternate measures as recommended by appropriate governmental entity *e.g., public health* to reduce the potential for COVID-19 transmission in the workplace. This will include the continued use of personal protective equipment or other measures deemed necessary by Company Name.

Important notes on "alternate measures": These should be compliant with public health recommendations to ensure that they do not amount to unreasonable requirements that are imposed solely to pressure an employee into getting vaccinated.

Additionally, it is important to note that the length of time that these "alternate measures" last should be considered. For example, it could be problematic if you are forcing an employee to work from home on a permanent basis unless they get vaccinated.

Proof of Vaccination

Each employee vaccinated is encouraged to provide proof of vaccination to **Company Name**, by providing it to **Name of person or department/position**. As noted above, “vaccination” includes any subsequent dose, booster or boosters that may be required or recommended by the **appropriate governmental entity**. *Here you could have to include the Ministry of Health or guidelines from a Long-Term Care authority as examples.*

All vaccination records will be securely stored and information on vaccination status will not be disclosed to any third party without employee consent.

Important notes on privacy. Pursuant to Privacy Acts (Federal and/or in some cases provincial acts), respecting the protection of personal information in the private sector is strict. Information can only be collected if it is necessary for the object of the file, regardless of employee consent. Therefore, if the employer requires personal information, they would have to be able to demonstrate that it was necessary for them to obtain the actual proof of vaccination and that the employee’s word (consent) was not sufficient.

Accommodation

Despite any other provision in this policy, **Company Name** will comply with its duty to accommodate under the Human Rights Code/Charter. *E.g., the Charter of Human Rights and Freedoms for Quebec, the Ontario Human Rights Code in Ontario, etc.*

An employee who requires accommodation in relation to this policy is asked to advise **Name or position**, and provide whatever documentation is required.