

# VACCINATION & REMOTE WORK ISSUES FOR EMPLOYERS

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The slide features a light gray background with a wooden floor at the bottom. On the right side, there are two framed logos. The top logo is for Interior Law LLP, with a blue square containing the letters 'IL' in white, followed by the text 'Interior Law LLP' in white. The bottom logo is for Navy & Sage Benefits, featuring a circular logo with a green leaf and blue water, followed by the text 'Navy & Sage BENEFITS' in blue.

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## LEARNING OBJECTIVES

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- Provide Legal and HR advice on navigating COVID-19 in the workplace
- Provide guidance on Vaccine Mandates and Policies
- Highlight the rules as they are today
- Discuss common challenges facing workplaces today

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## VACCINATIONS – THE LEGAL BACKDROP

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- Occupational Health and Safety Regulations
  - Employers have a duty to provide a safe workplace for its employees.
- Human Rights Code
  - Employers have a duty not to discriminate
    - Employment
    - Services
- Exemptions
  - Personal choice?

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## VACCINATIONS – FAQ'S

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- Can employers require:
  - Employees to advise if they have been vaccinated – or require proof of vaccination?
  - New hires and/or current employees to be vaccinated?
- On what grounds can an employee refuse to be vaccinated?
- Can employers ask for proof of exemption?
- Can employees refuse to work with colleagues who are not vaccinated?
- Can businesses require customers to show proof of vaccination?

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## VACCINATION POLICIES

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- Mandated for Federal Public Service and Federally Regulated Sectors (i.e. banks, airlines)
- In BC, on September 13, proof of vaccination was required to access certain events, services and businesses.
- Vaccination Policies in other industries are not yet mandatory but updates are being announced daily:
  - In August, Air Canada introduced a new health and safety policy making it mandatory for all its employees to be fully vaccinated against COVID-19 and to report their vaccination status as of October 30, 2021. In addition, full vaccination will be a condition of employment for any individual hired by the company.
  - Effective October 5, long-term care, assisted-living workers must have first dose by Oct. 12 or be off work without pay. Must have both doses by November 22.
  - Starting Oct. 12, visitors to long-term care homes will have to show their vaccine card.
  - On Oct. 26, all health-care workers in B.C. and visitors to acute care facilities must show proof of vaccine, with certain exceptions for palliative and end of life care.

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## VACCINATION POLICY OPTIONS

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- Voluntary/ highly encouraged vaccination policy
- Mandatory vaccination policy
- Vaccinate or mask policy (future option, as masking is currently mandatory)
- Vaccinate or rapid test policy

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## MANDATORY VACCINATION POLICIES

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- What does “mandatory” actually mean?
- Unlikely that all employers will be able to enforce mandatory vaccination policies, must be reasonably necessary and rationally connected to the workplace
- Fact-based assessment

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## MANDATORY VACCINATION POLICIES (2)

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- Potential challenges to Mandatory Vaccination Policies

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## BEST PRACTICES FOR INTRODUCING A VACCINATION POLICY TO YOUR WORKFORCE

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- Advance notice with a clear timeframe
- Restatement of commitment to other H&S measures
- Express safeguards/limits of use of personal data that is collected (respecting privacy)
- Alternatives to vaccination (if policy not mandatory)
- Potential consequences of non-compliance (disciplinary)
- Limited/narrow policy exemptions (human rights grounds)
- Alignment with collective agreement (if applicable)
- Commitment to reevaluate and comply with legislation
- Document your process

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## HOW TO INTRODUCE A VACCINATION POLICY IN YOUR WORKPLACE

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- Vaccination Policy Memo
  - Provides advance notice with a clear timeframe for the implementation of the policy and new guidelines, and the reason for the new policy.
- Vaccination Policy
  - Update all documents that refer back to the policy, such as a job posting.

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## VACCINATION POLICY IMPLEMENTATION

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- Consistent enforcement
- Clear & Unequivocal:
  - Policy training / FAQ
  - Vaccine awareness / education resources
  - Messaging
- Develop OHS committee / representative in policy development

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## TRANSPARENT USE OF YOUR VACCINATION POLICY

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- Can you ask a candidate in a job interview if they've been vaccinated?

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## ALTERNATIVES TO VACCINATION POLICIES

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- What other measures can employers take with respect to vaccinations?
  - Education
  - Implement safety protocols
    - Rapid Testing
    - Masking (*Mandatory*)
    - Screening questionnaires
    - Temperature screening
    - Physical distancing (*Mandatory*)
    - Provision of hand sanitizer / handwashing facilities
    - Increased disinfecting / cleaning
    - Limiting non-essential visitors
    - Maintenance of ventilation systems
    - Work-from-home where not required on location for operations

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## REMOTE WORK FAQ'S

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- Does an employee have the right to demand that they work remotely?
- Does an employer have the right to demand that an employee work remotely?
- Can either party change their mind, and terminate a remote work arrangement?
- Can employees refuse to return to the office and insist on working from home?

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## EMPLOYEE REFUSALS TO RETURN TO OFFICE

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- Employee right to refuse dangerous work
- Employee Rationales Matter
  - Anxiety about COVID-19
  - Pregnancy or immunocompromised condition
  - Childcare or family responsibilities
  - Personal preference
- Employer case by case assessment for response key
- Risks with Mandating a Return to Office
  - Human rights complaints
  - Constructive dismissal

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## REMOTE WORK FAQ'S (2)

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- What can an employer demand to know about where a remote employee lives and their living arrangements?

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## EMPLOYER REIMBURSEMENT PROGRAM

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- If employers do not currently provide employees with paid sick leave, this program will reimburse up to \$200/day for COVID-19 related paid sick leave.
- Employer pays wages up front and then applies for reimbursement.
- WorkSafeBC administers the program through its online services portal.
- Eligibility criteria:
  1. The employee must work in B.C.
  2. The employee must have taken a COVID-19 related sick leave between May 20, 2021 and December 31, 2021. For example:
    - Diagnosed with COVID-19
    - Waiting for COVID-19 test results
    - Need to self-isolate or self-monitor in accordance with public health orders and guidelines
    - Directed to stay home by your employer because of exposure risks

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## ANY OTHER QUESTIONS?

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## CONTACT US

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THANK YOU & GOOD LUCK