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## OHRC policy statement on COVID-19 vaccine mandates and proof of vaccine certificates

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September 22, 2021

On September 1, 2021, the Ontario government announced that starting September 22, Ontarians will need to be fully vaccinated (two doses plus 14 days) and provide proof of vaccination along with photo ID to access certain public settings and facilities. By October 22, Ontario plans to develop and implement an enhanced digital vaccine certificate with unique QR (Quick Response) code that will verify vaccination status when scanned. A paper version of the certificate will be available for download or can be printed from the [COVID-19 vaccination provincial portal](#).

The proof of vaccine regime currently applies to certain **higher-risk indoor public settings** where face coverings cannot always be worn. In addition to these settings, over the last few months many other organizations have begun to mandate vaccines for employees and service users.

### Vaccination requirements generally permissible

While receiving a COVID-19 vaccine remains voluntary, the OHRC takes the position that mandating and requiring proof of vaccination to protect people at work or when receiving services is generally permissible under the Human Rights Code (Code) as long as protections are put in place to make sure people who are unable to be vaccinated for Code-related reasons are reasonably accommodated. This applies to all organizations.

Upholding individual human rights while trying to collectively protect the general public has been a challenge throughout the pandemic. Organizations must attempt to balance the rights of people who have not been vaccinated due to a Code-protected ground, such as disability, while ensuring individual and collective rights to health and safety.

### Duty to accommodate for medical reasons

Some people are not able to receive the COVID-19 vaccine for medical or disability-related reasons. Under the Code, organizations have a duty to accommodate them, unless it would significantly interfere with people's health and safety.

Consistent with the duty to accommodate, the provincial proof of vaccine regime says that people who are unable to receive the vaccine must provide a **written document**, supplied by a physician or by a registered nurse extended class or nurse practitioner stating they are exempt for a medical reason from being fully vaccinated and how long this would apply. The written document may be required **until** recognized medical exemptions can be integrated as part of a digital vaccine certificate. The OHRC's position is that exempting individuals with a documented medical inability to receive the vaccine is a reasonable accommodation within the meaning of the Code.

Organizations that are not included in the list of settings but wish to mandate vaccines are encouraged to use the provincial proof of vaccine certificate with the written documentation showing medical inability to receive the vaccine as their way of meeting the duty to accommodate where needed.

The OHRC also stresses the need to make sure digital proof of vaccine certificates are designed to be fully accessible to adaptive technology, including for smart phone users with disabilities, in accordance with Accessibility for Ontarians with Disabilities Act regulations.

## COVID testing as an alternative to vaccine requirements

Many organizations are not included in the list of settings. Organizations with a proven need for COVID-related health and safety requirements might also put COVID testing in place as an alternative to mandatory vaccinations or as an option for accommodating people who are unable to receive a vaccine for medical reasons. Organizations should cover the costs of COVID testing as part of the duty to accommodate.

## Time limited requirements, privacy protection

The provincial proof of vaccine regime does not propose to limit access to any services for people who are unable to be vaccinated for medical reasons.

Proof of vaccine and vaccine mandate policies, or any COVID testing alternatives, that result in people being denied equal access to employment or services on Code grounds, should only be used for the shortest possible length of time. Such policies might only be justifiable during a pandemic. They should regularly be reviewed and updated to match the most current pandemic conditions, and to reflect up-to-date evidence and public health guidance.

Policies should also include rights-based legal safeguards for the appropriate use and handling of personal health information.

## Barriers in accessing COVID vaccines and testing

While the vaccine may be readily available across Ontario, barriers persist in equitable vaccine access and COVID testing. Some examples of barriers to vaccine access may include:

- Language barriers or lack of access to a compatible phone or Internet connection make it harder for some Code-protected groups to find information about vaccination or testing
- Older people or people living with disabilities may have difficulty booking or going to their vaccine or testing appointment, or may need extra supports to be vaccinated or undergo testing (such as a caregiver, communication supports, etc.)
- Low-wage workers with multiple jobs and caregiving responsibilities may lack the time or resources to prioritize visiting a vaccination site or taking a COVID test

- Undocumented people and people experiencing homelessness face a variety of barriers relating to the lack of government-issued ID, fear of revealing immigration status, and mental health and addiction disabilities
- Individuals and groups who have faced discrimination or traumatic experiences while receiving health-care services may not trust vaccines or testing.

Ensuring access to vaccines and testing for vulnerable Ontarians is a necessary element of any vaccine mandate or proof of vaccination regime.

## Enforcement

Under the provincial regime, organizations are responsible for making sure they meet the required proofs of identification and vaccination as outlined in the **regulation**. Service users must make sure any information they provide to the organization to show proof of vaccination (or proof of qualifying for an exemption like a doctor's note) and if identification is complete and accurate. There are fines for both individuals and organizations that fail to comply.

As with any regulatory regime requiring enforcement, providing law enforcement or any organization with discretionary powers to assess proof of identification and vaccination may result in disproportionate application and impact on members of marginalized and vulnerable communities. Any regime that requires service users to present government-issued documents may also create barriers for people experiencing homelessness or who are undocumented.

The OHRC urges governments and organizations to take proactive steps to make sure any enforcement of vaccine mandates or proof of vaccination policies does not disproportionately target or criminalize Indigenous peoples, Black and other racialized communities, people who are experiencing homelessness, or with mental health disabilities and/or addictions.

## Personal preferences and singular beliefs not protected

The OHRC and relevant human rights laws recognize the importance of balancing people's right to non-discrimination and civil liberties with public health and safety, including the need to address evidence-based risks associated with COVID-19.

Receiving a COVID-19 vaccine is voluntary. At the same time, the OHRC's position is that a person who chooses not to be vaccinated based on personal preference does not have the right to accommodation under the Code. The OHRC is not aware of any tribunal or court decision that found a singular belief against vaccinations or masks amounted to a creed within the meaning of the Code.

While the Code prohibits discrimination based on creed, personal preferences or singular beliefs do not amount to a creed for the purposes of the Code.

Even if a person could show they were denied a service or employment because of a creed-based belief against vaccinations, the duty to accommodate does not necessarily require they be exempted from vaccine mandates, certification or COVID testing requirements. The duty to accommodate can be limited if it would significantly compromise health and safety amounting to undue hardship – such as during a pandemic.

Read the OHRC's **Policy on preventing discrimination based on creed** for full explanation of creed-based discrimination and the duty to accommodate.

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