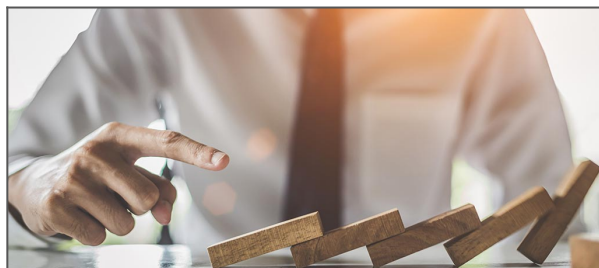


COVID-19 Policies for Construction Employers - Protecting Your Employees While Minimizing Legal Risks

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From the beginning of the COVID-19 pandemic, employers have encountered a wide variety of new issues that must be addressed in order to continue to operate while also protecting the health and safety of their employees and clients. Since vaccinations have become widely available, employers have also been forced to consider whether it is appropriate to implement a policy requiring that employees be vaccinated and/or tested in order to be in the workplace.



Construction employers are faced with additional complications due to the fact that they are often operating in a variety of environments over which they do not have complete control. Construction employers may be required to comply with the vaccination, testing, or personal protective equipment policies in place at a specific worksite. Even where the employer does not intend to implement any requirements for their employees generally, construction employers are often required to provide information regarding employee vaccination or testing status in order to work on certain projects.

Where an employer is collecting, utilizing, and/or disclosing any information regarding vaccination status or testing results, there are a number of potential areas where legal liability may arise. Areas of concern include privacy law, workplace health and safety, and potential violations of applicable human rights legislation. As a result, we recommend that employers carefully consider their policy as well as how the policy will be applied.

There are a number of measures that employers can implement in order to allow them to meet the needs of their clients while addressing potential legal risks. While all employers are different and have distinct needs and obligations, we would recommend that all employers take the following steps:

Remember that employers have an obligation to take reasonable steps to protect the health and safety of their employees.

Under workplace health and safety legislation, employers must take “reasonable steps” to protect the health and safety of their employees. This does not necessarily mean that all employers are required to mandate vaccination or testing – although there may be workplaces where such steps are necessary – but employers must ensure that employees are

provided with appropriate safety equipment and that adequate safety protections are implemented in the workplace.

Ensure that there is a written policy in place outlining the expectations for employees.

Having a clear policy in place ensures that all employees are aware of expectations during COVID-19, as well as the potential consequences for not complying with requirements. For construction employers, the employer may also want to include details regarding expectations where a client or worksite has specific rules that go beyond the rules put in place by the employer.

Consider how the employer will protect the privacy of employees.

It is important to remember that vaccination status is personal health information about the employee(s) in question, and must be treated as sensitive information. Employers must consider how any information will be collected, how and where the information will be stored, and who will have access to the information. Efforts must be taken to ensure that the information is secure and that access to the information is as limited as reasonably possible. Employees should be informed of how their personal information will be stored, used, and disclosed, and this information should be included the employer's policies.

Be mindful of obligations under The Human Rights Code.

While the vast majority of individuals can safely obtain the COVID-19 vaccination or engage in rapid testing, it is important that the employer ensure that their policies do not violate applicable human rights legislation. There are a very small number of individuals who cannot obtain vaccination for medical or religious reasons, and those individuals may be entitled to an accommodation (if it is possible to provide one).

As a result, all policies and job posting that indicate that there is a vaccination or testing requirement should also indicate that employees who *cannot* comply for established medical or religious reasons may be accommodated. Employers should also exercise caution in requesting any form of medical information during the application/interview process, as that action may violate *The Human Rights Code* (Manitoba).

Update employer policies as the situation and public health orders change over time.

The COVID-19 situation continues to evolve quickly, and it is important that employers continually evaluate whether their policies are appropriate given the current circumstances as well as applicable public health advice.

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