



Human Rights and COVID-19 Vaccination Requirements

Your rights
Your responsibilities

A guideline developed under *The Human Rights Code*

Introduction

The Manitoba Human Rights Commission (“the Commission”) is an independent agency of the Government of Manitoba responsible for administering [The Human Rights Code](#) (“*The Code*”).

We are governed by a Board of Commissioners who are appointed by the Government to represent the geographic, cultural, social and economic profile of Manitoba. We report annually to the Minister of Justice.

We are responsible for promoting human rights principles and educating the public about the rights and responsibilities in *The Code*.

We provide human rights education and regularly present to groups and at conferences about human rights principles. We consult with the public about emerging human rights issues and use the information we gather to develop education tools to assist the public and to raise awareness about issues with the public, organizations and Government. We reach out to all Manitobans in various ways to share that “we are all equal in dignity and rights.”

We are also responsible for administering a complaint process.

We take complaints of discrimination, investigate them and determine if there is sufficient evidence that *The Code* has been contravened to warrant a public hearing of the complaint. At the adjudication of a complaint, we represent the public’s interest in eliminating discrimination and ensuring that employers, landlords and service providers comply with *The Code*. We also offer mediation at various stages in the complaint process to give parties an opportunity to try and resolve their complaint without the need for a hearing.

Section 5 of *The Code* authorizes the Commission to prepare and distribute guidelines to assist in the understanding and application of *The Code*. These guidelines assist the public in understanding how to comply with *The Code*. They represent the Commission’s interpretation of *The Code* at the time of publication.

This guideline sets out the Commission’s interpretation of the protections in *The Code* with respect to COVID-19 vaccination requirements. If there is any conflict between this guideline and *The Code*, *The Code* prevails.

Acknowledgement: The Commission expresses gratitude to British Columbia’s Office of the Human Rights Commissioner, whose Policy entitled “[A human rights approach to proof of vaccination during the COVID-19 pandemic](#)” informed this Guideline.

A human rights approach to vaccination requirements during the COVID-19 pandemic

Since the beginning of the COVID-19 pandemic in Manitoba, the Commission has observed that the illness has had a significantly disproportionate impact on structurally disadvantaged communities. This includes Indigenous and racialized peoples; people with disabilities; incarcerated individuals and people who reside in institutions; older people; low-income communities who have unequal access to housing, health care, childcare; and unemployed people or people employed in low-paying, hourly-wage, benefit-free and otherwise precarious jobs.

On April 8, 2020, the Commission released a policy document entitled [A human rights based approach to COVID-19: Principles and Actions](#), which set out an approach for ensuring Manitobans **keep human rights principles front and centre during the COVID-19 pandemic**. We revisited these obligations in our [December 10, 2020 Update](#) to the “Principles and Actions” policy document, and outlined some of the specific challenges we observed related to COVID-19 and human rights throughout the first nine months of the pandemic.

As employers service providers and housing providers navigate the next wave of this illness and consider what a future might look like beyond the COVID-19 pandemic, many understand **the critical role that COVID-19 vaccines will play in protecting the health and well-being of our communities**. Growing vaccination rates have led to a corresponding drop in COVID-19 transmission, lower hospitalization rates and fewer deaths. Increased vaccination rates safeguard human rights by protecting individuals most at risk of severe COVID-19 related outcomes and reduce the need for restrictive public health measures.

Given the importance of vaccination to our future resiliency against COVID-19, some organizations are turning to mandatory vaccination policies or proof-of-vaccination policies as a way of protecting their employees, participants, clients and residents.

While the COVID-19 vaccine is vital to ensuring the health and safety of our communities, the Commission is mindful that **some Manitobans cannot be vaccinated for reasons related to a ground that is protected under *The Human Rights Code* (“The Code”)**. The Commission is also aware that **barriers in accessing the vaccine remain**, particularly for our most marginalized communities.

Upholding individual rights while acting collectively to protect one another has been a challenge throughout the pandemic. It is necessary to maintain a careful balance between the rights of people who have not been vaccinated for reasons related to a protected characteristic under *The Code* and individual and collective rights to health and safety.

The following is general advice on how organizations can respect human rights when developing mandatory vaccination policies or proof-of-vaccination policies.

Is requiring mandatory vaccination, or implementing a proof-of-vaccination requirement discriminatory?

The Code requires duty-bearers - employers, service providers and housing providers - to protect individuals from unreasonable discrimination in employment, services, housing and contracts when that discrimination is related to a protected characteristic. *The Code* protects against discrimination based on 12 characteristics, whether real or perceived, including disability, ethnic origin, country of origin, ancestry and race.

Discrimination can look like treating people differently on the basis of a protected characteristic, or failing to reasonably accommodate a person's needs related to a protected characteristic. *The Code* also protects individuals from being harassed on the basis of a protected characteristic.

Ultimately, *The Code* prohibits unreasonable discrimination, which means that discrimination may be legitimate and necessary in some situations.

Requiring someone to be vaccinated and/or provide proof-of-vaccination in order to access employment, services, housing, or enter into a contract, may result in discrimination on the basis of a *Code*-protected characteristic like disability, religious belief, age, ancestry/race, national origin, and family status. Some examples include:

- individuals with disabilities who cannot be vaccinated;
- currently, individuals under the age of 12 cannot be vaccinated;
- migrant and undocumented workers, many of whom do not have a Personal Health Number, may be unaware that they are eligible for the vaccine or concerned about revealing their immigration status. They may also experience barriers in gaining access to Manitoba's Immunization Card.
- parents or caregivers may experience negative treatment because their children are too young to be vaccinated.

It is the Commission's position that a person who chooses not to be vaccinated as a matter of personal preference - especially where that choice is based on misinformation or misunderstandings of scientific information - does not have grounds for a human rights complaint under *The Code* against an organization that is implementing mandatory vaccination policy. In other words, personal choice or preference is not a protected characteristic under *The Code*, and it cannot be justifiably argued that a person was discriminated against because of a choice or preference to not be vaccinated.

While discrimination can arise from mandatory vaccination policies, the Commission recognizes that there may be some **limited circumstances where the implementation of a mandatory vaccination policy may be legitimate and necessary – i.e. defensible under human rights law**, but only if less intrusive means of preventing COVID-19 transmission are inadequate for the setting and only where due consideration has been given to the human rights of everyone involved. This can only be determined on a case-by-case basis.

A note on barriers to vaccine access

In addition to individuals who cannot be vaccinated for reasons related to a *Code*-protected ground, the Commission is mindful that [disaggregated demographic data](#) in Manitoba suggests that there are inequities in vaccine access. While efforts to make the vaccine more accessible across Manitoba have addressed some of these concerns, there continue to be barriers in equitable access to the vaccine, particularly in low income urban communities. Some examples of barriers to vaccine access may include:

- Language barriers or lack of access to a phone or internet connection make it more difficult for some individuals to find information about vaccination.
- Those with disabilities may have difficulty booking or going to their vaccine appointment, may require additional supports in order to be vaccinated (such as a caregiver, communication supports, etc.), and people with certain medical conditions may be waiting for the results of additional clinical trials to ensure their safety.
- Precarious or low-wage workers with multiple jobs and caregiving responsibilities may lack the time or resources to prioritize visiting a vaccination site, even when provided leave from work.

In addition, the [Chief Science Advisor of Canada](#) notes: "...special attention needs to be directed to certain racialized, Indigenous and disadvantaged communities. These communities may lack trust in established medical institutions and/or their governments due to historic harms, such as experimentation without consent in residential schools and persistent inequitable care experienced in the medical system."

This is an important reminder that the reason some individuals are not vaccinated may be linked to historic and ongoing oppression.

Unvaccinated individuals are a diverse group of people with a wide range of life circumstances; each person may have a different reason why they have not accessed a vaccine. **Before organizations draft policies that treat people differently based on vaccination status, every measure must be taken to eliminate barriers to access for people who would like to receive a vaccination against COVID-19.**

Principles for protecting human rights when developing mandatory vaccination policies

Below are some of the principles that organizations should take into account as they determine whether vaccination policies or proof-of-vaccination requirements can be justified under *The Code* in specific circumstances or contexts:

Equitable access— If an organization has an ongoing relationship with a person who is unvaccinated due to an access issue, they should do all they can to help that person get vaccinated. Some examples of access issues include (but are not limited to): having competing responsibilities such as multiple jobs and/or caregiving duties, facing language barriers, having limited access to technology that is needed to access information and book appointments, or being impacted by a disability. Every person's circumstances are different, which means people may need to be treated differently in order to have equal access. **Applying a vaccination requirement the same way to every person may not be an equitable approach.**

Evidence-based — Evidence of the risk of the transmission of COVID-19 in a specific setting is required to justify policies that restrict individual rights for the purpose of protecting collective public health or workplace safety. Such policies must be aligned with up-to-date public health guidance and reflect current medical and epidemiological understandings of the specific risks the policy aims to address.

Time-limited — Vaccination status policies should only be used for the shortest possible length of time. Such policies should regularly be reviewed and updated to match the most current conditions of the COVID-19 pandemic and to reflect up-to-date public health guidance.

Proportional — Mandatory vaccination policies, if implemented, must be proportional to the health and safety risks they seek to address. As more and more people in Manitoba are vaccinated and these risks decrease, organizations should relax their rules about vaccination as well. In addition, the measures must be proportional and appropriate, based on the nature of the work being performed or service being provided. Certain work tasks and contexts may present varying degrees of risk that must be considered on a case-by-case basis. Therefore, **mandatory vaccination policies require an individualized assessment of the position, the context of work or service delivery and its attendant risks** to determine whether the implementation of a mandatory vaccination requirement can be justified. For example, if an employee is working from home and is not in contact with other colleagues, it may not be justifiable to subject that employee to a mandatory vaccination policy.

Necessary — Mandatory vaccination policies and proof-of-vaccination requirements should achieve an outcome that no other less intrusive measures could achieve. Relying on public health and workplace safety and health information, **organizations should explore whether there are less intrusive methods available to them for managing the health and safety risks associated with COVID-19.** If there is evidence to support that less intrusive measures do not work well enough to prevent COVID-19 transmission in a given setting, mandatory vaccination policies may be implemented as long as organizations also take into account their duty to accommodate under *The Code*.

Privacy — Vaccination status is highly sensitive personal health information. Any collection, use or disclosure of vaccination status information must be authorized by applicable privacy laws. In circumstances where determining individuals' vaccination status is necessary to address a specific safety risk, it is critical that this confidential health information is collected in the least intrusive means possible and only to the extent necessary to protect safety and facilitate accommodations. Appropriate safeguards must be in place to ensure the information is stored securely and only held for as long as needed in accordance with applicable privacy law. See the Joint Statement by Federal, Provincial and Territorial Privacy Commissioners on Privacy and COVID-19 Passports for guidance on this matter: https://priv.gc.ca/en/opc-news/speeches/2021/s-d_20210519

Reasonable accommodation and undue hardship

Under *The Code*, people who cannot be vaccinated because of a *Code*-protected ground must be reasonably accommodated to the point of undue hardship. This means that organizations must take every step possible to address the needs of those who require accommodation, unless taking those steps would amount to “undue hardship”— for example, if the accommodation would create health and safety risks for others or would be excessively costly. There is no definition for “undue hardship”; it differs depending on the circumstances, is highly fact-dependent and must be established based on objective evidence, not speculation or assumptions.

Simply put, organizations must accommodate the diverse needs of their employees and the public to the greatest extent possible—appreciating the difficulty of designing policy in the midst of shifting pandemic conditions. Organizations should implement current public health and workplace safety and health recommendations for decreasing the risk of COVID-19 transmission. This increases the safety of those most at risk from COVID-19 while reducing the need for more prescriptive mandatory vaccination policies.

If mandatory vaccination or proof-of-vaccination policies are necessary to address specific safety concerns in a particular setting, organizations must seek to accommodate people who are unable to get vaccinated for a *Code*-related reason. Those accommodations should be based on the individual needs of those involved and should be as easy and with as little burdens as possible. For example, employers may exempt an employee from the mandatory vaccination policy, create a requirement for staff to wear a face mask or other personal protective equipment (“PPE”), work at a physical distance from others, work a modified shift, get periodic tests for COVID-19, work remotely or accept a reassignment to a setting that poses less risk of transmission.

Possible forms of reasonable accommodation:

- Exemptions for employees from mandatory vaccination policies on the basis of a *Code*-protected ground;
- Enhanced personal protective equipment (“PPE”);
- Increasing the physical distance between employees;
- Modified shifts or schedules;
- Regular periodic COVID-19 testing;
- Working remotely/working from home; and
- Reassignment of duties to a setting/ tasks that pose less risk of transmission.

Conclusion

In this challenging time, it is most critical that we place human rights at the centre of our planning and decision-making processes, including those related to vaccination requirements.

Restrictions imposed in the name of health and safety must be justified based on the most current public health recommendations reflecting the best available medical and scientific evidence, relevant to their applicable setting.

All other less intrusive methods for preventing COVID-19 transmission must be explored and proven inadequate for the setting before implementing measures like mandatory vaccination or proof-of-vaccination policies..

Where these policies are necessary, the needs of those who cannot be vaccinated for reasons related to a *Code*-protected ground must be reasonably accommodated to the point of undue hardship. Where implemented, these policies must consider issues of equitable access to vaccine, must be evidence-based and time-limited, must be proportional to the health and safety risks they seek to address, must be absolutely necessary, and must consider the privacy rights of the people impacted.

No one should experience unreasonable discrimination or harassment because they have not been vaccinated, particularly where there are effective and less intrusive alternatives to a mandatory vaccination policy. Organizations must do their due diligence in considering all relevant factors in context and ensuring that mandatory vaccination policies do not place a disproportionate burden on certain people and communities because of a protected characteristic under *The Code*.



Need more information?

For further information on this guideline or *The Human Rights Code*, please contact us at hrc@gov.mb.ca

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