




COVID 19 Current Legal Issues

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NSHS Leadership Charter
6 May 2021

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Overview

- Paid Sick Leave
- Testing
- Vaccines
- Masking requirements
- Working from Home
- Enforcing COVID Rules











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Paid sick days? – NS to wait and see



- Ontario has recently provided employees up to 3 days of paid sick leave for COVID-19, for a limited time.
- NDP Bill 3 in NS would provide workers up to 10 days of paid sick leave each per year
- Would not impact unionized workplaces
- Bill not supported by current government

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Mandatory workplace testing



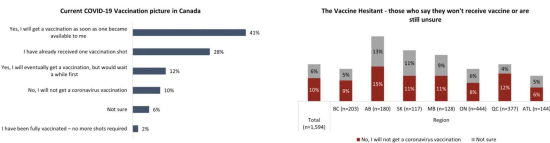
- Can require routine testing in workplaces
- Additional considerations apply in unionized workplaces
- Recent Ontario arbitration decision allowing testing distinguished COVID testing from Drug & Alcohol testing



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Vaccine hesitancy

- Angus Reid Canada, April 26, 2021 – Vaccine Hesitancy in Canada continues to decline; Atlantic Region least hesitant:



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Addressing vaccine hesitancy

- As employers, required to take all reasonable steps to ensure workplace safety.
- What is reasonable will depend on a range of circumstances
- Offering education on the risks of transmission and benefits of vaccination is highly recommended



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Mandatory vaccinations

- In many cases an employer can mandate vaccination as a condition of attending work
- If employee wants to make personal choice not to be vaccinated, they are free to do so, but may have consequences on ability to work
- Employers should have a clear policy
- The policy must have exceptions
- Mandatory policies create greater risk for WCB claims if adverse effects arise



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Mandatory vaccinations

- Different considerations in unionized vs. non-unionized workplaces, though policy considerations broadly similar.
- In union environment, policies must pass "KVP test" and be:
 - Consistent with collective agreement
 - Reasonable
 - Clear and unequivocal
 - Brought to the attention of affected employees before enforcement
 - Explicit regarding consequences of breach; and
 - Consistently enforced by the company from the time of its introduction



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Mandatory vaccinations

- No cases on COVID vaccination requirements yet
- Arbitration decisions on mandatory flu vaccines go both ways; however, unique COVID features suggest success is likely where workplace risks are significant.



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Mandatory vaccines & human rights

- Human rights legislation prohibits discrimination in employment on specific enumerated grounds
 - Religion or creed
 - Disability
 - Sex (due to pregnancy)
 - Irrational fear of contracting an illness or disease
- Accommodation and undue hardship



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Vaccination policy considerations

- Clearly worded
- Alternatives to mandatory vaccination
- Vaccination as a condition of employment (new hires and existing employees)
- Collection of personal information
- Availability of the vaccine
- Requirement to stay up to date (boosters)
- Clear communication on purpose and objectives of policy
- Travel Requirements
- Adjust vaccination policy as pandemic outlook changes



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Dealing with mask refusals: disability



- Masking is mandated by public health order
- Employers can require proof of disability
- Best practice is to have a policy
- Same goes with dealing with the public



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Dealing with mask refusals: religion



- Employers can also ask for further information regarding religious objections to masking
- Complaint recently rejected in BC on the basis that stated objection was not religious in nature



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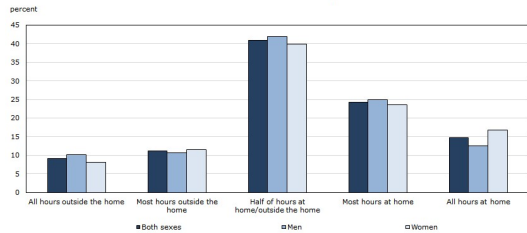
Working from home

- At the beginning of 2021, 32% of Canadian employees aged 15 to 69 worked most of their hours from home
- 90% of new teleworkers reported being at least as productive at home



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Preferences of new teleworkers for telework once the COVID-19 pandemic is over



Sources: Statistics Canada, Labour Force Survey and Labour Force Survey supplement, February, 2021.



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Legal issues as WFH continues

- Occupational health and safety concerns
- Liability (personal injury, confidentiality, WCB)
- Employee claims for expenses (rent, equipment)
- Ability to certify for insurance coverage
- Jurisdictional Challenges
- Monitoring/Recordkeeping
- Human Rights (Family Status)



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WFH policy

- Define performance expectations
- Define expected hours of work, availability, address unauthorized overtime
- Address confidentiality
- Address expenses and equipment
- How and when can the arrangement be cancelled or amended



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Discipline and dismissal

- Breach of safety rules necessary for COVID can form the basis for discipline or dismissal
- Clear policies and training bolster cause
- Keep competing safety interests in mind



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Questions?