



NEWS

## Can businesses deny customers who don't get the COVID-19 vaccine?

Yes, Ontario legal experts say. Here's how

By [Veronica Appia](#) Toronto.com

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Picture this: It's 2021. The vaccine rollout is well underway, and because Ontario's most vulnerable have been vaccinated, the vaccine is now accessible to the general public.

But not everyone is going to get it.

What happens to those people? Can they be denied entry to businesses? Can they be

refused boarding rights at airports? Does their employer have grounds to fire them?

That depends on a number of factors, Ontario legal experts say.

## Businesses and customers

From a business perspective, employers will have to make decisions to balance the health and safety of the many against the people that may be against taking the COVID-19 vaccine, Ryan Watkins, a Toronto employment lawyer at Whitten and Lublin, said.

"As an employer you have the right to refuse customers coming into your establishment ... It's a difficult choice for an employer and businesses to make, but I think the courts would back them up in the name of health and safety," he added.

Watkins said, to some extent, Ontarians have already seen a similar situation unfold with mask wearing, though it is government mandated and not at the discretion of individual businesses.

Prior to the mandate however, business owners were already choosing to turn certain customers away if they refused to use a mask – oftentimes even people who cited medical reasons.

"While there may be human rights issues that could come into play ... an employer is within their rights to say, 'for this time being, we're not going to allow you into the store because these are the rules,'" he said. "Employers are on good footing there."

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Watkins said though he believes businesses have the right to refuse customers who are not COVID-19 vaccinated, he thinks the chances that businesses will do this are rare, as many may fear alienating their customer base.

Simran Prihar, a human rights and labour lawyer at Goldblatt Partners LLP, said the state of the pandemic will play a large role in terms of the legal implications of requiring someone to get a COVID-19 vaccine.

She said she suspects that employers and businesses will be lobbying to make the COVID-19 vaccines a government mandated requirement. "That takes the employer out of it and it shields them from legal challenge from their unions or their employees," she said.

When it comes to customers who are unable to get the vaccine due to certain exceptions, the situation becomes tricky.

"Those rules are very hard to enforce because you can't just give every shop owner the right to demand your medical file," she said.

"I think lawyers are going to have clients who want to challenge this, and employers and businesses are going to have an interest in imposing it for both health and safety reasons, but also just pure wanting to stay open reasons – they need to survive," she added.

## Employers and employees

With an employer-employee relationship, certain legislation needs to be considered, Watkins said.

"Under the Ontario Occupational Health and Safety Act, employers are required to protect their workers, so in that sphere, certainly with the highly contagious virus that caused a global pandemic, if there's an antidote to that, employers are within their rights to require employees to take it in order to keep the rest of the workplace safe," he said, adding that this is especially true in industries where workers interact with the public.

However, when it comes to medical or religious exemptions, employees are covered under the Ontario Human Rights Code. In these cases, employers would be required to have more fulsome discussions and can ask for the necessary documentation from their employees, he explained.

Prihar said while the circumstances surrounding the COVID-19 vaccine are new and unprecedented, a similar case arose in the early 2000s, when 15 employees of St. Peter's Health System in Hamilton, Ont., refused a flu vaccine amid an outbreak at the hospital.

In that case, an arbitrator decided that a public hospital cannot enforce a mandatory

vaccine.

Prihar said in cases involving vaccinations, because it's an imposed medical treatment, there's case law about how that could be considered an assault.

"You can't necessarily force someone," she said. "I think that any union whose employees wanted to challenge this could use that."

## Airlines and passengers

When it comes to passengers being vaccinated against COVID-19, airlines could have different mandates altogether, as they are federally regulated.

Spokespeople from both WestJet and Air Canada told Metroland that there are many unknowns and it is premature to speculate at this time about what could happen.

"As we continue to move forward operating in one of the most carefully regulated industries in the world, we are making data-driven and evidence-based decisions to ensure the safety of all," Morgan Bell, a spokesperson for WestJet, said in an email.

"We await further updates and are working with our regulator and public health authorities to understand the availability and recommended use of a COVID-19 vaccine for Canadians."

Health Canada did not respond to requests for comment on this story.

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**Veronica Appia** is a reporter with Torstar Corporation Community Brands, covering COVID-19 news across Ontario.

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