

WORKING WITH UNVACCINATED COLLEAGUES

HERE'S WHAT YOU CAN, AND CAN'T, ASK YOUR EMPLOYER FOR

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You've probably never asked not to work alongside someone because they hadn't received a flu shot, but what if a co-worker tells you they've opted out of the COVID-19 vaccine?

This is a new dilemma workers and employers will need to navigate as more workplaces — such as schools, universities and offices — reopen post-pandemic.

Further, with 70 per cent of Ontario's population over 12 years old fully vaccinated, and most new cases of COVID-19 appearing in unvaccinated peo-

ple, immunization status is resulting in friction between vaccinated and unvaccinated people.

This could be especially true in the workplace, where employees might work alongside the same people for 40 or more hours each week. So what solutions are available, and legal, when it comes to removing this friction?

Employment lawyer Ryan Watkins and human resources expert Patrick Stepanian offer some answers.

CAN WORKERS DEMAND NOT TO WORK NEXT TO UNVACCINATED CO-WORKERS?

While workers can raise their concerns with employers, Stepanian, who serves as legal manager at health and safety consulting group Peninsula Canada, said employers in Can-

ada are not legally required to accommodate this request.

"If a worker does ask not to work next to an unvaccinated colleague, it will be up to the employer to either work out an accommodation or to deny this request," Stepanian said.

Watkins, who practises at Toronto-based firm Whitten & Lublin, said employers might be legally obligated to accommodate such a request under human rights provisions if the requester has been diagnosed with a health condition like cancer or an immune disorder.

"Obviously those are in special circumstances, not everybody has those types of disabilities or illnesses," Watkins said.

WHAT DUTY DO EMPLOYERS HAVE TO PROTECT WORKERS?



Valeria Labas Karam photo
RYAN WATKINS

Because COVID-19 vaccination has not been made mandatory in Canada, vaccination status is considered private medical information.

If an unvaccinated worker chooses to share their status with a co-worker, that's one thing, but it's not information an employer can disclose to other workers.

"Employers have to be careful, because with privacy legislation you want

to ensure if you're going to have some type of vaccination policy, only those who need to know that information have it," Watkins said.

"So it's hard to see where you could have an area where unvaccinated people have to be segregated without it infringing on some privacy rights."

Watkins said exceptions might be made in fields where employers work with vulnerable populations, such as in hospitals and long-term care homes.

"Maybe in terms of heightened safety environment ... you could see where that policy might work," he said.

WHAT TYPES OF ACCOMMODATION SHOULD EMPLOYERS OFFER?

Watkins and Stepanian agree employers are required to take measures to keep employees safe from COVID-19.

"Certainly, workers are entitled to be safe in their

workplace and employers have an obligation to make sure that's the case, so we start with that premise," Watkins said.

As for what those measures look like, Stepanian said there are some basic legal guidelines.

"Employers should be following the health and safety guidelines of their local public health unit. In many cases, measures such as distancing and masking are still required in workplaces regardless of vaccination status," Stepanian said. "These measures have been deemed sufficient by public health units in preventing the spread of COVID-19 and keeping workplaces safe."

Beyond those requirements, employers might choose to accommodate workers by allowing them to work remotely or, if that's not possible, to use separate workstations. Employers could also install Plexiglas barriers between workstations.



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