

# COVID-19: TO VACCINATE OR NOT TO VACCINATE?

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# AGENDA

## Workplace Vaccination Policies

1. Sources of Authority
2. Risks of Mandatory Vaccination Policy
3. Risks of No Policy & Vaccination Incentives
4. Practical Issues in the Future

# 1 - SOURCES OF AUTHORITY FOR POLICY

## Legislation

- OHSA
  - “Every precaution reasonable in the circumstances”
- School Children
- Day Cares

# 1 - SOURCES OF AUTHORITY FOR POLICY

## Case law

- Unionized workplaces
- Health care settings
- Congregate living
- “Vaccinate or Mask” may not be sufficient for COVID-19

## 2 - RISKS OF MANDATORY VACCINATION POLICY

**Requirement to undergo a medical procedure**

**The ability to justify may vary**

- More congregate setting = higher need
  - Health Care vs. Long Term Care vs. Food Processing vs Retail vs. Office
  - Blended / hybrid operations

## 2 – HUMAN RIGHTS RISK

### **Physical reasons to reject vaccination**

- Allergy / pregnancy

### **Religious reasons to reject vaccination**

- Dutch Reform, Faith healing denominations
- Alleged use of aborted fetus cells to develop vaccine

### **Strongly held view to reject vaccination**

- Anti-vaccination, QAnon

## 2 - HUMAN RIGHTS RISK

### Accommodation

### Undue hardship test

- Not inconvenience, inconsistency, inefficiency, moderate cost

### BFOR

### Health and Safety Exception under *Code*

### Employee's Duty to cooperate

## 2 - CONSTRUCTIVE DISMISSAL RISK

### **Consequences of refusal to vaccinate or provide proof of vaccination**

- Denial of access to work?
- Denial of attendance on customers?
- Requirement to wear PPE?
- Isolation from teams/ opportunities?

### **Work refusal under OHSA**



## 2 – TORT / NEGLIGENCE RISK

**Employee suffers negative reaction to vaccine:**

- **WSIB Coverage**
  - Bar to civil claims
- **Canadian Vaccine Injury Support Program**

## 2 - PRIVACY RISK

**Ontario:** No private-sector privacy legislation

**Common law** – collection, use, disclosure

- Consent?

**SCC**

- *Irving* - “Reasonable” purpose?

**Charter**

- Bodily Integrity?

# 3 - RISK OF NO MANDATORY VACCINATION POLICY

## HPPA – Section 22

So far - Toronto, Peel Region and Hamilton  
Public Health

- Stated intention to close workplaces with transmission
  - 2+ cases = reporting obligation
  - 5+ cases and reasonable to believe some were transmitted at work

# 3 - INCENTIVES TO PROMOTE VACCINATION

## **Paid Sick Days (WIPB vs. Policy)**

### **Additional pay / incentive**

- Risk of shaming
- Risk of collection of medical information

### **Education vs. propaganda**

### **Perception of communal welfare vs. self-interest**

# 4 - PRACTICAL ISSUES IN THE FUTURE

## **Dishonesty about vaccination status**

- Stating vaccinated when really not allowed to RTW
- Stating not vaccinated when really are to avoid return to workplace

## **Two classes of employees**

- Advantages / disadvantages
- Public health protocols – RTW sooner if vaccinated (e.g. 4 days vs. 14 days)?

# 4 - PRACTICAL ISSUES IN THE FUTURE

## Return to “normal” working arrangements

- No more kids / pets / flex hours
- Designated workspace in home
- Wi-Fi quality / cost
- Monitoring software / protocol
- Hours of work / productivity

## Vaccine “Passport”

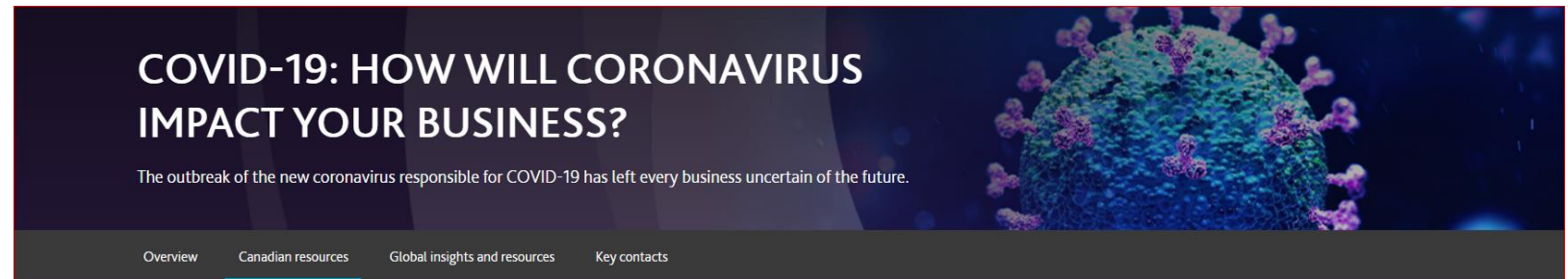
# USEFUL RESOURCES

## Gowling WLG – COVID-19 Insights

<https://gowlingwlg.com/en/topics/covid-19-how-will-coronavirus-impact-your-business/canadian-resources/>

## Insights: Mandatory Vaccinations

<https://gowlingwlg.com/en/insights-resources/articles/2020/workplaces-vaccination-policies-to-mandate-or-not/>



# QUESTIONS?



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