

Can I require my salon staff to get COVID-19 vaccinations before they come back to work?

ANDREA YU

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THE QUESTION

I own and operate my own salon and spa and we've been closed for most of COVID-19 due to lockdowns. When it becomes available, and when the lockdowns are lifted, I would like my staff to get vaccinated before they return to work to help keep everyone safe. I'd like to advertise this to our customers as well to encourage them to visit us. Can I require my staff to get vaccinated from COVID-19 before they come back to work?

THE FIRST ANSWER

Samia Hussein, lawyer, Sherrard Kuzz LLP, Toronto

An employer can require a COVID-19 vaccination as a condition of employment, subject to the considerations outlined below.

First, if a mandatory vaccination policy is implemented, an employer will need to consider whether and how it can accommodate any employee unable to receive the vaccine for Human Rights Code-related reasons, such as an underlying health condition or religious belief. Accommodation should be addressed in the policy.

Second, in a unionized workplace, a mandatory vaccination policy might be challenged on the basis it is a violation of the collective agreement. In this case, an employer will need to be able to demonstrate to an arbitrator the policy is reasonable for health and safety reasons or other workplace factors. Otherwise, the policy may be struck down. Under Ontario's Occupational Health and Safety Act, an employer is required to take every precaution reasonable in the circumstances for the protection of a worker. This includes protection against COVID-19.

Finally, an employer will need to consider what it will do if an employee refuses to be vaccinated on the basis of personal choice. Depending on the nature of the workplace and the employer's justification for requiring vaccination, refusal to vaccinate may not amount to just cause to terminate an employee. In this case, if the employee is non-unionized they may be entitled to pay in lieu of notice of termination; and if the employee is unionized they may be reinstated to employment.