

COVID-19 UPDATE

Temporary Layoff Exemption, Proof of Vaccination Requirements and Medical Exemptions to Vaccination

September 17, 2021

Ontario Government Extends Temporary Layoff Exemption to January 1, 2022

On May 29, 2020, the Government of Ontario introduced a [regulation](#) under the *Employment Standards Act, 2000* (“ESA”) that provided relief to any employer that had temporarily laid off or reduced the wages and/or hours of a non-union employee due to COVID-19. The regulation largely exempts any such layoff or reduction from being deemed a termination of employment, such that there is no obligation to provide ESA notice or severance pay. The employee is deemed to be on an **Infectious Disease Emergency Leave (“IDEL”)**.

If this regulation had not been passed, any such layoff or wage/hour reduction could, after a prescribed period of time, crystallize into a termination of employment, triggering ESA notice of termination and severance pay obligations.

Initially, the regulation applied to a temporary layoff or reduction in wages and/or hours between March 1, 2020 and September 4, 2020 (the “COVID-19 Period”). The COVID-19 Period was then extended several times, to January 2, 2021, to July 3, 2021, to September 25, 2021 and now again to [January 1, 2022](#). **The net result is that an employee who has been laid off or had their wages and/or hours reduced for COVID-19 related reasons can continue to be on an IDEL until January 1, 2022, without triggering termination and severance pay obligations under the ESA¹.**

Ontario Government Releases Guidance on Proof of Vaccination Requirements

Effective September 22, 2021, certain businesses must ensure any patron entering its indoor premises is “fully vaccinated” (as defined). On September 14, 2021, the Ontario Government released a [regulation](#) establishing this requirement as well as [guidance documents](#). These are summarized below.

Note: Proof of vaccination requirements apply only to a **patron**, not an **employee**, of the business or organization.

¹ Unless the employee is laid off due to a permanent discontinuance of business, in which case the employee is entitled to severance pay under the ESA.

Application

Proof of vaccination is required prior to entry to the indoor areas of any:

- Restaurant, bar and other food and drink establishment (excluding takeout and delivery services)
- Nightclub and restoclub
- Meeting and event space, including a banquet hall, conference and convention centre
- Sport and recreational fitness activity facility, including a waterpark and for personal fitness training
- Casino, bingo hall and other gaming establishment
- Concert venue, theatre and cinema
- Bathhouse, sex club and strip club
- Horse racing track, car racing track, and similar venues
- Commercial filming production areas where there is a studio audience (with the requirement applicable to those in the audience)

Proof of vaccination is not required for entry if a patron enters the indoor area solely to:

- Use a washroom
- Access an outdoor area only accessible through an indoor route (*e.g.*, a patio)
- Make a retail purchase
- Place, pick-up or pay for an order (including placing a bet or picking up winnings in the case of a horse racing track)
- Purchase admission

Or, as necessary for purposes of health and safety.

Definition of “Fully Vaccinated”

A patron is considered **“fully vaccinated”** only if they have received:

- The full series of a COVID-19 vaccine authorized by Health Canada, or any combination of such vaccines.
- One or two doses of a COVID-19 vaccine not authorized by Health Canada, followed by one dose of a COVID-19 mRNA vaccine authorized by Health Canada.
- Three doses of a COVID-19 vaccine not authorized by Health Canada.

In all cases, a patron must have received their final dose of the vaccine series at least 14 days before providing proof of vaccination.

Vaccination Receipts

A patron can demonstrate proof of full vaccination by showing a paper or electronic copy of their vaccination receipt. Vaccination receipts can be downloaded [here](#). A patron must provide proof of identification that matches the name and date of birth on the vaccination receipt. Photo identification is not required.

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The Ontario Government has indicated it expects to roll out an electronic (QR code) vaccine certificate protocol in October, 2021.

Exemptions

The proof of vaccination requirement does not apply to a patron:

- under the age of 12
- under the age of 18, if entering the premise of a sport or recreational fitness facility solely for the purpose of actively participating in an organized sport in accordance with guidelines published by the Ministry of Health
- who provides a written document completed or signed by a doctor or registered nurse in the extended class that sets out (1) a documented medical reason for not being fully vaccinated and (2) the effective time-period for the medical reason. The medical exemption document must include the name and contact information of the physician or registered nurse in the extended class and the logo or letterhead identifying the physician or registered nurse in the extended class.

Special rules also apply to those entering a meeting or event space for the purpose of attending a wedding service, rite or ceremony or funeral service, or a social gathering related to same.

Enforcement and Compliance

The person responsible for the business or organization is required to ensure compliance with the proof of vaccination requirements. Failure to do so is a violation of the *Reopening Ontario Act* and may result in a fine or, in more significant situations, prosecution as an offence under the *Provincial Offences Act*.

Practical Tips

Any impacted business or organization should prepare now for the introduction of the proof of vaccination requirements. To this end, a business should:

- Train employees how to appropriately verify vaccination status in accordance with the [guidance document](#).
- Assess and ensure safety measures are put in place to reduce the potential for workplace violence should an individual be denied entry based on vaccination status.
- Update its COVID-19 safety plan to reflect these safety measures, and train employees on what to do in these circumstances.
- Maintain a record that each patron was appropriately screened in compliance with the regulation and guidance documents. Note: The regulation prohibits a business or organization from retaining information provided by a patron about vaccination status. However, this does not prevent a business from maintaining a record that each patron who entered the indoor premise was permitted to do so under the regulation.

Medical Exemptions to Vaccination

On September 16, 2021 the Ontario Ministry of Health released a [guidance document](#) for doctors and registered nurses in the extended class, to summarize the limited circumstances or adverse events that may support a medical exemption to vaccination. Significantly, the document notes “**In general, there are very few actual contraindications to available COVID-19 vaccines that would qualify as medical exemptions and most individuals can safely receive COVID-19 vaccines.**”

This is a helpful tool for any employer that has implemented a workplace vaccination policy. If an employee claims they cannot comply with the requirements of the policy due to a medical condition, and requests accommodation under human rights legislation, an employer is well-advised to include the [guidance document](#) with any request for medical information from the employee’s physician.

For assistance with any COVID-19 related issue in your workplace, contact your Sherrard Kuzz LLP lawyer, or any member of the Sherrard Kuzz team at info@sherrardkuzz.com. We’ll respond promptly.

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