



Vaccination Mandate

The next steps



Information Session - Vaccination

- Your best source for information is the PSAC FAQ
 - <http://psacunion.ca/faq-federal-vaccination-policy>
- Common questions
 - What about teleworkers?
 - The federal government's vaccination policy applies to all employees in the core public service, RCMP, CBSA and Correctional Services. This includes employees who are teleworking because, according to the federal government, all employees may have to attend scheduled meetings or events, access sensitive information, or address urgent operational requirements.
 - Can the employer require our members to be vaccinated?
 - No one can be physically forced to get a vaccine against their will. However, according to the limited case law available, grievors must live with the consequences of refusing to get vaccinated.

Additionally, employers have an obligation to keep workplaces safe and, in the context of a global pandemic, the federal government requires that employees be vaccinated.



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Accommodation

- The basics, what is the duty to accommodate?

Employers and service providers have an obligation to adjust rules, policies or practices to enable you to participate fully. It applies to needs that are related to the grounds of discrimination. This is called the duty to accommodate.

The duty to accommodate means that sometimes it is necessary to treat someone differently in order to prevent or reduce discrimination. For examples, asking all job applicants to pass a written test may not be fair to a person with a visual disability. In such cases, the duty to accommodate may require that alternative arrangements be made to ensure that a person or group can fully participate.

(<https://www.chrc-ccdp.gc.ca/en/about-human-rights/what-the-duty-accommodate>)



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Accommodation

- The basics (2), what are grounds of discrimination?

Discrimination is an action or a decision that results in the unfair treatment of a person or a group because of their race, age or disability. These reasons, also called grounds, are protected under the Canadian Human Rights Act.

Only the grounds listed in the Act are protected under the Act and the collective agreement

Race

National or Ethnic Origin

Colour

Religion

Age

Sex

Sexual Orientation

Gender Identity or Expression

Marital Status

Family Status

Disability

Genetic Characteristics

A conviction for which a pardon has been granted or a record suspended



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Accommodation

- The vaccine policy states that all employees are to be fully vaccinated, “unless accommodated based on a certified medical contraindication, religion, or another prohibited ground for discrimination as defined under the Canadian Human Rights Act.”
- **There is no legal obligation for the employer to accommodate employees who have elected not to be vaccinated due to personal beliefs. Personal beliefs are not prohibited grounds for discrimination under the Canadian Human Rights Act or the collective agreement.**
- The two grounds to be expected are disability and religion
- Accommodation needs must be addressed on a case-by-case basis



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Accommodation

Employees have an obligation to provide true information. Submitting a false statement would constitute serious misconduct and may result in disciplinary action up to and including termination.

Union representatives should remind our members of this obligation if they have any doubts about the information submitted by our member.



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Disability

Normal requirements:

- Medical certificate signed by a medical physician or nurse practitioner
- As usual, certificate must not contain diagnostic but rather the functional limitation (unable to receive the COVID-19 vaccine)
- The note must specify whether the reason is permanent or time limited. If time limited, the note should indicate the length of the limitation

Don't forget the need to evaluate on a case-by-case basis! What if the member cannot provide the certificate?

- Request the details and reasons why unable and follow the knowledge tree if needed



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Religion

Normal requirements:

- Employer must be satisfied that the employee holds a sincere religious belief that prevents them from being fully vaccinated.
- The requirement is to focus on the sincerity of the **individual** belief rooted in religion, not whether it is recognized by other members of the same religion.
 - The belief must be religious in nature (not a personal, moral belief), and the employee must explain the nature of the belief and why it prevents vaccination.
 - The validity of the belief itself **must not be challenged** by the manager;
 - They must determine only if the belief is sincerely held by the employee.

(Managers Toolkit for the implementation of mandatory vaccination)

Don't forget the need to evaluate on a case-by-case basis! What if I am not sure if it's a valid accommodation request?

- Request the details and follow the knowledge tree if needed



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Religion (2)

For requests related to religious practices, you should not generally need supporting documentation. However, if you are unfamiliar with the religion or the specific religious practice, it may be appropriate to request additional information from the employee or a designated official within the employee's religious community. Again, the information you seek should focus on the needs pertaining to the accommodation rather than on personal information about the employee.

<https://www.canada.ca/en/government/publicservice/wellness-inclusion-diversity-public-service/diversity-inclusion-public-service/working-government-canada-duty-accommodate-right-non-discrimination/duty-accommodate-general-process-managers.html>

Don't forget the need to evaluate on a case-by-case basis! What if the employer requests additional information and I think it's too intrusive?

- Request the details and follow the knowledge tree if needed



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Other grounds

- The other prohibited grounds of discrimination are race, national or ethnic origin, colour, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability, and conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.
- Our member would need to provide an attestation as to how their request for accommodation relates to the relevant prohibited ground. Employer may request additional information and supporting documentation, as may be appropriate, to assess the accommodation request.

(Managers' toolkit)

Don't forget the need to evaluate on a case-by-case basis! What if the employer requests additional information and I think it's too intrusive?

- Request the details and follow the knowledge tree if needed



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How to handle questions and requests from membership

- General questions related to vaccination mandate
 - Use the template email we provided, refer them to the PSAC FAQ
- Specific questions regarding the legality of the mandate
 - General statement that PSAC explored all legal avenues and obtain legal opinions. Their general statement in the FAQ is that there is a strong possibility that the government's policy will withstand legal challenges that might be put forward, so the best and safest thing to do is to get vaccinated.
- Accommodation request
 - Refer the member to the employer for initial determination. Do not provide preliminary advice before the denial of the accommodation or request for clarification.



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How to handle questions and requests from membership

- Accommodation request (2)

- Request for clarification

1. Make sure the member understands the consequence of lying in their sworn affidavit. The consequences are greater than the vaccination policy itself. Should the member be caught lying, it could be construed as breach of trust and could lead to disciplinary measures up to termination.
2. Go back to the employer and request the rationale behind this request if you believe the employer is questioning the validity of the belief. You can refer them to the manager's toolkit that specifically states the validity of the belief itself must not be challenged by the manager.
3. For requests related to religious practices, you should not generally need supporting documentation. However, if you are unfamiliar with the religion or the specific religious practice, it may be appropriate to request additional information from the employee or a designated official within the employee's religious community. Again, the information you seek should focus on the needs pertaining to the accommodation rather than on personal information about the employee.



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How to handle questions and requests from membership

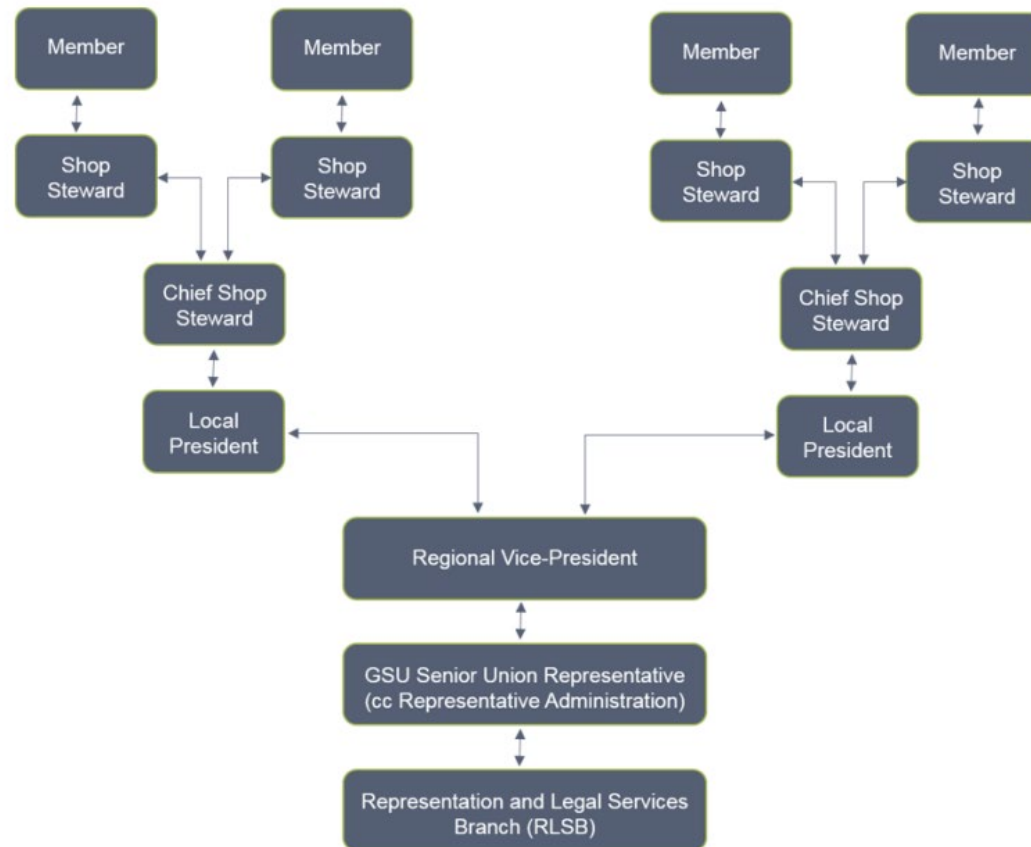
- Accommodation request (2)
 - Request for clarification
 4. Unless the employer can demonstrate a valid doubt, we believe they could be breaching their duty to accommodate. The religious accommodation test is made to be vague in order to cover unforeseen circumstances like this one, but there are still limits. This is definitely not a guaranteed success at arbitration. Many Canadian law firms issued preliminary opinions that religious exemptions to mandatory COVID-19 vaccination policy will be defeated if challenged in Court.

For those reasons, it is important to reiterate the doctrine of Obey now, grieve later. The general rule in labour law is that the employee must follow instructions and grieve rather than refusing to comply unless specific circumstances (health & safety, ...). In this case, if the employer persists and ask the member to provide the answers, they should advise the employer they are not agreeing with this request but are providing the responses and will be filing a grievance.



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The knowledge tree



<https://bit.ly/3DbPyN6>



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Resources

- PSAC FAQ
 - <http://psacunion.ca/faq-federal-vaccination-policy>
- Commentary on the Duty to Accommodate
 - https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/201201E