

An aerial, high-angle photograph of a large crowd of people standing on a floor marked with a grid of yellow lines. Several large, semi-transparent yellow circles are overlaid on the grid, highlighting specific areas. The people are scattered throughout the scene, some standing, some walking, and some sitting. The overall color palette is warm, dominated by yellows and oranges.

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Managing hybrid workplaces and vaccination policies in Canada and the US

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DENTONS WEBINAR SERIES
COVID-19 - LEGAL UPDATE
FOR CANADIAN EMPLOYERS

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Vaccination issues - United States

Peter Stockburger

Vaccinations in the US

- **Are employers allowed to mandate vaccination?**

- Yes, but must recognize: (i) accommodations; (ii) CBAs; (iii) conflicting state rules; (iv) employee resistance.

- **Are employers required to mandate vaccination?**

- State laws - Healthcare workers, not broadly
- Some pushback on states
- OSHA rule
- Federal contractor rule
 - \$250k and above (service contracts)
 - FAR sections released
 - No testing / accommodations / proof

- **What accommodations are required?**

- Medical / Religious

- **What are record-keeping obligations?**

- OSHA rule - 30 years / State deviation
- Privacy considerations

- **What are employers doing to mitigate risk?**

- Incentives / Disincentives
- Mandates / Hybrid approach

- **Risks**

- Lawsuits / employee loss
- Morale / enforcement / testing expenses

What you need to know about the Federal Government's mandatory COVID-19 vaccination policies

Jennifer A. Thompson

Overview

- On October 6, 2021, the Government of Canada announced a number of new COVID-19 policies/requirements:
 1. A mandatory COVID-19 vaccination policy for the federal core public administration and RCMP
 2. A requirement for federal employers in the air, rail and marine sectors to implement their own mandatory vaccination policies
 3. New vaccination rules for travellers on air, rail and certain marine services also announced

Mandatory vaccination of CPA employees and RCMP

- **Who does this apply to?**
- All CPA/RCMP employees, regardless of whether they work onsite, remotely, or telework in departments listed under Schedule I and IV of the *Financial Administration Act*.
 - This includes departments such as the Canadian Human Rights Commission, the Staff of the Supreme Court, Statistics Canada, and others.
- Contractors who require access to Federal Government worksites to perform work must also be vaccinated.

Mandatory vaccination of CPA employees and RCMP

What are the requirements?

- All employees must receive two doses (or one dose for single-dose vaccines) of a Canadian government approved COVID-19 vaccine by October 29, 2021. Mixed doses are acceptable.
- Proof of vaccination— employees must attest to their vaccination status in system. Can be asked for proof later.
- There is no alternative for unvaccinated employees to provide a negative COVID-19 test.

Exceptions

- **Clinical trial participants** until such time as the study is completed, the employee withdraws from the study, the employee is informed they received a placebo, or Health Canada declines authorization on the study vaccine.
- Any employee who is unable to be fully vaccinated due to a certified medical contraindication, religion, or any other **prohibited ground of discrimination** as defined in the *Canadian Human Rights Act*.

Consequences of non-compliance

- Employees who can get fully vaccinated but refuse to do so will be subject to:
 - An online training session on COVID-19 vaccination within two weeks after the attestation deadline
 - At two weeks after the attestation deadline, employees will be restricted from the workplace, off-site visits, business travel, and conferences.
 - Employees will then be placed on administrative Leave Without Pay and ordered to cease any work they are currently completing.

Consequences of non-compliance

- Employees who are partially vaccinated and have not received their second dose within 10 weeks of their first will be placed on Leave Without Pay.
 - Once fully vaccinated they will resume work and have their pay reinstated.
 - Partially vaccinated employees may be subject to temporary measures while they remain partially vaccinated.
- Employees who provide false information may be subject to disciplinary action.

Federal employers required to implement policies

- Employers in the federally regulated air, rail and marine transportation sectors must implement their own vaccination policies by October 30, 2021
 - Airlines, airports and other organizations who have employees who work in restricted areas of airports, such as concession and hospitality workers
 - Federally regulated railways, their rail crew and track employees
 - Marine operators with Canadian vessels with 12 or more crew
- Other federally regulated industries strongly encouraged to do the same.

Federal employers required to implement policies

- Policy requirements:
 - Attestation/declaration of status
 - State consequences for failure to comply or falsification of information
 - Meet standards consistent with CPA approach

Travel restrictions

- Effective October 30, 2021, travelers departing from Canadian airports to travel within or outside of Canada, travelers on VIA Rail and Rocky Mountaineer trains, and marine passengers on non-essential passenger vessels on voyages of 24 hours or more are required to be fully vaccinated.
- This applies to all travelers aged 12 and older who are able to be fully vaccinated.
- Until November 30, 2021, partially vaccinated travelers will be allowed to travel via plane, train, or boat if they have a valid COVID-10 molecular test within 72 hours of travel.
- May impact business travel if you have employees who are required to travel for their role who are unvaccinated

Managing a hybrid workplace

Taylor Buckley

Managing a hybrid workplace

Agenda

The hybrid workplace

- Occupational Health and Safety
- Expenses
- Security
- Privacy and confidentiality (business and client)

The hybrid worker

- Hours and recordkeeping
- Employee conduct
- Oversight and privacy (employee)
- Policies

Managing a hybrid workplace

The hybrid workplace

Occupational health and safety

The home is an extension of the workplace

- Workers' compensation and OHS obligations apply
- Education and training - clarify roles, duties and responsibilities
Assessment and reporting of potential hazards
- Safe work practices: e.g., ergonomic considerations, check-ins, emergencies

Expenses

Employers are responsible for business expenses.

- What does the employer require?
- What does the employee have in place?

Managing a hybrid workplace

The hybrid workplace

Security

How secure is the home office?

- Employer-provided devices vs. remote access
- Password protect devices
- Anti-virus software

Confidentiality and technology

In-office and home office practices should be consistent

- Crack down on bad habits/practices with respect to dealing with client information – must continue to be treated as company property
- USB keys should be avoided if possible or encrypted if use can't be avoided
- Take appropriate steps to secure videoconference meetings (passwords, waiting rooms, etc.)

Managing a hybrid workplace

The hybrid worker

Recordkeeping

Employers still have the recordkeeping onus

- Employers must keep records of hours worked (among other things), regardless of where the employee works
- If overtime is condoned, it will be payable
- In an investigation or complaint, the employee's records will be preferred if the employer's are deficient

Employee conduct

Set expectations for a hybrid environment

- All human rights and bullying/harassment/violence laws continue to apply
- How to manage and monitor employee interactions with each other and customers/clients
- Best practices for reviews (positive and negative!), discipline and termination continue to apply
- Do your policies include the types of behaviours and scenarios that may arise in your remote work environment?

Managing a hybrid workplace

The hybrid worker

Oversight & privacy

Monitoring off-site employees

- Beware overreaching technical solutions
- What information is necessary and useful? Can you justify it?
- Give notice of measures, including the how and why
- Protect information and get rid of it when it's no longer needed

Hybrid policies

Does the handbook reflect reality?

- Existing policies likely aren't robust enough for a permanent hybrid arrangement
- "New normal" topics: masks/vaccination; expenses; relocation – employers need to know where their workers are; remote work conduct
- Policy rollout is important – is notice required?

Managing a hybrid workplace

Conclusions – hybrid work strategy

Set **clear expectations** about when and where teams perform work

Adopt a **sufficient flexibility** framework that reflects strategic goals, but allows managers and teams to work together effectively

Consider inclusion and address bias to enable the success and engagement of all employees, wherever they work

Address changes as we move to a **post-pandemic** workplace

Create **monitoring processes** to ensure employees can adjust as necessary

Identify **training and formal support programs** required to support managing the difficult aspects of hybrid work

Thank you



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