

An aerial, high-angle photograph of a crowd of people standing on a light-colored surface marked with a grid of thin lines. Several large, semi-transparent circular highlights are overlaid on the grid, creating a network-like structure. The overall color palette is warm, dominated by yellows and oranges. The people are seen from above, their shadows cast on the ground.

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What you need to know about mandatory vaccinations and vaccine passports

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

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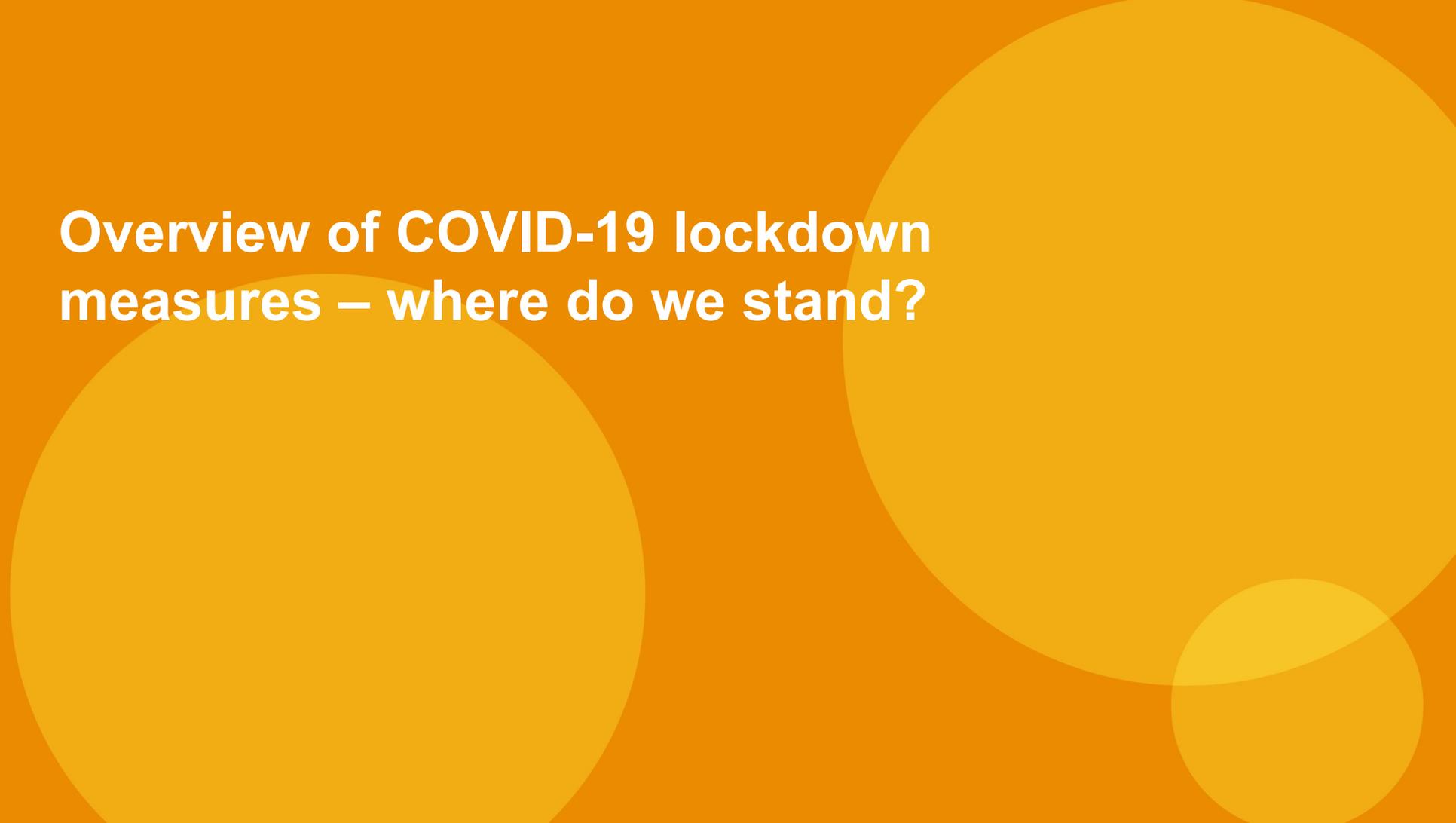
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The background is a solid orange color with a gradient. There are three large, semi-transparent yellow circles of varying sizes scattered across the page. One is in the top right, one is in the bottom right, and one is in the bottom left.

Overview of COVID-19 lockdown measures – where do we stand?

Overview of lockdown measures (coast to coast)

- British Columbia
 - Step Three of BC's Restart Plan
 - Additional restrictions in effect in the central Okanagan and Northern Health regions
 - Mandatory mask mandate reintroduced
- Alberta
 - Stage Three of Alberta's Open for Summer Plan
 - Restrictions reintroduced
 - Mandatory mask mandate
 - Mandatory work-from-home measures
 - Operational restrictions
 - Indoor and outdoor ceremonies, services and receptions
 - In-person dining, liquor sales and consumption
 - Attendance at retail, entertainment and recreational facilities
 - Indoor group classes or activities

Overview of lockdown measures (coast to coast)

- Saskatchewan
 - Step Three of the Re-Opening Roadmap
 - Mandatory mask mandate reintroduced
- Manitoba
 - Phase Three of the 4-3-2-One Great Summer Plan
 - Mandatory mask mandate reintroduced
- Ontario
 - Step Three of the Roadmap to Reopen
 - Physical distancing, mandatory masking, screening and PPE requirements remain in effect

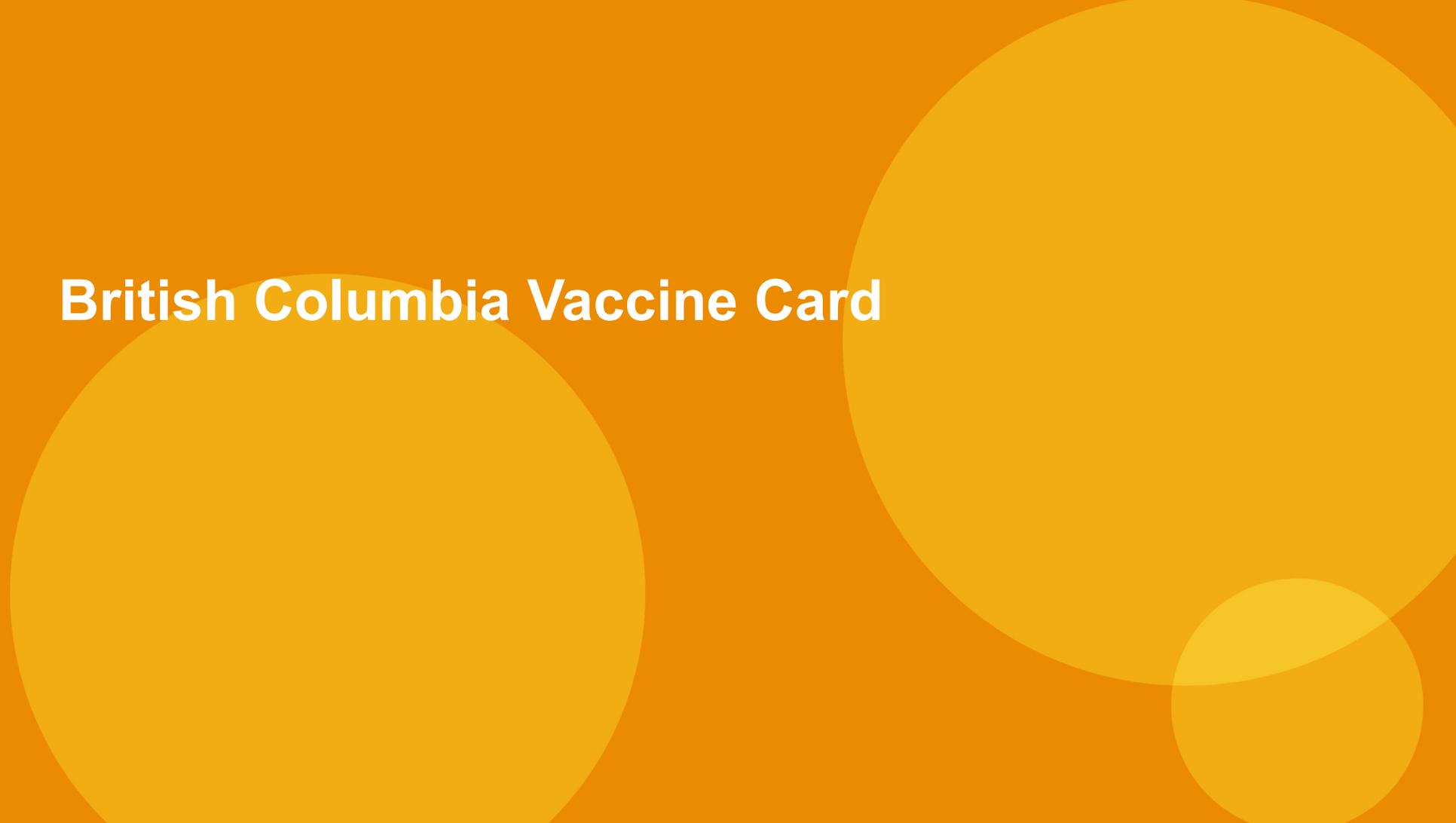
Overview of lockdown measures (coast to coast)

- Québec
 - Level 1 – Vigilance (Green) Zone
 - Certain restrictions remain in effect
 - Telework remains recommended
- New Brunswick
 - “Green” Zone of the COVID-19 Alert Level System
 - Mandatory mask mandate reintroduced
- Nova Scotia
 - Phase Four of the Reopening Safely with COVID-19 Plan
 - Move to Phase Five of the Reopening Safely with COVID-19 Plan – delayed

Overview of lockdown measures (coast to coast)

- Prince Edward Island
 - Steps Three and Four of the COVID-19 in PEI: Moving Forward Plan
 - Mandatory masking mandate reintroduced
- Newfoundland and Labrador
 - Step Two of the Together Again Plan
 - Certain additional restrictions in effect in regions of the province
- Territories
 - Yukon
 - Northwest Territories
 - Nunavut

British Columbia Vaccine Card

The background of the slide is a solid orange color. It features three large, semi-transparent circles in shades of yellow and light orange. One large circle is on the left side, another large one is on the right side, and a smaller one is positioned at the bottom right, overlapping the larger circle on the right.

British Columbia – Vaccine Passport

- Proof of vaccination is required to access certain “discretionary” events, services and businesses
 - September 13: Partially vaccinated
 - October 24: Fully vaccinated
 - January 31, 2022: Expiry, unless extended

Vaccine passport requirements are set out in two Orders of the Provincial Health Officer made September 10:

1. Regarding Gatherings and Events <https://www2.gov.bc.ca/assets/gov/health/about-bc-s-health-care-system/office-of-the-provincial-health-officer/covid-19/covid-19-pho-order-gatherings-events.pdf>
2. Food and Liquor Serving Premises <https://www2.gov.bc.ca/assets/gov/health/about-bc-s-health-care-system/office-of-the-provincial-health-officer/covid-19/covid-19-pho-order-nightclubs-food-drink.pdf>

British Columbia – Vaccine Passport

Gathering and Events

- The Order does not apply to workers at a workplace when engaged in their work activities (paragraph L, preamble)
- Part D sets out Proof of Vaccination requirements
 - An organizer of an **event** must obtain, and a **participant** must provide, proof in the form of a **vaccine card**, of having received two doses of vaccine (only one dose required prior to Oct 24). Absent such proof, a participant must not enter or be allowed to enter or remain at a place for an event.
 - “**event**” means a gathering of more than 50 **participants** in an inside place for social, entertainment, dancing, choral, musical, recreational, gambling, arts or crafts, or business and includes a ticketed sports activity, concert, theatrical production, dance or symphony performance, festival, conference, convention, trade fair, home show, workshop, wedding reception, funeral reception not at a funeral home, and a sponsored, ticketed party...[the definition continues]
 - “**participant**” means a person who attends an event, but does not include an organizer, event staff member, official, performer, player, athlete, officiant, or any other person who is acting in an official or service capacity.
 - “**vaccine card**” means photo ID plus electronic or printed proof of the BC government issued QR code or another listed form of official government proof, including from the government of Canada. Paper vaccination record can be used until Sept 26.

British Columbia – Vaccine Passport

Food and Liquor Serving Premises

- Order does not apply to take out, counter-service only premises, food courts, industrial camps, workplace cafeterias, or cafeterias that serve food or liquor to residents rather than the general public (preamble, paragraph M)
- An operator must obtain, and a **patron** must provide, proof in the form of a vaccine card, that the patron has received two doses of vaccine (only one required prior to Oct 24) in order to be served in a **premises**. Absent such proof, a patron must not remain on the premises.
- “**patron**” means a person who is present as a customer on premises, but does not include an owner, operator or member of staff
- “**premises**” includes both the inside and outside area of a place being operate as a restaurant with table service or a café, a food primary or liquor primary establishment, including a pub, bar, lounge, nightclub, liquor manufacturing facility that has a tasting room with seating or a private club.

British Columbia – Vaccine Passport

Both Orders

- Operators/organizers must not:
 - scan QR code with any tool other than the BC Vaccine Card Verifier App;
 - Retain proof of vaccination or identification, or use it for any other purpose
- But, with written consent of the participant/patron, an organizer/operator may keep a record of the fact the individual has provided proof of vaccination in compliance with the Order, and can rely on that record to satisfy the requirements at the premises or in relation to participation in an event in the future.

COVID-19 public health restrictions in Alberta

Overview

- Alberta Government declared state of emergency on September 15th
- New restrictions took effect on September 16th and 20th
- The Restrictions Exemption Program began on September 20th
 - High level overview
 - Special requirements for the City of Calgary

In-scope operators

- Restaurants
- Nightclubs
- Casinos
- Entertainment and recreation centers (arcades, museums, galleries)
- Movie theatres
- Conferences, meeting spaces, halls, rented space
- Weddings and funerals held in public facilities
- Spectators at professional sporting/performance events
- Private social events in public facilities
- Recreation and fitness facilities
- Amenities in hotels and condos

Out-of-scope operators

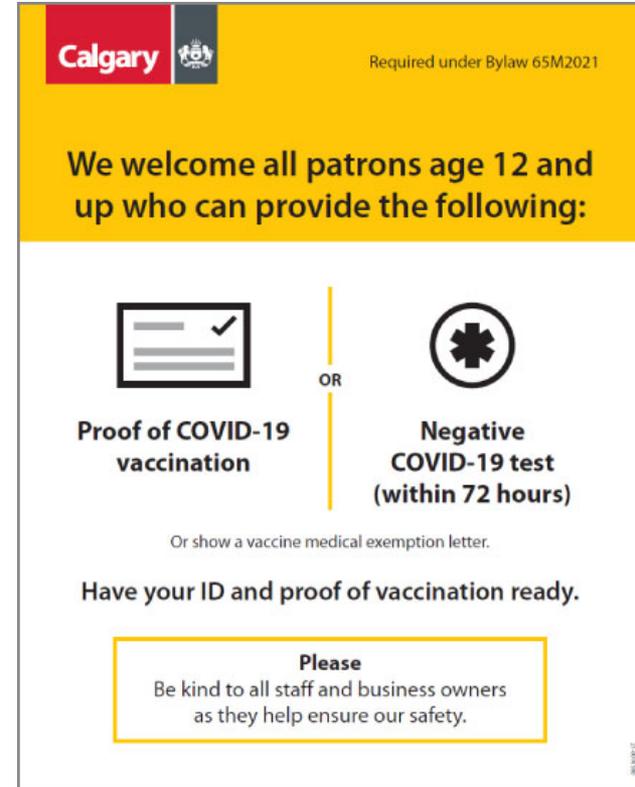
- Retail, shopping malls, food courts
- Events in private dwellings
- Libraries
- Schools (K-12)
- Accommodations (e.g. hotel)
- Places of worship – for faith services
- Health services
- Personal services
- Wellness services
- Publicly-funded post secondary institutions
- First Nations college entities

Restrictions Exemption Program

- Allows business to operate as usual (masks still required)
- Businesses who implement the program will require:
 - Proof of vaccination or
 - Proof of privately-paid negative test or
 - Documentation of medical exemption
- Single dose (+2 weeks) accepted between September 20 and October 25
- Program does not apply to:
 - Businesses required for daily living purposes
 - Employees/workers entering business for work

Calgary Vaccine Passport Bylaw 65M2021

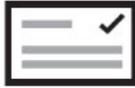
- Effective September 23rd
- All eligible businesses in Calgary must follow or exceed the Restrictions Exemption Program requirements
- Businesses must display signage
 - Failure could result in \$200 fine
- Penalties
 - Failure to provide proof of vaccination: \$500
 - Failure to provide signage: \$200
 - Permitting a person to enter without proof of vaccine: \$500
 - Subsequent offences within 12-month period will result in higher penalties



The graphic is a rectangular sign with a yellow header and a white body. The header contains the Calgary logo and the text 'Required under Bylaw 65M2021'. Below the header, a yellow banner reads 'We welcome all patrons age 12 and up who can provide the following:'. The main body features two options separated by a vertical line and the word 'OR'. The first option is 'Proof of COVID-19 vaccination' with an icon of a document with a checkmark. The second option is 'Negative COVID-19 test (within 72 hours)' with a medical cross icon. Below these options, it says 'Or show a vaccine medical exemption letter.' and 'Have your ID and proof of vaccination ready.' At the bottom, a yellow-bordered box contains the text 'Please Be kind to all staff and business owners as they help ensure our safety.'

Calgary  Required under Bylaw 65M2021

We welcome all patrons age 12 and up who can provide the following:

 OR 

Proof of COVID-19 vaccination **Negative COVID-19 test (within 72 hours)**

Or show a vaccine medical exemption letter.

Have your ID and proof of vaccination ready.

Please
Be kind to all staff and business owners as they help ensure our safety.

Business restrictions: restaurants, cafes, bars, pubs and nightclubs

- Outdoor dining only
- Max 6 people/table
 - 1 household or 2 close contacts for those living alone
- Liquor
 - Sales must end at 10pm
 - Consumption must end by 11pm

Business restrictions: adult indoor sport, fitness, recreation and performance activities

- Indoor group classes/activities not permitted
- 1-on-1 training and solo activities permitted with 3m physical distancing
- Indoor competitions paused except where vaccine exemptions granted
- No restrictions for outdoor activities

Out of Scope Businesses - masks and physical distancing etc.

- Masking and 2m physical distancing mandatory in all indoor public spaces, workplaces and places of worship
- Employees must mask except while alone in work stations
- Restrictions Exemption Program does not apply to masking
- Capacity limits
- Exceptions for approved medical conditions
 - Medical exception letter from authorized health professional required

Working from home

- Mandatory work from home, unless physical presence required for operational effectiveness

Québec vaccination passport

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Québec vaccination passport

- Since September 1st, 2021, by the *Order in Council no.1173-2021*, the vaccine passports were introduced in the province of Quebec.
- Individuals with the COVID-19 vaccination passport can be admitted in certain locations and non-essential activities where the risk of transmission is high.
- Individuals need to show a QR code that contains the protection status as proof of vaccination against COVID-19. The proof can be shown in one of three ways:
 - With the electronic proof-of-vaccination QR code produced by the Quebec government;
 - With a printout of the proof-of-vaccination QR code produced by the Quebec government; or
 - With the QR code produced by the VaxiCode app.
- A photo ID will be required for all persons age 16 and over, regardless of the QR code format that is used.

Vaccine Passport and proof of vaccination requirements (continued)

Saskatchewan

- Effective October 1, 2021, certain establishments, businesses and event venues will be required to implement proof of vaccination or negative test requirements
- Protocols for developing proof of negative test requirements are currently underway
 - Protocols will include the provision of documentation demonstrating proof of a negative COVID-19 PCR or rapid antigen test provided by a certified healthcare provider
- COVID-19 vaccination record can be downloaded, saved, printed or viewed on a mobile device
- Note: It is expected that by the end of September, businesses and organizations will have the option to download and use a free QR code verifier application to verify immunization status

Manitoba

- Effective September 3, 2021, certain businesses and organizations are required to limit admission to members of the public who produce proof of full vaccination against COVID-19
- Individuals who are unable to receive a COVID-19 vaccination due a medical exemption are permitted to present proof of a medical exemption from the Government of Manitoba
- Children aged 11 and under who are not eligible to receive a COVID-19 vaccination are permitted to attend events and activities with a fully immunized adults
- Manitoba Digital Immunization Card is used to validate proof of immunization for non-medical services
- Manitoba Immunization Verifier Application allows individuals and businesses to scan Manitoba Immunization Cards to confirm that an individual is fully vaccinated against COVID-19

Ontario

- Effective September 22, 2021, businesses and organizations are required to implement proof of vaccination requirements in certain settings and facilities
 - Individuals are required to produce proof of vaccination **and** proof of identification
- Individuals who cannot receive the vaccine due to a medical exemption can produce a written document completed and supplied by a physician or registered nurse
 - Must identify: (i) reason for not being fully vaccinated and (ii) expected time period exemption will apply
- Proof of vaccination requirements do **not** apply in the following circumstances:
 - To access the washroom or an outdoor area that can only be accessed through an indoor route
 - To make a retail purchase, to purchase admission or while placing, paying for or picking up an order
 - As may be necessary for the purposes of health and safety
- Effective October 22, 2021, an enhanced vaccine certificate as well as a verification application will be available for download in the province

New Brunswick

- Effective September 22, 2021, persons are required to show proof of vaccination when accessing certain events, services and businesses
- Business or organizations subject to the requirements **must** ask to see proof of vaccination and government issued identification from all patrons and participants aged 12 and older
- Individuals who are unable to receive a vaccination due to a medical exemption must show proof of exemption signed by a healthcare provider
- Proof of vaccination may be in the form of a photocopy, photo, digital proof or display on an electronic device

Nova Scotia

- Effective October 4, 2021, proof of full vaccination will be required to participate in discretionary, recreational or non-essential activities
- Proof of vaccination requirements will **not** apply to the following individuals:
 - Children 11 years of age and under
 - Staff of businesses and organizations that offer events and activities where the requirements apply
- Persons are permitted to use Nova Scotia COVID-19 Proof of Vaccination received following COVID-19 vaccination as proof of vaccination
- Note: Province is developing a process to provide exemptions for persons with medical conditions preventing the individual from receiving the COVID-19 vaccination

What about the remainder of the country?

- Prince Edward Island
 - Vaccine passport system expected to come into effect on October 5, 2021
- Newfoundland and Labrador
 - Intends to move forward with a vaccination passport
- Yukon
- Northwest Territories
- Nunavut

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The latest on mandatory vaccination policies

The basics

- Can an employer ask an employee to disclose their vaccination status? **YES**
- Can an employer implement a mandatory vaccination policy? **YES**
- Can an employer make being fully vaccinated a condition of employment for new hires? **YES**

Can an employer ask an employee whether they have received the vaccination for COVID-19?

- Generally speaking, under health and safety legislation, employers have a duty to take all reasonable precautions to protect the health and safety of workers

Should employers just ask employees – or can they require proof?

- Employers must determine what **form of proof** (if any) will be acceptable for workplace re-entry.
 - Will the employer accept the employee’s word that they’ve been vaccinated?
 - If the employee is required to provide proof, will the employer visually examine it or make a copy of it?
 - Who will inspect/collect the “proof”, and for what purpose (demonstrably justified)?
- Privacy guidance materials state that the reason for recording employee vaccination status must be “clear and compelling”. **Collecting it ‘just in case’ will not be sufficient.**
- Any information kept (e.g., status, copies of certificates and/or ID) is required to be accessible on request by the data subject under privacy laws. **Pro tip:** collect only bare minimum of personal information necessary to reduce compliance risk (also decreases impact of any breach).

What about getting consent?

- Absent an order or law, the Canadian Privacy Commissioners' Joint Statement concludes that consent **may** provide sufficient authority to proceed, but only if it meets all of the following conditions:
 - Consent must be **voluntary and meaningful**, based on **clear and plain language** describing the specific purpose to be achieved;
 - The information must be **necessary** to achieve the purpose;
 - The purpose must be one that a reasonable person would consider **appropriate** in the circumstances;
 - Individuals must have a true choice: **consent must not be required as a condition of service.**

What about consent in Québec?

- **Consent does not solve the problem in Québec.**
- As the Canadian Privacy Commissioners' Joint Statement points out, in Québec, “consent cannot form the legal basis for vaccine passports. In that jurisdiction, requesting their presentation would require that the information is necessary to achieve a specific purpose, one that is serious and legitimate.”

What information can the employer collect?

- Ask, show or copy?
 - Collection of documentation or other information may not actually be necessary. In many circumstances, it may be appropriate for an employer to simply accept the employee's **verbal statement** that they have had the vaccination (possibly backed up with an attestation as to the truth of that statement).
 - In other circumstances (e.g. healthcare setting), it may be appropriate to request that the employee to **show a vaccination certificate.**)
 - In most cases it will be difficult to justify making and retaining an actual **copy of such a certificate**, and organizations should consider carefully before doing so.
- Data minimization: prohibit the tracking of activities of individuals and “the creation of new central databases of vaccine information nationally or across jurisdictions”.
 - For businesses, this suggests that a centralized national customer database that contains vaccination status may be forbidden (for example, a hotel chain would be able to keep vaccination status information locally at each hotel, but could not record such information in its national CRM system).

How long should an employer keep the information?

- It may be the case that such information collected is adequately addressed by existing retention policies and it will be destroyed in accordance with those policies.
- More likely, vaccine status information will need to be destroyed earlier than an employer's standard procedure, as the purpose of the collection will very likely be time-limited (especially once public health orders and other restrictions are lifted).
- The Canadian Privacy Commissioners' Joint Statement contains similar advice, explicitly stating “[a]ny personal health information collected through vaccine passports **should be destroyed and vaccine passports decommissioned when the pandemic is declared over by public health officials or when vaccine passports are determined not to be a necessary, effective or proportionate response to address their public health purposes.** Vaccine passports should not be used for any purpose other than COVID-19.”

Can the employer use the vaccination information for any other purpose? Can the business?

- The short answer is no in both cases.
- As the Canadian Privacy Commissioners' Joint Statement notes, “[s]econdary uses of personal health information collected, used or disclosed through vaccine passports must be limited to only those required or authorized by law”. This would preclude almost all other uses.
- In the employment context, the employer must determine its authority to collect the information for a defined purpose, and only collect the information for that purpose). The employer should check the relevant legislation before using that information for any other purpose (for instance, health or emergency orders, disclosure to law enforcement, etc.) without first getting the consent of the employee” (and note that in Quebec, “consent cannot form the legal basis for vaccine passports”.)

Do employers or businesses need to develop a policy on COVID-19 vaccinations?

- Once an employer has made a decision, the employer should consider developing a policy (this may already be required in some municipalities). The Advisory suggests any such policy should contain:
 - Authority for the collection;
 - A statement of the purpose;
 - A statement as to whether employees will be asked to show a vaccination certificate;
 - A statement on possible actions taken based on whether employee has/hasn't been vaccinated;
 - A statement on where information will be stored;
 - A statement as to who it will be shared with (with public authorities or not); and
 - A statement on when the information will be destroyed.
- Businesses should include “who to contact to request access to, and correction of, any information available through vaccine passports or to make an inquiry or complaint about vaccine passports.”

Do employers or businesses need to develop a policy on COVID-19 vaccinations?

- The policy should also allow for accommodations for employees who cannot be vaccinated

Do employers or businesses need to develop a policy on COVID-19 vaccinations?

- [OHRC Policy Statement on COVID-19 Vaccine Mandates and Proof of Vaccine Certificates](#):
 - **Duty to Accommodate for Medical Reasons:** “Consistent with the duty to accommodate, the provincial proof of vaccine regime says that people who are unable to receive the vaccine must provide a written document, supplied by a physician (MD) or by a registered nurse extended class [RN(EC)] or nurse practitioner (NP) stating they are exempt for a medical reason from being fully vaccinated and how long this would apply. The written document may be required until recognized medical exemptions can be integrated as part of a digital vaccine certificate. The OHRC’s position is that exempting individuals with a documented medical inability to receive the vaccine is a reasonable accommodation within the meaning of the Code.”

Do employers or businesses need to develop a policy on COVID-19 vaccinations?

- [OHRC Policy Statement on COVID-19 Vaccine Mandates and Proof of Vaccine Certificates](#):
 - **Duty to Accommodate for Religious Reasons:** “...the OHRC’s position is that a person who chooses not to be vaccinated based on personal preference does not have the right to accommodation under the Code. The OHRC is not aware of any tribunal or court decision that found a singular belief against vaccinations or masks amounted to a creed within the meaning of the Code. While the Code prohibits discrimination based on creed, personal preferences or singular beliefs do not amount to a creed for the purposes of the Code.”
 - “Even if a person could show they were denied a service or employment because of a creed-based belief against vaccinations, the duty to accommodate does not necessarily require they be exempted from vaccine mandates, certification or COVID testing requirements. ***The duty to accommodate can be limited if it would significantly compromise health and safety amounting to undue hardship – such as during a pandemic.***

What are the employment law implications of a mandatory vaccination policy?

- Employee's failure/refusal to get vaccinated may constitute just cause for dismissal or result in frustration of employment depending on the circumstances
- Placing unvaccinated employees on unpaid leave of absence (Ontario employers could consider IDEL)
- Introducing a mandatory vaccination policy could result in a constructive dismissal claim; however, offering employee the ability to work remotely will be a good defence for mitigation purposes
- Offers of employment to new employees could be made conditional on the employees being fully vaccinated (subject to human rights accommodations)

Questions?

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Upcoming events

- **The Fourth Wave and beyond: a discussion on agile work**
Tuesday, September 28
8:30 – 9:30 a.m. PT
- **3rd annual Dentons Data Summit**
Wednesday, September 29th
12:00 – 4:00 p.m. ET
- **Global Employment and Labor webinar series: Independent contractors and worker misclassification**
September 29 (11 a.m. – 12 p.m.)
October 20 (11 a.m. – 12:15 p.m.)
November 10 (11 a.m. – 12:15 p.m.)

Visit our [Events page](#) or contact our [events team](#) to register.

Details will also be provided in the post event email.

Thank you



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