



Factsheet

COVID-19 and The Human Rights Code

COVID-19 & Terminations, Time-off and Lay-Offs

1. Can my employer terminate me if I cannot work because of COVID-19?

- Under Manitoba's *Human Rights Code* ("The Code"), an employer may not discipline or terminate an employee who has been diagnosed with COVID-19 or is perceived to have COVID-19 (because, for example, they are exhibiting certain symptoms). Similarly, an employer may not discipline or terminate an employee if they are unable to come to work because medical or health officials have quarantined them or have advised them to self-isolate and stay home in connection with COVID-19. In these circumstances, employer absenteeism policies must not negatively affect employees. Recently, Manitoba introduced the Public Health Emergency Leave, a temporary job-protected leave for employees who are unable to work for circumstances related to COVID-19. For more information, visit Manitoba Employment Standards at: www.manitoba.ca/labour/standards.
- Employees who cannot work because of COVID-19 may also be entitled to sick or disability or other leave benefits that may be available from their employer under the federal Employment Insurance (EI) program.
- Employees also have other rights under Manitoba's *Employment Standards Code* regarding termination (e.g. severance and notice of termination). For more information, contact Manitoba Employment Standards.

2. Can my employer lay me off if there is no work to do because of COVID-19? Does my employer still have to pay me?

- It is not discrimination under *The Code* if an employer needs to lay off employees because there is no work for them to do as a result of financial or operational impacts of COVID-19 on the business.
- However, if an individual employee is unable to perform their usual work in the context of the COVID-19 pandemic for reasons related to a *Code*-protected ground (for example, because a medical condition puts them at greater risk of contracting or having a severe outcome related to COVID-19), employers should explore all possible accommodation options up to the point of undue hardship before laying them off due to lack of suitable work. Potential accommodations could include modified shifts or duties, working remotely or an alternate position where feasible.
- *The Code* does not require employers to pay employees if they are not working or if there is no work for them to do because of the impacts of COVID-19.
- *The Employment Standards Code* sets out rights and obligations regarding payment of wages, temporary

layoffs, constructive dismissal and termination. For more information on Manitoba Employment Standards, visit www.manitoba.ca/labour/standards.

3. Can my employer refuse to let me work because of COVID-19?

- An employer should not send an employee home or ask them not to work because of concerns over COVID-19, unless the employer's concerns are reasonable and consistent with information from medical and public health officials. Currently, Manitoba public health officials are advising workplaces to practice physical distancing, which might require some employees to work from home fulltime or on a rotational basis, or not work.
- The Commission recognizes the importance of balancing a person's right to non-discrimination with public health and safety, including the need to address evidence-based risks associated with COVID-19 and safety risks.
- Therefore, the right to be free from discrimination may be justifiably limited in some circumstances under *The Code* (for example, where health and safety risks are serious and would amount to undue hardship).
- Employers should ensure any restrictions on employees are evidence-based and consistent with current information from medical and public health officials, and are justified for health and safety reasons.
- Employers also have obligations for workers' health and safety on the job under *The Workplace Safety and Health Act*. For more information on workplace safety and health in Manitoba, visit: www.manitoba.ca/labour/safety.

4. Does my employer have to accommodate me if I test positive or if I become sick because of COVID-19?

- The Commission's policy position is that the *Code*-protected ground of disability is engaged in relation to COVID-19, as it covers medical conditions or perceived medical conditions that carry significant social stigma.
- Employers have a duty to accommodate employees under *The Code* in relation to COVID-19, unless it would amount to undue hardship (for example, due to excessive costs or health and safety risks).
- Employers should also be sensitive to other factors such as any particular vulnerability an employee may have (for example, if they have a compromised immune system).
- Recently, Manitoba introduced the Public Health Emergency Leave, a temporary job-protected leave for employees who are unable to work for circumstances related to COVID-19. For more information, visit Manitoba Employment Standards at: www.manitoba.ca/labour/standards.

5. Do I need to get a medical note to support my need for time off work because of COVID-19?

- To reduce strain on our health care system, employers cannot request a note from a doctor, nurse or other health professional to verify an employee's eligibility to take leave for reasons related to COVID-19. However, employers can request reasonable verification of the need for the leave. For more information, contact Manitoba Employment Standards at www.manitoba.ca/labour/standards.

COVID-19 and Caregiving, Childcare and Education

5. Does my employer have to accommodate me if I need to stay home with my kids or an ill family member?

- An employer must accommodate an employee who has caregiving responsibilities up to the point of undue hardship.
- These caregiving responsibilities, which relate to the *Code*-protected ground of family status, could include situations where another family member is ill or in self-isolation, or where their child's school is closed due to COVID-19.
- Potential accommodations can include allowing employees to work from home where feasible, work alternate hours, take leaves from work, or other flexible options.
- Recently, Manitoba introduced the Public Health Emergency Leave, a temporary job-protected leave for employees who are unable to work for circumstances related to COVID-19. For more information, visit Manitoba Employment Standards at: www.manitoba.ca/labour/standards.

6. My kids are not back in school or at their childcare service because of COVID-19. I cannot afford other daycare or time off work to stay home with my kids. Does my employer have to help me? What financial assistance options do I have?

- *The Code* does not require employers to provide additional financial assistance to employees who are impacted by COVID-19.
- Individuals who are in a crisis or emergency situation (because of COVID-19, for example) and do not have enough money for things like food and housing, may be eligible for employment and income assistance from the Manitoba government. For more information, visit www.gov.mb.ca/fs/eia/index.html
- If an employee has to stop working because of COVID-19, they may be eligible for federal income support.

7. While daycares and schools have re-opened for in-person learning, I have decided to enroll my children in remote learning or homeschooling. Does my employer need to accommodate?

- An employer has an obligation to consider accommodation requests and to reasonably accommodate the individual needs of an employee who has caregiving responsibilities, up to the point of undue hardship.
- Depending on individual circumstances, a caregiver may need to stay home from work because their child cannot go to school or daycare for a reason related to COVID-19. This includes, but is not limited to, situations where the child or another family member is ill or in self-isolation; where the child or another family member is immunocompromised or at higher risk of contracting COVID-19; or where schools or daycares are closed.
- Accommodations may be necessary to avoid situations that would result in a real disadvantage to the parent/child relationship or put people in a position of having to choose between working and caregiving.
- Potential accommodations can include allowing employees to work from home, work alternate hours, take leaves from work, or other flexible options, where feasible.
- Recently, Manitoba introduced the Public Health Emergency Leave, a temporary job-protected leave for employees who are unable to work for circumstances related to COVID-19. This includes circumstances

where the employee is providing care, support or assistance to a family member as a result of COVID-19 including, but not limited to, school and daycare closures.

- For more information, visit Manitoba Employment Standards at: www.manitoba.ca/labour/standards

COVID-19 Testing Requirements

8. Can my employer ask me if I have tested positive for COVID-19? Can they disclose that information and my name to other employees?

- Generally, an employer does not have the right to know a person's confidential medical information or disclose that information to others.
- However, in situations like the COVID-19 pandemic, it may be necessary for an employer to request and disclose information about an employee's health to others in some cases, if there are compelling circumstances affecting employee health and safety.
- The Commission's policy position is that the *Code*-protected ground of disability is engaged when employers, housing or other service providers have requirements related to COVID-19. Medical testing to determine fitness to safely perform work, or to protect people receiving services or living in congregate housing, may be permissible under *The Code* if the testing is shown to be effective and necessary to promote public health and safety in circumstances such as a pandemic.
- Employers would need to justify an intrusion on a person's privacy based on the health and safety risks in their workplace. It is important for employers to consider whether risks to workplace health and safety outweigh the severe impacts on employees' privacy, and find ways to balance these interests.
- Making overly broad requests and sharing medical information may undermine the dignity and privacy of employees with disabilities. Requesting and sharing medical information should only be done in a way that intrudes as little as possible on a person's privacy, and does not go beyond what is necessary to ensure employees are healthy and safe and/or to accommodate an employee's individual needs.
- It is particularly important that medical information is handled in a way that maximizes confidentiality. When necessary, employers should only disclose that an unnamed employee has tested positive for COVID-19. Any information that could identify the employee should not be disclosed to other employees unless there is an urgent health and safety justification to do so at that time.
- Medical information about an employee and their identity should only be shared with staff who need the information to help manage a situation, or where required by law.
- *The Code* and the Commission's policies also recognize that employers have a duty to reasonably accommodate the needs of employees who test positive for COVID-19, and may request medical information to verify an employee's need for individual accommodation.
- Requesting and disclosing medical information should also be done in accordance with privacy laws. Employers should be guided by privacy principles such as meaningful consent and ensuring that individuals understanding of the nature, purpose and consequences of the collection, storage, use or disclosure of their personal information.
- For more information about privacy laws and how they apply to public and private employers, please see the Manitoba Ombudsman: www.ombudsman.mb.ca or the Office of the Privacy Commissioner of Canada: www.priv.gc.ca/en

9. Can an employer, service provider or housing provider make me do a medical test related to COVID-19, like take my temperature?

- The Commission's policy position is that the *Code*-protected ground of disability is engaged when employers, housing or other service providers impose medical testing, such as taking your temperature or having you take a COVID-19 test. Medical testing to determine fitness to safely perform work, or to protect people receiving services or living in congregate housing, may be permissible under *The Code* if the testing is shown to be effective and necessary in circumstances such as a pandemic.
- At the same time, the use of information from medical tests may have a negative impact based on a person's disability. Organizations should only seek the minimal amount of information from medical testing that is reasonably necessary to protect everyone's health and safety, while excluding unnecessary information (for example, information that may identify a pre-existing disability).
- Any form of medical testing should prove to be effective at assessing an employee's ability to safely perform work, or to protect people receiving services or living in communal housing. Only a qualified person should conduct medical tests.
- A test result must not lead to automatic negative consequences such as employee discipline or termination, complete denial of service or eviction from housing (for example, if a person is exhibiting certain symptoms but returns a negative test result, or if they have been or may have been exposed to COVID-19).
- Organizations have a duty under *The Code* to accommodate people who are negatively impacted by COVID-19 test results, unless it would amount to undue hardship based on excessive cost or health and safety risks.
- Everyone involved should be flexible in exploring accommodations, including alternative ways a person might continue to safely work, receive a service or live in congregate housing.
- Organizations should make clear the reasons why a medical test is needed in the circumstances and ensure prior, informed consent.
- Organizations must explain how they will store, use and dispose of information from a test and protect the person's privacy as much as possible.
- Organizations should only require the least intrusive means of testing necessary in the circumstances.

COVID-19 Mask Requirements

10. Can my employer, service provider or housing provider require me to wear a face mask because of COVID-19?

- In accordance with current public health orders, masks must be worn in indoor public places in Manitoba.
- Public health officials advise that wearing masks offers important protection to others, especially when physical distancing is hard to maintain.
- The Commission's policy position is that any requirements related to health and safety in the context of COVID-19 (such as wearing a mask, using other personal protective equipment, or following a procedure to perform work safely or to protect people receiving services or living in shared or congregate housing) do not generally cause concern under *The Code*.
- At the same time, employers and housing and service providers should recognize that health and safety requirements such as masks may have a negative impact on vulnerable populations identified by a

- ground under *The Code*, such as social disadvantage, who may not have access to such equipment.
- People with certain disabilities may have difficulty wearing a mask if, for example, they have severe respiratory or breathing issues in connection with a medical condition. Masks are also a barrier to people with hearing impairments who rely on lip reading or facial expressions to communicate. Masks may not be suitable for children and adults with certain physical, intellectual or cognitive disabilities such as autism.
 - Individuals would have to make an organization aware when they cannot access or wear a mask in connection with a *Code*-protected ground. Organizations have a duty under *The Code* to accommodate these types of individual needs related to COVID-19 requirements, unless it would amount to undue hardship based on excessive cost or health and safety risks. For example, it may be necessary to provide free masks or other means so that people who face barriers in accessing protective equipment can continue to access employment, services or housing with fewer barriers. For individuals who cannot wear masks, organizations may explore the feasibility of offering reasonable accommodations. This could look like curbside pickup or virtual service delivery to allow a person to receive a retail service even if a disability prevents them from being able to wear the required mask to enter a business.
 - An individual's inability to access or use a mask or other personal protective equipment, or to follow a health and safety procedure, must not lead to automatic negative consequences such as employee discipline or termination, complete denial of service or eviction from housing. Moreover, no one should experience harassment or other discriminatory treatment based on a *Code*-protected ground because they are unable to wear a mask.
 - In particular, service providers (i.e. stores, restaurants and other public service providers) should be cautious when asking individuals to provide medical information to substantiate their need not to wear a face mask. Unnecessary or non-critical visits to medical offices increases further risk of COVID-19 exposure for everyone and places an additional burden on individuals with disabilities or other *Code*-protected grounds who are attempting to access essential services. Service providers are entitled to explore alternatives, such as curbside pickup or virtual service delivery, particularly in circumstances where physical distancing may be difficult to maintain.
 - In some situations, such as an employment or ongoing service relationship, or where risk of COVID-19 transmission is increased due to the nature of the service/employment, it may be reasonable to ask for medical information to substantiate a need not to wear a face mask.
 - While organizations should be cautious about requesting medical information, individuals requesting accommodation should be prepared to provide general information as to the nature of their *Code*-related restrictions that prevent them from being able to wear a mask, and be open to exploring other ways that they may be able to receive a service.
 - Everyone involved should be respectful and flexible and should explore whether accommodation is possible, including alternative ways a person might safely continue to work, receive a service or live in shared or congregate housing.

COVID-19 Vaccination Requirements

11. Can my employer or any service or housing provider require proof that I've received a COVID-19 vaccine?

- Requiring someone to be vaccinated and/or provide proof-of-vaccination in order to access

employment, services, housing, or enter into a contract, may result in discrimination on the basis of a *Code*-protected ground like disability, religious belief, age, ancestry/race, national origin, and family status. In addition, some individuals experience barriers in accessing vaccines for equity related reasons including language barriers, lack of access to internet or transportation, lack of identification or health insurance coverage, etc.

- While discrimination can arise from mandatory vaccination policies, the Commission recognizes that there may be some limited circumstances where the implementation of a mandatory vaccination policy may be legitimate and necessary (i.e. defensible under human rights law), but only if less intrusive means of managing health and safety risks to prevent COVID-19 transmission are inadequate for the setting and only where due consideration has been given to the human rights of everyone involved. This can only be determined on a case-by-case basis.
- When implementing a vaccination requirement, organizations should take steps to eliminate barriers to access for people who would like to receive a vaccination against COVID-19.
- Organizations should also make sure mandatory vaccination policies are absolutely necessary and proportional to current risks associated with the context in which they apply. These policies should provide for reasonable accommodation of people who cannot be vaccinated for reasons related to a *Code*-protected ground, and consider the privacy risks involved in collecting information about vaccination status.
- The Commission recently issued a Guideline on Human Rights and COVID-19 Vaccine Requirements. This Guideline outlines the human rights considerations and principles that must be taken into account when it comes to mandatory vaccination and proof of vaccination policies. For more information, please refer to this Guideline: www.manitobahumanrights.ca/v1/education-resources/resources/pubs/guidelines/guidelinecovidvaccine.pdf
- While there are important human rights considerations when determining whether to implement a COVID-19 mandatory vaccination policy, please note that personal choice or preference to not be vaccinated is not a protected ground under *The Code*, and it cannot be justifiably argued that a person was discriminated against because of a choice or preference to not be vaccinated.
- That being said, organizations should make every effort to ensure that people who choose not to be vaccinated do not experience harassment or unjustifiable negative treatment on the basis of their personal health decisions. Everyone should be respectful and flexible when navigating these unprecedented times.
- In addition to human rights considerations, employers also have obligations for workers' health and safety on the job under *The Workplace Safety and Health Act*. For more information on workplace safety and health in Manitoba, visit: www.manitoba.ca/labour/safety

12. Can I incentivize vaccination for my employees, clients or residents by offering them bonuses, discounts or other benefits if they have been vaccinated?

- Requiring someone to be vaccinated and/or provide proof-of-vaccination in order to access a benefit of incentive may result in discrimination on the basis of a *Code*-protected ground like disability, religious belief, age, ancestry/race, national origin, and family status.
- Under *The Code*, organizations cannot unreasonably discriminate against people who may be unable to receive a COVID-19 vaccine for reasons related to a *Code*-protected ground, unless it would amount to undue hardship. Undue hardship can result from things like excessive costs or health and safety risks.

- As such, organizations should proceed very cautiously in implementing incentives or other benefits related to vaccination status.

13. My organization has implemented a proof-of-vaccine requirement. What kind of proof of immunity is acceptable?

- Businesses are encouraged to consult with public health officials to determine what types of proof are acceptable and legitimate in determining whether a person is fully immunized against COVID-19.
- While not all forms of proof may be reliable in determining if someone is fully immunized, organizations should also consider the potential barriers that vaccination identification requirements create for some individuals. People who do not have access to Manitoba Health benefits may experience challenges in getting an official record of their immunization. People who experience houselessness or other forms of disadvantage may experience challenges when being required to produce valid photo identification along with proof of vaccine. In addition, people who were immunized outside of Manitoba may not be eligible for Manitoba's Immunization Card. As such, organizations should be flexible in the types of documentation they accept with respect to proof of immunization, recognizing that they should be reliable. Organizations should also work with employees or clients who may experience barriers to accessing identification to support them in fulfilling any organizational requirements related to proof of immunization.

14. I have an employee or client who says they cannot be vaccinated for reasons related to a disability, religious belief or political belief. What do I do?

- Under *The Code*, people who cannot be vaccinated because of a *Code*-protected ground must be reasonably accommodated to the point of undue hardship. This means that organizations must take every step possible to address the needs of those who require accommodation, unless taking those steps would amount to "undue hardship"— for example, if the accommodation would create health and safety risks for others or would be excessively costly. There is no definition for "undue hardship"; it differs depending on the circumstances, is highly fact-dependent, and must be established based on objective evidence, not speculation or assumptions.
- The Commission is mindful that some people cannot be vaccinated for reasons related to a medical condition or disability. In these cases, organizations must reasonably accommodate these individuals to the point of undue hardship. Individuals who are requesting accommodation from an organization must be prepared to substantiate their *Code*-related needs. This could include a note from a doctor establishing restrictions related to vaccination, or proof of a medical exemption from the Government of Manitoba.
- While the Commission is not aware of any religions having a theological opposition to vaccines, there may be a circumstance where an individual, for reasons related to a religious belief, cannot be vaccinated. In such circumstances, the employer or service provider will have an obligation to determine if the person is entitled to reasonable accommodation, and if so, to engage in a reasonable accommodation process with this individual.
- The Commission's Policy on Religious Belief states that in determining whether a person has a religious belief that is entitled to protection under *The Code*, the focus is on whether the belief is: freely, deeply and sincerely held; integrally linked to a person's identity; based in a comprehensive and particular

system of beliefs that addresses questions of human existence or the divine; consisting of a set of practices and activities that govern a person's conduct; and including an association to an organization or community that shares the belief system.

- The Commission notes that the Courts and tribunals have generally indicated that they will not enter into theological debates about the validity or official standing of religious beliefs or practices. In other words, organizations are not required to rely upon evidence that the belief is part of an official doctrine, endorsed by a religious organization or leader, or practiced by others of the same faith. Rather, the focus is on whether the belief is sincerely held by the individual. The Commission's Policy on Religious Belief can be found here: www.manitobahumanrights.ca/v1/education-resources/resources/policies-pages/policies-i-13.html
- While employers and service and housing providers should not require individuals to provide documentation to substantiate their religious belief, an individual requesting accommodation in relation to vaccination policies would need to establish a connection between their belief system and their inability to receive the COVID-19 vaccine.
- The Commission is mindful that there may be a circumstance where an individual, for reasons related to a political belief, cannot be vaccinated. The Commission's Policy on "Political Belief" states that a political belief, association or activity encompasses some form of focused discourse about convictions that are linked to the political organization, political functioning or the political nature of society. This does not include beliefs or concerns about discrete social, environmental, medical or other such issues. This is also not the name as a broad right to freedom of expression to openly debate any issue that affects the public well being. It is also important to note that protection from discrimination based on political belief does not exempt a person from following provincial health orders or rules. The Commission's Policy on Political Belief can be found here: www.manitobahumanrights.ca/v1/education-resources/resources/policies-pages/policies-i-5.html
- When accommodating a person on the basis of a political belief, the focus is on whether the belief is freely and sincerely held, and connected to the political nature, organization and functioning of society. The individual requesting accommodation will be required to show a link between their political belief the reason they cannot be vaccinated.
- Singular beliefs related to a personal choice or preference to not be vaccinated would not amount to a religious belief or a political belief within the meaning of *The Code*.
- Once a person has made their employer or a housing or service provider aware that they have a *Code*-related need requiring accommodation, the organization should work with the individual to identify what accommodations are reasonably possible given the context. Some examples could include exempting the person from a mandatory vaccination policy, creating a requirement that they wear a face mask or other personal protective equipment ("PPE"), maintaining increased physical distance from others, receiving curbside or virtual service, being periodically tested for COVID-19, working modified shifts or duties, working remotely or accepting a reassignment to a setting that poses less risk of COVID-19 transmission.

COVID-19 and Changes to Employment, Requirements related to Employment

15. Can my employer insist that I work despite the current situation with COVID-19?

- Employers are entitled to expect that employees will continue to perform their work unless there is a legitimate reason that they cannot, such as a *Code*-related need for reasonable accommodation or a safety concern. For more information on workplace safety and health in Manitoba, visit: www.manitoba.ca/labour/safety

16. Can my employer redeploy me to do other work not related to my current job because of the COVID-19 pandemic?

- Given the unique nature of the COVID-19 pandemic, employers may be required to redeploy an employee to do other work. For example, health care providers have been required to redeploy staff to meet the urgent needs and pressures associated with COVID-19. There may be other circumstances where COVID-19 has changed the nature of an employer's business and redeployment is therefore necessary to meet new operational demands.
- While redeployment may be necessary, there may be some circumstances where an employee may have a legitimate *Code*-related reason why they cannot do the other work, or they may need an accommodation to do the other work, based on disability, family status, etc.
- If an employee is unable to do their current job or be redeployed to do other work for *Code*-related reasons, the employer should explore reasonable accommodation options, including whether there is other work or modified duties or shifts the employee can perform. An employer is expected to explore accommodations up to the point of undue hardship. For more information, see the Commission's Guideline on Reasonable Accommodation in the Workplace: www.manitobahumanrights.ca/v1/education-resources/resources/reasonable-accommodation.html

17. Can I refuse to work if I think my workplace is unsafe because of COVID-19?

- Employees and employers also have obligations for workers' health and safety on the job under The Workplace Safety and Health Act. This Act gives a worker the right to refuse work that they believe is unsafe for them or another worker.
- For more information on workplace safety and health in Manitoba, visit: www.manitoba.ca/labour/safety.

Other

18. Can retailers refuse cash payment during the COVID-19 pandemic?

- While promoting contactless payment instead of cash may help promote health and safety during the COVID-19 pandemic, service providers should be aware these requirements may have a negative impact on *Code*-protected groups, including people experiencing poverty.
- Census data recognizes that *Code*-protected communities like immigrants, women, single parents, people with disabilities, Black, Indigenous and people of colour are more likely to experience poverty.
- Certain groups may not have the means to use electronic payment. For example, people who are houseless may not be able to get a bank card without an account or permanent address. Research also suggests that people with lower levels of income are more likely to use cash.
- Even where COVID-19 requirements are legitimate, organizations still have a duty to explore options and

reasonably accommodate individual needs related to a *Code*-protected ground, unless it would amount to undue hardship based on excessive cost or health and safety risks.

- An inability to follow a COVID-19 health and safety requirement like contactless payment should not lead to complete denial of service. Without compromising the health and safety of employees and customers, service providers should look for ways a person might safely pay for goods or services with cash if that is their only option.
- The Bank of Canada asks retailers to continue accepting cash. Refusing cash purchases outright will put an undue burden on people who depend on cash and have limited payment options. Risks can be mitigated in retail settings using a variety of methods, including ensuring access to hand hygiene for all employees and customers.

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