

Can your boss force you to take the COVID-19 vaccine?

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If 2020 has felt like a horror movie, the COVID-19 vaccine is the highly anticipated final act. Now with the vaccine's premiere just days away many of us are on the edge of our seats hoping that this ending isn't a twist.

The first coronavirus vaccine in Canada has yet to be administered but already there are questions about whether a person can be forced to take the vaccine. While the vast majority of Canadians eagerly anticipate their vaccination and (hopefully) a return to normal life, there are some who have no intention of receiving the vaccine. Some Canadians will not be able to get the vaccine for medical reasons, others have religious objections, but still others will refuse out of a distrust of "Big Brother", "Big Pharma", or other conspiracy-based boogeyman. This group of anti-vaxxers will be at the forefront of a national conversation over whether the government or an employer can force a person to be vaccinated.

Current Legal Situation: No Plans for Government Mandated Vaccinations

At this point, only Ontario, Manitoba and New Brunswick have any sort of mandatory vaccination legislation in place, and these are limited to children enrolling in schools. Ontario Premier Doug Ford has already confirmed that the province will not make vaccinations mandatory, but once the vaccine is widely available will those who refuse the vaccine be refused services or even employment?

Most *Occupational Health and Safety Acts* in Canada require that employers take every precaution reasonable in the circumstances for the protection of their employees. Employers have, for the most part, risen to this challenge over the past year by refitting their workplaces with PPE or reconfiguring to promote social distancing. Now with the vaccine here, employers may interpret their health and safety mandate to permit them to prohibit customers who are not vaccinated or even requiring their employees to become vaccinated.

Conflict between Health and Safety laws and Individual Liberty

At its core, this will be a conflict between the interests of Ontario's *Occupational Health and Safety Act* to keep workplaces and employees safe, and the individual liberty rights protected by the *Human Rights Code*. While there are limited precedents in this area, a 2018 arbitration decision found that an employer could not force the Ontario Nurses Association to require its members to receive the annual flu vaccine. Whether that reasoning will carry the day now has yet to be seen.

Going Forward

For employers of front-line workers, especially those whose employment makes social distancing a challenge, a mandatory vaccination policy could make practical and economic sense. Particularly so since Ontario's recently enacted *Bill 218*, which limits a person or organization's liability for infecting another person with COVID-19, explicitly excluded certain employer-employee relationships from this liability waiver. The legalities of such a policy are yet to be seen, but just as the ubiquitous mask policy exempted certain individuals with medical conditions, any vaccination policy would have to make similar exemptions. The more difficult question will be what to do when an employee has moral or religious objections to vaccination. While politicians have echoed that we are not a country that forces anyone to vaccinate Employers and business may not feel the same.

Now that we are approaching the final scenes of this unbelievable year, I hope that "2020 The Movie" ends with a Happily Ever After and there is no sequel.

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