



# Employment and Labour Webinar

Best practices and practical tips for return to  
office

| Tuesday, October 5, 2021

# #1 Vaccination Policies

- Consider how your vaccination policy interacts with RTO plans
- Some key considerations:
  - Mandatory or not?
    - If mandatory, how and when will it be imposed?
    - If not, who is essential and what will you require?
  - Safety of employees with *bona fide* exemptions
  - Your policy's reach
    - Contractors, suppliers, etc – to whom will it apply?
    - Consider if it is needed to ensure employee safety, particularly the safety of those required to RTO

## #2 Managing Health Records and Information

- Any employee medical records must be managed in accordance with applicable privacy laws
  - Hat tip: McMillan LLP Privacy Seminar – November 10!
- Consider options for limiting risk
  - Vaccine attestation vs. receipt of full vaccination records
  - Authority to handle vaccine information
  - Storage of vaccine information
- Other medical records – exempt employees

## #3 Unvaccinated Employees

- Two key factors influencing employers' options for managing unvaccinated employees:
  - Workplace setting – can employees simply continue to work from home?
  - Vaccination policy – mandatory or not?
- Key considerations in addressing unvaccinated employees *in your workplace*:
  - Distancing and other COVID measures
  - Time permitted to obtain vaccination
    - Health Canada requires four weeks from a second dose to be considered “fully vaccinated”
  - What will you, ultimately, do with those refusing to be vaccinated?

## #4 Medical and Religious Exemptions

- Employers still have a duty to accommodate *BONA FIDE* grounds under applicable human rights legislation
- Widely-held view is that exemptions for vaccine requirements should be few and far between
  - Confirmed recently by the Ontario Human Rights Commission

### Medical

- Limited reasons for not obtaining a COVID vaccine on medical grounds
  - Pre-existing conditions (i.e. auto-immune concerns), allergies, reaction to dose 1
  - Require more than just “[name] will be off work for medical reasons” this time

### Religious

- *Very* limited application
- Employers can seek proof from a religious officiant

# #5 Know Your Local Public Health Guidelines

- Many public health rules directly affecting businesses are issued by municipalities. These may include:
  - Distancing
  - Masking
  - Vaccination policy mandates
- Ontario regulation 364/20 “Rules for Areas at Step 3 and At The Roadmap Exit Step”
  - S. 2(b) “the person responsible for a business or organization that is open shall operate the business or organization in compliance with the advice, recommendations and instructions of public health officials, including any advice, recommendations or instructions on physical distancing, cleaning or disinfecting.”

## #6 How are you Managing your Physical Space?

- Know applicable distancing regulations and guidelines
  - Provincial
  - Municipal
- Consider how your employees interact
  - With each other
  - With outside suppliers / vendors
- Consider what is “required” vs. what is “nice to have”
  - Does an employee *need* to be on-site?

# Work From Home: Policies and Employee Demands

- Since March 2020, work from home (WFH) has become a new reality for many employers
- Some benefits (especially for employees); some drawbacks
  - Biggest drawback: Difficulty in managing employee performance and delivery
- As WFH becomes a more permanent reality, employers should implement clear WFH policies.
- Consider:
  - Who can WFH?
  - How will you receive and respond to accommodation requests, including “family status” requests?
  - What other standards need to be in place for employees working from home?



## #8a Anticipated Legal challenges - Vaccines

- Mandatory vaccine policies are expected to generate at least some workplace-related litigation
  - May be a deluge; may be fewer cases than many think – time will tell!
- Anticipated nature of vaccine disputes:
  - Termination entitlements
    - Cause vs. without cause?
    - Frustration
    - Constructive dismissal
  - Human rights proceedings
  - Labour disputes

## 8b – Anticipated legal challenges – Non-vaccine

- Vaccines are front of mind, but RTO, or return to *normal*, is likely to generate other forms of employer-employee disputes
- Workplace changes necessitated by the pandemic have been widely accepted, but that may change
  - Likely that employees have been reticent to make demands in “these uncertain times”; demands may increase as uncertainty decreases
- Some may challenge RTO, especially if they have preferred new work from home arrangements
- Impact on entitlements, especially notice periods, remains uncertain

## Martin Thompson

Employment & Labour Relations

 Ottawa

 613.691.6104

 martin.thompson@mcmillan.ca



## Kyle Lambert

Employment & Labour Relations

 Ottawa

 613.691.6117

 kyle.lambert@mcmillan.ca



mcmillan

# Get in Touch

## EMAIL

info@mcmillan.ca



## LINKEDIN

@mcmillanllp



## INSTAGRAM

@mcmillanllp



## TWITTER

@mcmillanllp



If you have any questions about McMillan, or how we may help you with your legal needs, please get in touch with us.