

GGI PG Webinar Labour & Employment Law

June 23, 2021

Andy Balaura, Partner
Jeffrey Percival, Partner
Maria Tassou, Senior Counsel

PALLETT VALO LLP
Lawyers & Trade-Mark Agents

Your Authority For:
Business Law • Commercial Litigation • Commercial Real Estate
Construction • Insolvency & Corporate Restructuring
Employment & Labour • Wills, Estates & Trusts

Introduction & Overview

- ❑ Mandatory COVID-19 testing
- ❑ Mandatory use of masks
- ❑ Mandatory COVID vaccine policies

MANDATORY COVID TESTING

Mandatory COVID Testing

COVID-19 testing is used to determine whether an individual is infected with the virus.

Certain workplaces with heightened risks of COVID-19 outbreaks (e.g. health care settings, retirement homes) have implemented mandatory COVID-19 testing.

In one case in Ontario, the testing was upheld as a reasonable initiative (*Caressant Care Nursing & Retirement Homes and Christian Labour Association of Canada* (Dec 9/20))

Mandatory COVID Testing

Mandatory COVID-19 testing is more intrusive than mandatory COVID-19 screening (e.g. self-assessments, temperature screening, asking questions before employees enter the workplace).

COVID-19 testing is a more effective means of the detecting infection in order to prevent an outbreak in the workplace.

For workplaces that have a lesser risk of serious consequences following an outbreak (e.g. non-health care settings), one could argue that screening is a reasonable alternative to mandatory testing.

MANDATORY USE OF MASKS IN THE WORKPLACE

Mandatory Use of Masks in the Workplace

- Government laws generally require the use of masks or face coverings in indoor workplaces
- Occupational health and safety legislation also gives employers powers to take reasonable precautions to protect the health and safety of worker
- Masks can be used as source control or personal protective equipment (PPE)
- There are general exemptions to mandatory face masking laws

Mandatory Use of Masks in the Workplace

- Employers may be required to accommodate individuals under human rights legislation
- Many employers have implemented masking policies in the workplace
- Employers should provide training to staff on dealing with accommodation requests or enforcing the mandatory masking policy with visitors to the workplace

MANDATORY COVID VACCINE POLICIES IN THE WORKPLACE

Mandatory COVID Vaccine Policies in the Workplace

Currently, there is no case law or legislation that exists.

The policy would have to balance the health and safety risks of COVID-19 against the human rights and privacy considerations of compulsory vaccines.

Employers may have to explain why alternative measures (including mask-wearing, COVID-19 testing, self-isolation, recommended vaccination, and physical distancing) are inadequate to satisfy their occupational health and safety obligations.

Human Rights

Human rights legislation prohibits discrimination in employment on certain grounds, such as:

- Disability (includes most medical conditions)
- Sex (includes pregnancy)
- Religion

These grounds could justify vaccine refusal.

Employees may provide medical evidence from a health professional to substantiate their refusal to get a vaccine.

Privacy

An employee's vaccine status is highly sensitive and personal medical information.

An employer can only collect this information if it is reasonably necessary for a work-related purpose (e.g. for workplace safety)

Employers need to limit the disclosure of the employee's vaccine status to only those in the organization who require the information for operational purposes.

Privacy

An employee's body is given the highest level of privacy protection.

An employer cannot physically force an employee to receive the COVID-19 vaccine.

It may not be reasonable to request all employees to disclose whether they have been vaccinated, if some employees work exclusively from home.

Questions?

Andy Balaura, Partner

Tel: 905-273-3022 ext. 225

Email: abalaura@pallettvalo.com

Jeffrey Percival, Partner

Tel: 905-273-3022 ext. 254

Email: jpercival@pallettvalo.com

Pallett Valo LLP

77 City Centre Drive Suite 300, West Tower

Mississauga, ON L5B 1M5

Fax: 905-273-6920

Maria Tassou, Senior Counsel

Tel: 905-273-3022 ext. 295

Email: mtassou@pallettvalo.com

PALLETT VALO LLP
Lawyers & Trade-Mark Agents

Your Authority For:

Business Law • Commercial Litigation • Commercial Real Estate
Construction • Insolvency & Corporate Restructuring
Employment & Labour • Wills, Estates & Trusts

*The information contained in this presentation is provided for general information purposes only and does not constitute legal or other professional advice. This presentation is current as of **June 2021** and applies only to the province of Ontario. Information about the law is checked for legal accuracy as at the date the presentation is prepared, but may become outdated as laws or policies change.*

For clarification or for legal or other professional assistance, please contact Pallett Valo LLP.