

Introduction

As the COVID-19 pandemic continues to evolve, Alberta's hockey community, including clubs, players, coaches, officials, parents and the like, may have several questions about how to return to hockey safely and what measures can, or should, a club/sport organization put in place to keep everyone safe.

Hockey Alberta has asked Sport Law to answer commonly asked questions surrounding implementing mandatory Covid-19 vaccination and proof of vaccination requirements.

Frequently Asked Questions (FAQs) **on Mandatory Vaccination Policies and Vaccine Passports**

Q1: Is the Government of Alberta requiring organizations and businesses in Alberta, such as sport clubs, to mandate vaccination on its members and others?

A: No. As of August 31, 2021, the Alberta government have no plans to mandate vaccination in the workplace for public employees, nor have they made it mandatory for private businesses or employers to require vaccination of their employees.

However, some private business and municipalities, including the Calgary Sports and Entertainment Corp. and the Town of Banff, are requiring proof of vaccination to access their businesses or services.

Q2: What are the risks to a club if the club were to implement a mandatory vaccination policy?

A: A mandatory vaccination policy could give rise to a number of legal, ethical, and practical problems for the club. If the requirement is for individuals to be double-vaccinated, the club should be able to justify why that requirement is necessary for maintaining the health and safety of your environment, and how it is proportionate to the risk posed.

A club will likely be assessed on whether its conduct was reasonable in balancing its obligations to provide a safe environment and its obligations to respect a person's privacy and human rights. Additional privacy considerations are addressed in Question 3.

When it comes to human rights-related risks, requiring vaccination or proof of vaccination is not in and of itself prohibited by the *Alberta Human Rights Act*; however, clubs, as employers and/or service providers, may owe human rights obligations to some individuals. As such, clubs may owe a duty to accommodate (to the point of undue hardship) those individuals who have a legitimate reason protected under the human rights legislation for being unvaccinated. This is also discussed in Question 8.

Q3: What type of privacy issues arise around asking/collecting proof of vaccination information from individuals?

When it comes to potential privacy issues, the *Personal Information Protection Act* (PIPA) considers proof of vaccination to be personal information and so clubs must have a reasonable purpose for requesting such information.

The Office of the Information and Privacy Commissioner of Alberta advises that if collecting proof of vaccination for “health and safety purposes”, consider whether this purpose is reasonable. This could include considering:

- The likelihood individuals will be able to provide proof of vaccination on request
- The effectiveness of other measures to achieve the purpose, such as physical distancing, wearing a mask and other common public health practices
- The type of services and/or hockey activities offered, and whether players, coaches, parents, staff, guests, etc. are in close contact for extended periods of time
- The implications for people who may be denied access, such as those who choose not to be vaccinated for medical reasons or religious beliefs

As well, clubs would also need to consider how much information should be collected and whether recording the information is needed or if viewing proof of vaccination is sufficient, keeping in mind that if it is not necessary to collect any degree of personal information in order for that individual to safely participate in club activities, then the club likely cannot require the individual to provide the information.

To comply with PIPA, clubs should also keep in mind that they would have to notify individuals of the reason for collecting their personal information and must be prepared to provide individuals with the name or position of a person who is able to answer questions about the collection of personal information.

Finally, PIPA prohibits the retaining of personal information longer than is required to meet legal or business purposes. So, if the club does not require a record of vaccination for its purposes, it should not create and retain any.

Q4: How should our club decide whether to implement policy on mandatory vaccination and/or requiring proof of vaccination?

A: Every environment must be assessed based on its own unique situation and particular circumstances. Seek guidance from those who are in a good position to understand the potential risks of the spread of Covid-19 when playing hockey, how individuals interact in your facilities, and the practicalities of implementing such a policy, among other considerations.

In cases where physical distancing and other alternative safety measures aren't adequate or sufficient for preventing the spread of Covid-19, mandatory vaccination may be considered reasonable, provided that exceptions are still made to accommodate individuals under human rights legislation.

Any decision should be consistent with, and guided by, the most current public health information and scientific understanding of the Covid-19 pandemic.

Q5: Should clubs require vaccination of participants and guests for the whole season?

A: Further to the answer provided in Question 3, it is likely that clubs can implement mandatory vaccination for a whole season, provided that the risk level remains the same (or increases). A club's response to the health and safety risks posed by the pandemic must be proportional to those risks. So, if the risk posed by the pandemic decreases, then it is likely that a more onerous and strict vaccination policy may be considered unreasonable, and therefore subject to legal challenges.

As such, a vaccination policy should be regularly reviewed and updated to stay consistent with the evolving status of the COVID-19 pandemic and considering government regulations.

Q6: If our club does not implement a mandatory vaccination policy or require proof of vaccination before attending club events, are we failing to do our due diligence in preventing the spread of Covid-19?

A: No, not necessarily. Each situation must be assessed and determined on a case-by-case basis. A key question will be, can the club foster an environment in which vaccinated and unvaccinated persons can participate safely? Clubs must take every precaution reasonable in the circumstances to protect individuals within their care against the risks posed by Covid-19. Clubs might take different approaches depending on the nature of their specific environment, how people can safely interact, the risk posed by the virus in their particular region, and other factors. Your approach should be evidence-based and should follow current best practices and advice from public health authorities.

Q7: Can our club ask for proof of double (or full) vaccination for Covid-19? Can we require proof as a condition of membership or entry into the club?

A: You may ask individuals to voluntarily disclose their vaccination status and they may be willing to provide such information voluntarily. Requiring proof of vaccination can give rise to legal, ethical, and logistical problems for the club. If you choose to require proof of vaccination, you would have to have a legitimate reason for doing so and should be able to demonstrate that requiring the information is necessary for maintaining the health and safety of your environment.

The measures taken to ensure health and safety must always be proportionate to the risk posed.

Also see the answer to Question 3 above, addressing privacy considerations.

Q8: If our club implements a mandatory vaccination policy, how do we respond to unvaccinated individuals who request entry to our facilities and/or still wish to participate in club activities?

A: There is a difference between those unvaccinated individuals who have a legitimate medical, religious, or age-related reason preventing them from receiving a Covid-19 vaccine versus those who for personal preference choose not to be vaccinated.

For individuals who have valid human rights grounds, denying access to them could constitute discrimination. Clubs would have a duty to accommodate them, unless it would amount to undue hardship based on cost or health and safety. So, have a conversation with the individual requesting to be accommodated about how to go about accommodating them and explore whether accommodation is possible.

Where an individual's reasons for refusing to get vaccinated do not relate to a valid human rights ground, based on a political or strongly held personal belief for example, this would likely be insufficient to claim discrimination under human rights legislation.

Q9: If our club does not require proof of vaccination, how do we know that someone who says they are vaccinated has told the truth?

A: The key is to balance the obligations for protecting health and safety with the privacy concerns associated with individuals disclosing their vaccination status. It is a difficult balance because the less intrusive ways to gather information—for example, by simply asking individuals to confirm verbally if they have received the vaccination—will be less of a privacy concern, but it also means the information received is potentially inaccurate and less reliable. On the other hand, the more evidence you require to ensure the information is accurate, the greater the privacy concerns.

The Canadian Centre for Occupational Health & Safety defines due diligence as: *“the level of judgement, care, prudence, determination, and activity that a person would reasonably be expected to do under particular circumstances.”*

Applied in this context, due diligence could be ensuring that the policies, practices, and procedures you have in place to reduce the spread of COVID-19 are reasonable and executed in a good faith effort to ensure that people are reasonably safe while on your premises and/or engaging in organization-related activities. How you choose to implement safety measures will depend on the level of risk posed in the specific circumstance.

As well, consider attempting to exclude or limit such potential liability from false reporting through the use of waivers, posted signage, etc. This may help to transfer legal liability from the club to the unvaccinated individual who provided false information and caused harm as a result.

Q10: What other ways could we encourage vaccination without making it a requirement?

The club can look to engage with its members and guests in various ways to educate on how being fully vaccinated can contribute to the health and safety of others, based on current information provided by public health authorities. It could be that strongly encouraging individuals to be vaccinated and to voluntarily disclose their vaccination status could be more effective than imposing it on individuals.

Alternative approaches to mandatory vaccination that could assist in decreasing the spread of COVID-19 could include:

- Increased education, information sessions, and resources on the implications of vaccination and addressing concerns resulting from misinformation around the vaccines;
- Designate a contact person who would be available to provide information and respond to inquiries or concerns around vaccination to ease vaccination ‘hesitancy’;
- Provide information on the logistics of where to get vaccinated; and,
- Provide staff with time off during the workday to get vaccinated, where applicable.

Q11: If someone claims an exemption from a mandatory vaccination policy based on human rights grounds, how would a club go about asking for proof of that valid ground?

Medical information and/or religious beliefs are private personal information and must be treated as such. You should only request and use such personal information in a way that intrudes as little as possible on a person’s privacy and does not go beyond what is necessary to ensure health and safety.

In the case of an employee, employers should take requests for accommodation in good faith; consider not overburdening individuals (or the health care system) by requiring medical notes. Unnecessarily visiting medical offices to obtain such information also increases risk of exposure for everyone.

See also Questions 2, 3, and 9 that primarily address human rights and privacy considerations related to requiring vaccination or proof of vaccination.

Q12: Where can I get more information on the Covid-19 vaccines?

[Alberta Health](#) has information about the vaccine rollout in the province. Health Canada is another reputable source of information about [COVID-19 and vaccination](#).

Disclaimer:

The Covid-19 pandemic is a truly novel situation; as such, there is no clear understanding of how a court of law would view a mandatory vaccination policy. The above information is intended as a general guideline but it is always best to seek legal advice for more specific guidance.