

## Vaccination Question

Sabrina McGrath <[REDACTED]>

Thu 2021-10-28 5:47 PM

To: sabrina mcgrath <[REDACTED]>

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**From:** Nicole Holland <nholland@nsgeu.ca>

**Sent:** Thursday, October 28, 2021 1:42 PM

**To:** Sabrina McGrath <[REDACTED]>

**Subject:** Vaccination Question

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Hi Sabrina

This was a recap of what some of the ERO's are sending to employees.

I can confirm that the employer can mandate vaccinations, given the legal opinion we have received from the Union's legal counsel. We have been told all employees are required to be vaccinated.

Unless an employee can identify with the exemptions outlined by the province, an Employee could face a leave without pay. However, if the consequences are not reasonable in circumstances for not adhering to the employer's policy, then the Union may have merit to proceed with a grievance. Please note that this will be on a case-by-case basis.

In anticipation of such policies and/or orders from Public Health, we did confer with our legal counsel on this. The opinion of counsel for the Union is if we were to grieve, an arbitrator would likely uphold a policy requiring employees to be fully vaccinated, given the case-law already established. In the balance of interests, the health and safety concerns associated with COVID, including the amount that is still unknown about its transmission and long-term impacts; the prevalence of variants; the broader impact within the community of an outbreak; and the risk of disruption to the workplace would outweigh the interference with the Employees autonomy and privacy rights.

Policies that are implemented unilaterally by an employer without consent of the union must comply with the principles set out in Lumber & Sawmill Workers' Union, Local 2537 and KVP Co. Ltd, (1965) 16 LAC 73 (Wren). This is referred to as the "KVP test". Such a policy:

- a. must not be inconsistent with the collective agreement,
- b. must not be unreasonable,
- c. must be clear and unequivocal, both as to its requirements and the consequences of its breach,
- d. must be brought to the attention of the employees affected before the rule is acted upon, and
- e. must be consistently enforced.

Here is NSGEU's position on the matter.

[https://nsgeu.ca/home\\_page/nsgeu-statement-update-covid-19-mandatory-vaccination/24957/](https://nsgeu.ca/home_page/nsgeu-statement-update-covid-19-mandatory-vaccination/24957/)

Our advice to folks is if you have or believe you have a medical or religious exemption, is to begin getting that documentation for when you must apply for the exemption. If you believe you have an exemption, you will be required to show proof of that exemption through a medical accredited professional. The medical exemption would need to prove that medically, you cannot receive this vaccine, due to medical complications.

For religious exemption, a recognized religious official (paster, priest, etc.) would be needed to provide a letter (signed) and that religion must be one that you have been associated with for more than a couple of months, and that religion must be one that does not believe (for religious reasons) their followers should not receive any vaccine, not just this particular one.

I hope this helps

**Nicole Holland**  
**Employee Relations Officer**  
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