

## **Background**

In mid-October, SGEU obtained a legal opinion about employers' rights to require members to be vaccinated. The sections below summarize that legal opinion.

### **Can my employer legally require me to be vaccinated to keep my job?**

The short answer is: almost certainly yes.

Employers have the power to implement workplace policy, such as vaccination mandates. Unions can successfully challenge these policies only if they violate certain principles. The standard way of determining whether an employer policy is justifiable is to use a method called the "KVP Test." This means that the policy must be clear, consistent, and applied consistently. In the opinion of SGEU's lawyers, mandatory vaccination policies are almost certainly within the employer's power to impose – provided they are properly designed. The employer must still meet certain standards, such as providing employees with sufficient time to get vaccinated before any consequences apply as well as accommodating workers with a legitimate human rights or medical exemption to vaccination.

The evidence so far is that the vaccination policies implemented by the employers of SGEU members do meet the KVP test, meaning they are legitimate, and it is member's responsibility to follow them.

### **What about my rights to privacy and self-determination?**

While workers have strong rights to privacy and to make their own choices about their health, these rights are not absolute. They can be outweighed by the obligation of employers to provide a safe and healthy working environment.

The requirement to be vaccinated in order to work in a certain profession and to prove your vaccination status, is not an unprecedented one. Many jobs require workers to be vaccinated against routine childhood diseases and potentially other illnesses as well. Other jobs require intrusive medical exams to qualify for employment. Many public sector professions require candidates to submit to extensive background checks that compromise their right to privacy. These impositions on workers' rights are widely accepted because they keep workers and the public safe.

### **What if I don't accept that the vaccine is safe?**

No one can force you to accept certain beliefs or opinions about COVID-19 vaccines. At the same time, your employer cannot be forced to accept your beliefs about vaccination. Any attempt to object to vaccination on the grounds that the vaccine is unsafe would be decided in accordance with the scientific evidence – and there is a clear scientific consensus that COVID-19 vaccines are safe and effective. While you may know of studies or arguments about the safety of vaccines that you consider convincing, it is extremely unlikely that an arbitrator would accept them in the face of the medical community's worldwide approval of the vaccine.

### **What if I am exempt from vaccination for a human rights reason?**

There are certain reasons, such as medical issues or sincere religious beliefs, for which workers may be exempt from vaccination under human rights legislation. However, these exemptions are rare and must be supported with strong evidence in order to be successfully obtained. If you believe you qualify for a human rights exemption to vaccination, gather all the evidence you can. (For instance, if you have a disability or medical issue that makes vaccination unsafe, get copies of clear medical reports that outline the concern.) If you have a legitimate human rights exemption, SGEU will work with you to make sure your employer respects your rights and finds a way to accommodate you. Please note that an accommodation may not be perfect, and that testing is likely to be considered as a first option.

For additional information about accommodations, [please see SGEU's duty to accommodate resource](#).

### **What if I get sick or injured from the vaccine?**

In Saskatchewan, workers' compensation law prevents workers from suing their employers over work-related illness or injury. If an employer-mandated vaccination negatively affected a member's health, that member could potentially receive workers' compensation benefits for any time lost from work as a result. If not, the usual benefits available under the member's collective agreement, such as sick leave and disability leave, would be available to the member.

### **What if I can't afford to pay for the negative test?**

Most employer policies require you to receive a point of care test that is approved by the Saskatchewan Health Authority. As the Saskatchewan Health Authority no longer provides testing for people without symptoms, this means that you must pay a private provider to receive the testing. There are few circumstances that would warrant free medical testing as an employee. Provided your employer is being reasonable in their requests for the test and you have reasonable access to a provider, you will likely be responsible to pay for testing or could face termination.

### **Can my employer require me to receive a "booster" vaccination?**

As long as the employer is applying its policy in a way that is clear, consistent, and applied consistently, they have the power to implement a "booster" vaccination requirement policy.

However, if your employer is unreasonable in their application of that policy, SGEU will take action to advocate for that policy to be changed.

Our position on support for public health mandates remains: SGEU supports all public health measures, including mandatory vaccines, if that's what it takes to protect the safety of our members and the public. We will also support our members who are unable to have vaccinations due to exceptional status and we anticipate that accommodations will be made for them. We continue to strongly encourage vaccinations for all members who can do so.

**\*\*for individuals participating in the negative testing program**

**What if I have previously had Covid and I am still testing positive?**

SGEU and your employer will work together to accommodate you if necessary. The Saskatchewan Health Authority recommends getting a point of care rapid antigen test in place of a PCR if you have recently contracted COVID, are symptom free, and are outside of your isolation period. If necessary, SGEU will work with your employer to request accommodation on a case-by-case basis.

**What is my union doing to protect me?**

If your employer is unreasonable in their application of the policy, SGEU will advocate for policies to be changed to be reasonable. As an example, if you were unable to be fully vaccinated from the time your policy rolls out to the time that discipline would apply, we will challenge your employer on that basis.

If you are seeking exemption from vaccination on a protected ground, you will likely still require negative testing. It is vital that you reach out to SGEU if your request for accommodation is denied.

SGEU has filed a policy grievance around the reasonableness of negative testing requirements for those who continue to work from home. Members should be aware that working from home is not guaranteed, but the reasonableness of proof when a member is never in contact with the workplace is being challenged.