

SCHOOL BOARD VACCINATION PROTOCOLS: FREQUENTLY ASKED QUESTIONS

August 26, 2021

Has the provincial government made an announcement about COVID-19 vaccination protocols in schools for the coming school year?

Yes. On August 17, 2021 the Ministry of Education announced that it intends to introduce a vaccination disclosure policy for all publicly-funded school board employees and staff in private schools, as well as for all staff in licensed day care settings, for the 2021-2022 school year. It also announced that there will be rapid antigen testing requirements for staff who are not immunized against COVID-19 or for those who opt not to disclose their vaccination status.

School boards have been instructed by the Ministry of Education to develop protocols around vaccination disclosure and testing requirements.

Would COVID-19 disclosure and testing policies adopted by school boards violate human rights law, *Charter* rights, privacy legislation or negotiated rights ETFO collective agreements?

A voluntary request to disclose proof of vaccination to ensure fitness to safely perform work, to protect others in the workplace, or to protect people who receive services is generally permitted by legislation if the requirement is made in good faith and is reasonably necessary for reasons related to health and safety.

However, there is also an expectation that with any policy or protocol they adopt, school boards need to operate within rights established by the *Canadian Charter of Rights and Freedoms* and Ontario's *Human Rights Code*. School boards must also respect applicable collective agreement language that may be in place, and they need to follow privacy legislation if they collect personal health information about employees.

To date, school boards have not yet produced COVID-19 disclosure and testing protocols. ETFO is following up with the provincial government on a frequent basis to clarify the government's direction to school boards. ETFO is also monitoring school boards' actions closely and will ensure that any board protocols adhere with the *Charter*, Ontario's *Human Rights Code*, privacy legislation and ETFO collective agreement language.

Do school boards have legal obligations to protect staff from COVID-19?

Yes. Under the *Occupational Health and Safety Act*, school boards must take reasonable steps to maintain a safe working environment for workers. This includes measures to reduce the transmission of COVID-19 in the workplace.

Given the severity and length of the COVID-19 pandemic, the impact of the Delta variant, rising daily case counts, and the demonstrated effectiveness of vaccination in reducing an individual's chance of contracting the virus with a low risk of side effects, it is not inappropriate for school boards to request information from staff about COVID-19 vaccination status and/or implement some form of testing for non-vaccinated staff, within reasonable limits.

What is ETFO's position on mandatory vaccination?

On Tuesday, August 17, several hundred ETFO members attended the ETFO 2021 Annual Meeting as delegates. The Annual Meeting is ETFO's highest decision-making body.

At the Annual Meeting, delegates debated and passed a policy statement about the things that the government needs to do put in place for a safe return to school this fall. The policy statement passed at the Annual Meeting states:

That the provincial government ensure appropriate measures are in place for a safe return to school during the 2021-2022 school year.

That appropriate measures for a safe return to school during the 2021-2022 year include: lowering class sizes to enable physical distancing; maintaining cohorting that limits interactions; improving classroom/worksit air exchange/ventilation; mandating masking for all elementary students, including Kindergarten, unless medically exempted; requiring confirmation of COVID-19 screening of staff and students; providing on-site testing; directing adequate safeguards for student transportation; and mandating COVID-19 vaccination for school staff, with provisions for exceptions due to medical reasons, statements of conscience or religious belief.

Why did delegates at the ETFO 2021 Annual Meeting take this step?

ETFO has always stood up for our members' right to a safe and healthy workplace. Your Federation has consistently pushed school boards to do everything within their power to ensure that schools are safe places to work. Some of our colleagues are unable to be vaccinated due to medical conditions. In addition, school boards have a duty of care to students. Currently, children under 12 are not eligible for vaccination in Ontario. To ensure schools are safe for our students and our vulnerable colleagues, all those who can be vaccinated should be vaccinated.

For these reasons, ETFO Annual Meeting delegates support mandatory vaccinations for all eligible school staff as part of a safe return to school plan, with provisions for exceptions due to medical reasons, statements of conscience or religious belief.

Does ETFO's policy statement need to be enforced by the government or school boards?

No. Policy statements adopted at the Annual Meeting provide guidance to ETFO in its actions and public statements. An ETFO policy statement applies only to ETFO – it is not binding on the government, school boards or any other organization.

I don't think that ETFO's policy statement goes far enough. Why has ETFO included exemptions for "statements of conscience" and what does that mean?

A statement of conscience or religious belief is defined in the *Immunization of School Pupils Act* as "a statement by affidavit in the prescribed form by a parent of the person named in the statement that immunization conflicts with the sincerely held convictions of the parent based on the parent's religion or conscience."

It is important to remember that the merits of an accommodation request must be assessed on a case-by-case basis. The ETFO policy statement suggests that those who believe they require an exemption should be given the opportunity to provide information as to the merits of their request.

I have a medical condition and can't get vaccinated. How will ETFO support me?

Ontario's *Human Rights Code* prohibits school boards from discriminating against its employees based on specified grounds, such as disability or religion. If an ETFO member is unable to be vaccinated for grounds that are protected under the *Code*, a school board must accommodate that member up to the point of undue hardship. In order to be considered for an accommodation, an employee must make a formal request to their employer.

The ETFO policy statement regarding a safe return to school acknowledges this responsibility to accommodate based on *Code*-related circumstances. As a union, ETFO has always taken an active role in ensuring that our members who require an accommodation are provided one by their employer. If you require an accommodation, reach out to your ETFO local office or the ETFO Provincial office for support.

I do not want to provide COVID-19 testing results to my school board. What do I do?

If an ETFO member declines to disclose their vaccination status to their school board or advises the school board that they are unvaccinated, they may be required to undergo regular testing to confirm that they are not suffering from COVID-19. If you have been advised that you must undergo regular COVID-19 testing and have concerns about sharing the results, please seek advice from your ETFO local or from ETFO provincial office before communicating a decision to your employer on this.

Is it acceptable for my colleague on staff to ask me and others about their vaccination status?

ETFO strongly advises its members to refrain from asking others about their vaccination status. The disclosure information that is being collected by school boards is being done so in a private and confidential manner. Medical information and medical issues are very personal and should remain private.