

## HEALTH/MENTAL HEALTH & ADDICTIONS

### A. Creating a backstop for the implementation of mandated workplace vaccination policies

Submitted by: the Cambridge Chamber of Commerce

#### Issue

The financial impact the COVID-19 pandemic continues to have on Ontario businesses and our economy has yet to be fully tallied, or even realized. While mandated vaccination policies have been put in place for some sectors to offset potential interruptions, talk of similar policies being put in place at workplaces in general continues to generate heated political and social debate surrounding personal freedoms and government interference, not to mention threat of legal challenges. However, the need to keep businesses operating and providing a safe and healthy work environment for all employees should be paramount, even when not facing a national health crisis, and provisions should be included in the Employment Standards Act to ensure businesses that choose to mandate a vaccination policy are protected from discriminatory lawsuits.

#### Background

The Omicron variant of the COVID-19 pandemic has been the latest blow to Ontario's economy, potentially costing billions as businesses deal with even more lost revenue and a rising debt load as they continue to operate between waves of government-imposed health restrictions and persistent staffing shortages instigated by illness.<sup>240</sup>

The use of mRNA vaccines, whose foundation can be traced back to the early 1960s, to lessen the severity of this virus and its impact have become key tools at keeping our economy moving, especially since those who are fully vaccinated in Ontario with symptoms can now isolate for only five days compared to 10 for those who are not fully vaccinated.<sup>241</sup> The development of vaccines in general – smallpox, polio, MMR, Tdap, HPV – have provided protection to society, which in turn has helped businesses and economies continue to operate.<sup>242</sup>

However, ensuring this valuable mRNA technology can be utilized to its full potential during the most recent pandemic – one of five the world has experienced since 1900 – has sparked much political and social debate and protests surrounding use of the vaccinations, resulting in a seemingly widening divide in our society as government leaders attempt to find ways to navigate us out of this health crisis.<sup>243</sup>

Calls for the implementation of mandated vaccination policies have clearly added fuel to this heated debate, resulting in numerous protests as well potential legal challenges.<sup>244</sup> Three labour arbitration decisions filed in Ontario on behalf of the unionized employees of Ontario Power Generation, Paragon Protection Ltd. And Electrical Safety Authority resulted in only the latter action not being upheld when the judge ruled the Authority could not demonstrate having such a policy was reasonable since many of its employees worked from home.<sup>245</sup>

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<sup>240</sup> Toronto Star, Jan. 11, 2022. <https://bit.ly/3H2ZBpY>

<sup>241</sup> John Hopkins Bloomberg School of Public Health, Oct. 6, 2021. <https://bit.ly/32CAJGA>

<sup>242</sup> Insider, Nov. 28, 2020. <https://bit.ly/3u9bdUv>

<sup>243</sup> CBC, Nov. 3, 2021. <https://bit.ly/3H6urhu>

<sup>244</sup> Waterloo Region Record, Jan. 23, 2022. <https://bit.ly/33ZAPsl>

<sup>245</sup> Bennett Jones LLP, Nov. 22, 2021. <https://bit.ly/3r1TVqx>

Meanwhile, even mandated vaccination policies enacted for non-unionized employees in the healthcare, long-term care and education sectors have not come without challenges,<sup>246</sup> including protests outside Ontario hospitals<sup>247</sup> and harassment of healthcare workers.<sup>248</sup>

The acrimony surrounding the implementation of mandated, and proof of vaccination policies continues to fester – even though the Ontario Human Rights Code has deemed them generally permissible providing they meet an extensive list of criteria – as the current COVID-19 pandemic continues.<sup>249</sup>

It's this acrimony and clear lack of direction when it comes to the implementation of a mandated vaccination policy which has made it difficult for businesses to take any further steps without fear of legal and social repercussions.<sup>250</sup> Therefore, implementing elements within the articles of the Employment Standards Act to provide businesses with legal protection from discriminatory lawsuits should they choose to introduce such a policy to protect their employees and business down the road from any potential future health concerns or crises should be considered.<sup>251</sup>

## Recommendation

The Ontario Chamber of Commerce urges the Government of Ontario to:

1. Have the Ministry of Labour include elements within the articles of the Occupational Health and Safety Act that can provide protection against discriminatory legal actions against businesses that implement a vaccination policy for the workplace.

Effective Date: April 30, 2022

Sunset Date: April 30, 2025

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<sup>246</sup> Samfiru Tumarkin LLP. <https://bit.ly/348bufD>

<sup>247</sup> CBC, Sept 13, 2021 <https://bit.ly/3r2qfcW>

<sup>248</sup> Canadian Press, Sept. 3, 2021. <https://bit.ly/3KMs0Tn>

<sup>249</sup> WeirFoulds.com LLP, Sept. 23, 2021. <https://bit.ly/32FWuFw>

<sup>250</sup> Canadian Press, Jan. 2, 2022. <https://bit.ly/3IHIWsj>

<sup>251</sup> World Bank Blogs, Nov. 15, 2021. <https://bit.ly/3r6TZp0>