



ALIGN SPECIAL
COMMUNIQUE ON

Mandatory Vaccination



2021



Mandatory Vaccinations: Is it Right for Our Agency?

How can an employer navigate this difficult situation while balancing health & safety, human rights, privacy and other related legal requirements? ALIGN attended a presentation given by Al-Noor Nenshi Nathoo: Executive Director, Clinical Ethics Service at Alberta Health Services on September 14, 2021. In this special communique we will share with you the wisdom garnered from this session and then examine some of legal considerations of mandatory vaccinations provided to us by an Alberta lawyer whose practice focuses on employment and human rights.

Al Noor provided much food for thought on the topic of mandatory vaccinations and other key decisions that organizations have been left to decide individually by themselves in Alberta. He acknowledged these are not small decisions and cannot be made lightly. Our intent is to share a few pertinent points he made from an ethical and moral view point regarding this issue.

First, he described to us why these were complex times for leaders, and gave important points to consider in our responsibility of keeping people safe from harm. Finally, we will share what Al-Noor suggests leaders reflect on and think about when making the decision to have a mandatory vaccination policy or not.

**"No wonder so many of us are experiencing
'Decision Fatigue!'"**
(one CEO shared recently)

These points are for discussion purposes only and do not reflect ALIGN's position.

Leading in Complex Times:

Al-Noor says that a "central value tension" occurs when two moral obligations are in conflict. In mandatory vaccination the two conflicting obligations are "individual liberty" and "the public good".

It is very important in making a decision to clarify language when discussing the topic and separate "facts" (evidence) from "values".

Regarding Individual Liberty, Discrimination, and Human Rights:

Al-Noor says "there is a myth of unfettered liberty"

Restrictions and limitations can be exercised to prevent harm to others. He bases this on the "Harm Principal" (John Stuart Mill);

“the state can only intervene on an individual’s liberty if they pose as a harm to other people.”

He also shared the example of Isha Khan, the CEO of the Canadian Museum for Human Rights whose background is in Human Rights Law and was recently criticized for instituting a mandatory vaccination policy.

Ms. Khan saw the criticism about mandatory vaccination at the museum as an opportunity for a conversation about what discrimination and human rights are; stating

“Discrimination is defined in law as treating a person differently on the basis of some characteristic that goes to the root of who they are as a human being. Those characteristics include age, ancestry, ethnic origin, sex, sexual orientation, religious belief, gender identity and disability, she wrote. “We have to be careful about equating a choice not to get vaccinated with these protected characteristics when looking at what can be considered discriminatory.”

Where is the Risk of Harm to Others? Considerations:

- What is the likelihood of transmission and is severity of the virus high?
- Have voluntary initiatives been unsuccessful or unlikely to achieve goal?
- We know vaccines are effective in reducing transmission.
- Are the least restrictive means being used?
- Are needs of the vulnerable, those with no choice, or the marginalized being considered?
- Is risk of harm arising to others being mitigated?
- Have we balanced risks?

Reflection

Society does highly value liberty and choice.

Sometimes that “choice” is at the expense of solidarity, community and obligation to others.

“This is what we are experiencing now in Alberta.”

We cannot argue the fact that, whether we like it or not, we are all linked and connected to other individuals, communities, provinces, countries and the rest of the world.

We have a duty to protect others; a collected responsibility.

What do we owe the people we serve, work alongside, employ?

We have a moral obligation to protect others from harm.

Especially when we are caregivers to those with no choice to be vaccinated.

Legal Considerations:

Questions you may be asking your leadership, HR Department, or Legal Department are:

- **In what contexts could employers potentially require employees to be vaccinated against COVID-19?**
- **What is my responsibility as an employer to my staff and the people we serve with regard to safety?**
- **What factors should employers consider when developing a mandatory vaccination policy?**
- **Exposure to legal risks?**
- **Difference between employment relationships, i.e. private vs union?**

- What about privacy issues?
- How often should the policy be reviewed?
- What are the best practices for enforcing a mandatory vacation policy?
- What do I need to look at for exemptions?
- What are some options for accommodation?
- What about noncompliance?
- What are other options to look at instead of making vaccinations mandatory?
- Where can I find help and resources?

An article found while researching this topic, by Baker and Miller of JSS Barristers in Calgary outlines many of the answers to these and raises other questions. Here is a little sampling and the link to the full article: <https://jssbarristers.ca/litigation-law-firm/insights/mandatory-vaccinations-in-the-workplace/>

“Employers should consider these factors before implementing a policy which they intend to enforce and should also note their duty to provide a safe and harassment-free workplace for their employees. An employer should also turn their mind to whether a policy is reasonable or necessary for their specific workplace, consistent with government direction, and whether it has the effect of discriminating against any employees with protected characteristics.

Other considerations include whether the policy meets the criteria outlined above and seek legal advice before taking adverse steps against a vaccine-delinquent employee.

As an alternative to the “stick” approach of attempting to unilaterally impose a mandatory vaccination policy an employer may want to consider whether a “carrot” approach may achieve the same objectives. An employer may want to offer bonuses, gifts, time off or other perquisites to employees who choose to vaccinate and disclose their vaccination status to their employer.”

**Sarah Miller; one of the authors has in fact
graciously agreed to do a virtual presentation and
Q and A's for ALIGN Members on Oct 5, 2021
10 AM – 12 PM
mst**

Sarah's Bio:

Sarah Miller is an associate at JSS Barristers, a well-recognized litigation boutique firm in Calgary. Sarah's legal practice focuses on employment, human rights and constitutional matters. She advises all sorts of employers on legal aspects of their human resources. Her clients include non-profit businesses, publicly funded organizations, and residential support organizations. Sarah has extensive experience with diverse workforces that include employees, contractors, and volunteers, and has been advising on issues related to COVID-19 since its earliest days in our province. Sarah is committed to her community - in addition to her legal practice, she volunteers her time with the Alberta Institute for Wildlife Conservation, Scouts Canada, Calgary Legal Guidance and Pro Bono Law Alberta. She has been on television, podcasts, YouTube channels, and has presented to the Canadian Bar Association, and looks forward to meeting ALIGN's members and discussing legal issues around vaccine mandates with attendees.

To register for this presentation:

Date: Oct 5, 2021

Time: 10:00 AM –12:00 PM (Edmonton)

Register in advance for this Zoom meeting:

<https://lp.constantcontactpages.com/cu/t1fEcgi>

After registering, you will receive a confirmation email containing information about joining the meeting.

Policy Samples:

Some agency members have either implemented or are in the process of developing a mandatory vaccination policy and are willing to share with ALIGN once completed. They will then be posted on our website.

Here are samples of policies ALIGN has researched or received:

AHS has developed and implemented a Mandatory Vaccination for Covid-19 Policy effective September 14, 2021 Here is a link to this policy: <https://conta.cc/2XF4mEQ>

Mandatory Vaccination Policy_ – The Alex – Cassels revisions Sept. 15_21: <https://conta.cc/2XET97d>

City of Edmonton Link: <https://conta.cc/3Az4Vhy>

U of A Policy Link: <https://conta.cc/2XGi0qx>

8.1 COVID-19 Vaccination Policy Draft August 20 2021: <https://conta.cc/3zuXCGb>

Additional Resources:

Alberta Human Rights Commission – Protected areas and grounds under the Alberta Human Rights Act
Religious Benefits

A good article from BC is found here: Go2HR COVID-19 Vaccinations In The Workplace

Rapid Testing Screening Programs can identify pre-symptomatic and asymptomatic cases – people who don't know they're infected with COVID-19 – so they can be isolated early to stop the spread. The rapid testing program is open to any public, private or not-for-profit employer or service provider with an approved COVID-19 screening program.

More information about the Rapid Testing Program is available here: <https://open.alberta.ca/publications/rapid-asymptomatic-covid-19-screening-program-overview>

[Stewart Mackelvey Lawyers – Mandatory vaccines in the workplace July 2021](#)

With no commitments from government authorities on enforcing mandatory vaccinations for all those who are capable of getting vaccinated, employers will play a crucial role in the campaign to inform and vaccinate the general public. Whether employers should make COVID-19 vaccinations mandatory or not will be fact-dependent; however, every employer should at least consider implementing some form of workplace vaccination policy... [Learn more about Policy Considerations](#)

[A new policy brief published by WHO](#), led by Western University's [Maxwell Smith](#), provides ethical guidance for countries and organizations who may be considering making COVID-19 vaccinations mandatory, and if so, under which conditions, for whom and in what contexts.

[Harvard Business Review – How to Develop a Covid-19 Employee Vaccination Policy](#)