

FORM 80A - Rule 80

AFFIDAVIT

AFFIDAVIT OF LEX ACKER

I, Lex Acker, [REDACTED] of the City of Nanaimo, in the Province of British Columbia, Canada, SWEAR (or AFFIRM) THAT:

1. On June 29, 2023, I published a blog post about the BE Memo EI policy on my Substack account titled: "Why Your application For Employment Regular Benefits Was Denied If You Did Not Comply With A Mandatory Vaccination Policy" and included a copy of the BE Memo EI policy for my readers and subscribers to download. This blog post is attached herein to my affidavit as Exhibit #1.
2. On August 17, 2023, I received an email from [REDACTED] regarding my blog post on the BE Memo EI policy. Mr. [REDACTED] indicated to me that he had read the post and asked me to verify the provenance and authenticity of the BE Memo EI policy, which I freely agreed to do by swearing this affidavit.
3. The document in exhibit #2 titled: "EI Eligibility and refusal to comply with a mandatory vaccination policy – BE 2021-10" (BE Memo) is an authentic document that was reliably obtained, via an Access to Information and Privacy (ATIP) request, #WTP-2022-06298, exhibit #3, filed with, and answered by Employment and Social Development Canada (ESDC). I have no reason to believe that it is a false or incomplete reproduction of an official internal ESDC policy document.
4. The following paragraphs are additional facts from reliable ATIP requests that demonstrate that the BE Memo EI policy is relevant to legal challenges of EI claim denials related to a covid-19 vaccination mandate.
5. The BE Memo EI policy is not a mere internal guidance for informational only purposes written for EI adjudicating agents. It is the actual and effective EI policy that is applied to EI claims arising from non-compliance with a vaccination mandate. This fact is demonstrated on p.10 of the BE Memo EI policy with the following text: "*Questions regarding this policy should be directed to Regional Business Expertise who may refer questions to the EI Operational Policy Service desk as appropriate.*" This excerpt demonstrates, by admission, that the BE Memo is the ESDC policy for adjudicating EI claims arising from the non-compliance with a mandatory vaccination policy.
6. The BE Memo EI policy, on p.1, addresses its own lawfulness by clearly stating that: "*The memorandum is not linked to any legislative or regulatory amendments.*"
7. The following paragraphs are facts to demonstrate how the BE Memo EI policy was applied to [REDACTED]'s EI application for regular benefits.
8. [REDACTED] a Registered Nurse with at least 17 years of experience and with an impeccable employment record, was terminated by Vancouver Island Health Authority (VIHA) in October 2021 for non-compliance with her employer's request to take the covid-19 vaccines.
9. As a result of VIHA's action, [REDACTED] subsequently applied for regular EI benefits which were automatically (explained in para. #11-13) denied. [REDACTED] applied for an EI reconsideration which was also denied.
10. [REDACTED] filed a first Access to Information and Privacy (ATIP) request, #WTP-2022-00986, with Employment and Social Development Canada (ESDC) to obtain her full EI file. See Exhibit #4. The answer package of (ATIP) request #WTP-2022-00986 yielded more than 1200 pages.

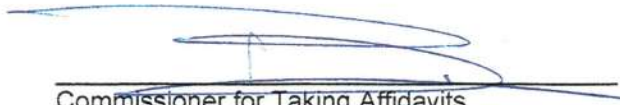
11. The Audit Trail provided by (ATIP) request #WTP-2022-00986 shown in exhibit #5 shows a timestamp of February 17th, 2022, of a finding of "Misconduct Proven".
12. Exhibit #6, from (ATIP) request #WTP-2022-00986, is a Supplementary Record of Claim documenting that EI agent, Mitchell Wells, was requesting support documentation from VIHA, the Employer. In the same Supplementary Record of Claim, the agent's notes stated explicitly that on February 17th, 2022: "**** No documents received as of 17/02/2022".
13. On February 17th, 2022, [REDACTED] and I returned a phone call to agent Mitchell Wells during which he advised that EI benefits were denied. This is documented in another Supplementary Record of Claim in Exhibit #7.
14. Paragraph 11., 12, and 13 demonstrate that the decision of to deny EI benefit was automatic and without proper documentation.
15. The answer to ATIP request #WTP-2022-00986 contains a Record of Decision on the Reconsideration Issue of Misconduct. The Record of Decision, in Exhibit #8, quoted three criteria required to make a finding of misconduct from an internal EI document referred as the "BE Memo 2021-10". The BE Memo was not part of the information release of ATIP #WTP-2022-00986.
16. I could not find any reference to these three criteria in the EI act, EI Regulations or in the EI Digest of Benefit Entitlements. This confirms para. #6.
17. I asked [REDACTED] to submit a second Access to Information and Privacy (ATIP) request # WTP-2022-06298 (exhibit #3) to Employment and Social Development Canada (ESDC) that specifically requested the release of:
 - a. the internal EI document referenced on her Record of Decision as the BE Memo 2021-10. See Exhibit #2.
 - b. The employer's, Vancouver Island Health Authority (VIHA), covid-19 vaccination policy.
18. [REDACTED] received a response package to ATIP request # WTP-2022-06298 that contained:
 - a. email communication between the employer, VIHA, and EI agent handling the reconsideration: Crystal Asselstine,
 - b. [REDACTED] termination letter shown in exhibit #9,
 - c. a document from the BC Centre of Disease Control (BC CDC) titled "Covid-19 Vaccination Requirements - Guidelines for Request for Reconsideration (exemption) Process for Health Care Workers affected by the Provincial Health Officer Orders",
 - d. the Order of the Provincial Health Officer, (Bonnie Henry) shown in exhibit #10,
 - e. The full text of the BE Memo policy, shown in exhibit #2,
19. The response package of ATIP request # WTP-2022-06298 did not contain the employer's vaccination policy which confirms para #12.
20. The EI commission at the reconsideration level still didn't have the employer's (VIHA) vaccination policy on file.
21. The BE Memo EI policy states three criteria to establish a finding of misconduct. P.5 of exhibit #2
 - a. *"The employer has adopted and communicated a clear mandatory vaccination policy to all affected employees;*
 - b. *The employees are aware that failure to comply with the policy would cause a loss of employment; and*
 - c. *The application of the policy to the employee is reasonable within the workplace context"*
22. These three criteria are not found in the EI Act, EI regulations, or even in the EI Digest of Benefit Entitlement. The same three criteria were stated in [REDACTED]'s Record of Decision (Exhibit #8).

23. The letter of termination in exhibit #9 stated: *"The PHO Order requires that staff have received at least one dose of vaccine by October 25, 2021, in order to continue working as of October 26, 2021."*
24. It is nowhere mentioned in the PHO Order in exhibit #10 that unvaccinated employee had to be terminated. Pandemics are short-lived regional events of subjective and rapidly decreasing severity as evidenced by other jurisdictions not mandating vaccination for their healthcare workers. Employers had the reasonable choice to admit effecting a voluntary labour-force reduction and place unvaccinated employees on a temporary leave of absence.
25. The BE Memo EI Policy, under its section "Fact-Finding", on p 10-11 in exhibit #2, lists five questions that defines "complete" fact-finding to support a sound decision. That section does not include the employment contract.
26. This is in contrast with the normal EI claim adjudication process described in the "Digest of Benefit Entitlement section 21.2.2 Gathering all available evidence" states: *"any written instrument including documents and records such as letters, notes, contracts, collective agreements..."*
27. Employment contracts are routinely evaluated in all other EI claims and are part of the three-step process of proving the facts. In conflicts between employees and employers, the employment contract is one of the most important pieces of evidence.
28. The alternate Fact-Finding definition of the BE Memo EI Policy was applied to [REDACTED] EI adjudication as [REDACTED]'s initial EI claim was denied without obtaining her work contract on file or even obtaining the employer's mandatory vaccination policy. [REDACTED]'s EI reconsideration file still shows no analysis or reference to her work contract.
29. In contrast to the normal fact-finding of the EI digest of benefit entitlement, the BE Memo EI policy alternate fact-finding definition detracts EI adjudicating agents from obtaining the work contracts of EI claimant and the inevitable finding that in most cases the work contracts do not have a written in or even implied mandatory vaccination work condition.
30. The BE Memo redefined the EI concept of Availability for Work as it states on p.6: *"For example, a client who voluntarily leaves their employment with just cause because they had a valid medical condition could have difficulty proving their availability, knowing that several other employers could also have a mandatory vaccination policies in place."* The BE Memo is equating availability with having received the covid-19 vaccine. Millions of unvaccinated Canadians remained employed during vaccination mandates.
31. The BE Memo's redefinition of availability for suitable work was expressed in the following manner in the benefit denial letter sent to [REDACTED]: *"Furthermore, we are unable to pay you Employment Insurance benefits from December 5, 2021, because you are unavailable due to vaccination status, which means you have not proven your availability for work."* See Exhibit #11.
32. The application of the BE Memo EI Policy found expression in the EI claim adjudication of my wife, on the Availability, Misconduct and Fact-finding EI concepts.
33. Since vaccination is a medical procedure just like sterilization, I will conclude this affidavit with two quotes from the Standing Senate Committee on Human Rights reports on Forced and Coerced Sterilization of Persons in Canada.
34. In June 2021, the Standing Senate Committee on Human Rights authored a report titled: "Forced and Coerced Sterilization of Persons in Canada" that stated on p.11: *"According to the international nongovernmental organization Human Rights Watch, "[f]orced sterilization occurs*

when a person is sterilized after expressly refusing the procedure, without... knowledge or is not given an opportunity to provide consent." An express refusal can include a verbal and/or a non-verbal statement or movement of pulling away. Amnesty International explains that "[s]terilization under coercion is when people give their consent to be sterilized, but on the basis of incorrect information or other coercive tactics such as intimidation, or that conditions are attached to sterilization, such as financial incentives or access to health services."

35. In July 2022, the Standing Senate Committee on Human Rights authored another report titled: "The Scars That We Carry: Forced and Coerced Sterilization of Persons in Canada – Part II" that stated on p. 26: "Canada provided follow-up information in response to the UN Committee against Torture's observations and recommendations. Canada's response noted that forced or coerced sterilization is a crime in Canada, constituting an offence under one or more sections of the Criminal Code, such as sections 265 (assault), 267 (assault causing bodily harm) and 268 (aggravated assault), and that in addition, all provinces and territories have legislation requiring consent for medical care and treatment. Canada's response further noted that the federal government, through the Royal Canadian Mounted Police, is committed to investigating reported allegations and treating those who report such crimes in a respectful manner."

Sworn (or Affirmed) before me at the Bartlett & Company Law Office in the City of Nanaimo of the province of British Columbia on October 17th 2023.


Commissioner for Taking Affidavits
(or as the case may be)

SANFORD BARTLETT
LAWYER
225 VANCOUVER AVENUE
NANAIMO, BC V9S 4E9


(Signature of Deponent)

Appendix A – List of Exhibits :

- #1 – Substack Blog Post: Why Your Application For Employment Insurance Regular Benefits Was Denied If You Did Not Comply With A Mandatory Vaccination Policy – Lex Acker, June 29th 2023
- #3 - Second ATIP request, #WTP-2022-06298 – February 15, 2023 – Answer Letter
- #4 – First ATIP request #WTP-2022-00986 – July 26, 2022 – Answer Letter

Exhibits Extracted from First ATIP Package WTP-2022-00986:

- #5 – Audit Trail – Misconduct Proven – February 17, 2022
- #6 – Supplementary Record of Claim: No Employer Document Received – February 17, 2022
- #7 – Supplementary Record of Claim: EI Denial decided on February 17, 2022
- #8 – Record Of Decision: Reconsideration Issue: Misconduct: Based on BE Memo 2021-10
- #11 – EI decision of benefit disentitlement – March 11th 2022

Exhibits Extracted from Second ATIP Package WTP-2022-06298:

- #2 - EI Eligibility and refusal to comply with a mandatory vaccination policy – BE 2021-10" (BE Memo)
- #9 – Letter of Termination
- #10 – Oct 14th, 2021 – Public Health Order

Why Your Application For Employment Insurance Regular Benefits Was Denied If You Did Not Comply With A Mandatory Vaccination Policy



LEX ACKER
JUN 29, 2023



3



Share



Introduction

If you were terminated for refusal to comply with a mandatory vaccination policy, and then applied for employment insurance regular benefits which most likely got denied, this article is for you.

I obtained, via an [ATIP \(Access to Information and Privacy\)](#) request, the full file, as seen by EI agents, of a person in the above situation. The ATIP revealed the existence of an internal memo dated as of October 19th, 2021, titled: [EI Eligibility and refusal to comply with a mandatory vaccination policy - BE 2021-10 \(BE Memo\)](#). Let's dig into it. Below is the first half of p.1 of the [BE Memo](#). This the first of a series of posts.

This is Exhibit "1" referred to in the
Affidavit of Lex Acker
sworn before me at Nanaimo, B.C., this
17 day of October

A commissioner for taking affidavits for
British Columbia

SANFORD BARTLETT
LAWYER
225 VANCOUVER AVENUE
NANAIMO, BC V9S 4E9

El Online Reference Tool

ELORT > Policies

El Eligibility and refusal to comply with a mandatory vaccination policy – BE 2021-10 (BE Memo)

BE Memo number: BE 2021-10

Date: October 19, 2021

Subject: Refusal to comply with an employer's mandatory vaccination policy and EI Eligibility

The purpose of this memorandum is to provide information to all staff with regard to the eligibility to Employment Insurance (EI) regular benefits for clients who refuse to comply with their employer's mandatory vaccination policy. The memorandum is not linked to any legislative or regulatory amendments.

The [BE Memo](#) provides more than information to all EI staff. It has been used to justify the denials of EI claims arising from non-compliance with a vaccination policy. The [BE 2021-10 Memo](#) is designed to deny such EI claims on two fronts: a finding of misconduct and/or a finding of unavailability. What's important to note here is that the [BE Memo](#) does NOT contain ANY references to the EI Act, EI Regulations or any jurisprudence. It even has a section on how to circumvent the Charter.

Whoever wrote this [BE Memo](#) went over the EI concepts of "Voluntary Leaving", "Suspension or Dismissal", "Leave of Absence", "Availability", "Exemptions for Medical and Religious Reasons", "Canadian Charter of Rights and Freedoms", "Fact-finding" and warped every single one of them to deny EI benefits to workers who rightly exercised their constitutionally protected right to safety and conscience by refusing to comply with a coercive medical procedure.[1][2][3]

It's the weaponization of bureaucracy and an **abuse of power**[1] by a yet to be determined group of bureaucrats; Employment Insurance is part of the **Employment and Social Development Canada portfolio**, which has the following four ministers: Carla Qualtrough, Karina Gould, Seamus O'Regan Jr., and Kamal Khera.

The overall **BE Memo** is intended to close all paths that would grant EI regular benefits if the claim originates from a vax mandate non-compliance. It's tantamount to a tort of misfeasance[2][3]. The **BE Memo** has the element of targeted malice[4] because it treats EI claims arising from non-compliance with a vax mandate differently than other EI claims. The BE Memo has its own special, made-to-fit, criterias to guarantee a finding of misconduct and the ensuing disqualification.

The intent and malice are obvious. In contempt of EI law, EI regulations, the Charter, and EI jurisprudence, the **BE Memo** subverts the EI system, a cornerstone of our social net. This **BE Memo** caused EI claims and EI reconsiderations arising from non-compliance with a covid vax mandate to be denied, which caused material damages of loss of EI benefits, psychological damages of greater economic vulnerability, emotional harm by wrong finding of misconduct, etc.

When applied, the **BE Memo** unfairly changes the burden of proof from a **balance of probabilities** to something closer to beyond reasonable doubt by introducing the concept of "exceptional circumstances" in various EI principles.

Historically when a resources town depending on mining, lumber, or a single major employer shut down, EI was there to support workers as such event was automatically deemed out of the worker's control. Driven by malicious politics of division, the EI system has been capriciously rigged to not recognize the most obvious that a pandemic is an event completely out of the control of workers.

Call to action:

- 1) Share and spread this article.

Thank you for reading Truth, Investing, and Freedom. This post is public so feel free to share it.

- 2) If you applied for EI because you were terminated for non-compliance with a mandatory vaccination policy, please [obtain your full EI file using an ATIP](#). For example, you could ask for: "Please provide my entire EI file, as seen by EI agents, including all historical claims, records of decisions, supplementary records of claims, all correspondence with employers, or other parties, etc."
- 3) Reach out to me, if you work in an organization that implemented a vax mandate and you:
 - a) have some awareness of improprieties regarding terminated unvaccinated workers such as falsification of records, internal and external pressures to manipulate records of employments, inappropriate behaviors and communications between EI and an employer,
 - b) want to share what you found in an ATIP or by other means,
 - c) have awareness of financial or other considerations from the government in exchange for the implementation of a vax mandate in a workplace (indications of employers being coerced or incentivized to implement a vax mandate?)
 - d) work for any non-profit organization that receives public funds, and you think there's something wrong with the use of the funds.
 - e) Just want to share something you think can help bring justice and restore freedoms.

Truth, Investing, and Freedom is a reader-supported publication. To receive new posts and

support my work, consider becoming a free or paid subscriber.

Next Post: Background section of the BE Memo

Future Contemplated Posts:

- A Serie of posts covering a large Canadian union financial statement, it's a \$500M+ scandal, multi-year scandal
- A bit of financial history of the LNP (lipid nanoparticle) and how its development and historical clinical reality could see the light of a court.
- Some posts about publicly traded companies that have poor prospects: things to sell short.
- Some posts about entire industries that are high risk investments and better avoided.

[1] Criminal Code 423(1): Intimidation

[2] WHAT IS THE ROLE OF MISFEASANCE IN A PUBLIC OFFICE IN MODERN CANADIAN TORT LAW?

[3] Claims for Misfeasance in Public Office: A Brief Summary

[4] Malice in the law of torts

[1] Government of Canada, "Assault," Criminal Code (R.S.C., 1985, c. C-46), S. 265 (1)
(a). Accessed October 20, 2021

[2] "Assault," Criminal Code (R.S.C., 1985, c. C-46), S. 265 (3)(d). Accessed October 20, 2021

[3] Supreme Court of Canada, "Hopp v. Lepp," 1980 CanLII 14 (SCC), [1980] 2 SCR 192. Accessed October 20, 2021



3 Likes

Comments



Write a comment...

El Online Reference Tool

El ORT > Policies

El Eligibility and refusal to comply with a mandatory vaccination policy – BE 2021-10 (BE Memo)

BE Memo number: BE 2021-10

Date: October 19, 2021

Subject: Refusal to comply with an employer's mandatory vaccination policy and El Eligibility


The purpose of this memorandum is to provide information to all staff with regard to the eligibility to Employment Insurance (EI) regular benefits for clients who refuse to comply with their employer's mandatory vaccination policy. The memorandum is not linked to any legislative or regulatory amendments.

Background

On January 30, 2020, the World Health Organization (WHO) declared an outbreak of what is now known as 2019-nCoV (COVID-19) acute respiratory disease to be a Public Health Emergency of International Concern (PHEIC). On March 12, 2020, the WHO labelled COVID-19 a pandemic.

There are several ways to protect against COVID-19 and the spread of the virus, like hand hygiene, wearing a mask, practising social distancing. Since December 2020, vaccination has proven to be a very effective tool to reduce the

This is Exhibit "2" referred to in the
Affidavit of Alex Acker
sworn before me at Nanaimo, B.C., this
17 day of October, 2023


A commissioner for taking affidavits for
British Columbia

risk of COVID-19 transmission for Canadians and to protect broader public health. The Government of Canada is continuing to take many actions to ensure as many Canadians as possible are getting vaccinated.

Employers across the country, both in the public and private sectors, have begun to implement mandatory COVID-19 vaccination policies for employees. Many other large employers in education, healthcare and government sectors have announced similar mandatory vaccination policies.

Application

Mandatory COVID-19 vaccinations as a condition of employment could lead to employees voluntarily leaving or being dismissed or suspended without pay from their employment if they refuse to comply. Whether these employees would have access to Employment Insurance (EI) benefits depends on several factors and all claims for benefits must be adjudicated based on individual circumstances.

A fundamental principle of the EI program is that clients must lose their employment through no fault of their own to be eligible for EI regular benefits. The *Employment Insurance Act* states that a client is disqualified (or disentitled) from receiving benefits if they have voluntarily left their employment without just cause or been suspended or dismissed as a result of their own misconduct.

More details on the adjudication of the different reasons for separation in relation to the refusal to comply with the employer's mandatory vaccination policy can be found below.

Voluntary leaving

The EI program provides temporary income support to employees during periods of involuntary unemployment. To receive benefits, clients who have voluntarily left their employment must show just cause for having taken this action. Generally, this means that these clients must demonstrate that they had no reasonable alternative but to leave their employment.

The definition of "reasonable alternative" can vary from one case to another. The legislation does not ask employees to do the impossible in establishing just cause for voluntarily leaving. All it requires is what is reasonable under the circumstances. To make this determination, consideration should be given to:

- the situation that led to the voluntary separation;
- whether other measures or reasonable alternatives that could have remedied this situation existed or were exercised; and
- the employees' reasons for not using what appears to be reasonable and available solutions.

All claims must be assessed on an individual basis in the context of the client's work history, willingness to immediately accept employment and job search efforts made to re-enter the workforce.

In the context of a mandatory vaccination policy, an employee would not have just cause to voluntarily leave their employment unless they left due to exceptional circumstances. Examples of such exceptional circumstances could be a medical condition that would prevent them from being vaccinated or a religious belief or other grounds protected under the Canadian Charter of Rights and Freedoms.

Some clients could argue that a new mandatory vaccination policy is a major change in the terms or conditions of employment and their duties. The just cause exception is usually used in the context of changes that have a direct

impact on the work and therefore the employee had no other choice than to leave their employment (i.e., reduction of hours, change in the shifts, direct change in work duties). A mandatory vaccination policy may not change an employee's specific duties, but merely changes the work environment and therefore an employee who voluntarily left employment because of a refusal to be vaccinated may not have had just cause.

In order to properly determine that a client had just cause for voluntarily leaving their employment, thorough fact-finding must be conducted and documented to support the existence of exceptional circumstances. It would be insufficient to rely only on a client's statement.

Suspension or Dismissal

The purpose of the EI program is to protect those who, through no fault of their own, become temporarily unemployed. All claims for benefits are processed and adjudicated based on individual circumstances. To do so, every attempt is made to ensure that all pertinent facts of the case are obtained.

When clients are suspended without pay or dismissed from their employment, the Commission must determine whether they lost their employment by reason of their own misconduct. The Commission is required by legislation to provide both clients and employers with an opportunity to provide details of the suspension or dismissal.

If, based on all of the facts of the case, the Commission determines that misconduct has been proven, a disqualification from receiving regular benefits is imposed.

In this context, if an employee willfully refuses to comply with their employer's mandatory vaccination policy and there is clear causality between the refusal to get vaccinated and the dismissal or suspension, then a finding of misconduct

can be established, if:

- The employer has adopted and communicated a clear mandatory vaccination policy to all affected employees;
- The employees are aware that failure to comply with the policy would cause a loss of employment; and
- The application of the policy to the employee is reasonable within the workplace context.

In addition, even if a policy was implemented after the employee was hired, the application of the policy could be viewed as reasonable in the context of the COVID-19 pandemic.

Leave of absence

The EI legislation provides for clients to be disentitled from receiving benefits if they have taken a voluntary leave of absence from their employment without just cause. To prove just cause, clients must show that they had no reasonable alternative but to take a leave from their employment.

Making the choice to take a leave of absence from employment because one does not wish to be vaccinated would normally not constitute just cause within the meaning of the Act, unless the client shows that in their circumstances, taking a leave of absence was the only reasonable alternative.

For employers that choose to place employees on leave without pay rather than imposing a termination or suspension for misconduct, the leave without pay could be considered equivalent to a suspension, if the reason for the leave without pay was non-compliance with the mandatory vaccination policy.

Availability

Entitlement to benefits does not rely solely on the fact that a person is available for work but rather on their proving it.

In the context of the mandatory vaccination policies, the issue of availability must be examined very closely. For example, a client who voluntarily leaves their employment with just cause because they had a valid medical condition could have difficulty proving their availability, knowing that several other employers could also have mandatory vaccination policies in place.

A client's availability for work is assessed in the context of the client's desire to immediately accept suitable employment and the personal efforts made to re-enter the labour market. Clients must prove that, for each day they request payment of regular benefits, they are available for and actively seeking employment and are not placing undue restrictions on their availability. All pertinent facts of each case are considered in rendering a decision.

When determining whether availability for work has been proven, the following questions will be helpful:

1. Does the client's attitude reflect a sincere desire to work or, conversely, the lack of concern of a person not really seeking employment?
2. Are there any circumstances which obstruct the client's desire to work?
3. Is the client's willingness to work subject to expectations which greatly reduce chances of obtaining employment?
4. Is the client unable to obtain suitable employment despite their personal efforts to find work?

The circumstances surrounding a separation from employment, personal efforts made to find work and the interest shown when a new job opportunity arises, are all factors that must be considered in assessing a person's attitude towards seeking and accepting employment.

Factors which impact a client's desire to work include any circumstances beyond the client's control, such as physical limitations or family constraints. These circumstances may be distinguished from other restrictions arising out of a client's own choice, such as when a person is simply not prepared to accept certain working conditions which would be considered suitable. Clients who do not prove they are available for work will be disentitled from receiving benefits.

In order to establish their availability for work, clients are expected to make every effort to remove any restrictions to doing so, such as family obligations and other personal responsibilities. Clients who have not made arrangements to remove restrictions to allow them to seek and accept all suitable hours of work, may be denied benefits for failing to prove their availability for work.

Exemptions

As previously mentioned, a client could refuse to comply with the employer's mandatory vaccination policy for exceptional reasons. A client who does not want to receive the COVID-19 vaccine could therefore submit a request for exemption to their employer.

More information about these exemptions in cases of a refusal to comply with the employer's mandatory vaccination policy is below.

Medical reasons

A client could submit a request for exemption for medical reasons to their employer. In these cases, a medical certificate must adequately support the client's decision to not be vaccinated.

In some cases, the employer can refuse to accept a medical certificate because it does not meet the conditions of the employer's mandatory vaccination policy.

A client could still receive EI benefits if the medical reasons or the description of the client's state of health in the medical certificate is directly related to their refusal to be vaccinated.

For example, an employer could specifically name the types of illnesses for which they would grant an exemption, such as an allergy. However, the client could have another credible medical reason, such as a mental illness or other condition justifying their refusal.

Religious reasons

Since religion is a protected reason under human rights legislation, a client who does not want to receive the COVID-19 vaccine could submit a request for exemption for religious reasons to their employer. It is possible that the employer does not offer exemptions for religious reasons due to the nature of the work done by their employees, as well as for security reasons. A client could still make the request.

When the employer is unable to grant an exemption for religious reasons, the client could receive EI benefits if they are able to demonstrate that their religious belief is authentic and their faith requires a particular practice. It must be possible to conclude that the client's religion is preventing them from being vaccinated. The client must show the link between their religious belief and their refusal to be vaccinated. Does the client's religion present clear conditions or teachings against vaccination? The simple allusion to free choice by the religious body is not considered an instruction by that body that can justify a refusal to comply with the vaccination policy.

In addition, the interpretation of sacred texts by the client themselves must not be seen as a particular practice required by their faith.

When examining the facts about a request for exemption, it is important to ensure that the exceptional circumstances provided by the client are actually of a religious nature, and not of a personal or political nature.

Canadian Charter of Rights and Freedoms

Only the Canadian Charter of Rights and Freedoms and the Canadian Human Rights Act constitute the human rights regime that is applied when considering a federal EI application.

The Canadian Charter of Rights and Freedoms guarantees the extended right to equality and to the other fundamental human rights and freedoms, such as the freedom of religion.

A client could, for example, invoke one or more protected reasons under the Canadian Charter of Rights and Freedoms to justify the fact that they lost their job.

Simply invoking that the employer's mandatory vaccination policy is discriminatory is insufficient to explain the end of employment. In such a case, the client must be able to demonstrate how they were discriminated against and on what grounds. It is important for the officer to establish the facts in order to understand the link between the supposed discrimination and the nature of the employer's professional expectations.

Fact-finding

The decision-maker is responsible for ensuring that fact-finding is complete before making a decision. "Complete" means that all facts necessary to make a sound decision have been obtained and are included in the claim file. In some

instances, determining when enough facts have been gathered to make a decision is difficult. However, if the answer is "yes" to each of the following questions, the fact-finding is sound.

Have all interested parties been contacted?

If one of the parties rebutted or contradicted earlier statements given by another party, have they been given the opportunity to respond?

In the case of a refusal to comply with a mandatory vaccination policy, fact-finding is essential for understanding the file.

Certain elements must be on file:

The details of the employer's policy, whether it is written or verbal.

When and how was this policy communicated to the client?

Does the policy include any accommodations for exemptions due to medical or religious reasons?

Did the client request an exemption and did they provide the information required by the employer?

A timeline of the events leading to the client's end of employment.

Processes and Procedures

Processes and procedures in regards to EI eligibility and the refusal to comply with a mandatory vaccination policy are available in the Online Reference Tool.

We ask that you share this guidance with all staff involved in the processing of claims.

Questions regarding this policy should be directed to Regional Business Expertise who may refer questions to the EI Operational Policy Service Desk as appropriate. In order to streamline the analysis process, all questions must

be accompanied by complete fact-finding and a recommendation from the region.

Questions regarding processes and procedures should be directed to the El Operational Processes and Procedures Service Desk .

Previous versions

Date modified: 2022-01-18



Employment and
Social Development Canada

Exhibit #3 p114
Emploi et
Développement social Canada

Access to Information and Privacy
1440 - 9700 Jasper Avenue
Edmonton, AB T5J 4C1

PROTECTED B

Your file - Votre référence


February 15, 2023

2835483/2835547/2835585/283624

Our file - Notre référence

WTP-2022-06298 / DO

This is Exhibit "3" referred to in the
Affidavit of Lex Acker
sworn before me at Nanaimo, B.C., this
17 day of October 2023


A commissioner for taking affidavits for
British Columbia

Dear [REDACTED]:

This is in response to your request submitted under the *Privacy Act* (the Act), received at Employment and Social Development Canada (ESDC) on February 1, 2023, and which reads as follows:

In furtherance to the previous request under file WTP-2022-00986 p.82, I wish to obtain the full "BE Memo 2021-10" and the BEA consult notes contained in MEE, Event ID: EVT-029325. This sought information is referred to on p.82 of the WTP-2022-00986 request. I wish to obtain the alledged (sic) "letter of termination" that Service Canada - EI has on file. this is referred to on p.83 of the WTP-2022-00986 request.

In furtherance to WTP-20200-00986 (sic) p. 88, I wish to obtain the "Vancouver Island Health's internal policies regarding their covid-19 vaccination non-compliance policy and any documentation" that agent Mitchell Wells mentions requesting from VIHA. I wish to obtain all emails received and sent from the "ns-9025364162-gd@servicecanada.gc.ca that match in subject line OR in the email text body with "[REDACTED]", "[REDACTED]", "[REDACTED]", "[REDACTED]", "[REDACTED]" I wish to obtain all faxes sent from a received at 902-536-4162 that match with "[REDACTED]", "[REDACTED]", "[REDACTED]", "[REDACTED]", "[REDACTED]" I wish to obtain all emails received and sent from the "mitchell.wells@servicecanada.gc.ca", or any other email address of agent Mitchell Wells that match in subject line OR in the email text body with "[REDACTED]", "[REDACTED]", "[REDACTED]", "[REDACTED]", "[REDACTED]"

Canada

In furtherance of WTP-2022-00986, p 89 and 90, in attachment. - I wish to obtain the "Public Health Order" that agent Crystal Asselstine mentions having on file under the May 18th 2022 notes. - I wish to obtain any internal communications of Vancouver Island Health sent to staff, to [REDACTED], and Island Health's internal policy. This was information requested on May 18th, 2022 by Crystal Asselstine. - I wish to obtain the "letter provided by HR" that is mentioned in the notes of May 19th, 2022 and sent to Crystal Asselstine. - I wish to obtain all emails received, that were filed in common share drive and sent for imaging as per p.90 - I wish to obtain all the information that agent Crystal Asselstine received from Vancouver Island Health in respect to p.89 and 90 in attachment.

In furtherance of WTP-2022-00986, p91-92, - I wish to obtain all information exchange with the "BEA Group" in relation to my EI file and EI claim. Information regarding my EI file must have been communicated by email to this BEA Group, therefore I request all such communications between BEA Group and EI agents having handled my file - I wish to obtain "Public Health Officer orders" that EI has on file, not a web reference, the full archived time-stamped text, because web links do change and expire. - I wish to obtain the source text that EI has on file that states: "Subject to section 2 and 3 as of October 26th, 2021, a staff member who was hired before October 26, 2021 must be vaccinated or have an exemption to work." This sentence is highlithed (sic) in the attached document and I want to see the full source document that EI took it from. - I wish to obtain the full "SROC dated 09/12/2021". I don't know what SROC means but it is a document that refers to me and statements I would have made. - I wish to obtain the full reference to the highlighted "EI Eligibility and refusal to comply (sic) with a mandatory vaccination policy - BE 2021-10 (BE Memo) (ort.prv)

A review of the information you have requested is now complete.

Portions of the Information have been exempted pursuant to section 26 of the Act.

A copy of the provision is enclosed.

You are entitled to complain to the Privacy Commissioner concerning the processing of your request. In the event you decide to avail yourself of this

right, your notice of complaint should be addressed to:

Office of the Privacy Commissioner of Canada
30 Victoria Street
Gatineau, Quebec K1A 1H3

The right exists to request the correction of any errors or omissions believed to exist in any of the enclosed information which originated with ESDC. To make such a request, complete the attached Record Correction Request Form and return it to the Access to Information and Privacy Division at the address above *along with documentary proof supporting the correction*. If the request for correction is not accepted for any reason, entitlement exists to request that a notation be attached to the information regarding the error or omission cited.

This completes the processing of your request. Should you have any questions, do not hesitate to contact me by email at W-T-SSB-DGSS-ATIP-AIPRP-GD@servicecanada.gc.ca. Please reference our file number starting with "WTP", which is located at the top on this document.

Yours sincerely,



David Olsen
ATIP Officer
Western Canada and Territories Region

Encl.

Privacy Act

26. INFORMATION ABOUT ANOTHER INDIVIDUAL

26. The head of a government institution may refuse to disclose any personal information requested under subsection 12(1) about an individual other than the individual who made the request, and shall refuse to disclose such information where the disclosure is prohibited under section 8.

Exhibit # 4 p1/3



Employment and
Social Development Canada

Emploi et
Développement social Canada

Access to Information and Privacy
1440 - 9700 Jasper Avenue
Edmonton, AB T5J 4C1

PROTECTED B

Your file - Votre référence

2424089

Our file - Notre référence

July 26, 2022

WTP-2022-00986 / DO

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

This is Exhibit "4" referred to in the
Affidavit of Alex Arkov
sworn before me at Nanaimo, B.C., this
17 day of October, 2023

A commissioner for taking affidavits for
British Columbia

Dear [REDACTED]:

This is in response to your request submitted under the *Privacy Act* (the *Act*), received at Employment and Social Development Canada (ESDC) on May 11, 2022, and which reads as follows:

I'm seeking my complete Employment Insurance file. I want all details, notes, communications to other departments and external parties, including consultants used in processing my file, internal and external emails, mailings pertaining to my file. I want to be able to see the entirety of my file un-redacted, who touched it and when. Thanks.

A review of the information you have requested is now complete. Portions of the information have been exempted pursuant to section 26 of the *Act*. A copy of the provision is enclosed.

You are entitled to complain to the Privacy Commissioner concerning the processing of your request. In the event you decide to avail yourself of this right, your notice of complaint should be addressed to:

Office of the Privacy Commissioner of Canada
30 Victoria Street
Gatineau, Quebec K1A 1H3

The right exists to request the correction of any errors or omissions believed to exist in any of the enclosed information which originated with ESDC. To make such a request, complete the attached Record Correction Request Form and return it to the Access to Information and Privacy Division at the address above

Canada

along with documentary proof supporting the correction. If the request for correction is not accepted for any reason, entitlement exists to request that a notation be attached to the information regarding the error or omission cited.

This completes the processing of your request. Should you have any questions, do not hesitate to contact me by email at W-T-SSB-DGSS-ATIP-AIPRP-GD@servicecanada.gc.ca. Please reference our file number starting with "WTP", which is located at the top on this document.

Yours sincerely,




David Olsen
ATIP Officer
Western Canada and Territories Region

Encl.

Privacy Act

26. INFORMATION ABOUT ANOTHER INDIVIDUAL

The head of a government institution may refuse to disclose any personal information requested under subsection 12(1) about an individual other than the individual who made the request, and shall refuse to disclose such information where the disclosure is prohibited under section 8.

Government
of CanadaGouvernement
du Canada

ROE Capture Module

Audit Trail

Social Insurance Number: [REDACTED]

Serial Number: W86343171

This is Exhibit "5" referred to in the
Affidavit of LEX ACKER
sworn before me at Nanaimo, B.C., this

17 day of October 2023

A commissioner for taking affidavits for
British Columbia

AUDIT LOG

Filter items

Showing 1 to 1 of 1 entries

Show entries

ROE Block

Number /

EHF

Original

Value

New

Value

Date and Time of

Change

Change

made

By

16-Special
Condition

N - Misconduct
proven

2022-02-17
12:28:25

Wells,
Mitchell MW

1

ADDITIONAL INFORMATION LOG

[Back](#)

Date Modified:

2020-11-17

Supplementary Record of Claim

Social insurance number: [REDACTED]

s.26
Exhibit #6 p 1/1

Canada
Protected - B

Client name:

BPC:

2320


Renewal:

Main Issue:

Other

Other Issue(s):

This is Exhibit "6" referred to in the
Affidavit of LEX ACKER
sworn before me at Nanaimo, B.C., this
17 day of October, 2023


A commissioner for taking affidavits for
British Columbia

Comments:

Covid-19 vaccination non-compliance policy - Employer

Details:

Called (250) 519-3500 (Block 22 ROE) at 1:04pm AST 21/12/2021. No answer. Left voicemail message requesting call back within 24 hours. Left agent's name, phone number and office hours. [Need information regarding Covid-19 vaccination non-compliance policies]

Employer returned call at 4:26pm AST 22/12/2021. Spoke with [REDACTED] Call transferred to HR, spoke with [REDACTED] Agent identified himself, explained the reason for the call and that the information was being documented. Also advised that the information could be shared with the other party. They stated that they understood and consented to provide further details.

[REDACTED] verified the existence of a company vaccination policy and that refusal to adhere to the policy would result in dismissal. Agent requested additional information regarding Island Health's internal policies regarding their Covid-19 vaccination non-compliance policy and any documentation specify to the client. [REDACTED] stated that she will collect the information requested and submit to the Commission.

Agent provided the following information:

Copies can be sent to our General Delivery email box at ns-9025364162-gd@servicecanada.gc.ca. In the subject line please write, "Attn: Mitchell Wells re: claimant [REDACTED]"

Fax:

Copies can be faxed to 902-536-4162. Please make a note on the fax "Attn: Mitchell Wells re: claimant [REDACTED]"

If you have any questions or need further clarification I can be reached by phone at [REDACTED] I am located in [REDACTED] so my office hours are 4:00am to 1:00pm (PST).

*** No documents received as of 17/02/2022

Obtained by:

Telephone

Obtained from:

Employer

Source details:

Employer returned call at 4:26pm AST 22/12/2021.

Obtained on:

2022-02-17

Submitted by: Wells, Mitchell MW

Submitted on: 2022-02-17 9:26:37 AM

Supplementary Record of Claim

s.26
Exhibit #7 p 1/1

Social insurance number: [REDACTED]

Client name:

BPC:

2320

Renewal:

Main Issue:

Other

Other Issue(s):

Comments:

Verbal communication of decision

Details:

Called client at 1:52pm AST 16/02/2022. No answer, left voicemail message requesting callback within 24 hours. Left agent's name, Mitchell, phone number, [REDACTED] and hours of work. [Verbal communication of decision].

Client returned call at 11:12am AST 17/02/2022. Agent identified himself, explained the reason for the call and that the information was being documented. They stated that they understood and consented to provide further details. Security check completed.

Spoke with claimant and advised of the decision. I reviewed the facts on file and confirmed it was complete and explained my decision and rationale in detail in context of the legislation and policies. I explained the time frame for request for reconsideration. Advised the client that a notice of decision will be sent by mail and provided the 1-800 toll-free number for any other enquiries. Claimant did not have any additional new facts to add to the file.

Obtained by:

Telephone

Obtained from:

Client

Source details:

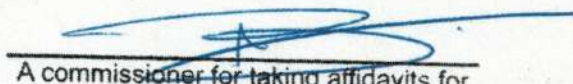
Client returned call at 11:12am AST 17/02/2022.

Obtained on:

2022-02-17

Submitted by: Wells, Mitchell MW

Submitted on: 2022-02-17 9:23:26 AM

This is Exhibit "7" referred to in the
Affidavit of LEX ACKER
sworn before me at Nanaimo, B.C., this
17 day of October, 2023

A commissioner for taking affidavits for
British Columbia

Record of Decision

Social Insurance number: [REDACTED]

Client name:

BPC:

2320

Description:

RFR 467221 - Dismissal - Vancouver Island Health - Maintained

Decision details:

Reconsideration Issue: D10 - Misconduct

Relevant Facts:

The client was employed as a casual RN with Vancouver Island Health Authority until Oct 24/21. She was dismissed from her employment for refusing to comply with the employer's mandatory vaccination requirements, in response to the BC PHO (requiring that all health care workers be vaccinated by October 26/21, or have applied for a medical exemption).

The claimant confirmed that she was aware of the employer's policy and consequence of not complying (her dismissal). She refused to comply for a number of reasons: The safety and efficacy of the vaccine, that the PHO acted illegally and the employer's enforcement of these orders was illegal and unconscionable. That this is violation of her Charter rights and the gene therapy used for the vaccine is unacceptable based on her religious beliefs, amongst others. The claimant identifies as a Buddhist and stated that Buddhism does not allow to take from one to give to another. She confirmed that Buddhism has no doctrine prohibiting vaccines but noted religion is a personal experience and this is her interpretation of the religion.

We concluded that the claimant lost her employment due to her own misconduct.

Claimant, [REDACTED], filed a request for reconsideration. Numerous arguments were presented, various sources were cited, scientific data was provided relative to the safety/ efficacy of the vaccine/ the legalities /reasonableness around vaccine mandates and policy implementation. No new or additional information was provided which would warrant a change to the decision at issue.

Reasoning and Rationale

The onus is on the Commission and the employer to prove

- the claimant wilfully acted in such a way that they knew or ought to have known the behaviour would have a negative impact on the employment relationship?
- the claimant lost the employment as a direct result of the alleged offense?
- the claimant committed the offense?
- the offense constituted misconduct as defined above.

To refuse benefits because of misconduct, it must be shown that the act or alleged act constitutes a breach of an implied or express obligation in the employment contract of such seriousness that the employee should normally have known it would result in dismissal. There must also be a causal relationship between the misconduct and the claimant's dismissal. An indefinite disqualification is imposed when the claimant loses employment by reason of misconduct. Canada (AG) v. Lemire, 2010 FCA 314

In the context of refusing to comply with an employer's mandatory vaccination policy and there is clear causality between the refusal to get vaccinated and the dismissal or suspension, then a finding of misconduct can be established, if:


- The employer has adopted and communicated a clear mandatory vaccination policy to all affected employees;
- The employees are aware that failure to comply with the policy would cause a loss of employment; and
- The application of the policy to the employee is reasonable within the workplace context.

(BE Memo 2021-10)

BEA consult notes that the policy is contained in MEE, Event ID is EVT-029325.

Public Health Officer orders can also be located at COVID-19 (Novel Coronavirus) - Province of British Columbia (gov.bc.ca) Employees were also able to request an exemption through the form covid-19-exemption-guidelines-request-for-reconsideration.pdf (gov.bc.ca)

This is Exhibit "8" referred to in the Affidavit of LEX ACKER sworn before me at Nanaimo, B.C., this 17 day of October 2023


A commissioner for taking affidavits for
British Columbia

Social insurance number: [REDACTED]

As per the letter of termination, the PHO announcement re: vac requirements was issued Sept 13/21. On Oct 14/21, the PHO provided a further opportunity for staff to have received at least one vaccine dose by Oct 25/21, to continue working. Claimant refused to comply and was placed on leave effective Oct 26/21. She was offered the option of receiving the Janssen vaccine on Nov 10/21, but declined. On Nov 16/21, she met with the employer stating she wasn't vaccinated and would not be getting vaccinated. Her employment was terminated effective immediately.

The claimant acknowledged being advised of the policy and knowing that non-compliance would result in her dismissal. She refused to get vaccinated on a number of grounds but confirmed that medical wasn't one of them. As noted, she maintains that the vaccine is against her religious beliefs because she is a Buddhist; however, acknowledges Buddhism has no anti-vaccination doctrine/ teachings against the vaccine.

While the claimant's beliefs against the vaccine are authentic, she has not demonstrated that she belongs to a specific creed / organized religion or faith that requires a particular practice, presents clear conditions or teachings against vaccination and directed their members against inoculation. She has not met the burden of proof to demonstrate that her refusal to comply with the mandatory vaccination policy was reasonable based on grounds of discrimination (creed or religion), contrary to the Human Rights Code. Her refusal was based on her personal belief.

The application of the employer's mandatory vaccination policy was reasonable within the workplace context, in compliance with PHO guidelines issued for healthcare workers.

The claimant's decision not to comply with the employer's vaccine requirements, knowing that this would result in her dismissal, is considered misconduct.

Decision: Maintained

Ref: S 29, 30 & 112 EIA

Submitted by: Asselstine, Crystal CR

Submitted on: 2022-05-20 10:31:34 AM

Exhibit # 9 p. 1/1

P/A

island health


Excellent health and care, for everyone,
everywhere, every time.

Nov. 16, 2021

This is Exhibit "9" referred to in the
Affidavit of LEX ACKER
sworn before me at Nanaimo, B.C., this
17 day of October, 2021

Registered Nurse, NRGH

Dear [REDACTED]:


A commissioner for taking affidavits for
British Columbia

Re: Termination of Employment

On September 13, 2021, the Provincial Health Officer (PHO) announced that all employees in the health sector will be required to be fully vaccinated against COVID-19 by October 26, 2021.

On October 14, 2021, the Provincial Health Officer issued the *Hospital and Community (Health Care and Other Services) COVID-19 Vaccination Status Information and Preventive Measures Order* (PHO Order), providing a further opportunity for staff to become fully vaccinated. The PHO Order requires that staff have received at least one dose of vaccine by October 25, 2021, in order to continue working as of October 26, 2021.

Over the past weeks, you have been repeatedly advised of the requirement to be vaccinated against COVID-19 in order to work at Island Health from October 26, 2021 onward. This requirement is based on a public health order by the Provincial Health Officer of BC and is a legal requirement for employees. The Provincial Health Officer has communicated that this step was not taken lightly and was done because of the continued risk of COVID-19 to patients, residents and employees.

On October 26, 2021, you were placed on an unpaid leave until November 14, 2021, as an employee who had not been confirmed vaccinated as required under the PHO Order. On November 10, 2021, you were informed of the option to receive the Janssen vaccine as it had been confirmed that BC would be receiving a limited supply of this vaccine. You were required to confirm, by November 12, 2021, your intention to receive this vaccine.

At our meeting on Nov. 16, 2021, you stated that you are not vaccinated, and indicated that you will not be getting vaccinated. You also confirmed that you would not be willing to receive the Janssen vaccine. As a result, your employment with Island Health is terminated effective immediately. Any property of Island Health must be returned immediately, including your ID badge, proxy card, parking pass and keys.

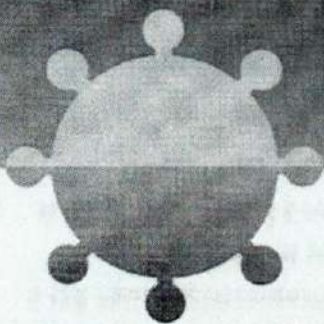
It is recognized some employees may wish to continue to access the Employee and Family Assistance Program (EFAP). To that end, we have arranged for continued EFAP coverage from the date of this letter, for an additional three (3) months. You can reach EFAP by dialing 1-800-663-1142 (24 hours a day, 7 days a week).

As you know, we value our staff and have encouraged all staff to become vaccinated in order to be able to continue their roles in providing services to our patients, residents and clients. It is regrettable when staff make the personal decision to remain unvaccinated and are ineligible to continue with this important work. If you become fully vaccinated in the future such that you would meet the requirements of the Order and you wish to discuss your options moving forward, please contact me.

Sincerely,



Israel Roman
Mgr, Floor 1, Palliative & ALC Courtyard
cc Personnel File
Union Rep



Coronavirus COVID-19

BC Centre for Disease Control | BC Ministry of Health



Exhibit #10 p1/30

This is Exhibit "10" referred to in the Affidavit of LEX ACKER sworn before me at Nanaimo, B.C., this 17 day of October, 2023

COVID-19 Vaccination Requirements -

Guidelines for Request for Reconsideration (Exemption) Process for Health Care Workers affected by the Provincial Health Officer Orders

October 8, 2021

The Provincial Health Officer (PHO) has issued Preventive Measures Orders under the *Public Health Act* which require individuals who work in health care in BC to be vaccinated against COVID-19. These orders are intended to reduce COVID-19 case rates, outbreaks, hospitalizations, critical care admissions, and deaths, protect people who cannot be vaccinated, and protect our healthcare system.

The purpose of these Orders is to protect those most vulnerable to complications of COVID-19, to protect health care workers, to prevent disruptions to care and to reduce incidence of COVID-19 cases, hospitalizations, and deaths. For these reasons it is important that people who can be fully vaccinated, do so.

Exemptions

Under section 43 of the *Public Health Act*, a person who is subject to an Order of the Provincial Health Officer can submit a request for reconsideration (exemption) from an Order's requirements.

Due to the nature of health care work risk to their health and the health of patients, residents and clients that make them more vulnerable to serious COVID-19 outcomes, there is a necessity to ensure that there is a low risk posed by health care workers providing care.

Process to submit a request for reconsideration (exemption)

Submitting an exemption request does not guarantee that you will receive an exemption.

The PHO order states that "A request for reconsideration from a person seeking an exemption from the requirement to be vaccinated or to provide proof of vaccination must be made on the basis that the health of the person would be seriously jeopardized if the person were to comply with Order, and must follow the guidelines posted on the Provincial Health Officer's website



Ministry of Health



BC Centre for Disease Control

If you have fever, a new cough, or are having difficulty breathing, call 8-1-1.



000005

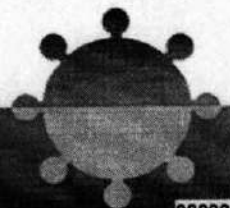
(<https://www2.gov.bc.ca/gov/content/health/about-bc-s-health-care-system/office-of-the-provincial-health-officer/current-health-topics/covid-19-novel-coronavirus>)."

To be considered for an exemption you will likely have had a dose of vaccine and experienced a serious adverse event or have a pre-existing medical condition the warrants being exempted for a period of time. It is important to note that being exempted from a PHO order requirement is not equivalent to a permanent deferral to being vaccinated. Some people for whom a vaccination deferral has been recommended may get a dose at a later date. If you have been granted an exemption to PHO requirements, and you do get vaccinated at a later date, you should notify the PHO at the contact information below to update your exemption status. A decision to get vaccinated remains a decision for the individual in consultation with their health care provider.

Conditions that could warrant an exemption include¹:

1. Anaphylaxis to components of both mRNA and adenovirus vector vaccine (i.e., polyethylene glycol and polysorbate 80) that has been confirmed by a qualified allergist who offers testing and graded dose administration procedures.
2. Receipt of anti SARS-CoV-2 monoclonal antibodies or convalescent plasma for treatment or prevention of COVID-19 (except tocilizumab or sarilumab).
3. Diagnosis of Multisystem Inflammatory Syndrome.
4. Medical practitioner-diagnosed myocarditis or pericarditis following the first dose of COVID-19 vaccine with no other cause identified.
5. Serious adverse event following first dose of COVID-19 vaccine awaiting recommendation for further vaccination by the medical health officer. Serious adverse events are those that required urgent medical care, resulted in hospitalization, or permanent disability.
6. Serious adverse event following first dose of vaccine not yet reported to the medical health officer.
7. Serious adverse event following a dose of vaccine and recommendation by the medical health officer to not receive further doses.

¹ Based on expert advice from BC Centre for Disease Control, BC public health officials, and allergy specialists.



To submit an exemption request, follow these directions:

For people who experienced a serious adverse reaction to COVID-19 vaccination

1. If you experienced a serious adverse reaction to a dose of vaccine that could warrant an exemption, you should have reported the reaction to the health care provider that gave you the vaccination, and you should have received a recommendation from a medical health officer.

If you did not report the reaction, then the first step is to report that event to your health care provider, who needs to report the reaction to the medical health officer. You should also confirm that your health care provider reported your reaction to the medical health officer, and wait for a recommendation from a medical health officer. Your health care provider should complete and submit a COVID-19 vaccine adverse event report using the form located [here](#).

2. If you have received a recommendation from a medical health officer about your reaction, or once you receive a recommendation after the reaction has been reported to a medical health officer, then send that information to the Office of the Provincial Health Officer, as described below.

For people who have a medical condition that warrants consideration of an exemption

1. You need to have your medical practitioner (a registrant of the College of Physicians and Surgeons of British Columbia) or nurse practitioner (a registrant of the British Columbia College of Nurse and Midwives) fill out [the medical deferral form](#) and give it back to you so that you can submit it to the Office of the Provincial Health Officer, as described below.
2. Your request must be accompanied by [the medical deferral form](#) supporting the request.

Inform your supervisor that you are submitting an exemption request

Your employer needs to know that you are requesting an exemption to ensure that your employer is aware so that they can assist with managing your situation. We also need to be able to communicate with your supervisor about the status of your exemption request. We will not be sharing medical information with your employer.

Information to be submitted

You must submit the request package with the subject line **Request for Reconsideration about Preventive Measures** and the following information:

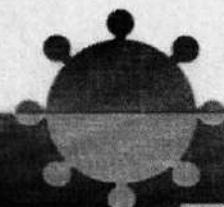


Ministry of
Health



BC Centre for Disease Control

If you have fever, a new cough, or are
having difficulty breathing, call 8-1-1.



000007

3. Your name and contact information.
4. The name of the facility / facilities you work in, and location with full mailing address. You must also include the contact information of a management representative of the facility including name, position, email, and phone number. Provision of this information is your consent that we can communicate with your employer regarding the outcome of your request.
5. If you have been informed by a medical health officer that you should not receive additional doses of a COVID-19 vaccine due to an adverse event following immunization, submit a copy of the letter from the medical health officer indicating that you should not receive additional doses of COVID-19 vaccine.
6. If needed to support an exemption request in relation to a medical condition, the COVID-19 Vaccine Medical Deferral form filled out, signed, and dated by your medical practitioner who assessed you.
7. Your preferred method of response i.e., email, mail, fax.

Submit the request by mail, fax or email to:

Office of the Provincial Health Officer

PO Box 9648 STN PROV GOVT, Victoria BC V8W 9P4

Fax: (250) 952-1570

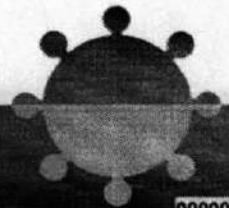
Email: PHOExemptions@gov.bc.ca

Note: The PHO recommends that personal information sent by email be sent using a password protected email, with the password sent by separate email.

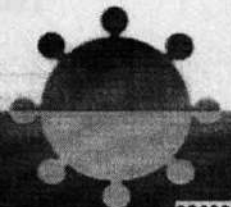
If you have questions about this process please contact the Office of the Provincial Health Officer at the contact information below, with the subject line "Requests for Reconsideration Question".

After you submit an exemption request

1. You must notify your employer of your exemption request.
2. You and your employer will be notified of receipt of your exemption request.
3. If your request is incomplete, you will be contacted to provide additional information to continue the review process.



4. Your request may be assessed by the Office of the Provincial Health Officer, and/or it may be referred to the local medical health officer.
5. Once a decision has been made by the Office of the Provincial Health Officer or the local medical health officer, if an exemption is granted it may be subject to recommended risk reduction measures for you to take. You will be notified in writing of the exemption and will be provided with written instructions and direction as appropriate.
6. Your employer will be informed of the outcome of your exemption request directly by the Office of the Provincial Health Officer or the local medical health officer and required risk reduction measures.
7. If you have been granted an exemption to PHO requirements, and you do get vaccinated at a later date, you should notify the PHO to update your exemption contacting the PHO as above.





ORDER OF THE PROVINCIAL HEALTH OFFICER

(Pursuant to Sections 30, 31, 32, 39 (3), 54, 56, 57, 67 (2) and 69 *Public Health Act*, S.B.C. 2008)

HOSPITAL AND COMMUNITY (HEALTH CARE AND OTHER SERVICES) COVID-19 VACCINATION STATUS INFORMATION AND PREVENTIVE MEASURES – OCTOBER 14, 2021

The *Public Health Act* is at:

<http://www.bclaws.ca/civix/content/complete/statreg/08028/?xsl=/templates/browse.xsl>

(excerpts enclosed)

- TO: THE REGIONAL HEALTH BOARDS, THE PROVINCIAL HEALTH SERVICES AUTHORITY, BRITISH COLUMBIA EMERGENCY HEALTH SERVICES, THE PROVIDENCE HEALTH CARE SOCIETY, THE MINISTER OF HEALTH, THE MINISTER OF MENTAL HEALTH AND ADDICTIONS, OPERATORS OF PROVINCIAL MENTAL HEALTH FACILITIES, AND BOARDS OF MANAGEMENT OF HOSPITALS, EXCEPT STAND ALONE EXTENDED CARE HOSPITALS, DESIGNATED UNDER THE HOSPITAL ACT**
- TO: A PERSON EMPLOYED BY A REGIONAL HEALTH BOARD, THE PROVINCIAL HEALTH SERVICES AUTHORITY, BRITISH COLUMBIA EMERGENCY HEALTH SERVICES, THE PROVIDENCE HEALTH CARE SOCIETY OR A PROVINCIAL MENTAL HEALTH FACILITY**
- TO: A PERSON CONTRACTED OR FUNDED BY A REGIONAL HEALTH BOARD, THE PROVINCIAL HEALTH SERVICES AUTHORITY, BRITISH COLUMBIA EMERGENCY HEALTH SERVICES, THE PROVIDENCE HEALTH CARE SOCIETY, MINISTRY OF HEALTH OR MINISTRY OF MENTAL HEALTH AND ADDICTIONS, TO PROVIDE HEALTH CARE OR SERVICES IN A HOSPITAL OR IN THE COMMUNITY**
- TO: A PERSON EMPLOYED, CONTRACTED OR FUNDED BY A PERSON CONTRACTED OR FUNDED BY A REGIONAL HEALTH BOARD, THE PROVINCIAL HEALTH SERVICES AUTHORITY, BRITISH COLUMBIA EMERGENCY HEALTH SERVICES, THE PROVIDENCE HEALTH CARE SOCIETY, THE MINISTRY OF HEALTH, OR THE MINISTRY OF MENTAL HEALTH AND ADDICTIONS, TO PROVIDE HEALTH CARE OR SERVICES IN A HOSPITAL OR IN THE COMMUNITY**

WHEREAS:

- A. On March 17, 2020 I provided notice under section 52 (2) of the *Public Health Act* that the transmission of the infectious agent SARS-CoV-2, which has caused cases, clusters and outbreaks of a serious communicable disease known as COVID-19 among the population of the Province of British Columbia, constitutes a regional event, as defined in section 51 of the *Public Health Act*;
- B. A person infected with SARS-CoV-2 can infect other people with whom the infected person is in contact;
- C. The presence of virus variants of concern in the Province, in particular the Delta variant, has not only heightened the risk to the population generally but, more particularly, has significantly heightened the risk to individuals of advanced age; and individuals with chronic health conditions or compromised immune systems;
- D. Vaccines, which prevent or reduce the risk of infection with SARS-CoV-2, have been and continue to be made available to residents of the Province;
- E. Unvaccinated persons are at much greater risk than vaccinated persons of being infected with SARS-CoV-2, of experiencing higher rates of complications and death, and of transmitting SARS-CoV-2 to other persons, including vaccinated persons;
- F. Persons receiving health care, personal care or home support in hospital or community settings often are of an advanced age, have chronic health conditions or compromised immune systems which make them particularly vulnerable to severe illness and death from COVID-19, even if they are vaccinated;
- G. Vaccination is safe, very effective, and the single most important preventive measure health professionals, visitors to hospitals, providers of care or services in hospital or community settings, and the staff or contractors of an organization which provides health care or services in hospital or community settings can take to protect patients, residents and clients, and the health and personal care workforce, from infection, severe illness and possible death from COVID-19;
- H. There are clear, objective criteria for determining whether a person has a medical deferral to a COVID-19 vaccination, and very few people fall into this category;
- I. There are difficulties and risks in accommodating persons who are unvaccinated, since no other measures are nearly as effective as vaccination in reducing the risk of contracting or transmitting SARS-Co-2, and the likelihood of severe illness and death;
- J. The public health and health care systems are currently experiencing severe stress, and are stretched beyond capacity in their efforts to prevent and respond to illness resulting from the transmission of COVID-19 in the population;
- K. Both the public health and the health care systems are using disproportionate amounts of their resources in their efforts to prevent and respond to the transmission of SARS-CoV2, and to provide care for those who become ill with COVID-19;
- L. The public needs to have confidence that when they receive health care from a health professional they are not putting their health at risk;

- M. Preserving the ability of the public health and health care systems to protect and care for the health needs of the population is critical;
- N. The retention of public confidence in the safety and integrity of the public health and health care systems is critical;
- O. Employers need to know the vaccination status of staff in order to enforce preventive measures ordered by me or the medical health officer;
- P. Medical health officers need to know the vaccination status of staff in order to most effectively respond to exposures to or outbreaks of COVID-19 among patients, clients or staff;
- Q. I recognize the effect which the measures I am putting in place to protect the health of patients and clients and other staff in hospital and community settings may have on people who are unvaccinated and, with this in mind, have engaged and will continue to engage in a process of reconsideration of these measures, based upon the information and evidence available to me, including infection rates, sources of transmission, the presence of clusters and outbreaks, particularly in facilities, the number of people in hospital and in intensive care, deaths, the emergence of and risks posed by virus variants of concern, vaccine availability, immunization rates, the vulnerability of particular populations and reports from the rest of Canada and other jurisdictions, with a view to balancing the interests of the people affected by the Order, including constitutionally protected interests, against the risk of harm created by unvaccinated persons providing health care or other services in hospital or community settings;
- R. I further recognize that constitutionally-protected interests include the rights and freedoms guaranteed by the Canadian *Charter of Rights and Freedoms*, including the right to life, liberty and security of the person, along with freedom of religion and conscience, freedom of thought, belief, opinion and expression. These rights and freedoms are not, however, absolute and are subject to reasonable limits, prescribed by law as can be demonstrably justified in a free and democratic society. These limits include proportionate, precautionary and evidence-based restrictions to prevent loss of life, serious illness and death, and disruption of our health system and society. When exercising my powers to protect the health of the public from the risks posed by COVID-19, I am aware of my obligation to choose measures that limit the *Charter* rights and freedoms of British Columbians less intrusively, where doing so is consistent with public health principles;
- S. In addition, I recognize the interests protected by the *Human Rights Code* and have taken these into consideration when exercising my powers to protect the health interests of patients, residents and clients and persons who provide health care, personal care, home support or other services in hospital or community settings;
- T. After weighing the interests of persons who receive health care and related services in hospital or community settings, against the interests of persons who provide care and services in those settings who are not vaccinated for reasons other than medical deferral, and taking into account the importance of maintaining a healthy workforce in hospitals and community settings, the stress under which the public health and health care systems are currently operating, and the impact this is having on the provision of health care to the population, the burden which responding to more clusters and outbreaks of COVID-19 would put on the public health system, the burden which responding to more patients with serious illness would place upon an already overburdened health care system, and the risk inherent in accommodating persons who are not vaccinated, I have decided not to consider a request for an exemption by way of a variance under section 43 of the *Public Health Act*,

other than on the basis of a medical deferral to vaccination.

- U. For certainty, this Order does not apply to a place to which the *Residential Care Vaccination Status COVID-19 Information Order* and the *Residential Care COVID-19 Preventive Measures Order* apply.
- V. For further certainty, this Order does not apply to the First Nations Health Authority, First Nations Health Service Organizations, Treaty First Nations, the Nisga'a Nation, the Métis Nation of BC, or to health care, personal care, home support or other services provided or funded by one of those bodies;

I have reason to believe and do believe that

- a. a lack of information on the part of employers about the vaccination status of staff interferes with the suppression of SARS-CoV-2 in hospital and community settings, and constitutes a health hazard under the *Public Health Act*;
- b. an unvaccinated person who provides health care or services in a hospital or community setting, puts patients, residents, clients, staff and other persons who provide health care or services at risk of infection with SARS-CoV-2, and constitutes a health hazard under the *Public Health Act*;
- c. an unvaccinated staff member of an organization which provides health care or services puts staff who provide health care or services, and patients, residents or clients, at risk of infection with SARS-CoV-2, and constitutes a health hazard under the *Public Health Act*;
- d. in order to mitigate the risk of the transmission of SARS-CoV-2 created by an unvaccinated person as described above, it is necessary for me to exercise the powers in sections 30, 31, 32, 39, 53, 54, 56, 57, 67 (2) and 69 of the *Public Health Act* **TO ORDER** as follows:

DEFINITIONS:

In this Order

"British Columbia Emergency Health Services" means the corporation continued under the *Emergency Health Services Act*;

"health care or services" includes

- a. health care, personal care or home support, including hospital-based care, emergency health services or community care,
- b. dietary, kitchen, housekeeping or maintenance services,
- c. administrative or managerial services;

"care location" means an inside or outside place in which health care or services are provided, including

- a. a hospital designated under the *Hospital Act* to provide acute care, extended care, convalescent care or rehabilitation care,

- b. hospital facilities,
- c. a Provincial mental health facility,
- d. a residential facility licensed under the *Community Care and Assisted Living Act* to provide one of the following types of care prescribed or described in section 2 of the Residential Care Regulation:
 - i. Child and Youth Residential;
 - ii. Hospice;
 - iii. Mental Health;
 - iv. Substance Use;
 - v. Community Living; or,
 - vi. Acquired Injury,
- e. an assisted living residence registered under the *Community Care and Assisted Living Act* in one of the following classes prescribed in section 3 of the Assisted Living Regulation:
 - i. Mental Health,
 - ii. Persons with Disabilities, for adults receiving assisted living services due primarily to a disability; or
 - iii. Supportive Recovery,
- f. a public health clinic,
- g. an urgent and primary care centre,
- h. a patient medical home,
- i. a child development centre,
- j. a community health centre,
- k. an adult day care,
- l. a laboratory facility,
- m. a diagnostic facility,
- n. a pharmacy,
- g. a vehicle,
- h. a private residence,
- i. a school,
- j. a post-secondary institution.
- f. a supervised consumption site,
- k. an overdose prevention site,
- l. a correctional facility,

but does not include a place excluded from the application of this Order by posting on the PHO's website;

"close contact" means within two metres of another person for more than 15 minutes cumulatively in a day;

"community care" includes home nursing, nursing support services in schools, home support, mental health services, drug and alcohol services, continuing care services, health care or services provided under the Choice in Supports for Independent Living program, health care provided in an office or clinic, health care or services provided by a child development centre, supervised consumption services, overdose prevention services and public health services;

"contractor" means a person who provides staff under contract to an employer to provide care or services in a care location;

"employer" means a regional health authority, the Provincial Health Services Society, British Columbia Emergency Health Services, the Providence Health Care Society, a Provincial mental health facility, or a person under contract with or funded by one of them, or the Ministry of Health or Ministry of Mental Health and Addictions, to contract with, employ or fund a person who provides health care or services in a care location, and includes a contractor, a person who employs or contracts with a staff member to provide health care or services in a care location, and the board of management of a hospital, except a stand alone extended care hospital, designated by the minister under the *Hospital Act*,

"exemption" means a variance issued to a person under the *Public Health Act* on the basis of a medical deferral to vaccination, which permits a person to work, despite not being vaccinated;

"facility" means a long term care facility, a private hospital, a stand-alone extended care hospital, or an assisted living residence for seniors;

"health care" means anything that is done for a therapeutic, preventive, palliative, diagnostic, cosmetic or other purpose related to health;

"health professional" has the same meaning as in the *Public Health Act*;

"HSPnet database" means the Health Sciences Placement Network which provides a web-based system for managing practice education in the health sciences." (<https://hspcanada.net/about-hspnet/>);

"medical mask" means a medical grade face mask that meets the ASTM International and ISO (or equivalent) performance requirements for bacterial filtration efficiency, particulate filtration efficiency, fluid resistance, pressure differential, flame spread, skin sensitivity and cytotoxic testing;

"occasional" means not being present on an ongoing basis in either one or different care locations;

"operator" means the person responsible for a care location, other than a patient, resident or client;

"outside health or personal care provider" means a health professional who is not a staff member, or any other person who is not a staff member, who provides health care, personal care or home support in a care location, but does not include a visitor;

"outside support or personal service provider" means a volunteer, hired companion, barber, hairdresser, nail esthetician or any other person who is not a staff member who provides support or a personal service in a care location, but does not include a visitor;

"other outside provider" means a person other than a staff member, visitor, outside health or personal care provider, outside support or personal service provider, who is in a care location, and includes an entertainer, animal therapy provider or maintenance person;

"patient medical home" means a team-based family practice that operates at an ideal level to provide longitudinal patient care;

"peer worker" means a person with lived experience who provides support and guidance to a patient, resident or client receiving health care or services in a care location, whether or not the person is paid to do so, or receives an honorarium or other benefit;

"photo identification" means one of the following:

- a. a photo BC Services Card within the meaning of the Identification Card regulation;
- b. a temporary or permanent driver's licence, issued by a government of a province of Canada;
- c. a certificate of Indian Status;
- d. a Métis Nation British Columbia citizenship and identification card;
- e. a passport attesting to citizenship or other national status, issued by a government of any jurisdiction and including a photograph of the holder;

"post-secondary institution" includes an entity that provides any of the following programs:

- a. an educational or training program provided under
 - i. the *College and Institute Act*,
 - ii. the *Royal Roads University Act*,
 - iii. the *Thompson Rivers University Act*,
 - iv. the *University Act*,
 - v. the *Private Training Act*, or
 - vi. the *Chartered Professional Accountants Act*
- b. a program provided in accordance with a consent given under the *Degree Authorization Act*;
- c. a theological education or training program provided under an Act;

"proof of an exemption request" means a response from the Office of the Provincial Health Officer or the medical health officer that a request for reconsideration for the purpose of seeking a medical exemption complies with the requirements of this Order;

"proof of vaccination" means a vaccine card, but does not include the requirement to provide photo identification in the case of a staff member;

"Provincial mental health facility" means a place designated as a Provincial mental health facility by the minister under section 3 (1) of the *Mental Health Act* and appearing in Schedule A to Ministerial Order M 393/2016, at <https://www.health.gov.bc.ca/library/publications/year/2016/facilities-designatedmental-health-act.pdf>, unless otherwise stated;

"Provincial Health Services Authority" means the society of that name incorporated under the *Societies Act*;

"Providence Health Care Society" means the society of that name incorporated under the *Societies Act*;

"regional health authority" means a board designated under the *Health Authorities Act*;

"regular" means being present at least once a month on an ongoing basis in either one or different care locations;

"school" means a place in which any of the following operates:

- a. a school as defined in the *School Act*;

- b. a francophone school as defined in the *School Act*;
- c. a Provincial school as defined in the *School Act*;
- d. an independent school as defined in the *Independent School Act*;
- e. but does not include a First Nation school certified as an independent school under the *Independent School Act*;

"staff member" means

- a. a person employed by, or working under contract to provide health care for, a regional health authority, the Provincial Health Services Society, British Columbia Emergency Health Services or the Providence Health Care Society;
- b. a health professional with hospital privileges or employed or under contract to provide health care,
- c. a person working in a Provincial mental health facility,
- d. a person under contract with or funded by a regional health authority, the Provincial Health Services Society or British Columbia Emergency Health Services to provide health care or services in a care location,
- e. a person under contract with, employed or funded by a person under contract with or funded by a regional health authority, the Provincial Health Services Society, British Columbia Emergency Health Services, the Providence Health Care Society, the Ministry of Health or the Ministry of Mental Health and Addictions to provide health care or services in a care location,
- f. a student, faculty member, researcher or staff member of a post-secondary institution who is in a care location for training or research purposes,
- g. a person provided by a contractor to provide health care or services in a care location;

but does not include a peer worker.

"unvaccinated" means that a person does not meet the definition of "vaccinated";

"vaccinated" means a person who is at least 7 days post-receipt of the full series of a World Health Organization ("WHO") approved vaccine against infection by SARS-CoV-2, or a combination of approved WHO vaccines.

"vaccine" means a World Health Organization approved vaccine against infection by SARS-CoV-2;

"vaccine card" means the following:

- a. in the case of a person who is more than 18 years of age, photo identification and proof in one of the following forms that the holder is vaccinated:
 - i. electronic proof or a printed copy of an electronic proof
 - (A) issued by the government in the form of a QR code, accessible through the "BC Services Card" electronic online platform, and
 - (B) showing the name of the holder;
 - ii. proof in writing, issued by the government for the purpose of showing proof of vaccination in accordance with orders made under the *Public Health Act*;

iii. a type of proof, whether electronic or in writing, that is issued

(A) by the government of Canada or of a province of Canada, and

(B) for the purpose of showing proof of vaccination in accordance with an order made in the exercise of a statutory power with respect to the protection of public health or the facilitation of international travel;

b. in the case of a person who is 12 to 18 years of age, proof in a form referred to in paragraph a. (i), (ii) or (iii).

"WHITE" means the Workplace Health Indicator Tracking and Evaluation Data Base;

"work" means to work for a regional health authority, the Provincial Health Services Society, British Columbia Emergency Health Services or the Providence Health Care Society, to work in a Provincial mental health facility, or to provide health care or services in a care location.

A. VACCINATION STATUS INFORMATION

I. EMPLOYERS WITHOUT ACCESS TO WHITE

1. An employer must request and collect proof of vaccination, or an exemption, from each staff member, and must keep a record of the information.
2. A staff member must provide their employer with proof of vaccination, or an exemption, on request from their employer.
3. An employer must disclose information about the vaccination status of their staff on both an aggregate and individual level to me or the medical health officer, on request, for the purpose of preventing, or responding to, exposures to, or clusters or outbreaks of, COVID-19 in a care location.
4. Sections 1 to 3 do not apply to a student.
5. A student must report their vaccination status to the HSPnet database.
6. A student must provide an operator with proof of vaccination, or an exemption, on request from an operator.

II. EMPLOYERS WITH ACCESS TO WHITE

1. An employer must confirm a staff member's vaccination status from WHITE,
2. If an employer does not find information about a staff member's vaccination status in WHITE, the employer must request the staff member to provide proof of vaccination, or an exemption.
3. A staff member must provide their employer with proof of vaccination, or an exemption, on request from their employer, and the employer must keep a record of the information.

4. An employer must disclose information about the vaccination status of their staff on both an aggregate and individual level to me or the medical health officer, on request, for the purpose of preventing, or responding to, exposures to, or clusters or outbreaks of, COVID-19 in a care location.
5. Sections 1 to 4 do not apply to a student.
6. A student must report their vaccination status to the HSPnet database.
7. A student must provide an operator with proof of vaccination, or an exemption, on request from an operator.

B. STAFF MEMBERS HIRED BEFORE OCTOBER 26, 2021

1. Subject to section 2 and 3, as of October 26, 2021, a staff member who was hired before October 26, 2021 must be vaccinated or have an exemption to work.
2. Despite section 1,
 - a. an unvaccinated staff member who received one dose of vaccine before October 26, 2021,
 - i. may work after October 25, 2021, if the staff member complies with the preventive measures in Part D, and
 - ii. may continue to work if the staff member receives a second dose of vaccine between 28 to 35 days after receiving the first dose of vaccine, and complies with the preventive measures in Part D, until 7 days have passed after receiving the second dose of vaccine.
 - b. an unvaccinated staff member who is ineligible to work as of October 26, because the staff member did not receive one dose of vaccine before October 26, but who received one dose of vaccine before November 15,
 - i. may, 7 days after receiving the dose of vaccine, work after October 25, 2021, if the staff member complies with the preventive measures in Part D, and
 - ii. may continue to work if the staff member receives a second dose of vaccine between 28 to 35 days after receiving the first dose of vaccine, and complies with the preventive measures in Part D, until 7 days have passed after receiving the second dose of vaccine.
3. An unvaccinated staff member to whom this Part applies who has an exemption must not work after October 25, 2021, unless the staff member is in compliance with the conditions of the exemption.
4. An employer must not permit an unvaccinated staff member to whom this Part applies to work after October 25, 2021, unless the staff member is in compliance with either section 2 (a) or (b), or has an exemption and is in compliance with the terms of the exemption.

C. STAFF MEMBERS HIRED AFTER OCTOBER 25, 2021

1. A staff member hired after October 25, 2021, must
 - a. be vaccinated and provide proof of vaccination to the employer, or
 - b. have an exemption and provide the exemption to the employer,in order to work.
2. An unvaccinated staff member to whom this Part applies who has an exemption must not work, unless the staff member is in compliance with the conditions of the exemption.
3. An employer must not permit an unvaccinated staff member to whom this Part applies who does not have an exemption to work.
4. An employer must not permit an unvaccinated staff member to whom this Part applies who has an exemption to work, unless the staff member is in compliance with the conditions of the exemption.

D. PREVENTIVE MEASURES AND REQUESTS FOR EXEMPTIONS

1. An unvaccinated staff member must wear a medical mask which covers the person's nose and mouth when at work, except when consuming food or a beverage.
2. An employer must require an unvaccinated staff member to wear a medical mask which covers the person's nose and mouth when at work.
3. Despite Parts B through C, an unvaccinated staff member who has provided proof of an exemption request may work until their request is responded to by me or the medical health officer, if the staff member complies with the preventive measures in section 1.
4. An operator or employer must not permit an unvaccinated staff person to whom section 3 applies to work, if the person is not in compliance with section 1.

E. OUTSIDE HEALTH CARE OR PERSONAL CARE PROVIDERS

1. In this Part

“care” means health care or personal care; and

“provider” means an outside health care or personal care provider.

2. A provider who does not provide an operator with proof of vaccination, an exemption, or proof of an exemption request, may be granted access to a care location to provide care, if the provider:
 - a. wears a medical mask which covers their nose and mouth,

- b. maintains a two metre distance from every other person in the care location, except for a person to whom they are providing care,
 - c. is not in close contact with a person to whom they are providing care, unless it is necessary in order to provide care to the person.
3. A provider who does not provide an operator with proof of vaccination, an exemption, or proof of an exemption request, and who is not in compliance with section 1, must not provide care in a care location.
 4. An operator must not permit a provider who does not provide proof of vaccination, an exemption, or proof of an exemption request, and who is not in compliance with section 2, to provide care in a care location.

Commencing on October 26, 2021, the following requirements come into effect and replace the requirements above:

5. An operator must request proof of vaccination, an exemption, or proof of an exemption request, from a provider who seeks access to a care location to provide care after October 25, 2021.
6. A provider must be vaccinated and provide proof of vaccination to the operator, have an exemption and provide the exemption to the operator, or have proof of an exemption request and provide the proof to the operator, in order to provide care in a care location.
7. Despite section 6,
 - a. an unvaccinated provider who received one dose of vaccine before October 26, 2021,
 - i. may provide care in a care location after October 25, 2021, if the provider,
 - A. wears a medical mask which covers their nose and mouth,
 - B. is not in close contact with a person to whom they are providing care, unless it is necessary in order to provide care to the person, and
 - ii. may continue to provide care in a care location, if the provider receives a second dose of vaccine between 28 to 35 days after receiving the first dose of vaccine, and complies with the preventive measure in section 7 a. i., until 7 days have passed after receiving the second dose of vaccine.
 - b. an unvaccinated provider who did not receive one dose of vaccine before October 26, but who received one dose of vaccine after October 26,
 - i. may, 7 days after receiving the dose of vaccine, provide care in a care location after October 25, 2021, if the provider complies with the preventive measures in section 7 a. i., and

- ii. may continue to provide care in a care location if the provider receives a second dose of vaccine between 28 to 35 days after receiving the first dose of vaccine, and complies with the preventive measures in section 7 a. i., until 7 days have passed after receiving the second dose of vaccine.
8. An unvaccinated provider who has an exemption must not provide care in a care location after October 25, 2021, unless the provider is in compliance with the conditions of the exemption.
 9. An unvaccinated provider who has a proof of an exemption request may provide care in a care location after October 25, 2021 until their request is responded to by me or the medical health officer, if the provider is in compliance with the preventive measures in section 7 a. i.
 10. An unvaccinated provider to whom section 9 applies must not work in a care location after October 25, 2021, unless the provider is in compliance with the preventive measures in section 7 a. i.
 11. An operator must not permit an unvaccinated provider to provide care in a care location after October 25, 2021, unless the provider is in compliance with either section 7 a. or b., has an exemption and is in compliance with the terms of the exemption, or has a proof of an exemption request and is in compliance with the preventive measures in section 7 a. i.

F. OUTSIDE SUPPORT OR PERSONAL SERVICE PROVIDERS

1. An operator must request proof of vaccination or an exemption from an outside support or personal service provider who seeks access to a care location to provide support or personal services.
2. An outside support or personal service provider who does not provide an operator with proof of vaccination or an exemption must not be in a care location to provide support or personal services.
3. An operator must not permit an outside support or personal service provider who does not provide proof of vaccination or an exemption to be in a care location to provide support or personal services.
4. An outside support or personal service provider with an exemption must comply with the conditions of the exemption when in a care location to provide support or personal services.
5. An operator must not permit an outside support or personal service provider with an exemption to provide support or personal services in a care location, if the outside support or personal service provider is not in compliance with section 4.

G. REGULAR OTHER OUTSIDE PROVIDERS WHO HAVE CLOSE CONTACT WITH A PATIENT, RESIDENT OR CLIENT

1. An operator must request proof of vaccination or an exemption from a regular other outside provider who has close contact with a patient, resident or client and who seeks access to a care location.
2. A regular other outside provider who has close contact with a patient, resident or client in a care location, and who does not provide an operator with proof of vaccination or an exemption, must not be in a care location.
3. An operator must not permit a regular other outside provider who has close contact with a patient, resident or client, who does not provide proof of vaccination or an exemption, to be in a care location.
4. A regular other outside provider with an exemption, who has close contact with a patient, resident or client, must comply with the conditions of the exemption when in a care location.
5. An operator must not permit a regular other outside provider with an exemption who has close contact with a patient, resident or client to be in a care location, if the regular other outside provider who has close contact with a patient, resident or client is not in compliance with section 4.

H. REGULAR OTHER OUTSIDE PROVIDERS WHO DO NOT HAVE CLOSE CONTACT WITH A PATIENT, RESIDENT OR CLIENT

1. A regular other outside provider who does not have close contact with a patient, resident or client, who does not provide an operator with proof of vaccination or an exemption, and who is in a care location must:
 - a. wear a face covering which covers their nose and mouth,
 - b. maintain a two metre distance from every other person in the care location.
2. A regular other outside provider who does not have close contact with a patient, resident or client, who does not provide an operator with proof of vaccination or an exemption, and who is not in compliance with section 1, must not be in a care location.
3. An operator must not permit a regular other outside provider who does not have close contact with a patient, resident or client, who does not provide proof of vaccination or an exemption, and who is not in compliance with section 1, to be in a care location.

Commencing on October 26, 2021, the following requirements come into effect and replace the requirements above:

4. An operator must request proof of vaccination or an exemption from a regular other outside provider who seeks access to a care location after October 25, 2021.

5. A regular other outside provider who does not have close contact with a patient, resident or client must be vaccinated and provide proof of vaccination to the operator, or have an exemption and provide the exemption to the operator, in order to be in a care location.
6. A regular other outside provider who does not have close contact with a patient, resident or client, and who is not in compliance with section 5, must not be in a care location.
7. An operator must not permit a regular other outside provider who does not have close contact with a patient, resident or client, and who is not in compliance with section 5, to be in a care location.
8. A regular other outside provider who does not have close contact with a patient, resident or client, and who has an exemption, must comply with the conditions of the exemption when in a care location.
9. An operator must not permit a regular other outside provider who does not have close contact with a patient, resident or client, and who has an exemption to be in a care location, if the regular other outside provider who does not have close contact with a patient, resident or client is not in compliance with section 8.

I. OCCASIONAL OTHER OUTSIDE PROVIDERS WHO HAVE CLOSE CONTACT WITH A PATIENT, RESIDENT OR CLIENT

1. An occasional other outside provider who has close contact with a patient, resident or client, who does not provide an operator with proof of vaccination or an exemption and who is in a care location must:
 - a. wear a face covering which covers their nose and mouth,
 - b. maintain a two metre distance from every person in the care location, except a patient, resident or client with whom it is necessary that they be in close contact,
 - c. not be in close contact with a patient, resident or client, unless this is necessary.
2. An occasional other outside provider who has close contact with a patient, resident or client, who does not provide an operator with proof of vaccination or an exemption, and who is not in compliance with section 1, must not be in a care location.
3. An operator must not permit an occasional other outside provider who has close contact with a patient, resident or client, who does not provide an operator with proof of vaccination or an exemption, and who is not in compliance with section 1, to be in a care location.

Commencing on October 26, 2021, the following requirements come into effect and replace the requirements above:

4. An operator must request proof of vaccination or an exemption from an occasional other outside provider who seeks access to a care location after October 25, 2021.

5. An occasional other outside provider who has close contact with a patient, resident or client, and who does not provide an operator with proof of vaccination or an exemption, must not be in a care location.
6. An operator must not permit an occasional other outside provider who has close contact with a patient, resident or client, and who has not provided proof of vaccination or an exemption, to be in a care location.
7. An occasional other outside provider who has close contact with a patient, resident or client, and who has an exemption, must comply with the conditions of the exemption when in a care location.
8. An operator must not permit an occasional other outside provider who has close contact with a patient, resident or client, and who has an exemption, to be in a care location, if the occasional other outside provider who has close contact with a patient, resident or client is not in compliance with section 7.

J. OCCASIONAL OTHER OUTSIDE PROVIDERS WHO DO NOT HAVE CLOSE CONTACT WITH A PATIENT, RESIDENT OR CLIENT

1. An occasional other outside provider who does not have close contact with a patient, resident or client, who does not provide an operator with proof of vaccination or an exemption, and who is in a care location must:
 - a. wear a face covering which covers their nose and mouth,
 - b. maintain a two metre distance from every other person in the care location.
2. An occasional other outside provider who does not have close contact with a patient, resident or client, who does not provide an operator with proof of vaccination or an exemption, and who is not in compliance with section 1, must not be in a care location.
3. An operator must not permit an occasional other outside provider who does not have close contact with a patient, resident or client, who does not provide an operator with proof of vaccination or an exemption, and who is not in compliance with section 1, to be in a care location.
4. An occasional other outside provider who has does not have close contact with a patient, resident or client, and who has an exemption, must comply with the conditions of the exemption when in a care location.
5. An operator must not permit an occasional other outside provider who does not have close contact with a patient, resident or client, and who has an exemption, to be in a care location, if the occasional other outside provider who does not have close contact with a patient, resident or client is not in compliance with section 4.

K. PROVIDERS WHO HAVE APPLIED FOR AN EXEMPTION

1. Despite Parts F through I, an unvaccinated provider referred to in those Parts who has a made a request for an exemption may be in a care location after October 25, 2021, until their request is responded to by me or the medical health officer, if the provider provides an operator with proof of an exemption request, and
 - a. wears a face covering which covers their nose and mouth,
 - b. is not in close contact with a patient, resident or client, unless this is necessary.
2. An operator must not permit an unvaccinated provider to whom section 1 applies to be in a care location, unless the provider is in compliance with section 1.

L. NOTICE TO HEALTH PROFESSIONALS

TAKE NOTICE that in accordance with further direction from me, health professionals to be determined by me and their staff, not otherwise required to be vaccinated under the *Residential Care COVID-19 Preventive Measures Order* or this Order, will be required to be vaccinated by a date to be determined by me, in order to provide health care or services in the Province.

M. DELEGATION OF AUTHORITY TO THE MEDICAL HEALTH OFFICER TO CONSIDER AND MAKE A DECISION WITH RESPECT TO A REQUEST FOR RECONSIDERATION MADE UNDER SECTION 43 RELATING TO A CARE LOCATION OR A REQUEST FOR AN EXEMPTION ON A MEDICAL BASIS

Under the authority vested in me by section 69 of the *Public Health Act*, I delegate my authority under section 43 of the *Public Health Act* to the medical health officer for the geographic region of the Province in which a care location is located to receive, consider, and make a decision with respect to a request for reconsideration related to the care location, and to the medical health officer for the geographic region in which an individual works, to receive, consider and made a decision with respect to a request from the individual seeking a medical exemption.

N. SPECIFICATION AND DESIGNATION OF THE MEDICAL HEALTH OFFICER TO RECEIVE A NOTICE UNDER SECTION 56 (2) OF THE PUBLIC HEALTH ACT AND TO ISSUE AN INSTRUCTION

Under the authority vested in me by section 56 of the *Public Health Act*, I designate the medical health officer to receive a written notice from a medical practitioner under section 56 (2) with respect to a person in the geographic region of the Province for which the medical health officer is designated, and designate the medical health officer to issue an instruction to the person in response to the notice, if reasonably practical.

O. MEDICAL HEALTH OFFICER ORDERS

Recognizing that the risk differs in different regions of the Province, and that medical health officers are in the best position to assess local circumstances with respect to the risk of the transmission of communicable diseases in hospital or community settings, I FURTHER ORDER:

1. A medical health officer may make an order subsequent to this Order for the purpose of imposing more restrictive limitations or conditions with respect to hospital or community settings in the geographic area of the Province for which the medical health officer is designated, or with respect to a particular care location or a class of care location.
2. While it is in force, a provision in an order made by a medical health officer subsequent to this Order, which imposes more restrictive limitations or requirements than this Order with respect to hospital or community settings, a care location, or a class of care location, applies in the whole or part of the geographic area of the Province for which the medical health officer is designated, according to the terms of the order, despite the provisions of this Order.

This Order does not have an expiration date.

You are required under section 42 of the *Public Health Act* to comply with this Order.

Pursuant to section 43 of the *Public Health Act*, you may request the medical health officer [see below] to reconsider this Order if you:

- (a) have additional relevant information that was not reasonably available to the health officer when the order was issued or varied,
- (b) have a proposal that was not presented to the health officer when the order was issued or varied but, if implemented, would
 - (i) meet the objective of the order, and
 - (ii) be suitable as the basis of a written agreement under section 38 [may make written agreements], or
- (c) require more time to comply with the order.

A request for reconsideration from a person seeking an exemption from the requirement to be vaccinated, or to provide proof of vaccination, must be made on the basis that the health of the person would be seriously jeopardized if the person were to comply with the Order, and must follow the guidelines posted on the Provincial Health Officer's website (<https://www2.gov.bc.ca/gov/content/health/about-bc-s-health-care-system/office-of-the-provincial-health-officer/current-health-topics/covid-19-novel-coronavirus>).

A request under section 43 may be submitted to the Provincial Health Officer at PHOExemptions@gov.bc.ca with the subject line "Request for Reconsideration about Preventive Measures in Hospital or Community Locations".

Failure to comply with this Order is an offence under section 99 (1) (k) of the *Public Health Act*.

If you fail to comply with this Order, I have the authority to take enforcement action against you under Part 4, Division 6 of the *Public Health Act*.

You may contact me at:

Dr. Bonnie Henry, Provincial Health Officer
4th Floor, 1515 Blanshard Street
PO Box 9648 STN PROV GOVT, Victoria BC V8W 9P4
Fax: (250) 952-1570
Email: ProvHlthOffice@gov.bc.ca

DATED THIS: 14th day of October 2021

SIGNED:



Bonnie Henry
MD, MPH, FRCPC
Provincial Health Officer

DELIVERY BY: Posting to the BC Government and the BC Centre for Disease Control websites.

Enclosure: Excerpts of the *Public Health Act*.

ENCLOSURE**Excerpts of the Public Health Act [SBC 2008] c. 28****Definitions****In this Act:****"health hazard" means**

- (a) a condition, a thing or an activity that
 - (i) endangers, or is likely to endanger, public health, or
 - (ii) interferes, or is likely to interfere, with the suppression of infectious agents or hazardous agents, or
- (b) a prescribed condition, thing or activity, including a prescribed condition, thing or activity that
 - (i) is associated with injury or illness, or
 - (ii) fails to meet a prescribed standard in relation to health, injury or illness;

"health professional" means

- (a) a medical practitioner,
- (b) a person authorized to practise a designated health profession within the meaning of the *Health Professions Act*, or
- (c) a person who practises a health profession within the meaning of the *Health Professions Act* that is prescribed for the purposes of this definition;

When orders respecting health hazards and contraventions may be made

30 (1) A health officer may issue an order under this Division only if the health officer reasonably believes that

- (a) a health hazard exists,
- (b) a condition, a thing or an activity presents a significant risk of causing a health hazard,
- (c) a person has contravened a provision of the Act or a regulation made under it, or
- (d) a person has contravened a term or condition of a licence or permit held by the person under this Act.

(2) For greater certainty, subsection (1) (a) to (c) applies even if the person subject to the order is complying with all terms and conditions of a licence, a permit, an approval or another authorization issued under this or any other enactment.

General powers respecting health hazards and contraventions

31 (1) If the circumstances described in section 30 [*when orders respecting health hazards and contraventions may be made*] apply, a health officer may order a person to do anything that the health officer reasonably believes is necessary for any of the following purposes:

- (a) to determine whether a health hazard exists;
- (b) to prevent or stop a health hazard, or mitigate the harm or prevent further harm from a health hazard;
- (c) to bring the person into compliance with the Act or a regulation made under it;
- (d) to bring the person into compliance with a term or condition of a licence or permit held by that person under this Act.

(2) A health officer may issue an order under subsection (1) to any of the following persons:

- (a) a person whose action or omission
 - (i) is causing or has caused a health hazard, or
 - (ii) is not in compliance with the Act or a regulation made under it, or a term or condition of the person's licence or permit;
- (b) a person who has custody or control of a thing, or control of a condition, that
 - (i) is a health hazard or is causing or has caused a health hazard, or
 - (ii) is not in compliance with the Act or a regulation made under it, or a term or condition of the person's licence or permit;
- (c) the owner or occupier of a place where
 - (i) a health hazard is located, or
 - (ii) an activity is occurring that is not in compliance with the Act or a regulation made under it, or a term or condition of the licence or permit of the person doing the activity.

Specific powers respecting health hazards and contraventions

32 (1) An order may be made under this section only

- (a) if the circumstances described in section 30 [*when orders respecting health hazards and contraventions may be made*] apply, and
- (b) for the purposes set out in section 31 (1) [*general powers respecting health hazards and contraventions*].

(2) Without limiting section 31, a health officer may order a person to do one or more of the following:

- (a) have a thing examined, disinfected, decontaminated, altered or destroyed, including
 - (i) by a specified person, or under the supervision or instructions of a specified person,
 - (ii) moving the thing to a specified place, and
 - (iii) taking samples of the thing, or permitting samples of the thing to be taken;
- (b) in respect of a place,
 - (i) leave the place,

- (ii) not enter the place,
 - (iii) do specific work, including removing or altering things found in the place, and altering or locking the place to restrict or prevent entry to the place,
 - (iv) neither deal with a thing in or on the place nor dispose of a thing from the place, or deal with or dispose of the thing only in accordance with a specified procedure, and
 - (v) if the person has control of the place, assist in evacuating the place or examining persons found in the place, or taking preventive measures in respect of the place or persons found in the place;
 - (c) stop operating, or not operate, a thing;
 - (d) keep a thing in a specified place or in accordance with a specified procedure;
 - (e) prevent persons from accessing a thing;
 - (f) not dispose of, alter or destroy a thing, or dispose of, alter or destroy a thing only in accordance with a specified procedure;
 - (g) provide to the health officer or a specified person information, records, samples or other matters relevant to a thing's possible infection with an infectious agent or contamination with a hazardous agent, including information respecting persons who may have been exposed to an infectious agent or hazardous agent by the thing;
 - (h) wear a type of clothing or personal protective equipment, or change, remove or alter clothing or personal protective equipment, to protect the health and safety of persons;
 - (i) use a type of equipment or implement a process, or remove equipment or alter equipment or processes, to protect the health and safety of persons;
 - (j) provide evidence of complying with the order, including
 - (i) getting a certificate of compliance from a medical practitioner, nurse practitioner or specified person, and
 - (ii) providing to a health officer any relevant record;
 - (k) take a prescribed action.
- (3) If a health officer orders a thing to be destroyed, the health officer must give the person having custody or control of the thing reasonable time to request reconsideration and review of the order under sections 43 and 44 unless
- (a) the person consents in writing to the destruction of the thing, or
 - (b) Part 5 [Emergency Powers] applies.

Contents of orders

- 39 (3) An order may be made in respect of a class of persons.
- (6) A health officer who makes an order may vary the order
- (a) at any time on the health officer's own initiative, or

(b) on the request of a person affected by the order, following a reconsideration under section 43 [reconsideration of orders].

Duty to comply with orders

- 42 (1) A person named or described in an order made under this Part must comply with the order.
- (2) Subsection (1) applies regardless of whether the person leaves the geographic area for which the health officer who made the order is designated.

Reconsideration of orders

- 43 (1) A person affected by an order, or the variance of an order, may request the health officer who issued the order or made the variance to reconsider the order or variance if the person
- (a) has additional relevant information that was not reasonably available to the health officer when the order was issued or varied,
 - (b) has a proposal that was not presented to the health officer when the order was issued or varied but, if implemented, would
 - (i) meet the objective of the order, and
 - (ii) be suitable as the basis of a written agreement under section 38 [may make written agreements], or
 - (c) requires more time to comply with the order.
- (2) A request for reconsideration must be made in the form required by the health officer.
- (3) After considering a request for reconsideration, a health officer may do one or more of the following:
- (a) reject the request on the basis that the information submitted in support of the request
 - (i) is not relevant, or
 - (ii) was reasonably available at the time the order was issued;
 - (b) delay the date the order is to take effect or suspend the order, if satisfied that doing so would not be detrimental to public health;
 - (c) confirm, rescind or vary the order.
- (4) A health officer must provide written reasons for a decision to reject the request under subsection (3) (a) or to confirm or vary the order under subsection (3) (c).
- (5) Following a decision made under subsection (3) (a) or (c), no further request for reconsideration may be made.
- (6) An order is not suspended during the period of reconsideration unless the health officer agrees, in writing, to suspend it.
- (7) For the purposes of this section,
- (a) if an order is made that affects a class of persons, a request for reconsideration may be made by one person on behalf of the class, and

(b) if multiple orders are made that affect a class of persons, or address related matters or issues, a health officer may reconsider the orders separately or together.

(8) If a health officer is unable or unavailable to reconsider an order he or she made, a similarly designated health officer may act under this section in respect of the order as if the similarly designated health officer were reconsidering an order that he or she made.

General emergency powers

54 (1) A health officer may, in an emergency, do one or more of the following:

(h) not reconsider an order under section 43 [reconsideration of orders], not review an order under section 44 [review of orders] or not reassess an order under section 45 [mandatory reassessment of orders];

Emergency preventive measures

56 (1) The provincial health officer or a medical health officer may, in an emergency, order a person to take preventive measures within the meaning of section 16 [preventive measures], including ordering a person to take preventive measures that the person could otherwise avoid by making an objection under that section.

(2) If the provincial health officer or a medical health officer makes an order under this section, a person to whom the order applies must comply with the order unless the person delivers to a person specified by the provincial health officer or medical health officer, in person or by registered mail,

(a) a written notice from a medical practitioner stating that the health of the person who must comply would be seriously jeopardized if the person did comply, and

(b) a copy of each portion of that person's health record relevant to the statement in paragraph (a), signed and dated by the medical practitioner.

(3) If a person delivers a notice under subsection (2), the person must comply with an instruction of the provincial health officer or a medical health officer, or a person designated by either of them, for the purposes of preventing infection with, or transmission of, an infectious agent or a hazardous agent.

Emergency powers respecting reporting

57 (1) The provincial health officer may, in an emergency, order that a specified infectious agent, hazardous agent, health hazard or other matter be reported under this section.

(2) If an order is made under this section, a person required by the order to make a report must promptly report, to the extent of his or her knowledge, to a medical health officer the information required by the order.

(3) If a person is required to make a report under this Act, the provincial health officer may in an emergency order the person exempt from the requirement, or vary the requirement.

Provincial health officer may act as health officer

67 (1) The provincial health officer may exercise a power or perform a duty of a medical health officer under this or any other enactment, if the provincial health officer

(a) reasonably believes that it is in the public interest to do so because

(i) the matter extends beyond the authority of one or more medical health officers and coordinated action is needed, or

(ii) the actions of a medical health officer have not been adequate or appropriate in the circumstances, and

(b) provides notice to each medical health officer who would otherwise have authority to act.

(2) During an emergency under Part 5 [Emergency Powers], the provincial health officer may exercise a power or perform a duty of a health officer under this or any other enactment, and, for this purpose, subsection (1) does not apply.

Delegation by provincial health officer

69 The provincial health officer may in writing delegate to a person or class of persons any of the provincial health officer's powers or duties under this Act, except the following:

(a) a power to further delegate the power or duty;

(b) a duty to make a report under this Act.

Offences

99 (1) A person who contravenes any of the following provisions commits an offence:

...

(k) section 42 [failure to comply with an order of a health officer], except in respect of an order made under section 29 (2) (e) to (g) [orders respecting examinations, diagnostic examinations or preventive measures];

Western Canada & Territories Region SCC
5988
PO Box 245
Edmonton AB T5J 2J1

Protected B


1-800-206-7218 (Enquiries)
1-800-529-3742 (TTY)
1-877-486-1650 (International only)

March 11, 2022

This is Exhibit "11" referred to in the
Affidavit of LEX ACKER
sworn before me at Nanaimo, B.C., this
17 day of October 2023

[REDACTED]
[REDACTED]
[REDACTED]
CANADA

Dear [REDACTED]


A commissioner for taking affidavits for
British Columbia

We are writing to inform you about your Employment Insurance benefits. Please note that we are required to advise you of all decisions made on your claim.

You are not entitled to Employment Insurance regular benefits because you lost your employment with VANCOUVER ISLAND HEALTH AUTHOR CUIHR CASUAL on October 24, 2021 as a result of your misconduct. However, because your benefit period begins on December 5, 2021, benefits are refused from this date only.

To receive regular benefits after losing your employment as a result of your misconduct, you must accumulate additional hours of insurable employment. If you become unemployed again and want to receive regular benefits in the future, you will have to file a new claim.

Furthermore, we are unable to pay you Employment Insurance benefits from December 5, 2021 because you are unavailable to work due to vaccination status, which means you have not proven your availability for work.

If you have any documents and/or information not previously submitted which could change this (these) decision(s), please forward immediately to the address indicated on the letterhead. If you would like more details regarding this (these) decision(s), please contact us at either 1-800-206-7218 or at a Service Canada Centre.

Our decisions are based on the *Employment Insurance Act* and its *Regulations*. If you have already provided all pertinent information and still disagree with this (these) decision(s), **you have 30 days following the date of this letter (or from the date you were verbally notified, whichever occurred first)** to make a formal request for reconsideration to the Commission. For more information on how to request a reconsideration and to access the *Request for Reconsideration of an Employment Insurance decision* form, please visit www.canada.ca/en/services/benefits/ei/ei-reconsideration.html, contact us at 1-800-206-7218 or visit the nearest Service Canada Centre.