



COVID-19 Frequently Asked Questions from BC's Office of the Human Rights Commissioner

During the COVID-19 pandemic, questions about the rights and responsibilities of employers and employees, tenants and landlords and residential care providers such as seniors' homes may arise. We have provided the following information to guide your understanding about human rights and responsibilities during this time.

Disclaimer: This statement does not constitute legal advice. BC's Human Rights Commissioner encourages individuals and organizations to take universal precautions based on the most current advice from public health officials and to seek legal advice if necessary. The Commissioner continues to monitor the evolving situation and will update this statement on an ongoing basis as needed.

Q: Do masking or vaccination requirements inherently violate human rights principles?

Masking and vaccination requirements can and must remain consistent with B.C.'s *Human Rights Code*, but these sorts of requirements are not inherently a violation of human rights. Human rights are not absolute. Reasonable limits can be placed on rights when there are good reasons that justify those limits. Protecting public health can be a valid reason for limiting rights.

Q: Does B.C.'s *Human Rights Code* prohibit discrimination against people who are not vaccinated?

B.C.'s [Human Rights Code](#) protects against discrimination on the basis of vaccination status only when someone is not able to be vaccinated because of a disability or another part of their identity protected from discrimination under the *Code*.

- For example, a person who is not vaccinated because they have an extremely severe allergy to the vaccines available to them would be protected from discrimination under the *Code*.
 - Every case will depend on its own facts and evidence. It is the B.C. Centre for Disease Control's opinion that it is [rare that a disability prevents an individual from being able to get vaccinated against Covid-19](#).
 - For further information, the B.C. Human Rights Tribunal has [clarified](#) what a complaint about discrimination based on not being vaccinated must include for the Tribunal to consider it.
- The Human Rights Commissioner's opinion is that a person who chooses not to get vaccinated *as a matter of personal preference* does not have grounds for a human rights complaint if they are treated differently because they are not vaccinated. This is especially true where that choice is based on misinformation or misunderstandings of scientific information.
 - The Commissioner's opinion is consistent with several decisions of the B.C. Human Rights Tribunal. Visit the [Tribunal's website](#) for more on recent decisions.
- For more about human rights and vaccination status, see our full guidance on [a human rights approach to proof of vaccination during the COVID-19 pandemic](#).

Q: Is the BC Vaccine Card program consistent with B.C.'s Human Rights Code?

Yes. It is the opinion of B.C.'s Human Rights Commissioner that the requirement to provide proof of vaccination is generally justified from a human rights perspective and will result in increased protection for those among us who are most vulnerable to the virus.

A medical exemption process is in place to protect the rights of individuals who cannot be vaccinated due to a medical condition or disability.



For more on human rights and the BC Vaccine Card program, see our full guidance on [a human rights approach to proof of vaccination during the COVID-19 pandemic](#).

Information for people with rights under the Code such as workers, tenants and people who use services

Q: Can my employer require me to show them proof of vaccination?

- Yes, they can, in some situations. It is the opinion of B.C.'s Human Rights Commissioner that employers may require proof of vaccination in some situations:
 - If other methods of preventing COVID-19 transmission, which are simpler for the worker to do, are not the best option for the setting and
 - If they carefully consider the human rights of everyone involved.
- If vaccination is necessary to address specific safety concerns in a particular setting, an employer has a responsibility to take steps to avoid harm to you if you cannot be vaccinated because of a part of your identity protected by B.C.'s *Human Rights Code*. This is called a "duty to accommodate" in human rights law.
 - The Human Rights Commissioner's opinion is that there is **no** duty to accommodate a person who chooses not to get vaccinated as a matter of personal preference—especially where that choice is based on misinformation or misunderstandings of scientific information.
- Where an accommodation is required, it should be based on the individual needs of those involved and must be reasonable. It does not have to be perfect. For example, employers may do one or more of the following:
 - exempt a worker from the vaccination policy
 - require a worker to
 - wear a face mask
 - work at a physical distance from others
 - work a modified shift
 - get periodic tests for COVID-19
 - work remotely



- accept a re-assignment to a setting that poses less risk of virus transmission.
- Some accommodations are too difficult to be reasonable options. In human rights law, this is called “undue hardship.” Undue hardship can be, for example, where the accommodation would create health and safety risks for others or would be too expensive. There is no universal definition for “undue hardship;” it is different in different circumstances and depends on the facts of each situation. An employer does not have to accommodate you past the point of undue hardship.
- For more on how a vaccine status policy can be designed in a way that respects human rights, see our full guidance on [a human rights approach to proof of vaccination during the COVID-19 pandemic](#).
- If you believe you have experienced discrimination you may have a human rights complaint. These complaints are heard by the [BC Human Rights Tribunal](#). You can read more about decisions they are making for mask and vaccine related complaints on their website.

Q: Can a business, school or landlord require me to wear a mask?

- Yes. If a mandatory masking order is in effect, you are required to wear a mask regardless of whether you have been vaccinated. The masking order will include exemptions so that some people do not have to wear a mask, including:
 - Children under 5 years old
 - People unable to wear a mask because of a health condition or impairment
 - People unable to put on or remove a mask without help
 - People who can’t communicate with someone with a hearing impairment if they wear a mask
- Even if masks are no longer mandated by an order of government, businesses, schools, and landlords may still require their workers, customers, students, or tenants to wear masks in indoor public spaces.
 - B.C.’s [Human Rights Code](#) protects people from discrimination based on certain parts of their identity (e.g., disability, religion, age). You can find the full list of these protected areas *in B.C.’s Human Rights Code* and they are



explained in more detail on the [Human Rights in B.C.](#) page of our website.

If wearing a mask is necessary to address specific safety concerns in a particular setting, a business, school, landlord or service provider has a responsibility to take steps to avoid harm to you, also called a “duty to accommodate” in human rights law. In order to comply with B.C.’s *Human Rights Code*, any masking requirement must include reasonable accommodations for those who are not able to wear a mask due to part of their identity protected by the *Code*.

- Where an accommodation is required, it should be based on the individual needs of those involved and should be reasonable. It does not have to be perfect. For example, if an employer, school, landlord or service provider determines there is a real safety risk to allowing unmasked people into the space, they may ask that customers order a product ahead of time and collect it outside the business instead of letting them enter a store without a mask on. This could be a reasonable accommodation in some circumstances.
- Some accommodations are too difficult to be reasonable options. In human rights law, this is called “undue hardship.” Undue hardship can be, for example, where the accommodation would create health and safety risks for others or would be too expensive. There is no universal definition for “undue hardship;” it is different in different circumstances and depends on the facts of each situation. A business or service provider does not have to accommodate you past the point of undue hardship.
- If someone is able to wear a mask but chooses not to as a matter of personal preference, employers and service providers are not required to provide accommodations under B.C.’s *Human Rights Code*.

Q: Can I refuse to work in a setting where my co-workers are not vaccinated?

- According to WorkSafeBC, a worker has the right to refuse work that is unsafe if that person has “reasonable cause to believe that to do so would create an undue hazard to the health and safety of any person.”



- [Visit WorkSafeBC's website on vaccination and the workplace for more information.](#)

Q: Can my employer make me take a COVID-19 test or a test to screen for symptoms of COVID-19 (e.g. taking my temperature) as a condition for working?

- B.C.'s Human Rights Commissioner's opinion is that COVID-19 testing or other medical assessments are allowed during the pandemic if there is a reasonable connection to protecting health and safety of everyone in the setting.
- Employers should only seek information from medical testing that is reasonable and necessary to:
 - check the worker's ability to perform on the job and/or
 - protect the health and safety of workers on the job as required by occupational health and safety rules.

Q: Can my employer terminate me if I can't work because I have COVID-19?

- B.C.'s *Human Rights Code* protects your rights as a worker. Under the *Code*, an employer may not discipline or terminate a worker who has been diagnosed with COVID-19 or is perceived to have COVID-19 (because, for example, they are exhibiting certain symptoms). Similarly, an employer may not discipline or terminate a worker if they are unable to come to work because medical or health officials have quarantined them or have advised them to self-isolate and stay home in connection with COVID-19.
- Workers are entitled to unpaid, job-protected leave related to COVID-19 per section 52.12 of the [Employment Standards Act](#). This unpaid leave entitlement also protects you if you are helping a dependent being vaccinated against COVID-19, if you have been diagnosed with COVID-19 and are following medical advice, and if your employer has directed you not to work due to concern about your exposure to others.
- Workers are also entitled to up to five paid days and three unpaid days of leave each year due to illness or injury. For more information on what



situations entitle workers to leave, see the provincial government's [webpage on types of job-protected leave](#).

Q: Does my employer have to accommodate me if I test positive or if I become sick because of COVID-19?

- The Human Rights Commissioner's opinion is that COVID-19 is a disability. Discrimination on the basis of disability is prohibited under B.C.'s *Human Rights Code*. In the *Code* disability includes disabling medical conditions or perceived medical conditions that carry significant social stigma as well as possible ongoing long-term physical limitations.
- Because in the Commissioner's view COVID-19 is a disability under the *Code*, an employer has a responsibility to take steps to avoid harm to you, also called a "duty to accommodate" in human rights law. Where an accommodation is required, it should be based on the individual needs of those involved and should be reasonable. It does not have to be perfect.
- Some accommodations are too difficult to be reasonable options. In human rights law, this is called "undue hardship." A business, employer, school, landlord or service provider does not have to accommodate you past the point of undue hardship.
- Employers may also need to accommodate related situations such as a worker who has a compromised immune system and may need additional steps to protect them from virus transmission in the workplace.

Q: Do I need to get a medical note to support my request for Covid-19 related leave?

- The [Employment Standards Act](#) confirms that a worker will not be required to provide a medical note if they need to take a leave related to COVID-19.
- An employer is, however, entitled to ask a worker for "reasonably sufficient proof" that one of the situations exists as described in the "COVID-19-related leave" section of the [Employment Standards Act](#).
- "Reasonably sufficient proof" is a concept that is not yet clearly defined in the law.



Q: I am a contract worker. Do I have the same rights as employees under B.C.'s *Human Rights Code* related to COVID-19?

- The right to be free from discrimination in employment under B.C.'s *Human Rights Code* includes full-time and part-time work, volunteer work, student internships, special employment programs, probationary employment and temporary or contract work.
- The definition of “employee” in the B.C. *Human Rights Code* is interpreted broadly enough to include contractors, even if they would not be considered “employees” for the purposes of other legislation.

Information for people with responsibilities under the *Code* such as employers, schools, service providers, and landlords

Q: What should I consider before implementing a mandatory vaccination policy?

- For information on how a mandatory vaccine policy can be designed in a way that respects human rights, see our full guidance on [a human rights approach to proof of vaccination during the COVID-19 pandemic](#).
- If you are considering requiring proof of vaccination from your workers or customers/clients, you should first ask yourself the following questions:
 - What does the science and public health information say about the risk of transmission in settings like mine?
 - What scientific evidence shows proof of vaccination is needed to prevent the spread of COVID-19 in settings like mine?
 - Are there simpler ways of preventing COVID-19 transmission that I can use instead?
 - How will I protect the human rights of all my workers and customers, including providing accommodations where necessary?



- If you have decided to require proof of vaccination, you will need to plan carefully for the following items:
 - **Time limits** – You should establish a time limit for your requirement.
 - **Regular reviews** – You should regularly review and reconsider your decision, especially the scientific evidence relevant to your setting as well as public health and legal information.
 - **Privacy** – A person’s vaccination status is highly sensitive personal health information. You must follow federal and provincial privacy laws when you collect, use, store or share anyone’s vaccine information. The Federal, Provincial and Territorial Privacy Commissioners have released [guidance about requiring vaccine information](#).
 - **Accommodations** – You will need a process for planning reasonable accommodations for and with workers, customers and clients who cannot get a vaccine because of a part of their identity protected by B.C.’s *Human Rights Code*.

Q: What do I do if I require my workers or customers to be vaccinated, but one of them says they can’t get the vaccine because of a disability or other protected area under B.C.’s *Human Rights Code*?

- If the individual can demonstrate that they cannot receive a vaccine because of a part of their identity protected under the *Code* you have a responsibility to take steps to avoid harm to your workers or customers, also called a “duty to accommodate” in human rights law. Where an accommodation is required, it should be based on the individual needs of those involved and should be reasonable.
- If the worker or customer has a medical concern, the B.C. Centre for Disease Control provides guidance on [who should and should not get a COVID-19 vaccine based on their medical conditions](#).
- Where an accommodation is required, it should be based on the individual needs of those involved and must be reasonable. It does not have to be perfect. For example, employers may do one or more of the following:
 - exempt a worker from the vaccination policy



- require a worker to
 - wear a face mask
 - work at a physical distance from others
 - work a modified shift
 - get periodic tests for COVID-19
 - work remotely
 - accept a re-assignment to a setting that poses less risk of virus transmission.
- Some accommodations are too difficult to be reasonable options. In human rights law, this is called “undue hardship.” Undue hardship can be, for example, where the accommodation would create health and safety risks for others or would be too expensive. There is no universal definition for “undue hardship;” it is different in different circumstances and depends on the facts of each situation. You do not have to accommodate a worker or customer past the point of undue hardship.
- The Human Rights Commissioner’s opinion is that there is no duty to accommodate a person who chooses not to get vaccinated as a matter of personal preference—especially where that choice is based on misinformation or misunderstandings of scientific information.

Q: If the provincial government lifts the mandatory mask order for indoor public places, can I still require my workers, customers, or students to wear a mask?

- Even if mask-wearing is no longer mandated by government, you may still require workers, customers, or students to wear masks in indoor public spaces if you have legitimate safety concerns.
- However, you must accommodate or provide alternatives to those who cannot wear a mask because of a part of their identity protected by B.C.’s *Human Rights Code*.
- For example, a rule requiring masks at work should not apply—or apply differently—to the following groups of people:
 - Children under 5 years old
 - People unable to wear a mask because of a health condition or impairment



- People unable to put on or remove a mask without help
- People who can't communicate with someone with a hearing impairment if they wear a mask

- If someone is able to wear a mask but chooses not to as a matter of personal preference, you are not required to provide accommodations under B.C.'s *Human Rights Code*.

Q: As an employer or service provider, what information do I need if someone is not wearing a mask because of a disability and requires an accommodation?

- You need only enough information to plan an accommodation.

- In the Commissioner's view, where the relationship is brief—such as a customer visiting a store—you should accommodate those who are unable to wear masks based on what they tell you, without requiring them to provide medical information because this is sensitive, personal information. An example accommodation could include assisting the customer to shop through curb-side pick-up rather than in-store.

- The Human Rights Tribunal has not yet ruled on what information a person may have to provide to a service provider when they say they cannot wear a mask because of a part of their identity, like disability, protected under the *Code*.

- Where there is a longer-term relationship—such as a worker coming in to work at the office—you may need additional information to support an accommodation. However, you only need the medical information required to determine the limitations an individual has in relation to mask wearing and how they can be accommodated. Employers must keep this medical information confidential and share it only as necessary to put in place the accommodation.

