

Is Enforcing Mandatory Vaccination Employment Discrimination? – Quiz



It depends on whether employees refuse due to a disability or personal preference.

Getting the COVID-19 vaccination is still a personal choice. But in vulnerable sectors like healthcare, some employers are adopting [mandatory vaccine policies](#) for their employees. Employees who refuse face the prospect of [mandatory COVID-testing](#) or even loss of their jobs.

Despite all of this, there are clear limits to how far employers can go in enforcing mandatory vaccination policies and [vaccine passports](#). Among other things, employers can't discriminate against and must make reasonable accommodations for those who can't or won't get vaccinated due to disability and other grounds protected by human rights laws. But accommodations aren't required if they impose undue hardship. Here's a scenario illustrating how these principles play out in real-life.

SITUATION

ABC Company has adopted a policy requiring employees to get and produce verification of having gotten one of the COVID-19 vaccines. Despite the early grumbles, most employees have complied. But there are also a few objectors. The Company wants to discipline these employees for refusing vaccination but is worried about potential liability under human rights laws:

1. Alan says he can't get the vaccination because of his immunological deficiency;
2. Barbara says she doesn't have time to get vaccinated because she has to spend all of her non-working hours caring for her disabled child;
3. Cal refuses to get vaccinated because it would violate his religion;
4. Dawn claims the vaccine is unsafe;
5. Ed insists that COVID-19 is a hoax and that there's no scientific evidence supporting the need for vaccination;
6. Fran won't get vaccinated because she's a lifelong anti-vaxer.

QUESTION

Which, if any, of the above employees has/have a valid claim for discrimination?

ANSWER

Alan and Cal have legitimate discrimination claims; Barbara and Fran may also have claims but it's far weaker; Dawn and Ed have no case at all.

EXPLANATION

Alan HAS a valid claim because his immunological deficiency is a disability. **Caveat:** The Company can require Alan to furnish medical documentation of his condition. When and if it verifies his disability, the Company must accommodate Alan to the point of undue hardship. Accommodation doesn't necessarily mean exempting him from the mandatory vaccination policy. The Company must make an assessment of whether letting him come to work without being vaccinated would put others in the workplace at undue hazard. If so, exemption would be deemed undue hardship and the Company would have to explore safer alternatives, like letting him work from home.

Barbara MAY have a valid claim for family status discrimination, at least in theory, to the extent her vaccine refusal is based on her childcare needs. But in reality, not having time to get vaccinated would be a tough case to make, especially if the workplace is in a province that provides [paid COVID-vaccination leave](#).

Cal HAS a valid claim, as long as he can document his contention that getting vaccinated would violate his religion. But, again, an assessment of the specific circumstances would be necessary to determine if exemption would be a reasonable accommodation or undue hardship.

Dawn DOES NOT have a valid claim because her reason for not getting vaccinated is just personal preference not related to a disability or other characteristic protected by human rights laws. Her fears also go against the scientific evidence showing that the vaccine is safe and effective.

Ed DOES NOT have a valid claim for the same reasons that Dawn doesn't. According to the BC Human Rights Commissioner, "in my personal opinion, 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—does not have grounds for a human rights complaint against [an employer] implementing a vaccination status policy."

Fran MAY have a case if the workplace is in a jurisdiction that bans [discrimination on the basis of creed](#). However, courts have yet to determine whether the anti-vaccination movement constitutes a creed protected by human rights laws.