

IN THE MATTER OF AN ARBITRATION

BETWEEN

ELECTRICAL SAFETY AUTHORITY

(the “ESA”)

and

POWER WORKERS’ UNION

(the “PWU”)

**GRIEVANCE: ESA-P-24
RE: COVID-19 Vaccination Policy**

CHIEF ARBITRATOR: John Stout

APPEARANCES:

For the ESA:

David Cowling, Johnstone & Cowling LLP
Alexander Boissonneau-Leher, Johnstone & Cowling LLP
David Rinaldo, Senior Legal Counsel
Carol Calvert
Earl Davidson
Terry Hughes
Karen Seblowski
Enzo Tramontozzi
Dr. Colin Furness
Dr. Neal Sutton

For the PWU:

John Monger, Paliare Roland
Jessica Latimer, Paliare Roland
Chris Dassios, PWU General Counsel
Jenn Vautour
Patrick Fee
Tom Chessel

HEARINGS HELD BY VIDEOCONFERENCE ON NOVEMBER 7, 2021

AWARD

Introduction

[1] This matter concerns a grievance filed by the PWU asserting that the ESA has implemented a mandatory COVID-19 Vaccination Policy (attached as an appendix) that is unreasonable and a significant over-reaching exercise of management rights, which violates the Collective Agreement as well as employees' privacy rights and right to bodily integrity.

[2] The ESA denies any violation of the Collective Agreement, asserting that their COVID-19 Vaccination Policy is a reasonable exercise of management rights that fulfills their legal obligations to take every reasonable precaution to protect their workers and the public.

[3] The parties filed comprehensive briefs in advance of the hearing, as required under Article 2.8.4 of the Collective Agreement. Additional documents were submitted at the hearing and Dr. Colin Furness MSt PhD MPH, one of the ESA's experts, answered questions posed by counsel and I. Counsel then made very fulsome oral submissions complementing their written material.

[4] At the end hearing, it was agreed that given the urgency of this matter, I would provide a bottom line award by end of business November 11, 2021, with reasons to follow. Upon reflection, I find that I am compelled to provide some brief reasons and directions to assist the parties in navigating through this difficult situation. I also want to ensure that my decision is not seen as any form of vindication for those who chose, without a legal exemption under the Ontario *Human Rights Code*, not to get vaccinated. As will be seen, the choice of individual employees not be vaccinated may result in consequences at a later date and in different circumstances. Those who continue to refuse to be vaccinated are not just endangering their health but may also placing their employment in jeopardy.

Decision

[5] After carefully considering the parties' submissions, I find that the ESA's current Vaccination Policy is unreasonable to the extent that employees may be disciplined or discharged for failing to get fully vaccinated. It is also unreasonable at this time to place employees on an administrative leave without pay if they do not get fully vaccinated. However, that may change as the situation unfolds in the coming weeks and months. I do not find it to be unreasonable for the ESA to require employees to confirm their vaccination status as long as the personal medical information is adequately protected and only disclosed with their consent. Employees may provide a general consent to disclosure of vaccination status in order to access third-party premises or an employee may reserve the right to disclosure on a case by case basis. Employees must be cognizant of the fact that in the current circumstances they may be required to disclose their vaccination status to gain entry to third-party premises and the ESA's offices. I am directing that the ESA refer their Vaccination Policy and this award to the Joint Health and Safety Committee (JHSC) together with the concerns raised by the ESA in this matter. The JHSC shall have a reasonable period of time for review, so they may identify dangers or hazards and make written recommendations. If concerns still exist and the situation has evolved to a point where additional measures need to be made but the PWU objects, then the matter may be brought back before me on an urgent basis for resolution.

[6] I note that this case is not about the merits of being vaccinated or the effectiveness of COVID-19 vaccines. The science is clear that the COVID-19 vaccines currently being used are safe and effective at reducing the likelihood of becoming seriously ill or dying from this horrible disease. Moreover, vaccinating the population is necessary in order to secure the fragile healthcare system and eventually put this pandemic behind us.

[7] This matter concerns the interpretation of management rights as found in the Collective Agreement between the PWU and the ESA. In particular, the focus of the analysis is on management's right, as provided for under the Collective Agreement, to

unilaterally introduce a rule or policy that all employees must disclose their vaccination status and any employee who does not disclose their status or who is not vaccinated places their employment in jeopardy.

[8] There is nothing in the Collective Agreement that specifically addresses vaccinations. The ESA has not previously required any employee to be vaccinated as a condition of employment. There is no legislated requirement that ESA employees must be vaccinated. I have also not been provided with any prior authority (arbitration award or court decision) that upholds a mandatory employer vaccination rule or policy applicable to all employees, without specific collective agreement language or legislative authority, outside of a healthcare or long-term care setting.

[9] Most of the decisions provided to me by the parties occur in the context of healthcare or long-term-care. Some of the decisions address drug and alcohol testing in safety sensitive workplace. The decisions reflect, and counsel agree, that when assessing employer rules or policies that affect an employee's individual rights, arbitrators generally apply the decision of *Re Lumber & Sawmill Workers' Union, Local 2537, and KVP Co.* (1965), 16 L.A.C. 73 (Robinson), which sets out the scope of management's unilateral rule making authority under a collective agreement. The "KVP test" requires that a policy or rule satisfy the following conditions:

- It must not be inconsistent with the collective agreement.
- It must not be unreasonable.
- It must be clear and unequivocal.
- It must be brought to the attention of employees affected before the company can act on it.
- The employee concerned must have been notified that a breach of such rule could result in his discharge if the rule is used as a foundation for discharge.
- Such rule should have been consistently enforced by the company from the time it was introduced.

[10] The *KVP* test has been judicially endorsed by both the Ontario Court of Appeal, *Metropolitan Toronto (Municipality) v. C.U.P.E.* (1990), 74 O.R. (2d) 239 (C.A.) and the

Supreme Court of Canada in *Communications, Energy and Paperworkers Union of Canada, Local 30 v. Irving Pulp and Paper, Ltd.* [2013] 2 S.C.R. 458.

[11] Arbitrators generally apply the KVP test using a “balancing of interests” approach to assess unilaterally imposed employer rules or policies affecting an employee’s privacy, see *Chinook Health Region v. U.N.A., Local 120* (2002), 113 L.A.C. (4th) 289 (Jolliffe). However, the PWU relies upon *St. Peter’s Health System v. CUPE, Local 778* (2002), 106 L.A.C. (4th) 170 (Charney) for the proposition that absent any legislative support or specific language in a Collective Agreement, an employer cannot require all employees be vaccinated.

[12] In *St. Peter’s Health System v. CUPE, Local 778, supra*, Arbitrator Charney undertakes a detailed review of authorities provided to him and finds that prior to balancing the interests of the employer and the employees one must look at the common law rights issues and s.7 of the Canadian *Charter of Rights and Freedoms* (the “*Charter*”) as to whether it is permissible to enforce medical treatment. Arbitrator Charney concludes:

“...suspending employees (non-disciplinary) for refusing to undergo medical treatment is a violation of their common law sec. 7 charter rights. Virtually all the court cases, including Supreme Court of Canada and Ontario Court of Appeal, find that enforced medical treatment, and I point out that this is not a medical examination but treatment, is an assault if there is no consent.”

[13] I appreciate the analysis of Arbitrator Charney, but I do not agree with his approach. I agree that an individual employee’s rights, including the right to privacy, personal autonomy, and bodily integrity as well as rights under the *Charter* are fundamental to a just and democratic society. Such fundamental rights should not be easily abrogated or constrained by employers. However, these individual rights are not absolute and there are circumstances where the rights of the collective outweigh the rights of the individual. Arbitrator Charney’s approach, with respect, also seems to ignore the fact that some jobs (first responders healthcare for example) have an inherent physical component or occur in an inherently high risk work environment, see *Halton District School Board and ETFO (BMS Grievances)* 2020 CanLII 5702m (ON

LA). I am of the view that a more nuanced contextual approach applying the *KVP* test, and the balancing of interests is the more appropriate way to address the issue before me, see *Sault Area Hospital and Ontario Nurses' Association (Vaccinate or Mask)* (2015), 262 L.A.C. (4th) 1 (Hayes).

[14] Context is extremely import when assessing the reasonableness of a workplace rule or policy that may infringe upon an individual employee's rights. The authorities reveal a consensus that in certain situations, where the risk to health and safety is greater, an employer may encroach upon individual employee rights with a carefully tailored rule or policy, see *Carewest v. AUPE* (2001), 104 L.A.C. (4th) 240 (Smith).¹

[15] In cases where the rule or policy involves health and safety, one must consider the obligations that arise under the *Occupational Health and Safety Act*, including an employer's obligation to "take every precaution reasonable in the circumstances for the protection of the worker," see s. 25(2)(h). This statutory obligation fits neatly within the *KVP* test, which is grounded in a contextual analysis and a balancing of interests approach to determine the reasonableness of any rule or policy.

[16] While an individual employee's right to privacy and bodily integrity is fundamental, so too is the right of all employees to have a safe and health workplace. The interests in this case raise extremely important public policy issues during a very unique and difficult time in our history. The context is very unusual, but the existing law provides guidance for the analysis.

[17] In workplace settings where the risks are high and there are vulnerable populations (people who are sick or the elderly or children who cannot be vaccinated), then mandatory vaccination policies may not only be reasonable but may also be necessary and required to protect those vulnerable populations.

¹ In *Carewest, supra*, the arbitrator permitted a carefully crafted vaccination policy that only applied to certain employees in certain situations where the risks were extremely high.

[18] However, in other workplace settings where employees can work remotely and there is no specific problem or significant risk related to an outbreak, infections, or significant interference with the employer's operations, then a reasonable less intrusive alternative, such as the ESA's voluntary vaccination disclosure and testing policy (VVD/T Policy) employed prior to October 5, 2021, may be adequate to address the risks.

[19] It must also be noted that the circumstances at play may not always be static. The one thing we have all learned about this pandemic is that the situation is fluid and continuing to evolve. What may have been unreasonable at one point in time is no longer unreasonable at a later point in time and vice versa.

[20] There can be no doubt that the risks associated with contracting COVID-19 are serious to both the individual and society. Individual response to infection varies, but the higher the number of infections, the higher the number of admissions to hospitals and intensive care units (ICUs). The strain on our healthcare system has been immense and our long-term care system has suffered greatly, exposing flaws in these systems that need to be addressed. However, it is for the democratically elected governments to address general public health issues, not employers. At this point there is no government mandate that all ESA employees must be vaccinated.

[21] In terms of this specific workplace, the ESA has done a tremendous job of protecting their employees. The ESA has a reputation as a safety organization that they have lived up to that reputation. The ESA has issued "Playbooks" to their employees and provided Inspectors with personal protection equipment (PPE), including N95 masks. I recognize that the ESA has an interest in continuing to promote and protect their reputation as a safety organization.

[22] The ESA has not had a breakout in their workplace. Since the beginning of the pandemic in March 2020, only seven employees have contracted COVID-19 of the over 400 employees and only two of those infections may be work related. Those two possible work related infections occurred in early January and early February 2021

before vaccines were available to the general population. Those two possible workplace infections were reported to the Ministry of Labour and the Workplace Safety Insurance Board (WSIB). I have no evidence of any Ministry of Labour orders being made or any significant WSIB claims being made in relation to those two possible workplace infections.

[23] The vast majority of ESA employees have voluntarily been vaccinated (88.4%) and disclosed their status to the ESA. Over 90% of Operations, which includes Inspectors, have been vaccinated. While there may have been some hesitancy earlier, it appears that employees are now disclosing their status and only 14 of 415 employees have not disclosed their vaccination status.

[24] Prior to October 5, 2021, the ESA had in place the VVD/T Policy, which the company judged to be a reasonable and appropriate process to protect employees and stakeholders. The VVD/T Policy allowed employees who did not voluntarily disclose their vaccination status to be tested on a regular basis. The PWU did not object to this VVD/T Policy, in fact they were publicly supportive of the policy as being a reasonable workplace health and safety measure. Similar policies have been adopted by other employers in the sector and there is no evidence that they are not effective at addressing health and safety concerns. There appears to be no significant change in the situation since the VVD/T policy was implemented in September 2021, other than a fear that mandatory vaccination rules and policies by third-parties may interfere with the ESA's business and a desire to bring employees back to the workplace in January 2022.

[25] I acknowledge that testing is fallible and a less effective intervention than vaccination. However, it is a reasonable tool to utilize in protecting a workplace. It has been endorsed by the Ontario Chief Medical Officer of Health and the ESA's expert, Dr. Furness advises that mandatory vaccination, along with testing "provides maximum protection against transmission." In this case, the ESA has not demonstrated any difficulties in protecting their workplace utilizing a combined vaccination and testing regime.

[26] I have been provided with no analysis of any workplace dangers or hazards associated with the ESA's concerns. I have also been provided with no analysis or any substantial interference with the ESA's business. I have no evidence that these concerns have manifested themselves in any actual problems in the workplace that cannot be reasonably addressed under a policy that provides for a combined vaccination or testing regime or other reasonable means. At this point the ESA has legitimate concerns, but those concerns do not at this point justify imposing a mandatory vaccination regime with threats of discipline or discharge.

[27] The vast majority of the work that is undertaken by ESA employees has been effectively undertaken remotely and many employees have a right to continue working remotely under the Collective Agreement.

[28] I recognize that some ESA employee's (Inspectors and ESAFE) will require access to third-party sites or locations or may need to travel. However, I am not satisfied that the ESA has proven a significant problem exists with regard to third-party access and travel, which would interfere with their operations. As pointed out by PWU counsel, employees provide coverage for various absences (sick leave, vacation etc.) on an ongoing basis. There is no evidence that work has been significantly impeded or lost as a result of some employees (a significant minority) not being vaccinated. The PWU has indicated that in the context of mandatory vaccination for travel, they would raise no objection to travel only being assigned to those employees who are fully vaccinated.

[29] There have been many third-parties who have enacted vaccination policies that limit access to their premises. However, many of these third-party policies also provide a testing alternative. I am not satisfied at this time that these issues cannot be addressed by a policy that includes a testing option.

[30] The PWU points to the authority of ESA Inspectors to enter and inspect premises pursuant to s.113.13 of the *Electricity Act*. I agree with the ESA that the power to enter and inspect is limited, both within the legislation, see 113.13(3) and by virtue of

the fact that the legislation does not apply to federally owned and operated workplaces and many provincial facilities. I also have doubt that the statutory authority to enter and inspect would allow an unvaccinated ESA Inspector to enter a third-party premises that has a mandatory vaccination rule that has been instituted to protect the health and safety of vulnerable persons such as children, the elderly or those seeking medical attention.

[31] At this point there has only been one instance of entry being denied to an ESA Inspector. In that one case a vaccinated Inspector later attended at the premises and was granted entry for the inspection. The other incidents were addressed by the Inspector showing proof of vaccination and being granted entry. At this time, the third-party vaccination policies have not significantly interfered with the ESA's business. If, as this situation unfolds, the ESA is placed in a situation where a significant issue arises with respect to accessing third-party sites to perform work, then the ESA may have cause to place an employee on administrative leave until they are vaccinated.

[32] The ESA has only point to one actual complaint arising with respect to the conduct of an Inspector. This complaint is found in an email dated October 1, 2021, wherein a homeowner expresses disappointment with the conduct of an Inspector. One of the concerns expressed was a refusal by an Inspector to provide "a valid negative covid test or vaccine confirmation prior to entering the home." This one issue could have been addressed under a policy that combines vaccination with a testing alternative and makes it clear to employees that they are to respect the wishes of third-parties who require proof of a negative test or confirmation of vaccination prior to granting access to their premises. If the employee does not wish to comply with the third-party's requirement, then they are not enter the third-party's premises. Instead, alternative measures must be taken to ensure the inspection can take place.

[33] I have great sympathy for the challenges that the ESA faces in responding to the situation that seems to be unfolding. Mandating that all employees be vaccinated provides an obvious and simple answer to address their concerns. However, mandating

vaccinations is not the only reasonable response at this time and in these circumstances.

[34] It would appear that in early September the ESA was satisfied with the VVD/T Policy, but later had second thoughts. There does not appear to be any event, issues or concerns brought to the JHSC for review and recommendations. In my view, it appears that the ESA has jumped to a hasty conclusion without turning their mind to the validity of the concerns and analyzing if the concerns will manifest themselves in serious workplace problems that cannot be addressed by a policy that combines vaccination with a testing alternative. In my opinion, the ESA has acted prematurely and without considering the individual rights of employees. As a result, I find that their certain aspects of the current Vaccine Policy are unreasonable.

[35] The Supreme Court of Canada has on a number of occasions recognized that work is fundamental to one's identity, providing a means of financial support and a contributory role in society, see *Machtiger v. HOJ Industries Ltd.* [1992] 1 SCR 986.

[36] In my view, disciplining or discharging an employee for failing to be vaccinated, when it is not a requirement of being hired and where there is a reasonable alternative, is unjust. Employees do not park their individual rights at the door when they accept employment. While an employer has the right to manage their business, in the absence of a specific statutory authority or specific provision in the collective agreement, an employer cannot terminate an employee for breach of a rule unless it meets the *KVP* test and found to be a reasonable exercise of management rights.

[37] Management does have the right and the legal obligation to protect the health and safety of their employees in the workplace environment. An employer may institute a reasonable rule or policy requiring disclosure of medical information to ensure that the employee is fit to perform work or safely attend at the workplace. However, any such rule or policy must be reasonably necessary and involve a proportionate response to a real and demonstrated risk or business need. Employees who are not fit to perform work may be placed on an administrative leave, subject to their right to claim any benefit

provided for under the collective agreement and file a grievance challenging the reasonableness of the employer's decision.

[38] All individual employee's medical information must be kept safe, secure, and protected from disclosure. Such medical information may only be disclosed with an employee's prior consent. It is preferable that disclosure be limited to healthcare professionals, although one must be aware in a world where you are either fully vaccinated against COVID-19 or you are not, then it may not be possible to fully protect an employee from inadvertent disclosure. In addition, it is fair and reasonable for employees to have the option of granting the employer the right to disclose their vaccination status to third-parties for the sole purpose of accessing worksites. However, such consent should not be required, and any consent granted must be clear, knowledgeable and with the ability to be withdrawn, see Part III, s. 18 and 19 of the *Personal Health Information Protection Act, 2004*.

[39] The ESA has legitimate concerns, and they wish to return employees to the workplace in the near future. In my view, these concerns and plans ought to be discussed at the JHSC, where the PWU has representation. The JHSC should be asked if they have any of their own concerns or recommendations. If a health and safety problem arises in the workplace or if the number of unvaccinated employees creates real problems for the ESA's business that cannot be addressed in any other reasonable way, then the ESA may need to take other measures, including placing unvaccinated employees on administrative leave. If the PWU objects to such measures, then the issue may be brought back before me on an expedited basis.

[40] On a final note, after the hearing I was provided with the award of Arbitrator von Veh between *UFCW, Canada Local 333 and Paragon Protection Ltd (Vaccination Policy Grievance)* dated November 9, 2021. I need only state that this award arises in a different context involving a different union and a different employer (a security company whose employees perform all their work at third-party sites) and specific language in the applicable collective agreement that requires employees to receive a specific vaccination required at an assigned site (see art. 24.05). In my view, the Von

Veh award is clearly distinguishable, and it does not lead me to a different result. Moreover, I do not see Arbitrator von Veh's award conflicting with my decision in this matter. Rather, I am of the view that in the circumstances before Arbitrator von Veh, he came to a reasonable conclusion.

[41] After carefully considering the parties' submissions and for all the reasons stated above, which will be elaborated upon in due course, I am allowing the grievance, and making the following orders:

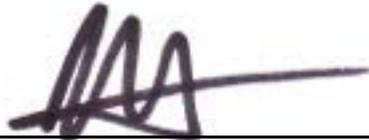
- The ESA is directed to amend their Vaccination Policy to make it clear that employees shall not be disciplined or discharged for failing to get vaccinated.
- The ESA is directed to provide a testing option to those who have not been vaccinated.
- The ESA may revise their Vaccination Policy to indicate that at some point in the future if problems occur in their operations or safety concerns become such that they cannot be adequately addressed by a combined vaccination and testing regime, then with reasonable notice the ESA may place employees on an administrative leave without pay if they are not fully vaccinated.
- The ESA's Vaccination Policy may require employees to confirm their vaccination status as long as the personal medical information provided by employees is adequately protected and only disclosed with their consent.
- The ESA may amend their Vaccination Policy to provide employees with the option of providing a general consent to disclosure of vaccination status in order to access third-party premises or an employee may reserve the right to disclosure on a case by case basis.
- The ESA is to provide a copy of the revised Vaccination Policy together with this award to the JHSC and advise them of any and all concerns they may have about health and safety in the workplace and at third-party sites. The JHSC shall have a reasonable period of time for review, so they may identify any of their own dangers or hazards and make written recommendations to the ESA. If concerns still exist and the situation has evolved to a point where additional measures need to be made by the ESA but the PWU objects, then the matter may be brought back before me on an urgent basis for resolution.

[42] As I stated at the beginning, this award should not be taken as a vindication for those who choose, without a legal exemption, not to get vaccinated. Those individuals are in my view misguided and acting against their own and society's best interests.

These individuals may also be placing their ability to earn a living in jeopardy. These individuals should not construe this award as a victory.

[43] I remain seized to address any issue fairly raised but not addressed in this award, including implementation of my orders, and providing more fulsome reasons at a later date. If the parties feel that they do not require any further reasons, they may advise me within 7 days.

Dated at Toronto, Ontario this 11th day of November 2021.

A handwritten signature in dark ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

John Stout- Chief Arbitrator

APPENDIX



Procedure Title	Procedure Number	Date Created
COVID-19 Vaccination Disclosure Procedure	HS-2029	10/05/2021
Issuing Department	Version	Governing Policy
People and Culture	2	Health & Safety Policy
Author	Owner	Approval Date
Karen Serblowski	VP, People and Culture	10/18/2021

COVID-19 Vaccination Procedure

1.0 Purpose

The purpose of this procedure is to outline organizational expectations about COVID-19 immunization and to obtain information about the appropriateness and content of further protocols related to COVID-19 health and safety.

2.0 Scope

This procedure applies to:

- Employees (including full-time, part-time and temporary, hiring hall inspectors, field and office employees). An individual would fall under this definition (for the purpose of this Procedure) if they are on ESA payroll, and they have an ESA email address.
- Students on an educational placement.
- New hires will also be subject to this policy as a condition of their employment contract with the Electrical Safety Authority.

In this Procedure, all references to vaccination refer to a Health Canada-approved vaccination against COVID-19.

3.0 Objectives

COVID-19 remains a serious health risk in our community. The ongoing spread of variants of concern means we must make every reasonable effort to protect our workplaces against the virus. COVID-19 vaccines have been approved by Health Canada and are available to all working-age Canadians. According to public health information, COVID-19 vaccines are a safe method of giving individuals added protection against the effects of the COVID-19 virus and its variants and are an additional measure for limiting the risk of contracting and spreading the virus.

ESA is committed to protecting the health and safety of our employees and community, and we believe that COVID-19 vaccines are an important part of prevention and mitigation during the pandemic. This procedure implements controls to mitigate the risk of COVID-19.



Procedure Title	Procedure Number
COVID-19 Vaccination Disclosure Procedure	HS-2029
Issuing Department	Last Revision Date
People and Culture	10/05/2021

4.0 Procedure

4.1. Vaccination Disclosure

All ESA staff will be required to be Fully Vaccinated unless exempt on the basis of a validated Human Rights Code ground. As outlined in this section 4.1, the process and timing of the requirement to be Fully Vaccinated will depend on the nature of the role.

Fully Vaccinated means the individual has received a full series of a COVID-19 vaccine (or a combination of vaccines) approved by Health Canada and has received the final dose of that vaccine at least 14 days ago.

Any new employees must provide proof of Full Vaccination prior to commencing active employment.

4.1.1 Field Staff

Field Staff are those employees who attend non-ESA sites and interact in-person as a regular part of their job function (for example, inspectors). Field staff that are fully vaccinated are required to disclose their vaccination status using the process outlined in section 4.2, below, by October 13, 2021.

Field staff who are not Fully Vaccinated are required to comply with the below process:

- i. Field staff who disclose that they have received one vaccination must provide proof of their second vaccination by November 24, 2021 using the process set out in section 4.2.
- ii. Field staff who disclose that they have not received any vaccination will be required to provide proof of receiving their first vaccination by November 11, 2021 and their second vaccination by December 9, 2021, using the process set out in section 4.2.
- iii. Field staff are required to complete a COVID-19 vaccination education session (as set out in section 4.3, below) and undertake testing (as set out in section 4.4, below) until they are Fully Vaccinated.

Field staff who provide proof that they are exempt from vaccination for medical or other protected grounds under the Human Rights Code will be accommodated on a case-by-case basis.

4.1.2 Non-Field Staff

Non-Field staff are staff that are fully vaccinated are required to disclose their vaccination status using the process outlined in section 4.2, below, by October 13, 2021.

Non-Field Staff who are not vaccinated are required to:



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COVID-19 Vaccination Disclosure Procedure	HS-2029
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People and Culture	10/05/2021

- i. complete a COVID-19 vaccination education session (as set out in section 4.3, below) and undertake testing until they are fully vaccinated (as set out in section 4.4, below); and
- ii. provide proof that they are Fully Vaccinated by December 22, 2021 using the process set out in section 4.2.

Non-field staff who provide proof that they are exempt from vaccination for medical or other protected grounds under the Human Rights Code will be accommodated on a case-by-case basis.

4.2. Employee Confidential Vaccination Status Disclosure and Receipt Submission Process:

Getting your vaccination receipt/QR code:

Employees can receive their Ontario health vaccination receipt by following the instructions provided.

Instructions on how to confidentially disclose your COVID 19 vaccination status:

ESA’s eCompliance Health & Safety Management System has a limited access section specifically for COVID-19 vaccination disclosure. ESA employees all have an employee profile to disclose vaccination status and upload their vaccination receipts using the instructions provided.

New Hires:

As a condition of the employment contract, new hires will contact People & Culture at time of employment offer to confidentially disclose their vaccine receipt.

New hires who have an approved protected ground exemption under the Human Rights Code will be subject to ESA’s education and rapid testing process as noted in 4.3 and 4.4.

4.3. Educational Component

Those who are subject to the education session requirement pursuant to section 4.1, will be provided with details of how to access the education session and the timeframe for doing so.

Proof of completion of educational session

Employees must provide proof of completion. This will be in the form of a signed self-declaration, and submitted confidentially to ESA’s third party medical provider.

4.4 Screening Test Process

Those who are subject to the testing requirement pursuant to section 4.1, must follow the below processes. ESA will make all efforts to use a third-party medical provider for oversight of the rapid testing process.

Frequency



Procedure Title	Procedure Number
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Screening tests for employees who are unvaccinated or who have not disclosed their vaccination status will be conducted at a frequency determined by ESA. This may vary based on role and frequency of in-person interaction.

- a. Field Staff: Tests must be completed at least twice a week, during an active work week. Testing does not need to be conducted during vacation time.
- b. Office Employees: For staff who work in office-based and/or remote functions, testing must be done no more than 48 hours before appearing for an in-person meeting/work function or attending at an ESA office. If an employee is required to attend an ESA office or in-person meeting(s)/training/activities on a weekly or regular basis the test must be completed at least twice a week. Testing does not need to be conducted during vacation time.

Testing Process

Screening test kits will be provided to those who are subject to the testing requirement. These will be delivered to employee homes or provided at an ESA office or a set location for pickup. Instructions will be provided on the use of the test kits and reporting of results.

Note: Employees are not required to share their rapid testing results with their supervisor/manager. Any applicable public health instructions given to employees must be followed.

Employees will use the regular process for reporting sick days and follow the regular Major Medical Absence Report (MMAR) process, as applicable.

4.6 Compliance

Unless there is a protected ground exemption under the Human Rights Code, ESA will not provide alternate work accommodations for employees who choose not to comply with this Procedure.

Employees who do not meet or follow the requirements of these procedures may be subject to discipline, up to and including discharge. The employer may also, at its discretion, place employees who do not meet or follow the requirements of these procedures on unpaid leaves.

Employees who have a protected ground exemption under the Human Rights Code will be accommodated on a case-by-case basis.

4.7 Confidentiality and Privacy

ESA has implemented steps and measures to protect the privacy of the information collected.

The use of information collected pursuant to this procedure will be limited to the following uses:



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- to promote the health and safety and well-being of our employees
- provide assurances to our stakeholders and clients that ESA has taken appropriate measures for their safety, and assist our staff with managing third party interactions, and complying with third party requirements in the current pandemic environment
- to inform return to office planning and design
- to further enhance and support our current pandemic health and safety policies and procedures, and to help inform future needs
- to minimize potential business interruptions to the essential services we provide
- to develop further policies relating to how to ensure the ESA can continue its operations in efficient and safe manner

Vaccination receipts will be retained for no more than seven days. Testing results will be retained for no more than six months.

5 Procedure Review

ESA will maintain, revise and augment this Procedure as required in response to public health guidance and the evolving conditions of the COVID-19 pandemic and as a result of information gathered herein and the requirements of third parties.

This procedure will be reviewed at a minimum of every 6 months.

6 Associated Documents/References

- ESA Health and Safety Policy

7 Document History

Version #	Author / Reviewer / Reviser	Summary of Action / Key Changes & Rationale	Date
1.0	People and Culture	Original procedure	September 9, 2021
2.0	People and Culture	Revised process to include disclosure of vaccination status in eCompliance, and revised timeline requirements.	October 18, 2021