

**For: United Church regional councils and congregations in Ontario**  
**From: Heather Keachie, Legal Counsel, Gardiner Roberts LLP**

I've looked at the regulation and the related press releases and explanatory documents.

### **Ontario Vaccine Passports**

See here:

- O. Reg 645/21 which amends O. Reg 364/20 re proof of vaccinations:  
<https://www.ontario.ca/laws/regulation/r21645>
- O. Reg 364/20 which will be amended as of Sept 22 to include the new requirements:  
<https://www.ontario.ca/laws/regulation/r21645>
- Guidance on vaccine passports:  
[https://www.health.gov.on.ca/en/pro/programs/publichealth/coronavirus/docs/guidance\\_proof\\_of\\_vaccination\\_for\\_businesses\\_and\\_organizations.pdf](https://www.health.gov.on.ca/en/pro/programs/publichealth/coronavirus/docs/guidance_proof_of_vaccination_for_businesses_and_organizations.pdf)

### **Places of Worship exempt but meeting/event spaces are not**

It seems that places of worship will not be requiring vaccine passports, but I agree that the meeting and event spaces within church buildings are likely caught by the regulation. This seems confirmed by the idea that after October 12, a vaccine passport will be required for funeral and wedding receptions, which could well be held in the churches.

The regulation uses the term “patrons” when referring to the individuals who are required to show proof of vaccination, and also specifically exempts “Workers, contractors, repair workers, delivery workers, students, volunteers, inspectors or others who are entering the business or organization for work purposes and not as patrons”.

I would interpret that to mean that any church meeting taking place that included volunteers or staff would not be caught by the regulation. Any space that is rented out for a meeting or event could be subject to the regulation, wedding or funeral receptions being an obvious example. However, an organization providing an essential service, like a food bank, would not be caught. Something like a Bible study group is a grey-area, but I would err on the side of requiring proof, especially if a staff member of the congregation is leading it.

### **Who is responsible for verifying?**

The onus to verify is put on the “the person responsible for a business or an organization”. I think it is a question as to who is responsible for the meeting or event spaces of a church. If the spaces are leased out to tenants, the onus is likely on the tenants, if they are operating a business or organization that would be caught by the regulation. But if the church itself manages the rental space (for example, rents out the gym for a wedding), the church may be the person responsible for ensuring that vaccine passports are checked. I would expect that it is possible to delegate that responsibility.

### **Advice to congregations and their tenants**

I would advise congregations that as places of worship they are exempt, and that would include church meetings. However, any non-church related meetings or non-essential events could well be required to

verify vaccination status of patrons attending those meetings/events. If the tenants have an existing lease, I think they are responsible for complying with the regulation. Churches should avoid telling tenants whether they are subject to the regulation or not: it should be up to the tenants themselves to figure it out. However, churches may want to take some steps to verify that tenants are complying, since as the landlords, they could have some liability exposure.

One-off rentals may be the responsibility of the churches, depending on the terms of the rental contract. Churches should stipulate in any one-off rental contracts that it is the renter is responsible for complying with all COVID-restrictions then in place, including verifying vaccinations, as required.

### **Mandatory Vaccination Policy**

The advice on mandatory vaccination policies has shifted since we last discussed the issue in the spring. The advice then was that generally the benefits of a mandatory vaccination policy didn't outweigh the risks. The science has evolved, the government recommendations have changed, and the prevailing direction in Canada is towards mandatory vaccination, with very limited exceptions. I attended a CPD last week on vaccination policies, and the best advice is now that not implementing mandatory vaccination policies in a workplace is now the riskier choice, since the obligation of employers to provide a safe workplace outweighs the chance of a human rights code violation or other infringement on the individual.

From a regulatory perspective, O. Reg 364/20 that requires that "The person responsible for a business or organization that is open shall operate the business or organization in compliance with the advice, recommendations and instructions of public health officials operate in the compliance with the advice / recommendations of the health units." And some of those units have recommended that employers implement a mandatory vaccination policy. For example, Toronto Public Health announced August 20, 2021 that it now "strongly recommends" that employers implement mandatory vaccinations in their workplace: <https://www.toronto.ca/news/toronto-medical-officer-of-health-strongly-recommending-toronto-employers-institute-covid-19-vaccination-policy-and-support-workplace-vaccination/>

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