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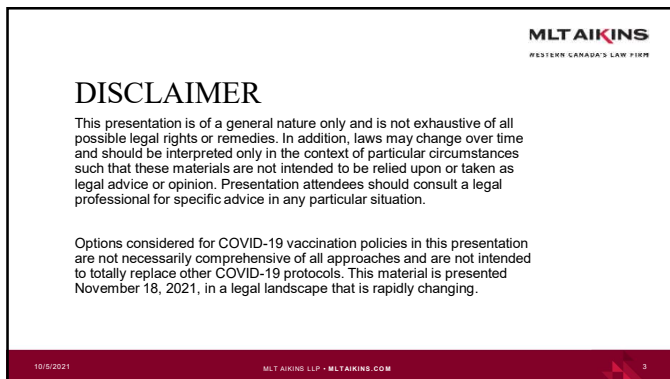
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## AGENDA

1. Vaccination Policies
2. Legal Risks
3. Collecting Employee Vaccine Information
4. COVID-19 Testing
5. Medical and Religious Exemption Requests
6. Q&A

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# VACCINATION POLICIES

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## WHAT TYPE OF POLICY IS BEST FOR YOUR WORKPLACE?

Least Onerous	• Voluntary Vaccination/Disclosure/Testing Policy
Middle Ground	• Pre-Access Testing Policy • Mandatory Disclosure Policy • Voluntary Vaccine "OR" Policy
Most Onerous	• Mandatory Vaccination Policy

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## VACCINATION POLICIES

1. **Voluntary vaccination / voluntary disclosure policy**
  - Both vaccination and disclosure of vaccination is voluntary
2. **Mandatory disclosure policy**
  - Status is required to be disclosed – but that could be yes or no on vaccination
3. **Pre-access testing policy**
  - No requirement to share vaccination status or be vaccinated. Simply pre-access testing
4. **Voluntary Vaccinate "OR" policy**
  - Vaccination is voluntary – but if employee is unvaccinated or does not disclose they must do the "OR" option in order to have site access
5. **Mandatory vaccination policy**
  - Mandatory vaccination for all employees except those accommodated on the basis of a human rights ground

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## LEGAL RISKS AND OTHER CONSIDERATIONS

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## FACTORS TO CONSIDER

1. Operational Risk
2. Government Statements
3. Actions of Others
4. Scientific Understanding
5. OH&S
6. Constructive Dismissal Risk (non-union)
7. Grievance Risk (union)
8. Human Rights Risks
9. Privacy Risks
10. Workers Compensation
11. Contractual Considerations
12. Loss of Employees



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## TWO RECENT ARBITRATION DECISIONS

**UFCW, Canada, Local 333 and Paragon Protection Ltd. – Policy Grievance (November 9, 2021)**

- Vaccination policy upheld
- Specific section of the collective agreement contemplating vaccination may be required

**Electrical Safety Authority and Power Workers' Union (November 11, 2021)**

- True mandatory vaccination policy held not to be enforceable
- The arbitrator directed the employer to include an "or" option for unvaccinated workers

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## COLLECTING EMPLOYEE VACCINE INFORMATION

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## PRIVACY RISKS

- Vaccination status and tests results are personal health information
- Little privacy framework for private employers
- New privacy claims possible
- Privacy best practices
- Privacy legislation for health organizations may be applicable



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## PRIVACY PRINCIPLES

- Necessity**
  - Clearly defined, evidence-based necessity for the use of the measure being taken
- Proportionality**
  - A measure or execution of an invasive power must be carefully tailored for the specific purpose to be achieved
- Effectiveness**
  - Measure to be taken must be shown to be empirically effective at treating the issue and clearly connected to solving the problem
- Minimally Intrusive**
  - Choose the least intrusive option for the intended purpose
  - Collect as little information as is necessary to meet the purpose

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## COLLECTING EMPLOYEE VACCINE INFO

- government-issued QR code confirming vaccination (preferred method)
- photo of a government-issued vaccination card or vaccination certificate;
- A copy of a government-issued digital immunization record;
- A copy of a government email confirmation of vaccination status (where applicable).

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**COVID-19 TESTING**

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## RAPID TESTING & PCR TESTING

Rapid test – point-of-care antigen test for COVID-19

PCR test - polymerase chain reaction (PCR) test is a lab test

- Only if an employee receives a positive rapid test result will a confirmatory PCR test be required
- Although, if an employee has symptoms or a known exposure, should refrain from attending the workplace and should seek a PCR (lab) test
- How often employees should be tested depends on workplace

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## WHO PAYS FOR TESTING?

- Employees are responsible for obtaining a negative test on their own time and at their own expense
- Must show up fit to work, and an employer is not responsible for compensating an employee to ensure that they are fit to work
- If employees are given the choice as to where they can obtain a rapid test, the employer is likely not required to compensate its employees in connection with testing



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**MEDICAL & RELIGIOUS  
EXEMPTIONS**

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## RESPONDING TO EXEMPTION REQUESTS

- If the policy is a "vaccinate or test" policy and, a testing accommodation is built into the Policy for those employees who are not vaccinated, for whatever reason
- Employer and employee both have obligations to participate in accommodation process
- Employer can make reasonable inquiries of employee and individuals requesting an exemption will be required to provide appropriate documentation
- Legitimate accommodation requests must be accommodated to the point of undue hardship

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## MEDICAL EXEMPTIONS

An employee must provide a statement from a qualified physician that states the following:

- the reporting physician and the employee are in a doctor-patient relationship;
- the reporting physician has advised the employee to not receive a COVID-19 vaccine at this time for medical reasons;
- a description of the medical restrictions (not a diagnosis) that result in the COVID-19 vaccine presenting a substantial risk to the employee's health.
- whether the risk from vaccination is permanent or temporary, and whether there are circumstances that could reduce the risk to the employee and, if temporary, an estimate of when the risk may end.

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## RELIGIOUS EXEMPTIONS

- An employee would have to indicate that they cannot be vaccinated due to a sincerely held religious belief
- Personal belief, opinion, preference or ideology is not a protected ground and does not warrant accommodation
- Most if not all mainstream religions have stated they either are in favour of or do not prohibit COVID vaccinations
- The previous law on religious exemption is that an employer essentially must accept that the belief is valid even if not mainstream
- Difficult to objectively verify a religious belief

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## HOW CAN MLT AIKINS ASSIST YOUR ORGANIZATION?

- Vaccination policy templates
- Review and assist with drafting policies
- Understand and respond to government announcements
- Assist with implementation of policy
- Respond to workplace issues – human rights, OH&S, positive cases, non-compliance

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# Q&A

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## THANK YOU

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