The COVID 19 vaccine: Considerations for Canadian employers

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In a recent LinkedIn Live session, some of BLG's leading lawyers fielded questions about the COVID 19 vaccine and the obligations and risks Canadian employers and business owners could face in light of widespread rollout of the vaccine.

The session, "COVID-19 and employers: Vaccines, testing and protecting employees," was moderated by Kate Crawford, National Business Leader of BLG's Health Group. Dan Michaluk, a partner and well-recognized cybersecurity, privacy and information management lawyer; Edona Vila, a partner with a specialized disputes practice; James Fu, a partner whose specialities include labour and employment law; and Ewa Krajewska, a partner with a broad litigation practice, discussed what lies ahead for workplaces as more Canadians get access to the vaccine.

What you need to know:

- There is risk in requiring employees be tested for COVID 19. However, for some employers – healthcare and long-term care homes, for example – it may be an acceptable risk. Recently, a labour arbitrator in Ontario upheld the right for a retirement home to make its employees take regular COVID tests.
- Under workplace health and safety legislation, employers arguably have an obligation to notify employees of potential workplace COVID exposures, without identifying the individual(s) who got sick.
- Under the common law, the occupier of a premises has a fundamental right to control entry to said premises. Whether a restriction to entry is likely to be viewed as enforceable in a court of law depends on the specific factual circumstances, including the industry the entity operates and whether the organization seeking to do so is a private or public entity (with the latter engaging constitutional law concerns).
- Outside of high-risk settings, it could be complicated for employers to require current employees get the COVID 19 vaccine and take the position that employees who do not get the vaccine can be terminated for cause. The Ontario Human Rights Commission has indicated requiring proof of the vaccination may be allowable depending on the type of workplace.
- In December 2020, the federal government announced the creation of the Vaccine Injury Support Program. Expected to be rolled out in the next few

months, the program will provide financial support in the rare case someone is seriously and permanently injured as a result of receiving a Health Canada-approved vaccine.

Watch the video from the “COVID-19 and employers: Vaccines, testing and protecting employees” LinkedIn Live below and visit our COVID-19 Resource Centre for the latest on the pandemic.

By

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