

## Frequently Asked Questions about Vaccination Policies

**LAST UPDATED SEPTEMBER 2021**

*Please contact the Commission for additional information.*

### General

**Question:** I do not believe in vaccinations (or masks). Does the New Brunswick *Human Rights Act (Act)* exempt me from getting the Covid-19 vaccine or wearing a mask based on my personal beliefs?

**Answer:** Personal beliefs are not a protected ground under the *Act*. The *Act* applies only in circumstances where a person is being discriminated against or requires accommodation in relation to one or more of the protected grounds listed in the *Act*. This means that a personal belief that is not related to a protected ground would not entitle a person to an exemption under the *Act*.

### Employment

**Question:** Even though the Province has ended mandatory masks in public spaces, my employer is still requiring employees to wear a face mask in the workplace. Is my employer allowed to do this?

**Answer:** The New Brunswick *Human Rights Act* does not prevent employers from requiring employees to wear a face mask. However, should an employee be unable to wear a face mask for reasons related to a protected ground, for example, a mental or physical disability, the employee has a duty to inform the employer of their inability to do so. Once the employer is advised of same, the employer has a duty to accommodate to the point of undue hardship. The *Act* does not apply in situations where the employee does not want to wear a mask for reasons not related to a protected ground.

If an employer, however, requires medical documentation to support that the employee cannot wear a mask due to a mental or physical disability, the employee needs to provide it. The medical documentation would need to set out that for medical reasons, the employee is unable to wear a community face mask or any other type of mask. The employer's duty to accommodate would be on hold until such documentation has been provided. Requests for medical documentation beyond this may not suspend the employer's duty to accommodate until it has been provided.

Even though an employee cannot wear a mask for medical reasons, they may be required to take other measures to keep themselves and others safe from the Covid-19 virus.

**Question:** My employer is requiring all employees to receive two doses of a Covid-19 vaccine, and has stated employees who do not comply may have their employment terminated. Is my employer allowed to do this?

**Answer:** The New Brunswick *Human Rights Act (Act)* does not prevent employers from requiring employees to receive the COVID-19 vaccine. However, some employees may be unable to receive the Covid-19 vaccine. If an employee is unable to get the Covid-19 vaccine for reasons related to one or more of the protected grounds listed in the *Act*, for example, a mental disability, a physical disability, or their religion, then the employee has a duty to inform the employer of their inability to get the vaccine. Once the employer is advised of same, the employer has a duty to accommodate to the point of undue hardship. The *Act* does not apply in situations where the employee does not want to get the vaccine for reasons not related to a protected ground.

The employer is allowed to ask for documentation supporting that the employee is unable to get the vaccine for reasons related to the protected ground, and the employee needs to provide it. The employer's duty to accommodate would be on hold until such documentation has been provided.

If an employee is unable to get the Covid-19 vaccine, they may be required to take other measures to keep themselves and others safe from the Covid-19 virus.

These other measures should be determined in good faith and be rationally linked to the goal trying to be achieved. Alternative measures should be assessed on an individual basis, be time limited and necessary in the context of the specific premises because less intrusive alternatives are not available. Alternative measures that do not meet these criteria could be found to discriminate against individuals who cannot get vaccinated for reasons related to the protected grounds.

## Services

**Question:** Even though the Province has ended mandatory masks in public spaces, my service provider (ex: grocery store, spa, university) is still requiring customers to wear a face mask on the premises. Are they allowed to do this?

**Answer:** The New Brunswick *Human Rights Act (Act)* does not prevent service providers from requiring customers to wear a face mask. However, should a customer or potential customer be unable to wear a face mask for reasons related to a protected ground, for example, a mental or physical disability, the customer has a duty to inform the service provider of their inability to do so. Once the service provider is advised of same, it has a duty to accommodate to the point of undue hardship. How a service provider accommodates a customer may vary depending on the service being offered, but could include, for example, curbside pickup, online shopping or online classes. The *Act* does not apply in situations where the customer does not want to wear a mask for reasons not related to a protected ground.

If a service provider, however, requires medical documentation to support that the customer cannot wear a mask due to a mental or physical disability, the customer needs to provide it. The

medical documentation would need to set out that for medical reasons, the customer is unable to wear a community face mask or any other type of mask. The service provider's duty to accommodate would be on hold until such documentation has been provided. Requests for medical documentation beyond this may not suspend the service provider's duty to accommodate until it has been provided.

Even though a customer cannot wear a mask for medical reasons, they may be required to take other measures to keep themselves and others safe from the Covid-19 virus.

**Question:** My service provider (ex: restaurant, store, college) is requiring all customers to receive two doses of a Covid-19 vaccine, and they say those who cannot show they have received the vaccine will not be permitted to enter. Are they allowed to do this?

**Answer:** The New Brunswick *Human Rights Act (Act)* does not prevent service providers from requiring customers to receive the COVID-19 vaccine. However, some customers may be unable to receive the Covid-19 vaccine. If a customer is unable to get the Covid-19 vaccine for reasons related to one or more of the protected grounds listed in the *Act*, for example, a mental disability, a physical disability, their age or their religion, then the customer has a duty to inform the service provider of their inability to get the vaccine. Once the service provider is advised of same, the service provider has a duty to accommodate to the point of undue hardship. How a service provider accommodates a customer may vary depending on the service being offered, but could include, for example, curbside pickup, online shopping or online classes. The *Act* does not apply in situations where the customer does not want to get the vaccine for reasons not related to a protected ground.

The service provider is allowed to ask for documentation supporting that the customer is unable to get the vaccine for reasons related to a protected ground, and the customer needs to provide it. The service provider's duty to accommodate would be on hold until such documentation has been provided.

If a customer is unable to get the Covid-19 vaccine for reasons related to the protected grounds, they may be required to take other measures to keep themselves and others safe from the Covid-19 virus.

These other measures should be determined in good faith and be rationally linked to the goal trying to be achieved. Alternative measures should be assessed on an individual basis, be time limited and necessary in the context of the specific premises because less intrusive alternatives are not available. Alternative measures that do not meet these criteria could be found to discriminate against individuals who cannot get vaccinated for reasons related to the protected grounds.