



Wednesday September 8th, 2021

To: Employer & City Council

Re: Unlawful Introduction of 'Mandatory COVID-19 Vaccination Verification Policy'

Further to our earlier advice, on behalf of our members, this confirms the Union's strenuous objection to the recent purported unilateral introduction of a 'Mandatory COVID-19 Vaccination Policy'.

We recognize that COVID-related issues have been a sensitive and potentially polarizing topic. We're proud of how our ATU 107 members have shown up – with pride, compassion, and respect for all.

As you know, we've been advocating for the continued safety of our members, balanced with protection of their fundamental rights & freedoms throughout these unusual times. Our local has created a Task Force to deal with COVID-related issues and we continue to stay vigilant to protect against the erosion of our members' rights and freedoms, while maintaining the delicate balance of ensuring the safety of our members and the greater public.

We're at a loss to understand on what possible basis the Employer unilaterally introduced its new Mandatory COVID-19 Vaccination and Verification Policy for City Employees without any consultation with the Union, notwithstanding clear contractual obligations for such consultation. This high-handed approach on an issue of such critical importance to our members is a profound sign of disrespect for the Union and the members we are statutorily charged to protect. You are well aware that we are the exclusive lawful bargaining agent on behalf of our membership and your attempt to bypass us in this time of unrest and profound change is both untenable and unlawful.

Aside from the affront the City's actions show, it is an inexplicable course. If ever there was a time and an issue to ensure the fullest possible access to information and intelligent discourse, this is it. This is a time that calls for collaboration and cooperation to the fullest extent possible – not top-down, power-over approaches that exclude the key stakeholders who are most affected. The stakes are high and the impact profound. This blatant lack of respect for our Union and its membership is unfortunate to say the least.

To add insult to injury, not only did the Employer choose to enact and purport to implement this new policy with no consultation as legally required, but you continue to refuse to answer critical questions posed by the Union, including but not limited to:

1. What consideration was given to the mandatory provisions in our binding, mutually negotiated contract provisions requiring consultation in **advance** of such decisions/policies being introduced? [i.e. specifically what discussions and determinations were made in deciding to ignore and override these contractual obligations]
2. What was the rationale for failing to seek **any** input from the exclusive bargaining agents legally responsible for representing the members directly affected by this unilaterally introduced policy?

3. What expert advice was sought and will you be sharing the specific expert advice, if any, that you received in coming to this decision?
4. We've been advised by our legal counsel that this is a gross invasion of our members' rights and in fact constitutes a breach of the *Charter*. What discussion and consideration was given to this?
5. How was the decision reached that only medical or religious exceptions would be considered? What provisions are you prepared to make for objections on principle or moral grounds, etc?
6. What expert advice was secured about the potential adverse consequences and/or side-effects of the vaccines?
7. On what basis did the City determine that the social distancing and mask requirements that have been in place through the worst of the pandemic are suddenly inadequate?
8. If mandatory vaccination is mandatory for all city workers to ensure their "safety", what measures will be taken by the city to ensure that all passengers/patrons are fully vaccinated? If you will not be enforcing mandatory vaccination for passengers and patrons, how to you justify this discrepancy?
9. Does this mean that management will now be returning to in person meetings and forgo zoom meetings? Does this mean that we will all be returning to in-person arbitrations?
10. What do you mean by "unique" medical exemptions and "unique" religious exemptions?
11. Please confirm that the City intends to pay for any and all 'required' tests.
12. Please confirm if this policy applies to the mayor, councillors, all patrons, constituents, and public visitors to the City, etc.
13. Who is collecting the workers medical information regarding vaccination? How is it being stored? How is it being protected?

The new 'policy' purports to require all employees to provide proof of vaccination status; to mandatorily require all staff to be fully vaccinated by November 1st (and to take any subsequent recommended boosters); to undergo ongoing COVID-19 testing to access City facilities without proof of vaccination.

The failure to answer fundamental questions about the risks associated with the medical treatment in question renders it impossible to achieve the requisite level of 'informed consent' necessary to expect our members to submit to a medical procedure. In fact, efforts to require someone to submit to medical treatment without express informed voluntary consent (absent duress – including the exercise of authority) is considered an assault under the *Criminal Code of Canada*.

Further, and perhaps more importantly, we believe this new purported policy is a gross invasion of our members' fundamental rights and freedoms. We believe the Employer does NOT have the right to require mandatory disclosure of medical health information and the Employer does NOT have the right to require mandatory vaccinations. It remains the Union's position that every member has the right to make **individual choices** about what medical treatments they will undergo and what medical information they choose to disclose.

We have sought legal advice and our counsel advises that in their view the unilateral introduction of this policy is unlawful on a number of fronts and constitutes not only a violation of our collective agreement but a violation of multiple statutory protections, including but not limited to:

- *Charter of Rights and Freedoms*

Specifically:

- s.2 Fundamental Freedoms
- s.7 Life, Liberty & Security of Person
- s.15 Equality Rights

- *Labour Relations Act*

Specifically:

- s.17 Obligation to Bargain
- s.57 Binding Effect of Collective Agreements
- s.70 Interference with Union
- s.72 Employer Interference with Employees' Rights
- s.73 No Interference with Bargaining Rights
- s.76 Intimidation and Coercion

- Various Privacy statutes

The sanctity of medical confidentiality has long been recognized and protected (by statute and based on legal precedent and at common law).

PIPEDA: Personal Information Protection and Electronic Documents Act

PHIPA: Personal Health Information Protection Act

Municipal Freedom of Information and Protection of Privacy Act

- *Occupational Health & Safety Act*

Not only does the statute provide that Employers must take all reasonable steps to ensure the safety and security of its employees, but it also provides that no Employer shall seek access to any health record of a worker without the worker's written and informed consent.

- *Ontario Health Care Consent Act*

Provides that no treatment can be administered without consent.

- *Nuremberg Code*

Even the Nuremberg Code (to which Canada is a signatory) provides that there must be informed voluntary consent (without duress) before any medical procedure can be performed.

- *Bill S-201: An Act to Prohibit and Prevent Genetic Discrimination*

This Act amended the Canada Labour Code to protect employees from being required to undergo or disclose results of a genetic test (which would include the PCR test for COVID).

- and more.

It is the Union's position that you cannot require our members to sign off this policy nor to disclose their medical information (including vaccination status) nor to undergo mandatory vaccination. It is our position that the City needs to respect individuals' choice to make decisions in these regards.

We will vigorously defend our members' rights in this regard, and we will hold the City liable for any and all breaches, including any and all damages arising from such breaches. These damages are exacerbated by the Employer's blatant disregard for our mutually negotiated contractual rights and the statutory rights & obligations to which the City is bound.

We trust this clarifies our position. We note that it is unfortunate the City appears to have elected to make this an unnecessarily adversarial process at a time when consensus-building is called for to ensure the greater good.

Sincerely,

ATU 107 Executive and ATU COVID Task Force