

# Workplace vaccination: What the Equal Opportunity Act says

COVID19 has undeniably created unique and challenging circumstances for both employers and employees, as well as an avenue for unwanted discrimination in the workplace. Despite these unprecedented circumstances, employers are under a legal obligation to ensure that any decision made in response to covid19 does not discriminate against employees pursuant to the Equal Opportunity Act, Chap 22:03 (the act).

Under the act, it is unlawful to discriminate against employees based on specific protected characteristics referred to as status grounds. These include sex, race, ethnicity, origin, religion, marital status or disability.

The act is not currently equipped to handle complaints of discrimination based on being unvaccinated.

Based on the status grounds currently covered under the act, employees can object to being vaccinated because of a disability or a sincere-



ly held religious belief. This, however, is new territory for employers circumnavigating these issues.

It is the first time in recent history that employers have been required to make decisions that impact employees, customers and the nation at large.

This is no easy task given the potential risk of allowing unvaccinated employees to be in the presence of, and possibly infect, colleagues or consumers. Individual rights versus public interest continue to be a pressing issue and it is imperative that inclusive decisions are made to support employees during these unpredictable conditions.

Employers are required to accommodate these grounds, unless they will impose undue hardship to the organisa-

tion. In the case of a religious exemption, the employer is justified to seek additional information if there is any basis for questioning the sincerity of the objection and this may require evidence to prove that there has been opposition in the past as it relates to vaccination or a letter from the religious institution confirming same.

Disability tends to be simpler, as documentation from a doctor confirming a genuine medical condition that would negatively impact an individual's health would provide the requisite evidence as to whether an employee has a valid reason for their refusal to vaccinate and, if so, determine what accommodation can be offered. Possible questions to determine accommodation may include how the disability creates a limitation or how the accommodation will effectively address same, etc.

In both instances, employers are required to provide accommodation, for example

allowing an employee to work from home or modify work duties in order to comply with physical distancing, unless it causes undue hardship. Some businesses, for example restaurants and gyms, could argue undue hardship on the grounds that doing so may increase the spread of infection among customers and employees or there could be additional cost as unvaccinated employees may deter customers, thus reducing business.

Thus, flexibility is required by both the employer and employee in such instances as reasonable accommodation is necessary to enable employees to enjoy equal employment opportunities, unless it is significantly difficult or expensive to the employer. This will be assessed and determined on a case by case basis. If there is a genuine religious or medical need for an exemption, it is usually best to discuss options with your employer and work with them to find an amicable resolution.