

FTR Now

Further Details Released on Ontario's Requirement for Proof of Vaccination in Select Settings

Date: September 15, 2021

On September 1, 2021, the [Ontario government announced](#) that in order to access certain public settings, patrons would be required to provide proof of full vaccination against COVID-19.

On September 14, 2021, it filed a regulation to give effect to these requirements. The new proof of vaccination requirements will begin to apply on September 22, 2021.

New Regulatory Requirements

[Ontario Regulation 645/21](#) amends [Ontario Regulation 364/20](#), Rules for Areas at Step 3 and at the Roadmap Exit Step, to set out the proof of vaccination requirements.

Businesses/Organizations Which Must Require Proof of Vaccination

The new proof of vaccination requirements apply to the following businesses and organizations:

1. The indoor areas of restaurants, bars and other food or drink establishments where dance facilities are not provided, but not with respect to takeout and delivery service.
2. The indoor and outdoor areas of food or drink establishments where dance facilities are provided, including nightclubs, restoclubs and other similar establishments, but not with respect to takeout and delivery service.
3. The indoor areas of meeting and event spaces, including conference centres or convention centres, but not including places described in subsection 4 (2) of this Schedule. The excluded places include places rented out for certain day or overnight camps for children, to certain child care providers, for the purpose of the provision of social services, for the purpose of delivering or supporting the delivery of court services, for operations by or on behalf of a government or for the purpose of delivering or supporting the delivery of government services
4. The indoor areas of facilities used for sports and recreational fitness activities, including waterparks and personal physical fitness trainers, including, for greater certainty, the indoor areas of facilities where spectators watch events, but not including places described in subsection 16 (4) of Schedule 2. The excluded places include any part of the facility that is being used for certain day or overnight camps for children, by a certain child care providers or for the purpose of the provision of social services.
5. The indoor areas of casinos, bingo halls and other gaming establishments.
6. The indoor areas of concert venues, theatres and cinemas.
7. The indoor areas of bathhouses, sex clubs and strip clubs.
8. The indoor areas of horse racing tracks, car racing tracks and other similar venues.
9. The indoor areas of places where commercial film and television production takes place, where there is a studio audience. For the purposes of this paragraph, a member of the studio audience is considered to be a patron of the production.

The new proof of vaccination requirements do not apply to businesses or organizations which are not listed, including those that provide access to necessary medical care, groceries and basic medical supplies.

There are several specified exceptions to these requirements, which include but are not limited to access by a patron solely

to use a washroom, to make a retail purchase, to place or pick up an order, to purchase admission, and more.

Obligations of Businesses or Organizations

The applicable businesses or organizations must require each patron who enters its premises to provide, at the point of entry, proof of identification and of being fully vaccinated. Applicable businesses or organizations must also comply with guidance published by the Ministry of Health on its website specifying what constitutes proof of identification and of being fully vaccinated against COVID-19 and the manner of confirming proof of vaccination (see discussion of the Guidance Document, below).

No information relating to the proof of vaccination can be retained by the businesses or organizations.

Proof of Vaccination Requirements and Exceptions

O. Reg. 645/21 states that a person is considered fully vaccinated where they have received:

- (i) the full series of a COVID-19 vaccine authorized by Health Canada, or any combination of such vaccines,
- (ii) one or two doses of a COVID-19 vaccine not authorized by Health Canada, followed by one dose of a COVID-19 mRNA vaccine authorized by Health Canada, or
- (iii) three doses of a COVID-19 vaccine not authorized by Health Canada.

To date, Health Canada has approved two mRNA vaccines: Moderna and Pfizer-BioNTech and two non-mRNA vaccines: AstraZeneca/COVISHIELD and Janssen (Johnson & Johnson).

Each patron must have received their final dose of the vaccine at least 14 days before providing the proof of being fully vaccinated.

Certain patrons of businesses or organizations are exempt from the proof of vaccination requirement. These include persons:

- under the age of 12 years
- under the age of 18 years who are entering the indoor premises of a facility used for sports and recreational fitness activities solely for the purpose of actively participating in an organized sport, in accordance with guidance published by the Ministry of Health
- who provide a written document, completed and supplied by a physician or registered nurse in the extended class (i.e. nurse practitioner), that sets out, in accordance with the Ministry's guidance, a documented medical reason for not being fully vaccinated against COVID-19 and the effective time period for the medical reason
- who are entering the indoor premises of a meeting or event space, including a conference centre or convention centre, solely for the purposes of attending a wedding service, rite or ceremony or a funeral service, rite or ceremony, but not an associated social gathering
- who are entering the indoor premises of a meeting or event space that is located in a place of worship or in a funeral establishment, cemetery, crematorium or similar establishment that provides funeral, cemetery or cremation services and that is operated by a person licensed under the *Funeral, Burial and Cremation Services Act, 2002*, for the purposes of attending a social gathering associated with a funeral service, rite or ceremony
- who are entering the indoor premises of a meeting or event space other than a place described in the preceding bullet point, including a conference centre or convention centre, for the purposes of attending a social gathering associated with a wedding service, rite or ceremony or a social gathering associated with a funeral service, rite or ceremony, on

or after September 22, 2021, but before October 13, 2021, as long as the patron produces the results of an antigen test administered within the previous 48 hours establishing that the person is negative for COVID-19 to the person responsible for the establishment.

Obligations of Patrons

A person who provides any information to a business or an organization pursuant to these requirements must ensure that their information is complete and accurate.

Proof of Vaccination Guidance for Businesses and Organizations under the *Reopening Ontario Act*

On September 14, 2021, the Ministry of Health released a document entitled "[Proof of Vaccination Guidance for Businesses and Organizations under the *Reopening Ontario Act*](#)" (Guidance Document) which accompanies the new regulatory requirements and provides further details regarding the scope of the requirements and what proof of vaccination is acceptable.

The Guidance Document confirms that the new proof of vaccination requirements apply to patrons only, and do not apply to "workers, contractors, repair workers, delivery workers, students, volunteers, inspectors or others who are entering the business or organization for work purposes and not as patrons."

Providing Proof of Vaccination

The Guidance Document contains information about how patrons can access their vaccination receipt, for the period between September 22 and October 22, 2021, which they must provide to the business or organization before entering.

When presented with the vaccination receipt at the point of entry, the business or organization must then:

- check the name and date of birth information on the vaccination receipt against the name and date of birth on an identification document (the Guidance Document provides details on acceptable identification documents)
- verify the receipt is either (a) an Ontario receipt issued at the time of vaccination or any format of receipt downloaded from Ontario.ca that shows the holder is fully vaccinated against COVID-19, (b) a receipt signed by an Indigenous Health Provider, or (c) a receipt from another jurisdiction that shows the holder is fully vaccinated against COVID-19
- verify that the receipt shows that the holder is fully vaccinated
- verify that the date of administration of the final shot in the series is at least 14 days prior to the date the patron is seeking access to the business or organization.

Without this verifying information, the business or organization must not permit the patron to enter the premises.

Claiming an Exemption

Where a patron claims a medical exemption, they must present identification and a written document stating they are exempt for a medical reason to the business or organization. The business or organization must then ensure the following:

- the name of the person in the written documentation matches the identification provided
- the information provide by the physician or registered nurse in the extended class (i.e. nurse practitioner) is complete (details of the required information can be found in the Guidance Document).

Compliance

The Guidance Document also refers to the compliance measures and the existing enforcement procedures under the *Reopening Ontario Act*, which includes fines for both individuals and corporations for non-compliance, as well as certain statutory remedies and obligations.

Development of QR Code

As announced in its [news release](#) of September 14, 2021, Ontario is developing an enhanced digital vaccine certificate with a unique QR (Quick Response) code and an accompanying verification application that will allow users to securely verify their vaccination status when scanned. This vaccine certificate, as well as a verification app to allow businesses or organizations to read the QR code, is expected to be available beginning October 22, 2021.

Going Forward

Businesses and organizations that will be subject to the new proof of vaccination requirements should carefully review the new regulation and the Guidance Document. You will need to develop processes to confirm patrons' proof of identification and proof of full vaccination at each point of entry, and to ensure that your employees are appropriately trained on the new rules. This should include advance consideration of your health and safety obligations, including proactive security measures, to better ensure that you are able to deal with patrons who respond negatively if denied entry.

We will continue to monitor developments related to the new proof of vaccination requirements, including in relation to the province's vaccination certificate program. If you have any questions related to the province's new proof of vaccination requirements, please contact [your regular Hicks Morley lawyer](#).

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