

REQUEST FOR DECISION (RFD)

Town of Creston



Action Date: October 12, 2021

File: 7130-03

SUBJECT: Mandatory COVID-19 Vaccination Policy

RECOMMENDATION: THAT Council ADOPTS a mandatory COVID-19 immunization policy for the Town of Creston employees and volunteers AND THAT Town of Creston employees and volunteers must be fully immunized by December 4, 2021 as recommended in the report submitted by the Chief Administrative Officer.

CAO COMMENTS: CAO is submitting this report.

RECOMMENDATION

Report / Document:

Attached ☒

Available ☐

Nil ☐

KEY ISSUE(S) / CONCEPTS DEFINED: COVID-19 is a worldwide pandemic. WorkSafeBC requires that the employer takes reasonable steps to ensure employee safety. Public Health Officials consider vaccination as the best method for controlling the spread of COVID-19, and most importantly reducing the burdens placed on the health system. The Town of Creston provides many essential services that would impact community safety, livability, and economic health if services were impacted by staff shortages. The public expects that essential services are continuously maintained, such as fire services, snow clearing, water, sewer, etc. Recent COVID-19 cases in workforce are of unvaccinated employees.

RELEVANT POLICY: Town of Creston legal counsel's opinion is that there are no legal impediments or employment agreement prohibition on the implementation of a vaccination policy.

STRATEGIC FOCUS AREA: Community Safety, Livability, Economic Health and Service Excellence

DESIRED OUTCOME(S): That all employees and volunteers working for the Town of Creston be fully immunized by December 4, 2021.

RESPONSE OPTIONS: Possible ways to achieve the main result with analysis highlights

1.	Council direct Staff to develop and implement a COVID19 immunization policy for employees and volunteers.
2.	Policy amendments as directed by Council.
3.	Status Quo.

PREFERRED STRATEGY: Option 1

IMPLICATIONS OF RECOMMENDATION:

GENERAL: Potential suspension of 5-10% of workforce who remain unvaccinated. Service levels can be maintained through temporary employees. Reduces risks to service levels from a COVID-19 outbreak.

ORGANIZATIONAL: Implementation will be managed through existing work load.

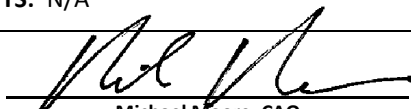
FINANCIAL: N/A

FOLLOW UP ACTION: N/A

COMMUNICATION: Staff Memo of policy and press release.

OTHER COMMENTS: N/A

Submitted by:


Michael Moore, CAO

Endorsed by: Other

Reviewed by: CAO

Reviewers

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TO:	Mayor and Council
CC:	Senior Management
FROM:	Michael Moore
DEPARTMENT:	Administration
SUBJECT:	Mandatory Vaccination Policy for Employees
APPENDIX:	<input type="checkbox"/> ATTACHED <input type="checkbox"/> OTHER DOCUMENT <input type="checkbox"/> NOT APPLICABLE

KEY ISSUE(S) / CONCEPTS:

An implemented vaccination policy will be aimed at relieving pressures on our healthcare system and protecting the health and safety of Town of Creston employees and volunteers.

BACKGROUND:

COVID-19 double vaccination rates of approximately 65% for the Creston Valley area remain significantly lower than the Provincial average of 82%.

This lower vaccination rates place employees and volunteers at greater risk to be infected with COVID-19. An outbreak in the workplace may require a number of employees to be off work for self-isolation and may lead to reduced capability to provide an essential service.

The healthcare system locally is strained due workload carried by healthcare providers. Additional COVID-19 places further strain on the local system and expands to impacts the regional health system.

On October 5, 2021, CUPE BC released a press release in response to the Province of BC requiring all public service employees to be immunized with CUPE BC President Karen Ranalletta saying *"Today's announcement from the B.C. government implementing mandatory vaccinations across the public service makes sense as they are the best proven measure to prevent the spread of COVID-19 in our communities"*. CUPE BC represents the unionized workers employed by the Town of Creston.

COVID-19 cases among employees and volunteers have been in unvaccinated employees to date. A recent unvaccinated employee is currently self-isolating due to a person within the household having COVID-19.

Current health and safety measures being employed include working from home schedules for administration and altered shift schedules for public works employees. These measures were effective of minimizing the impact of an outbreak but at the expense of some productivity.

WorkSafeBC requires an improved Communicable Disease Program that addresses how the employer will manage COVID-19 within the workplace. Many health and safety measures in place will remain in place, such as masking and physical distancing.

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CURRENT STATUS:

The Town's legal counsel has provided there are no legal impediments to having a vaccination policy, providing it is clear, concise, equally enforced and is reasonable. With the Province and Health Officials advising that the best protection to individuals and the health care system is vaccination, then it would be considered reasonable to impose such a policy.

As the employer, the Town of Creston has not collected COVID-19 immunization status from employees and volunteers to date, but have a reason to believe that approximately 16% of the fulltime workforce remains unvaccinated and approximately 10% of the fire service volunteers.

Full Time Employees	38
Estimated Unvaccinated	5-6
Paid On Call Firefighters	50+
Estimated Unvaccinated	4-5

**Firefighters are placed at risk during emergency responses, especially during rescue and medical calls where other health measures cannot be followed consistently.*

Health and safety measures help reduce risk to employees during working hours, but do not protect employees outside of work. Employees that have been diagnosed with COVID-19 have been unvaccinated and have exposed other employees in the work place prior to diagnosis.

Based on current publicly accessible information, immunization will provide protection for employees, creating a significantly lower risk to infection. An immunized workforce reduces the opportunity of breakthrough infections in the workplace reducing risks to essential services provided.

With the lower than average vaccination rate in the Creston Valley (64%), and Provincial statistical evidence that the highest rate of positive cases, hospitalizations and death is with unvaccinated people, there are identifiable risks;

- Higher risk that an employee or volunteer will interact with an unvaccinated person during the course of their duties,
- Higher risk that an employee could spread COVID-19 to unvaccinated population, and
- Town of Creston has 36% population over the age of 65, who are identified as higher risk of severe illness from COVID-19.

FINANCIAL:

No direct financial cost for implementing a mandatory immunization policy. Employers are required to provide paid time off to go to immunization appointments.

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ORGANIZATIONAL / POLICY DISCUSSION:

The recommended policy applies to all Town of Creston staff and volunteers;

- Town Hall (union and exempt)
- Public Works (union and exempt)
- Fire Department (career and volunteer including Creston, Wynndel, and West Creston fire halls)
- Creston Valley Youth Network employees
- RCMP Victims Assistance Program employees at the RCMP Detachment.

The recommended dates for compliance:

- For a two dose vaccine series, employees and volunteers must receive one dose of COVID-19 vaccine by October 22, 2021, and the second dose on or before November 20, 2021 to be fully immunized by December 4, 2021.
- For a single dose vaccine series, employees and volunteers must receive the dose on or before November 20, 2021 to be fully immunized by December 4, 2021 (Note: There currently is no approved single dose series available in British Columbia).

Those employees that are not fully immunized will be placed on leave without pay for a maximum of 90 days and advised they may return once they have become immunized.

Those employees that are not vaccinated at the end of the 90 day leave of absence will subject to disciplinary measures that may include termination.

Those employees that refuse to provide proof of vaccination status or falsifies vaccination status, starting with the October 22, 2021 date, will be subject to disciplinary measures up to and including termination.

Exemption to the proposed policy will include medical exemptions and religious grounds. It is expected that to receive a medical exemption that a physician will be required to provide a letter outlining reasons for exemption that is consistent with College of Physician guidelines. Religious grounds will require acceptable proof based on guidance from our legal counsel.

The legal opinion received outlines;

1. The policy must not be inconsistent with provisions of applicable the collective agreements;
2. The policy must not be unreasonable;
3. The policy must be clear and irrevocable;
4. The policy must be brought to the attention of employees prior to an employer acting upon it;
5. Employees must be notified that a breach of the policy could result in the imposition of discipline or discharge; and
6. The rule must be consistently enforced from the time it is introduced.

At a general level, given the scientific evidence and public health and government messaging that vaccination is the most effective tool to prevent serious illness and death, a policy which seeks to

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minimize the risk of COVID-19 transmission and infection or its severity in the workplace will likely be found to be reasonable.

WorkSafeBC declines to provide comment to COVID-19 safety measures or vaccination policies yet states that employers must take reasonable efforts to protect employees.

The Human Rights Code of BC prohibits discrimination in employment on various bases, including religion and physical and mental disability. Employers implementing a vaccination policy must still comply with their obligation not to discriminate. As a result, employees refusing to be vaccinated on the bases of disability and/or religious reasons have a right to be accommodated by their employer to the point of undue hardship.

In terms of proof, please note that the College of Physicians and Surgeons of Ontario has published a FAQ which sets out the processes and factors doctors are to consider before providing patients with medical certificates confirming they are unable to be vaccinated for health reasons. We expect that the BC College may publish such guidance in the future. Generally speaking, there are very few medical exemptions to the COVID-19 vaccination and doctors are urged to clearly specify the reason(s) the patient cannot be vaccinated and whether the restriction is time limited or permanent.

Staff will receive further legal guidance for those that claim medical or religious exemptions. Proof of religious grounds will be reviewed and accepted as reasonable by our legal counsel.

Canadian Charter of Rights and Freedoms

Our legal counsel provided the following:

An analysis of Charter issues requires a review of Sections 15 and 7 of the Charter. Section 15 states that every individual is equal before and under the law and has the right to equal protection from and equal benefit from the law without discrimination based on a number of grounds, including religion and disability. A mandatory vaccination policy which adversely affects employees in relation to their religious beliefs or disability will engage s. 15 of the Charter. A mandatory vaccination excluding employees from the workplace, without regard to their religious beliefs or their disability will certainly engage s.15 of the Charter.

However, as with the human rights analysis above, a vaccination policy which provides a choice between vaccination or alternative safety measures such as testing, masking or distancing may not be found to be discriminatory because employees who cannot be vaccinated are provided with the same alternatives open to other employees who do not wish to be vaccinated for personal reasons. As long as unvaccinated employees protected by the Charter are not required to pay for testing, such a policy should not be found to infringe on s. 15 rights. Section 7 of the Charter provides that everyone has the right to life, liberty and security of the person and the right not to be deprived of those rights, except in accordance with the principles of fundamental justice. Typically, Section 7 rights are engaged in cases involving detention and not immunization. Additionally, Section 7 rights are not meant to protect economic rights.

However, the Supreme Court of Canada has made statements which suggest that s.7 could be expanded to protect 'fundamental personal choice' which include 'the right to make decisions concerning one's body free from state interference'. Given the PHO's comments on proportionality of August 24, 2021, local governments should consider whether their policies proportionately balance the purposes or

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objectives of the policy (health and safety in the workplace; or, of some departments in the workplace) through the reduction of serious illness and death from COVID-19 against the potential right to determine whether to be vaccinated.

OPTIONS FOR CONSIDERATION:

Option 1 – Mandatory Immunization for Employees, including volunteers.

This is the implementation of mandatory immunization with the consequence that failure to be immunization results in exclusion from the workplace.

Advantages	Disadvantages
<ul style="list-style-type: none">• Reduces risk of outbreak in employees• Reduces risk to essential services• No cost to implement• Reduces concern with vaccinated employees• Provides increased protection to employees dealing with public• Limited oversight to implement and maintain	<ul style="list-style-type: none">• Loss of some employees to leave of absence

Option 2 – Mandatory Immunization combined with alternative health and safety measures.

This is the implementation of mandatory immunization and alternative health and safety measure such as regular asymptomatic testing, masking and distancing.

Advantages	Disadvantages
<ul style="list-style-type: none">• Reduces of spread in workplace only• No loss of employees due to policy	<ul style="list-style-type: none">• Costs for asymptomatic testing• Coordination of asymptomatic testing• Concerns among vaccinated employees• Risk to essential services from outbreak• Implementation and oversight

This measure could also include restricting unvaccinated employees from certain duties which may lower productivity overall. For example, fire department personnel that are unvaccinated could be removed from medical and rescue response duties.

Regular rapid asymptomatic testing requires the employer to pay and not utilize the public health system.

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Option 3 – Status Quo

This would be the continuation of health and safety measures in place to manage the risks of COVID-19 as recommended by the Public Health Officer, such as physical distancing and masking only.

Advantages	Disadvantages
<ul style="list-style-type: none">• Reduces of spread in workplace only• No loss of employees due to policy	<ul style="list-style-type: none">• Costs for asymptomatic testing• Coordination of asymptomatic testing• Concerns among vaccinated employees• Risk to essential services from outbreak

COMMUNICATION:

An employee FAQ will be developed explaining the policy adopted by Council.

A press release to advise the public of new policy for Town of Creston employees.

CONCLUSION:

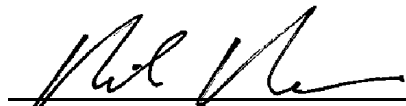
There is no express legal impediment to the implementation of a vaccination policy, there are legal issues to consider.

Employers contemplating the development and implementation of such a policy should evaluate carefully the risks and benefits and ensure that the implementation takes those into account.

After analysis of risk and benefits, the small workforce providing essential services cannot be impacted by an outbreak and maintain those essential services. The Town of Creston, through health and safety measures, has been fortunate that an outbreak has not caused an impact to an essential service. Measures have included working from home and altered work hours to limit spread within the organization in the event of an employee being diagnosed with COVID-19, but these measures have come at an expense and loss in productivity.

Staff recommend option 1 of a vaccination policy as this limits an outbreak in the workplace, limits spread into the public and assists in lowering risk on hospitalizations locally. This option also lowers risk that there would be a future risk to capabilities in maintaining essential services expected by the public.

Submitted by:


Michael Moore, CAO

Reviewed by:

CAO

Michael Moore, CAO