



Government Clarifies Employment Insurance Information Relating to Employee Refusal of Mandatory COVID-19 Vaccination

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On October 15, 2021, the federal government updated its Employment Insurance (EI) information relating to circumstances in which an employee does not work because of their refusal to comply with the employer's mandatory COVID-19 vaccination policy.

The government's *EI regular benefits: Do you qualify* resource states that "in most cases, if you lose or quit your job because you didn't comply with your employer's mandatory COVID-19 vaccination policy, you won't be eligible for EI regular benefits."

Service Canada can contact the employee to determine the following information:

- If the employer clearly communicated a mandatory COVID-19 vaccination policy to the employee;
- If the employee was informed that not complying with the policy would result in the employee losing their employment;
- If applying the policy to the employee was reasonable within the employee's workplace context; and
- If the employee had a valid reason for not complying with the policy and the employer did not provide the employee with an exemption.

The government's *EI information for employers - COVID-19* resource contains updated guidance regarding the issuing of a Record of Employment (ROE). If an employee does not report to work because they refuse to comply with the employer's mandatory COVID-19 vaccination policy, the employer should use code E (quit) or code N (leave of absence). If an employer suspends or terminates an employee for not complying with the employer's mandatory COVID-19 vaccination policy, the employer should use code M (dismissal).

If those codes are used, Service Canada may contact the employer for more information relating to the four considerations outlined above.

In Our View

The updated guidance indicates that the government may view an employee's refusal to comply with a mandatory vaccination policy as misconduct that makes them ineligible for EI benefits. If the



employer's conduct was reasonable considering the four criteria, an employee is unlikely to be entitled to benefits.

EI entitlement is not determinative of issues such as whether or not an employer had just cause to dismiss an employee. However, the four factors that would be considered in an EI claim are relevant to the reasonableness of an employer's actions. They can therefore serve as useful factors to consider for employers who are considering leave or dismissal as potential consequences of an employee's refusal to comply with a mandatory vaccination policy.

Employers should seek legal advice before indicating "Quit" on the ROE. Doing so could have legal implications beyond the employee's EI entitlement, including being viewed by a court or tribunal as being tantamount to a constructive or wrongful dismissal. Such a finding could lead to liability for notice, severance, and other potential damages.

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