



TEAMSTERS CANADA RAIL CONFERENCE

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September 17, 2021

All CN Members

Sisters and Brothers,

In my letter of September 8, 2021, I committed to obtaining a legal opinion and guidance from our Legal Counsel. The purpose of this letter is to convey the information I received.

On August 13th, the Federal Government announced its intention to require all federal public servants be vaccinated as early as the end of September. The Government said it expects all employers in federally regulated sectors and Crown corporations to follow suit. Transport Minister Omar Alghabra confirmed that workers in federally regulated air, rail and marine transportation sectors will have to be vaccinated by the end of October. The Intergovernmental Affairs Minister Dominic LeBlanc added that all public servants and some employees in federally regulated sectors must comply with the mandate or “risk losing their jobs”.

So far, these are only announcements by the Government. Details of the mandate and its implementation remain unclear until legislation, an order in council or regulations are released. Further, Canadian National Rail is one of the few companies which have produced language on any proposed vaccination policy.

One of the most common objections to mandatory vaccination policies relate to the doctrine of informed consent and the right to be free from coerced medical treatment. In Canada, these rights are captured under section 7 of the Canadian *Charter of Rights and Freedoms*, which guarantees the life, liberty, and personal security of all Canadians.

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While it is true that the broad liberty interests of unvaccinated individuals are affected by instituting employment vaccine requirements and by the privacy intrusion of being required to disclose vaccination status, those rights are not absolute. Section 1 of the *Charter* states that all of its rights can be subject to “reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.” In the case of the COVID-19 vaccine mandate, in all likelihood, the Government will be able to justify an invasion of section 7 rights on the same basis: that the vaccine mandate is reasonable and “demonstrably justified” due to the public safety threat of COVID-19. This safety threat being the evolving data around the transmissibility of the Delta variant and the impact of the spread of the virus on both the workforce and the general public. The nature of the work in the rail industry - where employees work very closely with one another, frequently in a confined space, over many hours – means the risk of infection is very high.

In terms of the lawfulness of the CN policy, it is our Legal Counsel’s opinion that the policy will also likely be upheld as lawful as a reasonable exercise of management rights (consistent with principles annunciated in *Lumber & Sawmill Workers' Union, Local 2537 v. KVP Co*) on similar grounds as any Federal Government mandate. CN states that its policy is being applied “in order to comply with the government mandate.”

Subject to the actual language of any Government legislation, Legal Counsel are of the view that a mandatory vaccination mandate would likely survive a legal challenge and, in particular, a *Charter of Rights and Freedoms* challenge. Similarly, subject to the specific language of any policy promulgated by a railway, Legal Counsel are of the view that a mandatory vaccination policy would also be found to be consistent with the employer’s rights under a collective agreement (subject to any language in a collective agreement specifically limiting an employer’s ability in this regard) regardless of any Government mandate. This includes CN’s announced policy. Employees who refuse to get vaccinated (and who are unable to establish legitimate grounds for such a refusal based on medical or religious reasons) will likely be held from service or, in the worst case, be terminated. Such actions by an employer will not likely be overturned in the arbitration process.

On November 1st, for those members affected by the CN policy as written, our best legal option at this time is to file grievances on behalf of these members on a case-by-case basis. Currently we are requesting CN to reconsider their policy to allow for other alternatives for those who do not adhere to the policy. Failing that, we are prepared to take further actions.

All CN Members
September 17, 2021
Page 3

To be clear, we can provide no guarantees of success that CN will adjust their policy, nor can we guarantee the success of any further actions we may take. As the policy stands today, those who choose not to be fully vaccinated by November 1st may face the consequences of unpaid leave which may lead to termination.

I fully realize that many of you will be upset and angry with this information. It is my responsibility to provide accurate information and manage the expectations of our members. While we encourage our members to get vaccinated, we oppose the unreasonable parameters espoused in this policy. I encourage all of you to consider the information provided and make an informed decision.

Fraternally,

A handwritten signature in black ink, appearing to read 'Lyndon Isaak', written in a cursive style.

Lyndon Isaak
President - TCRC