



What's New in HR Law

Maple Leaf Foods' Mandatory Vaccination Policy Upheld by Arbitrator

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Bottom Line

In *Maple Leaf Foods Inc., Brantford Facility and UFCW, Local 175*, [2022 CanLII 28285 \(ON LA\)](#), Arbitrator Chauvin upheld a mandatory vaccination policy (the "Policy") after finding it to be reasonable and enforceable. The Policy required all employees to be vaccinated by March 31, 2022, barring any exemptions based on human rights grounds. Unvaccinated, non-exempt employees would be placed on an unpaid leave of absence and could be subject to discipline.

Background Facts

Maple Leaf Foods (the "Company") operates food processing, production, and distribution facilities across North America. The United Food and Commercial Workers (the "Union") represents 120 employees in the Company's Brantford poultry processing plant. Members of the Union's bargaining unit work closely together processing, weighing, and packaging product for consumer consumption.

Beginning in March 2020, the Company implemented significant COVID-19-related safety measures, most of which continued until the date of arbitration. These safety measures included: plexiglass set-ups between production floor employees; scheduling additional employees to provide cleaning services; isolation requirements for symptomatic employees (with a 75% top-up for employees in isolation); staggering of shifts and breaks; assigned cafeteria seating to facilitate contact tracing; and implementing touchless surfaces and hand sanitizer stations.

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Despite these significant safety measures, the Company's Brampton plant was shut-down for several days due to a COVID-19 outbreak. Furthermore, across the country, 2,993 of the Company's employees contracted COVID-19, with five of these cases resulting in death.

On December 13, 2021, the Company notified employees that it would be implementing the Policy and that non-compliant employees would be placed on an unpaid leave of absence. These communications about the Policy continued until the Policy came into effect on January 28, 2022. Throughout this period, the Company followed up with employees who had not confirmed their vaccination status, as well as provided vaccine education for vaccine-hesitant employees and accommodations as necessary.

The Union filed 20 grievances relating to the Policy.

The Decision

Arbitrator Chauvin dismissed the grievances and held that the Policy was both reasonable and enforceable.

Mandatory Vaccination Was Reasonable in the Specific Workplace Context

The Arbitrator found that the Company's workplace conditions heightened the risk of COVID-19 infection, making it especially necessary for the Company to take significant measures to stop the spread of COVID-19. In deciding to uphold the Policy, the Arbitrator pointed to various contextual factors that supported the need for enhanced safety measures and vaccination requirements, including the following:

- The employees were essential workers who could only perform their duties on-site.
- The employees worked in close quarters and regularly interacted face-to-face.
- Supervisors and safety persons had to walk around the plant at all times to monitor employees.
- Because the production floor was noisy, employees had to wear noise cancelling headphones and, in order to hear each other, needed to speak loudly and sometimes close to each other.
- The Company had spent significant resources to ensure that the plant was operating safely and to avoid shut down due to COVID-19.
- Despite the Company's safety measures, thousands of employees contracted COVID-19 (leading to five deaths) and the Brampton plant was shut down for several days due to COVID-19, resulting in major consequences for the community's food supply and the Company.
- Given the Company's role as a massive food producer, it was of utmost importance that the employees not contaminate the food in any way.

Notably, Arbitrator Chauvin rejected the Union's argument that rapid antigen testing ("RAT") was an appropriate, less intrusive means to protect workplace safety. The evidence demonstrated that, without vaccination, RAT had not effectively prevented COVID-19 transmission at the Company. The Arbitrator also cited a comment by the Ontario COVID-19 Science Advisory Table that a negative RAT could not reliably rule out infection and should not be a "green light for abandoning or reducing precautions."

Even though public health measures were being lifted in or around April 2022, Arbitrator Chauvin held that mandatory vaccination remained justifiable and reasonable. According to the Arbitrator, the ever-changing and unpredictable nature of the COVID-19 pandemic made it "highly improvident to lessen or eliminate precautions only because the statistics regarding COVID-19 had recently reduced."

The Policy Balanced the Interests of the Company and its Employees

Arbitrator Chauvin found that the Company reasonably protected employee privacy interests as it did not collect proof of vaccination but, rather, recorded only whether an employee was vaccinated or unvaccinated. Further, only senior level Human Resources personnel had access to this information.

The Policy was also found to be reasonable as it provided for exemptions and accommodations based on protected human rights grounds.

The Company's Implementation and Enforcement of the Policy Was Appropriate

Moreover, Arbitrator Chauvin found the Policy to be clear and unequivocal. For approximately two months, the Company had communicated with the Union and employees about its intentions to implement the Policy and the requirements under the Policy. The Policy also clearly notified employees that non-compliance could result in an unpaid leave of absence or discipline, up to and including discharge. Discipline for non-compliance was to be assessed on a case-by-case basis against a 'just cause' standard, and could be grieved by the Union.

Interestingly, the employer requested the Arbitrator to opine upon how long the Company should wait before disciplining or discharging an employee who failed to become vaccinated. While the Arbitrator acknowledged the need for a fact-specific analysis before imposing discipline, he stated that it would be helpful to inform employees that they could be disciplined or discharged if they remained unvaccinated for two months.

Check the Box

Arbitrator Chauvin's decision is the latest decision in a line of arbitral cases upholding workplace vaccination policies. This trend continues to provide welcome comfort to employers who implemented vaccination policies to prevent COVID-19 transmission in their high-risk workplaces. Arbitrator Chauvin's decision also gives support to employers who have maintained workplace safety protocols despite the Ontario Government's lifting of public health measures.

Although COVID-19 related public health measures have relaxed across the country, employers still have a legal duty to take all reasonable precautions to protect workers from illness and injury. Accordingly, employers should stay abreast of developments related to COVID-19 and respond appropriately to changing requirements or safety risks, such as newly emerging variants.

As employees return to on-site work, employers should update their COVID-19-related safety practices and policies and keep their employees informed about rules and expectations. The return to on-site work also offers employers an opportune time to consider their safety practices more generally to ensure they are providing a safe and well-maintained workplace.

Need More Information?

For more information or assistance with vaccination decisions and recalling employees to on-site workplaces, contact [Stephanie Nicholson](#) at 416-598-0515, or your regular lawyer at the firm.



Toronto

Bay Adelaide Centre
333 Bay Street
Suite 2500, PO Box 44
Toronto, Ontario M5H 2R2
tel: 416.408.3221
fax: 416.408.4814
toronto@filion.on.ca

London

620A Richmond Street, 2nd Floor
London, Ontario N6A 5J9
tel: 519.433.7270
fax: 519.433.4453
london@filion.on.ca

Hamilton

1 King Street West
Suite 1201, Box 57030
Hamilton, Ontario L8P 4W9
tel: 905.526.8904
fax: 905.577.0805
hamilton@filion.on.ca