



What's New in HR Law

Arbitrator Upholds Hospital's Mandatory Vaccination Policy

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Bottom Line

The recent decision by Arbitrator Herman in [Lakeridge Health v CUPE, Local 6364, 2023 CanLII 33942 \(ON LA\)](#), confirms the reasonableness of a hospital's mandatory vaccination policy and upholds the hospital's decision to terminate the employment of employees who refused to comply with the policy. Although he upheld the policy and the terminations, the Arbitrator found that the hospital should have provided four weeks of unpaid leave prior to terminating employment.

Background Facts

Lakeridge Health ("Lakeridge") was comprised of five hospitals, four Emergency Departments, and more than twenty community health care locations.

The Union represented Lakeridge employees, in such roles as Registered Practical Nurses, Clerks, Service Associates, Personal Support Workers, Screeners, and Secretaries.

When COVID-19 vaccinations became available in mid-2021, Lakeridge implemented a vaccination policy (the "Policy"). Between June and September 2021, the Policy was voluntary, meaning that employees were required to attest to their vaccination status and take educational programming if they indicated that they were unvaccinated.

This article is for the purposes of only general information and does not constitute legal advice or opinion.

In September 2021, the Delta variant had become dominant and was deemed a more transmissible variant by Lakeridge. Senior staff recommended to Lakeridge's leadership that a mandatory vaccination policy should be implemented. An important factor of the recommended policy included terminations of employees who remained unvaccinated after being placed on unpaid leaves of absence.

Lakeridge's reasons for adding a termination of employment component to their Policy included:

- Lakeridge's assessment of the threat posed by the transmissible Delta variant of COVID-19;
- Non-vaccinated employees appeared strongly opposed to getting vaccinated and Lakeridge doubted they would ever get vaccinated; and
- Lakeridge's belief that it would have been more difficult to hire employees into temporary vacancies if unvaccinated employees were put on indefinite absences.

On September 28, 2021, Lakeridge issued an amended Policy requiring all employees to be fully vaccinated against COVID-19 or their employment would be terminated. The length of time on leave was variable and depended on whether Lakeridge believed it needed to delay termination of employment based on past communications with employees and the degree of hope that employees would change their minds. The time intervals between placing unvaccinated employees on unpaid leaves of absence and their terminations therefore varied from several days to three weeks.

Out of approximately 104 Union members who had been placed on unpaid leaves, the employment of 47 of them was ultimately terminated. Three of the four individual grievors were Union members who refused to vaccinate and whose employment was terminated by Lakeridge in November 2021.

At arbitration, the Union took the position that Lakeridge could reasonably place unvaccinated employees on unpaid leaves of absence until June 2022, at which point Lakeridge ought to have returned those employees to active employment. On the other hand, Lakeridge argued that it was reasonable to terminate unvaccinated employees after placing them on unpaid leaves of absence.

Arbitrator Upholds the Hospital's Policy and Decision to Terminate

Arbitrator Herman dismissed the Union's grievances, finding the Policy to be reasonable in all respects, save for the timing of the terminations.

In doing so, the Arbitrator upheld Lakeridge's decision to terminate the employment of unvaccinated employees on culpable grounds for failure to adhere to the Policy. Arbitrator Herman stated that the need to protect the health of Lakeridge's employees and patients, and to act in a way that enabled Lakeridge to continue to provide its services in a relatively safe manner, outweighed the rights of individual employees to preserve their employment status when they declined to get vaccinated. The specific circumstances of Lakeridge's obligation to provide life-saving health services during the pandemic meant that an automatic termination provision for unvaccinated employees was reasonable.

In addition, the Arbitrator noted that "long service or a clear disciplinary record" did not act to prevent or nullify a leave or termination that was part of a reasonable mandatory vaccination policy. Individual circumstances (other than exemptions based on religious or medical grounds) did not detract from Lakeridge's entitlement to terminate employees who refused to comply with the Policy.

The Arbitrator further commented that:

- The Policy was reasonably applied to remote workers because those employees still needed to attend on site from time to time.
- Lakeridge was reasonable in concluding that a difficulty in filling temporary vacancies supported the termination of unvaccinated workers.
- The factual circumstances of the pandemic and vaccinations in the months before and when the Policy was issued were relevant (mid to late 2021). Later developments in 2022 and 2023 regarding the efficacy of vaccinations in addressing transmission were not relevant to the enforceability of the Policy as challenged by the Union’s grievance.

On the particular consideration around the timing of terminations, the Arbitrator found that Lakeridge ought to have placed unvaccinated employees on an unpaid leave for a period of four weeks prior to proceeding with termination. Therefore, the Arbitrator concluded that the mandatory vaccination policy was reasonable in all respects except that the terminations should not have occurred earlier than four weeks after the start of unpaid leave. Notably, however, no wage remedy was awarded to employees because, even if Lakeridge had provided four weeks of leave, the affected employees would still have been on an unpaid leave when they were terminated.

Check the Box

This decision appears to be the first Ontario case that examines and upholds a hospital’s mandatory vaccination policy and the resulting terminations. Health care providers should review this decision and consult with counsel regarding the potential impact of this decision on any outstanding vaccination grievances.

Need More Information?

For more information or assistance with vaccination policy grievances, contact [Lucas Mapplebeck](mailto:Lucas.Mapplebeck@filion.on.ca) at lmapplebeck@filion.on.ca or your regular lawyer at the firm.



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