



What's New in HR Law

Public Health Order Mandating COVID-19 Vaccinations Supports Decision to Terminate Employment

May 4, 2022 | By [Caroline DeBruin](#)

Bottom Line

In *Fraser Health Authority and British Columbia General Employees' Union (L. Capozzi Grievance)*, 2022 CanLII 25560 (BC LA), an employee (the "Grievor") was dismissed after she repeatedly refused to take a COVID-19 vaccine and indicated that she had no intentions of ever becoming vaccinated. In response to her termination, the Union filed a grievance alleging unjust discharge. This grievance was dismissed by Arbitrator Koml Kandola.

Background Facts

The Provincial Health Officer of British Columbia issued a public health order mandating health authority employees to be vaccinated against COVID-19 (the "Hospital and Community Order"). This public health order was issued without an expiry date.

The Grievor worked as a substance abuse counsellor with Fraser Health Authority (the "Employer") and, due to the nature of her role, was subject to the Hospital and Community Order. However, the Grievor did not get vaccinated against COVID-19 and as a result was precluded from working for the Employer.

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

The Employer repeatedly advised the Grievor of the government vaccination requirements and afforded her ample opportunity to become vaccinated. Further, the Employer clearly notified her of the repercussions of failing to get vaccinated. Despite the Employer's efforts, the Grievor chose not to get vaccinated and advised the Employer that she had no intention of ever becoming vaccinated.

Eventually, the Grievor's employment was terminated due to her non-compliance with the Hospital and Community Order and her resulting inability to work. Notably, the Employer did not attempt to rely on its own vaccination policy, but instead cited only the Hospital and Community Order.

The Decision

At the outset of her decision, Arbitrator Kandola stated that she would not rule on the validity of either the Hospital and Community Order or the vaccination policy that the Employer had implemented to comply with the Hospital and Community Order. Therefore, the only issue before Arbitrator Kandola was whether the Employer had just and reasonable cause to terminate the Grievor's employment.

The Union argued that termination of employment was not compulsory under the Hospital and Community Order; instead, the Employer could have placed the Grievor on an unpaid leave. Arbitrator Kandola rejected this argument, finding that the employee had chosen to render herself statutorily ineligible to work indefinitely and, in doing so, had given the Employer cause for some action.

Arbitrator Kandola then canvassed the provisions of the parties' collective agreement and found that they did not create any entitlement to an unpaid leave of absence of indefinite length where an employee is legally prohibited from working and, due to personal choice, has no foreseeable prospect of returning to work. Arbitrator Kandola also found that no such entitlement existed in arbitral law. As such, an indefinite leave of absence was not available to the Grievor.

In her decision to dismiss the grievance, Arbitrator Kandola took particular note of the Hospital and Community Order's indefinite nature and the grievor's inability to return to work in the foreseeable future. At the time of the Grievor's dismissal, the Public Health Officer had not provided any indication that the Hospital and Community Order would be lifted in the foreseeable future and, instead, had repeatedly recommended vaccination as a key tool in British Columbia's continued response to the pandemic.

Based on these factors, there was no path forward for the Grievor's continued employment while the Hospital and Community Order was in effect and it was reasonable for the Employer to terminate the Grievor's employment.

Check the Box

Employers should be cautious about depending on this case as authority for the principle that refusing to abide by a workplace vaccination policy justifies termination. Arbitrator Kandola's decision is unique in that it upholds employment termination by relying on noncompliance with a public health order and, critically, the employee's choice to remain "statutorily ineligible to work." Although termination of employment was not required, it was reasonable in the circumstances as the employee had no prospect of returning to work for the foreseeable future.

Need More Information?

For more information or assistance with workplace management issues amidst the COVID-19 pandemic, contact [Caroline DeBruin](#) at 647.797.4441 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