



# What's New in HR Law

## Companion COVID-19 Cases: Mandatory Vaccination Policy Upheld & Arbitrator Finds Just Cause for Employee Terminations

October 7, 2024 | By Emily Elder

### Bottom Line

Four years after the onset of the COVID-19 pandemic, we are beginning to see judicial and arbitral clarity regarding employer conduct during this unprecedented period. In two recent decisions, Arbitrator Newman upheld the employer's mandatory vaccination policy as clear and unambiguous and found that non-compliance with this policy is just cause for termination.

### Policy Grievance

In [\*The Corporation of the County of Wellington v Canadian Union of Public Employees, Local 973\*](#), the Arbitrator upheld the employer's Mandatory COVID-19 Vaccination Policy (the "Policy") as clear and unambiguous. Represented by Filion Wakely Thorup Angeletti LLP lawyer [Jamie Knight](#), the employer successfully argued that the Policy clearly indicated to all employees the consequences of non-compliance, including potential termination.

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

This policy grievance was heard in advance of four individual termination grievances. The union claimed that the employer's Policy was unclear and ambiguous because it did not specifically state that all employees must be fully vaccinated, and that the consequences of being unvaccinated were not clearly stated.

The Arbitrator disagreed with the union's position and found that all employees knew that they were required to vaccinate, and they knew what would happen if they did not. It was clear that employees who did not comply with the Policy would remain on an unpaid leave until they complied, were dismissed, or otherwise left employment.

The policy grievance was dismissed.

## Termination Grievances

Once the Policy was upheld, the parties then held a hearing on four related grievances. These had been filed by the Union on behalf of four members whose employment had been terminated for cause when they refused to comply with the Policy.

In the [Termination Award](#) decision, Arbitrator Newman upheld the dismissal of three employees, but reinstated the fourth in recognition of her long service. The employer in this case was successfully represented by Filion Wakely Thorup Angeletti LLP lawyers [Jamie Knight](#) and [Catherine Phelps](#).

Arbitrator Newman acknowledged that ordinarily, employees should not be disciplined for exercising their right to withhold consent to undergo a medical procedure. However, the extraordinary circumstances of the COVID-19 pandemic required a different standard. The Arbitrator concluded that the employer did have cause for dismissing these employees. After issuing multiple warnings, placing employees on extended unpaid leaves, providing educational resources, and allowing substantial time for compliance, she agreed with the employer that dismissal was the only viable disciplinary action. The employer's responsibility to safeguard its employees and the public justified this strict enforcement of the vaccination policy.

In considering whether to substitute a lesser penalty for the terminations, Arbitrator Newman determined that for the three employees with shorter service (ranging from 18 months to 8 years), there were no mitigating factors that warranted a reduced penalty. However, for an employee with 21 years of service who was nearing retirement, Arbitrator Newman replaced termination with a lengthy suspension.

## Takeaways

Arbitrator Newman's decisions provide further support to the reasonableness of mandatory vaccination policies that permit discipline up to and including termination. They also highlight the employer's obligation to provide opportunities for employees to be policy compliant prior to considering termination. As a whole, the policy and individual termination grievances underscore the importance of clear policy communication, progressive discipline, and the need to balance employer obligations to protect health and safety, employee rights, and public health responsibilities.

## Need More Information?

For more information or assistance with COVID-19 related issues, contact your [regular lawyer](#) at the firm.

The author wishes to thank Jessica Krueger, an Articling Student in the firm's London office, for her assistance in preparing this Insight.



**Toronto**  
416.408.3221  
[toronto@filion.on.ca](mailto:toronto@filion.on.ca)

**London**  
519.433.7270  
[london@filion.on.ca](mailto:london@filion.on.ca)

**Hamilton**  
905.526.8904  
[hamilton@filion.on.ca](mailto:hamilton@filion.on.ca)

**Kitchener-Waterloo**  
519.433.7270  
[kitchener-waterloo@filion.on.ca](mailto:kitchener-waterloo@filion.on.ca)