



What's New in HR Law

Vaccine Policies Continue to Be Found Reasonable

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Bottom Line

The recent decision by Arbitrator Stewart in [Alectra Utilities Corporation v. Power Workers' Union, 2022 CanLII 50548 \(ON LA\)](#) ("Alectra"), affirms and expands on a growing body of case law that supports the reasonableness of workplace vaccination policies.

Alectra Utilities Corporation and Power Workers' Union

In *Alectra*, the Employer implemented a mandatory vaccination policy, which required employees to provide proof of vaccination or risk being placed on unpaid leave. The vast majority of employees complied with the policy, but a small minority did not. Non-compliant employees who could work from home were permitted to perform their jobs remotely. Those who could not work from home were placed on unpaid leave.

One of the key matters at issue in the grievance was the Employer's plan to mandate all employees to transition back to the physical workplace. As a result, those who were unvaccinated and working from home would be directly impacted by the vaccination policy for the first time. The Union argued that both the policy and the Employer's decision to mandate a return to in-person work were unreasonable.

At arbitration, the Union argued that the policy was an unreasonable and over-reaching exercise of management rights, as well as a violation of the right to bodily integrity. The Union also argued that forcing employees who have been working from home to return onsite was inconsistent with the statutory

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obligation to take every precaution reasonable to protect employees. Further, the Union argued that the circumstances of the pandemic had shifted with high rates of vaccination, the waning effect of vaccination, and the precautions available, such that the vaccination policy could not be considered reasonable even if it was reasonable at one point during the pandemic.

In contrast, the Employer argued that the policy was eminently reasonable. The policy was consistent with available public health and scientific information, which continued to establish that vaccinations are the primary method of protection from COVID-19 transmission. The policy also specifically contemplated the potential for change as the pandemic evolved, although, in the Employer's view, the time for change had not yet arrived. There were unique and formidable dangers to health associated with the continuing pandemic, particularly in light of the greater likelihood of COVID-19 exposure stemming from the Government's relaxation of public health measures. The Employer had also determined that employees could not work as effectively and efficiently from home as they could in the physical workplace.

Balancing of Interests: Scales Tip in Favour of Vaccination Policy

Ultimately, Arbitrator Stewart upheld the Employer's policy, finding that it was – and still is – reasonable in the circumstances.

In reaching this decision, Arbitrator Stewart reviewed expert medical evidence filed by the Employer, which confirmed that a “mandatory vaccine policy is the most effective method of ensuring a safe workplace.” Although the protection afforded by vaccination could wane, this did not alter the fact that unvaccinated individuals created a greater risk to health in settings where people congregate. Because employees could not individually manage their environment within the workplace, they depended on the Employer to take reasonable precautions, like the vaccination policy, to protect their health.

The Arbitrator balanced the interests of the unvaccinated employees with the interests of the Employer and other employees. In conducting this analysis, Arbitrator Stewart gave considerable weight to the Union's argument with respect to the interests of the unvaccinated workers, noting that a disruption of employment, especially in the context of a personal decision about a medical procedure, was a matter commanding careful consideration.

However, Arbitrator Stewart found that this was outweighed by the interest in protecting the health of the wider workplace from the risk posed by unvaccinated individuals. In weighing this consideration, Arbitrator Stewart stated:

“An individual's health is an extraordinarily significant matter, perhaps the most significant personal interest that exists, and it simply must be given the utmost consideration. In my view, **this interest in protecting the health of those in the workplace properly prevails over the interests of the unvaccinated in maintaining their livelihood.**”

This is some of the strongest language we have seen so far that directly weighs the rights of the unvaccinated against others in the workplace.

The Arbitrator also highlighted how the Employer's policy specifically contemplated amendment as circumstances change. This feature of the policy was considered “one of the hallmarks of its reasonableness”, as it welcomed the possibility for reintegrating unvaccinated employees into the workforce.

Arbitrator Confirms Employer’s Choice to Discontinue Remote Work

Arbitrator Stewart also commented on the Employer’s decision to mandate a return to onsite work for unvaccinated employees who had been working from home. The Union argued that, given the circumstances, the Employer should continue to allow employees to work remotely. Arbitrator Stewart disagreed, stating:

“...I note that **an employer’s assessment as to how work is most efficiently and effectively conducted is a critical management prerogative.** Alectra’s decision to implement a gradual and careful return of employees to the workplace is understandable and **entirely accords with the practices of responsible employers across the province,** as they adapt to the changed and evolving circumstances that the pandemic has brought.”

This part of the decision should be welcome news for any unionized employer who is looking to mandate a return to onsite work.

Check the Box

This decision affirms that despite the reopening of the province and certain mandates being lifted, mandatory vaccination policies can still be reasonable for workplaces.

Employers should continue to evaluate the needs of their organizations and balance competing interests. Although this decision strongly supports an employer’s right to continue to implement and enforce a vaccination policy, it also acknowledges that there may be a day when the balance of interests tips the other way.

Need More Information?

For more information or assistance with matters related to vaccination policies or other workplace issues, contact [Darren Avery](mailto:davery@filiation.on.ca) at davery@filiation.on.ca or your regular lawyer at the firm.



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