



What's New in HR Law

Injunction Denied in Mandatory Vaccination Policy Case

December 8, 2022

Bottom Line

In *National Organized Workers v Sinai Health System*, [2022 ONCA 802](#) (“*Sinai Health*”), the Court of Appeal for Ontario confirmed that it may be inappropriate to grant an injunction to restrain a workplace vaccination policy.

The National Organized Workers Union (the “Union”) had sought an injunction to restrain Sinai Health System (the “Employer”) from enforcing its mandatory vaccination policy (the “Policy”) pending arbitration of grievances that challenged the Policy. In [a previous decision](#), the Ontario Superior Court of Justice denied the Union’s injunction request. The Superior Court’s decision was upheld on appeal.

Background Facts

In August 2021, Ontario’s Chief Medical Officer of Health introduced a public health directive that mandated every employer in the healthcare sector to develop a workplace policy in respect of COVID-19 vaccination and testing.

In accordance with the Government’s directive, the Employer implemented the Policy on October 26, 2021. The Policy required employees to be fully vaccinated (i.e., receive two doses of a COVID-19 vaccine) by December 9, 2021, or their employment would be terminated. Employees could be individually exempted from the Policy for medical or other reasons.

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

The Union filed several grievances challenging the Policy's reasonableness and enforceability. Concurrently, the Union commenced an application seeking an injunction to restrict the Employer from enforcing the Policy pending arbitration of the Union's grievances.

Superior Court Refuses to Grant Injunction

The application judge dismissed the Union's injunction application.

The application judge's decision turned on the scope of Superior Court's jurisdiction to intervene in labour relations matters. The application judge found that if the injunction were not granted, the resulting harm would be that some unvaccinated employees may be placed on unpaid leave or dismissed from employment. As an arbitrator could adequately remedy such harm if the Union's grievances prevailed, it was inappropriate for the Court to exercise its residual jurisdiction over labour relations matters to grant the injunction.

The Union appealed the application judge's decision to the Court of Appeal.

Court of Appeal Upholds Decision to Deny Injunction

The Court of Appeal upheld the application judge's decision in its entirety.

The Court of Appeal concluded that the application judge made no palpable and overriding error in finding that the harm at issue was purely monetary. The Union attempted to characterize the Policy's harm as compelled vaccination without informed, voluntary consent and the denial of employees' bodily autonomy. The Court of Appeal, however, agreed with the application judge that the harm at issue was the potential for non-compliant employees to be placed on unpaid leave or dismissed from employment. Notably, this finding was consistent with other court decisions that considered requests for injunctive relief in relation to mandatory vaccination policies in both unionized and non-unionized workplaces.

Based on its characterization of the harm at issue, the Court of Appeal found no justification to exercise the courts' residual jurisdiction over labour relations matters. Because the potential harm caused by the Policy was employment-related, an arbitrator had the tools to remedy the harm and injunctive relief would be inappropriate. In fact, the Court of Appeal commented that the exclusive jurisdiction of labour arbitrators would be fundamentally undermined if parties were permitted routine access to the courts to resolve workplace disputes.

Check the Box

Sinai Health offers welcome support for employers who have implemented mandatory vaccination policies to protect their workplaces from the risks of COVID-19.

From a procedural standpoint, *Sinai Health* reinforces that labour arbitration is the proper forum for challenges to mandatory vaccination policies in a unionized workplace. This finding will assist parties in pursuing the efficient adjudication of vaccination policy disputes.

This case also confirms that in the context of mandatory vaccination policies, the harm suffered by non-compliant employees is generally monetary.

Need More Information?

For more information or assistance with workplace vaccination policies, contact 416-408-3221 or your regular lawyer at the firm.

Filion Wakely Thorup Angeletti LLP thanks Jemma Lewis for her assistance in preparing this article.



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