



What's New in HR Law

British Columbia Supreme Court Finds Enforcement of Mandatory Vaccination Policy Is Not Constructive Dismissal

October 31, 2022 | By [Stephanie Nicholson](#)

Bottom Line

In a first across Canada, the British Columbia Supreme Court (the “Court”) has held that an employee was not constructively dismissed when she was placed on an unpaid leave of absence following her refusal to abide by her employer’s mandatory COVID-19 vaccination policy (the “Policy”). The Court in [Parmar v Tribe Management Inc., 2022 BCSC 1675](#) (“*Parmar*”), determined that the Policy was reasonable in the context of the COVID-19 pandemic and that the employee’s voluntary non-compliance was due to her speculation about potential vaccination risks.

Relevant Facts

The employer was a B.C.-based company that provided condominium management services (such as financial and information management, community/amenity management, and building maintenance) and rental management services. Employees of the company were frequently required to attend at the premises of various strata and rental properties to serve the employer’s clients.

In October 2021, the employer implemented the Policy, which required all employees to be fully vaccinated against COVID-19 by November 24, 2021. The Policy included exemptions for medical or religious reasons pursuant to human rights legislation and allowed for extra time for employees who were

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unable to get vaccinated by the Policy deadline. If an employee wished to remain unvaccinated for personal reasons, they would be placed on an unpaid leave of absence instead of being dismissed or disciplined.

The employer developed the Policy based on guidance from the American Centers for Disease Control and Prevention, provincial public health offices, and applicable provincial health orders. In particular, these public health authorities had encouraged vaccination as a key element in protecting individuals from contracting COVID-19 and reducing community transmission of the COVID-19 virus.

The plaintiff was employed by the employer as a senior accounting professional. She decided not to get vaccinated against COVID-19 after a self-review of information about the efficacy and potential risks of available COVID-19 vaccines, but did not apply for a Policy exemption based on human rights grounds.

Although the plaintiff had suggested that she could work remotely or take COVID-19 rapid tests before attending the workplace, the employer determined that the Policy needed to be enforced consistently across all employees and visitors in order to be effective. Consequently, the plaintiff was placed on an unpaid leave of absence pending her compliance with the Policy. The plaintiff ultimately resigned and commenced a constructive dismissal claim against her employer.

Notably, of the more than 200 employees in the workplace, only the plaintiff and one other employee refused to comply with the Policy.

Court Upholds the Policy as a Reasonable Response to the COVID-19 Pandemic

The Court held that the plaintiff was not constructively dismissed but, rather, had voluntarily resigned.

At the outset of its analysis, the Court held that the employer had acted reasonably in implementing the Policy. In particular, the Court found that the Policy struck the appropriate balance between the employer's business interests, the employees' right to a safe work environment, the interests of the employers' clients, and the interests of the residents in the properties serviced by the employer. The Policy also allowed for both medical and religious exemptions and did not discipline employees for non-compliance with the Policy. Furthermore, the Policy was consistently applied by the employer.

The Court also explained that, in the context of a global pandemic, it was reasonable for the employer to take the extraordinary measure of enacting a workplace policy that impacted employees' bodily integrity. The Policy was consistent with the employer's statutory obligation to ensure workplace health and safety, as well as the prevailing public health guidance in respect of COVID-19 vaccination. The reasonableness of the Policy was underscored by the fact that it did not force employees to become vaccinated but, rather, provided a choice between getting vaccinated and continuing to earn an income.

The Employer's Enforcement of the Policy Was Not a Constructive Dismissal

The enforcement of the Policy was not arbitrary and led to reasonable consequences for the plaintiff. Specifically, the plaintiff understood that, under the Policy, she would be placed on leave if she were to remain unvaccinated. The employer did not fill the plaintiff's position during her leave of absence; instead, the employer was prepared to return the plaintiff to employment if she became vaccinated or to extend the plaintiff's leave of absence if she continued to be non-compliant with the Policy.

While the plaintiff was entitled to hold her personal beliefs and protect her bodily integrity, she was not entitled to adversely impact other employees or the residents of the buildings in which the employer operated. The plaintiff also was not entitled to take the position that an exception to the Policy should be

made for only her, given her senior management position and the widespread acceptance of the Policy in her workplace.

Significantly, the Court stated that a reasonable employee in the plaintiff's position would not have felt that an unpaid leave of absence for failing to abide by the Policy was a substantial alteration of an essential term of the employment contract. The Court noted that all but one other employee had complied with the Policy and that most adult Canadians had been vaccinated against COVID-19.

Check the Box

It appears that *Parmar* is the first Canadian decision to determine whether a non-unionized employee can be placed on an unpaid leave of absence for their failure to comply with a mandatory vaccination policy. In *Parmar*, the Court held that placing the employee on an unpaid leave of absence for their non-compliance with the policy was reasonable. This decision offers welcome support for employers who have implemented mandatory vaccination policies to protect their workplaces from the risks of COVID-19.

Employers should be mindful that courts and other adjudicators will be driven by a highly fact-specific analysis in determining the reasonableness of vaccination policies and their enforcement measures. *Parmar* sheds insight on some of the factors that form part of this analysis, but additional considerations may be relevant in other cases.

Need More Information?

For more information or assistance with COVID-19 matters affecting your workplace, contact [Stephanie Nicholson](#) at snicholson@filion.on.ca or your regular lawyer at the firm.



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