



Vaccination Grievances

Update on status of the lead grievance arbitration cases

CHALLENGES TO MANDATORY VACCINATION POLICIES

During the pandemic, hospitals and long-term care facilities established mandatory COVID-19 vaccine policies. CUPE encourages its members to get vaccinated and does not object to vaccine policies in general, however, **it is our position that no one should be terminated for exercising their personal medical choice to decline a vaccine, and that vaccine policies must comply with the Human Rights Code.**

OCHU is supporting a number of test cases at 5 hospitals which challenge employer practices of terminating unvaccinated employees and failing to accommodate religions, creeds or medical exemptions that restrict some members from receiving the vaccine.

Because of the time sensitivity of these issues, OCHU made an exception to its central arbitration policy, opting to have these cases decided by single arbitrators. We hope to get answers on these important questions faster than we would through a 3 person arbitration process. *For details on the cases, see page 2.*

Local 6364 v. Lakeridge Health

The Hospital's vaccine policy provided that employees would automatically be terminated if not vaccinated by a certain date, and in fact, dozens of employees were dismissed as per the policy. The Local filed a policy grievance and individual grievances for each of the affected employees. The policy grievance and four individual grievances were selected as test cases. The four grievances included situations where longstanding employees with clean disciplinary records and different job roles (i.e. some non-patient facing), were terminated “for cause based on wilful misconduct, disobedience or wilful neglect of duty” for choosing to remain unvaccinated.



This case tests the issue of which employment consequences are appropriate for employees who exercise their personal medical right to decline a COVID-19 vaccine.

We argue first and foremost that employees who make a personal medical choice should not be subject to discipline at all. They have not engaged in the kind of “wilful misconduct, disobedience, or wilful neglect of duty” that warrants a disciplinary response.

While a healthcare worker’s decision to remain unvaccinated may have health and safety consequences for patients and other workers,

those consequences should be addressed through the least intrusive means, such as temporary reassignments or regular testing.

Where these accommodations are not possible, then unpaid leaves may be considered, but not termination. We also argue that the Hospital is violating the principles of just cause requirement in the collective agreement by imposing discipline automatically, without regard to the employee's individual circumstances, job requirements, amount of seniority and record of employment.

Local 7800 v. Hamilton Health Sciences

This case tests the issue of termination as a consequence for employees who remain unvaccinated, but on a different set of facts. In this case, the Hospital’s vaccine policy did not provide for unpaid administrative leave. For months, unvaccinated employees were allowed to continue to work with rapid testing. Then, 76 employees were terminated all at once. *Continued on page 3*

Local 7800 v. Hamilton Health Sciences (continued)

The Local has selected two of these grievances as test cases. The grievors are longstanding employees who happen to be spouses. They both adhered to the vaccine policy, having disclosed their status and they complied with all testing requirements.



As in the Lakeridge case, the Union argues that the terminated employees could have continued to work safely with rapid testing. The Union points out that employees did in fact continue to work safely with rapid testing long past the end of the Delta wave and through the Omicron peak. The January termination date seems especially arbitrary in this case, considering that by that date, COVID-19 cases in Ontario were trending downwards.

The Union will also argue that even if the Hospital could somehow justify some sort of crackdown on unvaccinated employees at the end of January, termination was an unreasonable response when the Hospital hadn't even tried administrative leave as a means of protecting the public and encouraging employees to get vaccinated.

The Union will also argue, as is being argued at Lakeridge, that employees should not have been met with any disciplinary response at all for exercising a personal medical choice. At the very least, termination was an excessive penalty in the circumstances, considering that it is an irreversible punishment meted out when it looked like the pandemic might be ending.

Finally, as in Lakeridge, the terminations were carried out without regard to individual circumstances or mitigating factors, contrary to the just cause protection. We believe that the issue of terminating unvaccinated employees warrants running two different test cases.

Local 4540 v. Bruyere Hospital

The Local filed a policy grievance in response to the Hospital's policy of requiring a letter from a "religious or creed leader" in order to support the employee's exemption request.

The Union argues that this violates the Human Rights Code, because the right to a religious or creed-based accommodation under the Code should depend on whether the employee's belief is sincere, and this can't always or necessarily be determined by a letter from a leader. *Continued on page 4*

Local 4540 v. Bruyere Hospital (continued)

The case against Bruyere also involves an individual grievance, where the grievor is a member of the Christian Orthodox church who objects to the COVID-19 vaccines on the basis that they were originally tested on fetal cells.

The grievor has been placed on unpaid leave, resulting in financial hardship to him and his family. The Union argues that the grievor's belief is sincere and should have been accommodated by allowing him to continue to work with regular testing.

Local 1156 v. University Health Network (Toronto Rehab branch)

This is an individual grievance in which the grievor is a member of the Nation of Yisrael Community Congregation in Messiah ("NYCCM").

NYCCM takes a strict and literal interpretation of the Hebrew Bible, in which all kinds of medications and needles are prohibited.

The Hospital refused the employee's request for a religious accommodation and terminated her employment as a result.

The Union argues that the grievor's belief is sincere. We are requesting that she be reinstated to her employment and permitted to work with regular testing.

AS THESE LEGAL CHALLENGES TO MANDATORY VACCINATION POLICIES ARE DECIDED AT ARBITRATION, OCHU-CUPE WILL PRODUCE REGULAR UPDATES.

Local 5180 v. Trillium Health Partners

This is an individual grievance in which the member was seeking a 3 month extension before receiving her second vaccine due to contracting COVID-19. This request was supported by a medical specialist as the member needed to be hospitalized due to an exacerbation of a pre-existing medical condition as a result of contracting COVID-19.

The extension was denied by the employer and the member was terminated.

The union argues that the grievor should have been granted the time extension and challenging whether other medical conditions can form the basis of a medical exemption.

PLEASE POST THIS FLYER AND CIRCULATE TO ALL MEMBERS AND TO ALL PERSONS WHO WERE TERMINATED OR OTHERWISE ADVERSELY AFFECTED BY THE VACCINE POLICY AT THEIR WORKSITE