



Novel Coronavirus (COVID-19)

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When is a Mandatory Vaccination Policy Reasonable? Arbitration Award Provides Additional Guidelines

By Shreya Patel

In a recent Arbitration Award, Arbitrator Stout provided further guidance on vaccination policies in the course of balancing the legitimate interests of a safe and healthy workplace with employee privacy rights.

In our previous publications, we addressed recent arbitration awards in which the propriety and reasonableness of mandatory vaccination policies was evaluated by arbitrators.

In *Hydro One Inc* (“Hydro One”) and *Power Workers Union* (“Union”), arbitrator Stout affirmed that it is reasonable to require employers to bear the costs of COVID-19 testing when the employer’s policy requires employees who have not confirmed their vaccination status, to be tested. Arbitrator Stout ordered that employees are required to self-administer rapid antigen tests on their own time, prior to reporting to work and are not entitled to compensation for the time spent in the administration of the test or in the reporting of the results. Further, Hydro One was ordered to consider reasonable compensation, on a case by case basis, for those employees who are granted a medical or religious exemption for administering rapid antigen tests.

With respect to mandatory vaccination policies and employees requests for religious exemptions, Arbitrator Stout found that a questionnaire that had been devised by Hydro One which sought information about employees’ religious beliefs was held to be reasonable. Specifically, the following questions that employees had to respond to were found to be reasonable:

1. *What creed/religion do you belong to?*
2. *How long have you practiced your creed/religion?*
3. *Why does your belief in this creed/religion prevent you from being vaccinated against COVID-19?*

4. *Have you been vaccinated against any other illnesses? If so, why were those vaccinations permissible under your creed/religion?*

Asking employees to substantiate their religious exemption by submitting documentation on religious text or letter from a religious leader was also held to be reasonable.

With respect to privacy concerns, Hydro One's policy confirmed that employee's QR code confirming their vaccination status was not stored and once vaccination status was verified, the QR code would be deleted. The only information retained on Hydro One's system was the notation that an employee was subject to testing or they were not subject to testing. Further, the Union's proposal that managers be informed only about a) whether an employee was barred from attending the workplace on any given day and b) whether an employee was in a testing program or not was held to be insufficient. Arbitrator Stout held that it was reasonable for managers to know that an employee's test results were negative so as to allow them to access the workplace.

This decision is noteworthy in that it affirms that reasonable mandatory vaccination policies will be upheld as workplaces begin to return their employees to the office amidst the ongoing global pandemic. Arbitrator Stout's decision provides critical guidance to employers as they address religious exemptions in mandatory vaccination policies. Employers should continue to consult legal counsel as they develop and implement vaccine policies in their workplace.

Should you have any questions, please contact any member of our Labour and Employment Group.

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