

Case In Point

Arbitrator Upholds Mandatory Vaccination Policy—Reduced Public Health Measures of No Consequence

Date: April 7, 2022

In a “bottom line” decision in [Extendicare Lynde Creek Retirement Home and United Food & Commercial Workers Canada, Local 175](#), Arbitrator Raymond upheld the mandatory COVID-19 Immunization Policy (Policy) of a retirement home, finding that the Policy is a reasonable workplace rule and consistent with the collective agreement, the *Occupational Health and Safety Act*, the *Retirement Homes Act, 2010* and related requirements. Of note, the Arbitrator held the fact the Ontario government and other public health authorities had recently reduced or eliminated various vaccine requirements did not affect this finding. Further, the Arbitrator upheld the Policy’s requirement that employees receive all booster shots as recommended by public health authorities now or in future.

The employer introduced the Policy in August 2021. It required all new hires to be fully vaccinated as a condition of employment. Effective October 12, 2021, the Policy required all existing employees to be fully vaccinated, subject to any applicable accommodation requirements under the *Human Rights Code*. A term of the Policy is that unvaccinated employees are placed on an unpaid leave of absence and “may be subject to additional corrective action up to and including termination of employment.” The employer agreed that corrective action or any “just cause” termination would be subject to review in accordance with the “just cause” standard found in the collective agreement.

As noted above, Arbitrator Raymond found that the Policy was reasonable and aligned with the statutory obligations of the employer, as well as the collective agreement. Whether or not the employer chose to implement a testing regime was not determinative of this issue. The Arbitrator underscored that any corrective action or termination of employment under the Policy will subject to the review in accordance with the “just cause” standard in the collective agreement, which is consistent with arbitration decisions to date.

COMMENTS

This is a key decision for the long-term care and retirement sector. It affirms that a properly constructed and implemented mandatory vaccination policy will be reasonable and in compliance with collective agreement and statutory requirements, provided that any termination of unvaccinated staff is not automatic and is subject to a just cause assessment. It is also a clear signal—especially to staff or unions who may be asserting otherwise—that vaccination policies remain reasonable notwithstanding reduced public health measures, and that current and future boosters are a reasonable policy requirement.