
February 9, 2022

BULLETIN

**GRIEVANCE DISMISSED
COVID-19 VACCINE POLICY UPHELD**

An Ontario Arbitrator recently dismissed grievances filed by the Power Workers' Union (PWU) on behalf of 12 employees who were placed on an unpaid leave of absence for failing to comply with Hydro One's vaccine policy.

Hydro One adopted a COVID-19 vaccine policy that required its employees to provide proof of vaccination or confirmation of a valid medical or human rights exemption (the "Policy"). The Policy required employees who were unvaccinated or chose not to disclose their vaccination status to undergo regular COVID rapid testing prior to reporting for work.

The Grievors did not comply with the Policy, and as a result, they were placed on unpaid leave until they complied with the Policy. Although the Grievors eventually complied with the Policy and returned to work, PWU filed grievances seeking the lost wages for the time the Grievors were on unpaid leave. Additionally, PWU claimed that Hydro One should have provided the Grievors with the opportunity to work from home. PWU argued that Hydro One did not respond to the Grievors' concerns about the Policy in a timely manner, and as a result, the Grievors were put on unpaid leave.

The Arbitrator concluded that it was fair and reasonable for Hydro One, in light of the circumstances of the pandemic, to adopt the Policy. Hydro One was balancing various interests, including its obligations as an employer under the *Occupational Health & Safety Act* and the interests of its employees in adopting the Policy.

The Arbitrator noted that the Grievors had reasonable notice about the Policy, yet they did not raise their concerns about the Policy with Hydro One in a timely manner. Nonetheless, Hydro One addressed the Grievors' concerns "in good faith and within a reasonable period of time by providing fair and adequate responses".

The Arbitrator also held that Hydro One was not required to provide employees, who choose not to disclose their vaccination status, with the ability to work remotely if a reasonable alternative, such as rapid testing, has been provided.

This arbitration confirms that vaccine policies that include a rapid testing option are likely to be found to be reasonable and an appropriate balance of an employer's obligation to provide a safe

workplace and the rights of employees. The law in this area will, no doubt, continue to evolve and we will continue to provide regular updates.

Carolyn MacEachern & Sarah Strukoff