Ontario court rejects injunction request brought by employees against COVID-19 vaccine policy

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The Ontario Superior Court of Justice refused to grant an injunction brought by employees of University Health Network seeking to avoid losing their jobs for not complying with the COVID-19 vaccine policy.

In August, University Health Network (UHN) implemented a policy requiring employees to be fully vaccinated by October 22, or they would face termination.

The plaintiffs sought an injunction to prevent losing their jobs until the merits and legality of the vaccination policy could be decided.

The Court had previously granted a short term order to preserve the status quo until the release of this decision. The Court lifted the status quo order on October 29, refusing to grant it based on three issues:

- Whether the unionized plaintiffs had standing in civil court;
- Whether the court had jurisdiction to grant the injunction to the unionized plaintiffs; and
- Whether the interim injunction should apply to the non-unionized plaintiffs.

The decision does not address whether the vaccination policy is valid and it does not apply to any other employees (or employers) in similar situations outside those involved in this proceeding.

Standing of unionized plaintiffs

The Court found that the unionized plaintiffs did not have standing to seek the relief requested. The central question the plaintiffs asked concerned UHN's right to enact and enforce its vaccine policy.

This issue is directly related to the collective bargaining agreement and relationship. This means the unionized plaintiffs were required to pursue their complaint through the grievance and labour arbitration process, not through the civil courts.

Court jurisdiction

Next, the Court considered whether it had the jurisdiction to grant the relief requested by the unionized plaintiffs. The Court found that this was not a case where there was jurisdiction existed for it to grant interim remedies.

The Court noted that none of the unions intervening on the hearing requested that the interim injunction, which preserved the status quo until this decision, remain in place in order for them to bring their own applications, despite them having standing to do so. The Court deferred to the strategic choices the unions have made to challenge the validity of the vaccination policy and the relevant remedies at arbitration.

Non-unionized plaintiffs

The non-unionized employees would have had to prove they would suffer irreparable harm if the interim injunction was lifted.

The Court stated that the non-unionized plaintiffs could not establish irreparable harm resulting from the threatened termination of their employment. The law allows employers to terminate the employment of non-union employees outside of the collective bargaining sphere (subject to some exemptions). If their employment is wrongfully terminated, the remedy available to these employees is money.

If the employees are correct that their termination is wrongful, they could be awarded that same remedy at the end of litigation. Therefore, they could not prove that they needed a preliminary remedy, like an injunction, to prevent irreparable harm.

The Court found there was no evidence to establish the legal test for an injunction in relation to whether the UHN vaccination policy contravenes the Human Rights Code.

Takeaways

The Court declined to issue an injunction to prevent UHN from moving to terminate employees who fail to adhere to the vaccination policy.

This case does not address whether the vaccination policy adopted by UHN is “legal,” or, more specifically, what the consequences or remedies will be for employees who have their employment terminated under the policy.

We will continue to monitor these vaccination policies as they are adjudicated in the courts and labour arbitrations. If you have questions regarding the Court’s decision, reach out to any of the key contacts below.

Thank you to Mark Muccilli, articling student, for his contribution.

By

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