

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

November 04, 2021

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

[Robert Weir](#)

Expertise

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 725 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2024 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.