



Vaccination Mandate Cases: April 2022 Update

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Last month, we provided an [update](#) on arbitration cases relating to mandatory vaccination policies. Since then, two new Ontario labour arbitration awards have been published, in which the arbitrators found the employers' mandatory vaccination policies to be reasonable and enforceable.

- On April 1, 2022, Arbitrator Christopher White upheld Revera's mandatory vaccination policy (the "Policy"). Given the nature of the work performed at the long-term care and retirement homes owned and operated by Revera, as well as the vulnerability of the residents of the homes, Arbitrator White found the Policy to be a reasonable workplace rule. The award also speaks to whether unpaid leave and termination are appropriate just cause consequences for employees who decide not to comply with the Policy. [Revera Inc. \(Brierwood Gardens et al.\) v Christian Labour Association of Canada](#). Please see our [more detailed summary](#).
- On April 10, 2022, Arbitrator Peter Chauvin found that Maple Leaf Foods' mandatory vaccination policy met the requirements of the *KVP* test and was therefore a reasonable and enforceable policy. Employees worked in extreme proximity to one another, and there was a heightened risk of the infection and spread of COVID-19 in Maple Leaf Foods' Brantford Plant. The employer had a duty to take every reasonable precaution to protect its workers, and alternative measures, such as rapid antigen testing, were insufficient to protect workers. Regarding consequences for non-compliance, The policy did provide for disciplinary consequences, including termination, for non-compliance. However at the time of the hearing, the employer only intended to place non-compliance employees on unpaid leave and stated that any discipline would be assessed on a case-by-case basis, taking to account all relevant factors. The employer requested the arbitrator's opinion about the reasonable length of time to wait before imposing discipline on non-compliant employees. Arbitrator Chauvin suggested that a set time line was difficult to determine as individual factors would need to be considered. However, he suggested that employees be advised that those who remained unvaccinated for two months following the deadline may well be subject to discipline or discharge. [Maple Leaf Foods Inc., Brantford Facility v United Food and Commercial Workers Canada, Local 175](#). Please see our [more detailed summary](#).



This month, we have also included the following British Columbia arbitration cases as they speak to the important issue of just cause to terminate an employee for non-compliance with a mandatory vaccination policy.

- On April 4, 2022, Arbitrator Koml Kandola dismissed the grievance of a grievor whose employment was terminated because they refused to become vaccinated and were therefore ineligible to work per an Order issued by the Provincial Health Officer of BC. The employer had a mandatory vaccination policy that aligned with the Order and terminated the employment of the grievor pursuant to the Order requiring all health authority employees to be vaccinated to be eligible to work. [*Fraser Health Authority v British Columbia General Employees' Union*](#). Please see our [more detailed summary](#).
- Recently, Arbitrator Gabriel Somjen wrote a notable decision in which they upheld the employer's mandatory vaccination policy (the "Policy") but struck the portion relating to the possibility of discipline for failure to comply with the Policy. Arbitrator Somjen noted that the employer achieved its health and safety goals by placing unvaccinated employees on unpaid leaves. The addition of potential discipline would not, for now, enhance that goal but would further impinge on employees. The reference to discipline for continuing to be unvaccinated was struck from the policy. [*BC Hydro and Power Authority v International Brotherhood of Electrical Workers*](#). Please see our [more detailed summary](#).

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