

BC Arbitrator Upholds Influenza Control Policy for Healthcare Workers



Flu season is officially upon us. *Everyone* is vulnerable to getting the flu. But workers in the healthcare industry are especially at risk as they can be regularly exposed to patients who are already sick and may be contagious. In addition, workers in hospitals, nursing homes and other long-term care facilities who get the flu could expose not only their co-workers but also vulnerable patients who are at high-risk of catching this very infectious disease. As a result, healthcare employers may impose policies designed to control influenza in the workplace, such as requiring workers to get flu shots, take antiviral medication or wear masks when dealing with patients. Although these policies are designed in part for the workers' own health and safety, workers and union may challenge them as overly intrusive. An arbitrator in BC recently ruled on a such a challenge to an influenza control policy. Here's a look at why the arbitrator upheld this policy.

THE CASE

What Happened: The Health Employers Association of BC, which represents the six Health Authorities in the province and a number of affiliates, implemented an Influenza Control Program Policy. The policy required all covered individuals to be vaccinated annually against influenza or wear a surgical/procedure mask during influenza season when in a patient care area. During an actual influenza outbreak, the mask-wearing requirement would be suspended and standard policies regarding exclusion and the use of anti-viral medications would apply instead. That is, in an outbreak, workers who aren't immunized and refuse to take antiviral medication will be excluded from work without pay. Workers who violated the policy would be subject to discipline. The union claimed the policy was unreasonable and violated workers' privacy rights.

What the Arbitrator Decided: The BC arbitrator upheld the policy as a valid exercise of the employer's management rights.

The Arbitrator's Reasoning: The arbitrator noted that influenza can be a serious and even fatal disease, especially for the elderly and those with underlying medical conditions. In addition, the flu vaccine, while not perfect, does reduce the risk of infection. The evidence supported the conclusion that immunization of healthcare workers reduces the risk of infection in patients,

concluded the arbitrator. Studies also showed that where an immunization or masking policy was in effect, immunization rates increased significantly. And because workers have a choice between immunization and masking, the policy accommodated those who object to getting a flu shot for medical or other reasons. The arbitrator also rejected the argument that the policy posed a risk of significant harm to the workers. Finally, in weighing the employer's interest in the policy as a patient safety measure against the harm to the privacy rights of the impacted workers, the policy was reasonable, ruled the arbitrator [*Health Employers Assn. of BC v. Health Sciences Assn. (Influenza Control Program Policy Grievance)*, [2013] B.C.C.A.A.A. No. 138, Oct. 23, 2013].

ANALYSIS

It's unlikely that employers outside of the healthcare sector would be permitted to implement a similar influenza control policy because the decision turned in large part on patient safety (although workers' health would benefit from the policy, too). But that doesn't mean you shouldn't take steps to protect workers from getting the flu, such as by holding a flu shot clinic in the workplace. You should also educate workers on personal hygiene and other measures for guarding against the risk of infection, including:

- Hand washing;
- 'Cough etiquette,' that is, coughing in the crook of your arm as opposed to your hands;
- Social distancing; and
- Proper use of PPE, such as facemasks.