



MEMORANDUM

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DATE: November 16, 2021

TO: All Members; 1000

FROM: Provincial Executive Committee

RE: COVID-19

We have been receiving some questions and concerns from members regarding the Covid 19 vaccine. Some members had expressed concerns regarding working with other employees that were not vaccinated. Others have expressed their disappointment regarding the Provincial Governments Mandatory Vaccine Directive. The message has been consistent; everyone that can get the vaccine, should. Physical distancing, frequent handwashing and wearing a face covering are also important to keep safe. We asked CUPE National for assistance reviewing the Employers Workplace COVID-19 Prevention Directive, please see the attached response.

Thank you and stay healthy and safe.

ATLANTIC REGIONAL OFFICE

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Via Email

RECEIVED NOV 08 2021

November 2, 2021

Steve Joy
President, CUPE Local 1867
271 Brownlow Ave.
Dartmouth, NS B3B 1W6

Dear Brother Steve:

As requested, we have reviewed the *Workplace COVID-19 Prevention Directive* issued by the Treasury & Policy Board requiring employees of the Province of Nova Scotia to be vaccinated against COVID-19 by November 30, 2021. It is our opinion that the policy in its current form does not infringe on members rights as established under the Collective Agreement, the *Occupational Health & Safety Act*, or the *Nova Scotia Human Rights Act*. Further to this, the policy is consistent with the requirements of the "COVID-19 Mandatory Vaccination Protocol in High-Risk Settings" issued by Nova Scotia's Chief Medical Officer of Health on October 6th, 2021 (<https://novascotia.ca/coronavirus/docs/COVID-19-Protocol-for-mandatory-vaccination-high-risk-settings-en.pdf>)

Employers are able to impose policy requirements so long as they do not conflict with the terms of the collective agreement. The Treasury & Policy Board is empowered by section 14A of the *Public Service Act* to "issue such administrative directives as it considers necessary for the performance of its duties." In this case the Board's duty was to implement and adhere to the directive of the Nova Scotia Chief Medical Officer of Health that establishes a requirement for employees to be vaccinated against COVID-19.

The application of an employer's policy must be reasonable and the potential consequences of non-compliance with a policy must be considered. In the policy at hand, the consequence for non-compliance is the employees being placed on an unpaid administrative leave. There are no arbitration cases that have considered COVID-19 vaccine policies that we are aware of. There are many decisions over the last thirty years related to flu vaccination policies, as well as a number of cases related to mandatory COVID-19 testing policies. These cases provide some guidance

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National President/Président national

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National Secretary-Treasurer/Secrétaire-trésorier national

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General Vice-Presidents/Vice-présidences générales

about the kinds of consequences that employers may impose on workers who choose not to be vaccinated. Policies that conform to Nova Scotia Public Health directives are unlikely to succeed in arbitration.

The Nova Scotia *Human Rights Act* does apply to workplace vaccination policies. Workers who are unable to become vaccinated for reasons that are covered by the Act have the right to reasonable accommodation, up to the point of undue hardship on the employer. We note that this policy acknowledges the employer's responsibility to adhere to the *Human Rights Act* and to provide accommodation where required. The stated purpose of the policy refers to the *Occupational Health and Safety Act* and the employer's responsibility under section 17(2)(a) to "ensure the health and safety of persons at or near the workplace". Establishing policies to prevent exposure to known or foreseeable hazards is a well-established and reasonable application of this responsibility.

In summary, the employer's vaccination policy does not provide grounds to be challenged and even if there were, it is unlikely to succeed. Specific interpretations and application of this policy should be monitored by the local to ensure reasonableness, consistency, and fairness.

Yours in Solidarity,



Tracey Pinder
Atlantic Regional Director
:ch/cope 491



Jenna Brookfield
Health & Safety Representative