

**IN THE MATTER OF AN ARBITRATION
PURSUANT TO CERTAIN COLLECTIVE AGREEMENTS**

BETWEEN:

**TORONTO HYDRO-ELECTRIC
SYSTEM LIMITED**

**(“the Employer”
or “Toronto Hydro”)**

- and -

**POWER WORKERS’ UNION,
CUPE LOCAL 1000**

**(“the Union”
or “PWU”)**

Policy Grievance re: COVID-19 Vaccination Policy

Sole Arbitrator: Christopher White

For the Union: Simran Prihar and others

For the Employer: Sven Poysa and others

Hearing Dates: April 25, 2023
May 10, 2023
October 31, 2023
December 19, 2025

AWARD

INTRODUCTION

1. This is a policy grievance (“the Grievance”) concerning Toronto Hydro’s mandatory COVID-19 vaccination policy introduced in September 2021 (“the Policy”). The Union challenges the Policy as unreasonable and alleges violations of the Collective Agreements between Toronto Hydro and the PWU as well as of the *Ontario Human Rights Code* (“the Code”), the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1 (“OHSA”), the *Personal Health Information Protection Act*, 2004, S.O. 2004, c. 3, Sched. A (“PHIPA”) and the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56 (“MFIPPA”). The Employer denies any breach and maintains that the Policy was a reasonable and appropriate health and safety

measure in the context of the COVID-19 pandemic and the nature of its operations. Given the passage of time since the Grievance was filed, the parties have asked for an expedited award with succinct reasons that addresses the interpretation and application of the Policy.¹

2. Having carefully considered the evidence, including the comprehensive Agreed Statement of Facts provided by the parties, relevant expert evidence, the parties' submissions, and the relevant jurisprudence, I find:
 - a. The Policy was a reasonable exercise of management rights, consistent with the Employer's statutory duty under the OHSA to take every precaution reasonable in the circumstances for the protection of workers.
 - b. Subject to accommodations required under the Code, employees who chose not to comply with this reasonable health and safety policy over an extended period of time and despite repeated warnings regarding the consequences of non-compliance were properly terminated for just cause.
 - c. However, such failure to comply with the Policy does not amount to "wilful misconduct, disobedience or willful neglect of duty" within the meaning of the jurisprudence interpreting Ontario Regulation 288/01 ("O. Reg. 288/01") to the *Employment Standards Act, 2000* ("ESA"). As such, employees terminated for non-compliance with the Policy are entitled to termination pay and, if applicable, severance pay in accordance with the ESA.

BACKGROUND

The Parties

3. Toronto Hydro is the local electricity distributor for the City of Toronto, operating 24/7 to serve approximately 785,000 customers and providing a critical public service to residents and businesses in Toronto. The City of Toronto is Toronto Hydro's sole shareholder.

¹ In addition to the present policy grievance, the Union filed several individual grievances relating to the interpretation and application of the Policy to employees represented by the Union. As of the date hereof, I am advised that the grievances of only one individual (Grievances TH-O-268, TH-O-265, TH-O-257 and TH-O-254) remain unresolved, and that this award is expected to be determinative of such grievances.

4. The PWU represents approximately 15,000 workers who help operate Ontario's electricity system. At Toronto Hydro, the PWU represents two bargaining units, an "Inside Employees" bargaining unit and an "Outside Employees" bargaining unit.
5. The Inside unit comprises largely technical, clerical, and administrative roles. The Outside unit consists primarily of trades employees working in the field on electrical distribution infrastructure, often in close quarters, confined spaces, and shared vehicles, with daily interactions among crews and with the public.
6. The Collective Agreements for each bargaining unit at Toronto Hydro are substantially similar for purposes of the Grievance. The relevant Collective Agreements were effective February 1, 2018 to January 31, 2022, later renewed. Without setting out the provisions of the Collective Agreement in detail, it is clear that health and safety is a top priority for both the Union and the Employer. This is entirely understandable given the highly safety sensitive nature of the work.

THE COVID-19 Pandemic and Implementation/Roll-out of the Policy

7. The Policy was developed and implemented against the backdrop of a global pandemic. While I have carefully considered all facts and evidence before me, in particular, I would highlight the following:
 - a. COVID-19 is a highly contagious respiratory disease that can cause severe illness, hospitalization, long-term health consequences (including 'long COVID'), and death. On March 11, 2020, the World Health Organization declared COVID-19 a global pandemic.
 - b. There is no known immunity nor any verifiable evidence of natural immunity to contracting COVID-19.²
 - c. As of August 2021, when the Policy was first announced, the COVID-19 pandemic had taken the lives of over 5 million people worldwide, including almost 30,000 in Canada and over 3,000 in Toronto alone. It is worth recalling that the pandemic caused untold disruptions to the daily lives of Torontonians, negatively impacting everything from the health care system to the economy to children's mental health.

² *Parmar v Tribe Management Inc.*, 2022 BCSC 1675, at para 108, citing *Steiner v. Mazzotta*, 2022 BCSC 827 at para. 5, citing *Dyquiangco Jr. v. Tipay*, 2022 ONSC 1441 at para. 22.

- d. At that time, a clear and consistent public health consensus existed that vaccines reduced transmission risk and significantly reduced serious illness, hospitalization, and death. Further, by that time, vaccines were widely available for free to all Torontonians.
- e. Prior to implementing the Policy, Toronto Hydro promoted voluntary vaccination through several methods, including education and hosting on-site mobile vaccination clinics. Toronto Hydro also encouraged voluntary disclosure of vaccination status to its Health Services department. However, voluntary reporting remained low.
- f. On August 20, 2021, Toronto's Medical Officer of Health (the "MOH") "strongly recommended" employers institute a workplace vaccination policy, at minimum requiring proof of vaccination, documented medical exemption if applicable, and education for unvaccinated workers. On August 24, 2021, O. Reg. 364/20 was amended to require businesses open in Step 3 (including Toronto Hydro) to operate in compliance with "advice, recommendations or instructions of a medical officer of health." The combined effect of this amendment and the published recommendation of the MOH was to require employers in Toronto to implement a workplace vaccination policy.
- g. On the same day, Toronto Hydro's then CEO announced that Toronto Hydro would implement a mandatory vaccination policy in keeping with the "strong recommendation" of the MOH.
- h. The Policy was ultimately issued September 9, 2021, requiring disclosure and proof of at least one dose of a COVID-19 vaccine by September 13, 2021 and full vaccination by October 30, 2021, with defined exemption and accommodation processes and an express commitment from Toronto Hydro to comply with its accommodation obligations under the Code.
- i. Implementation followed graduated steps. Non-compliant employees received express written reminders in late September, mid-October and early November 2021 regarding the need to comply with the Policy and the potential consequences of non-compliance. Bargaining unit employees who remained non-compliant by the October 30, 2021 deadline were placed on unpaid leave in early November 2021 and were explicitly warned that continued non-compliance would result in termination for cause. Employees were given until

December 11th to bring themselves into compliance with the Policy's requirements. Any employees who chose to remain non-compliant by December 11, 2021 were subsequently terminated for cause.

- j. Vaccination uptake rose dramatically following the Policy's introduction – with reported vaccination status increasing from approximately 30% of employees to over 99% of eligible employees.
- k. The Employer also maintained other layered protective measures, including masking, distancing requirements, screening, enhanced cleaning, PPE guidance, and various procedures addressing suspected or confirmed cases. The Employer continuously developed and revised these measures during the pandemic, but none were a substitute for vaccination.
- l. The Union provided an expert report (the "Expert Report") that recognized that, at all relevant times, (i) being vaccinated against COVID-19 offered a direct benefit to the population by preventing hospital admissions, intensive care admissions and death, and (ii) this direct benefit continued even with the emergence of new variants such as Omicron and Delta. While the Expert Report called into question the ongoing degree of the efficacy of vaccines as the pandemic progressed and new variants emerged, its ultimate conclusion was that excluding unvaccinated employees from the workplace was unreasonable as of January 31, 2022. Even if that conclusion were accepted, that date is well after the Policy was implemented and the employment of non-compliant employees was terminated. In other words, even the Union's expert in essence accepts the reasonableness of the Policy throughout 2021.

OVERVIEW OF THE PARTIES' SUBMISSIONS

Submissions of the Union

- 8. The Union submits that the Policy was unreasonable and breaches the Collective Agreements and various statutory protections, as noted above. It argues the Employer could have relied on less intrusive measures (masking, distancing, RAT testing, redeployment or remote work where practicable), and that the Employer's universal approach failed to tailor measures to differential risk profiles within the bargaining unit.

9. In the alternative, the Union contends even if the Policy were found to be reasonable, the implementation of the Policy was unreasonable and punitive, and that the Employer ought to have implemented non-disciplinary consequences (such as indefinite unpaid leaves) in lieu of termination.
10. In the further alternative, the Union argues that even if employees were properly terminated for just cause under the Policy (which it strenuously denies), such employees are entitled to termination and severance pay under the ESA.

Submissions of the Employer

11. The Employer submits that the Policy was a reasonable exercise of management rights and consistent with its duty to take every precaution reasonable in the circumstances to protect workers. The Employer emphasizes the direction from public health authorities, and the critical and unique nature of Toronto Hydro's operations.
12. The Employer relies on a substantial line of arbitral authority upholding mandatory vaccination policies as reasonable in analogous contexts, including utilities, healthcare, municipalities, and manufacturing, and endorsing a disciplinary pathway culminating in discharge for continued non-compliance with a reasonable health and safety policy.

DECISION

Reasonableness of a mandatory vaccination requirement in this workplace

13. Unilaterally implemented employer policies must satisfy the KVP criteria, including consistency with the collective agreement, reasonableness, clarity, notice, and consistent enforcement, and if relied upon to support discharge, advance notice that breach could result in discharge.
14. In the present case, I find that the KVP criteria have been satisfied. To begin, there is no dispute that the Policy was clear and unequivocal, was properly (and repeatedly) communicated to employees, was consistently enforced, and expressly warned of the potential for discipline for non-compliance.
15. I am also satisfied that, at the time it was implemented and enforced, the Policy was reasonable. Like many other arbitrators who have upheld the reasonableness of such policies, I find that in the context of a global pandemic the KVP analysis should

be conducted with due regard to OHSA s. 25(2)(h), the precautionary principle, and the scientific and public health consensus concerning COVID-19 transmission and vaccination. In particular, I accept that at all relevant times vaccination was widely understood by the scientific community as the most effective control to reduce transmission and the severity of symptoms.³ The Employer's layered measures and the exemptions for *bona fide* accommodations under the Code further support reasonableness in these circumstances.

16. Toronto Hydro's operations are safety-critical and continuous; the evidence demonstrates frequent close contact among employees, including during shared travel, in confined spaces, and in public interactions. Arbitrators have repeatedly upheld vaccination requirements in comparable settings, rejecting arguments that employers must implement job-by-job exclusions or broad redeployment programs, particularly in light of OHSA obligations and the precautionary principle.
17. In *Alectra Utilities*, Arbitrator Stewart upheld a policy similar in purpose and architecture, emphasizing that how work is most efficiently and effectively conducted is a critical management prerogative; adjusting structures or relying on indefinite remote work is not required where an employer determines a return or onsite presence is necessary. That reasoning applies here. Indeed, the Union acknowledges that determining how work is performed (e.g., the optimal form of working arrangement) is a fundamental management right.
18. I conclude the Policy's core vaccination requirement—subject to medical and human-rights accommodations—was reasonable throughout the relevant period of time between when the Policy was introduced and when employees were terminated in December 2021.

³ As noted above, the Expert Report itself recognized the direct benefits provided by vaccination at the relevant times. Respectfully, the fact that the Expert Report takes the position that the degree of vaccine efficacy waned as the pandemic progressed, such that it was no longer reasonable to exclude unvaccinated employees from the workplace at some point in 2022 is not relevant to the question of whether the Policy was reasonable when implemented in September 2021 and, ultimately, enforced from September through to December 2021. On this point I am in agreement with Arbitrator Goodfellow's comments in *Central West LHIN*, and consider that the potentially waning efficacy of COVID-19 vaccines in 2022 is of no 'practical consequence' to my finding that the Policy was reasonable when implemented and enforced.

Policy implementation: Progressive discipline and discharge for non-compliance

19. Arbitral authority has consistently recognized that continued, deliberate non-compliance with an employer's reasonable health and safety requirements constitutes just cause for discipline up to and including termination.
20. In *Central West LHIN (Goodfellow)*, the learned arbitrator not only found the mandatory vaccination policy to be reasonable, but he accepted that termination after a reasonable period of unpaid leave was an appropriate outcome, rejecting the proposition that indefinite unpaid leave is required as the only enforcement mechanism.
21. The Policy before me clearly states that non-compliance may lead to discipline up to discharge. Moreover, the Employer provided impacted employees with:
 - (i) education to overcome vaccine hesitancy/misinformation as well as time off to become compliant,
 - (ii) repeated warnings regarding the consequences of non-compliance,
 - (iii) an extended period of unpaid leave for those who remained non-compliant by the October 30, 2021 deadline in order to emphasize the seriousness of continued non-compliance, and
 - (iv) an unequivocal final warning with an explicit deadline some four (4) weeks later, failing which employees would be terminated for cause.
22. Having found that the Policy is reasonable, I also find that the Employer acted reasonably in implementing the Policy and in terminating all employees who (without Code-related justification) chose to remain non-compliant. Put simply, employees cannot pick and choose which health and safety requirements they will comply with, nor can they unilaterally elect not to work instead of complying with an employer's reasonable health and safety requirements.
23. Health and safety is both an individual and collective obligation, and an employer is entitled to impose significant discipline for prolonged and deliberate non-compliance with its reasonable health and safety rules. Here, all terminated employees were clearly informed of the Policy, had ample opportunity to become compliant, and were specifically and repeatedly warned of the consequences of

continued non-compliance. As such, in the circumstances before me, I find that termination for just cause of any employee who remained non-compliant by December 2021 was a reasonable and appropriate action by the Employer.

ESA “wilful misconduct” and minimum termination entitlements

24. Notwithstanding my conclusion that the Employer had just cause to terminate employees who remained non-compliant on or about December 11, 2021, the analysis does not end there; I must address the Union’s further alternative argument that terminated employees are nonetheless entitled to termination and severance pay under the ESA.
25. The Employer relies on Section 2(1)3 of O. Reg. 288/01 as a basis for denying employees termination and severance pay under the ESA. This section provides that employees who are guilty of wilful misconduct, disobedience, or wilful neglect of duty that is not trivial and that was not condoned by the employer are not entitled to ESA notice/termination pay.
26. Arbitral authorities in the COVID-19 vaccination context have repeatedly held that while discharge for just cause can be (and often was) an appropriate labour relations consequence for prolonged non-compliance with a reasonable employer vaccination requirement, a refusal to vaccinate based on sincerely held (albeit fundamentally misguided) concerns regarding vaccines in the unprecedented circumstances of the COVID-19 pandemic generally does not meet the strict “wilful misconduct” standard for disentitlement to termination or severance pay under the ESA.
27. For example, in *Trillium Health Partners* (Goodfellow), the arbitrator held that employees terminated for non-compliance with a reasonable policy were nonetheless entitled to termination and severance pay under the ESA, rejecting the “wilful misconduct” and frustration-of-contract arguments of the employer. Similarly, in *William Osler Health System* (Stout), the arbitrator reached the same conclusion—that while terminations for non-compliance were properly for “just cause”, ESA minimums remained payable.
28. I adopt the same conclusion here. The Policy supports serious discipline up to and including termination for just cause for individuals who chose to remain non-compliant well passed the required deadline. However, the authorities do not

support a blanket conclusion that in these circumstances non-compliance constitutes “wilful misconduct” disentitling employees to ESA entitlements.

Human rights, PHIPA and MFIPPA

29. The Policy provided for Code-based accommodations and a process for medical and human-rights exemptions, with the Employer’s express commitment to accommodate up to the point of undue hardship. Further, the Employer provided confidentiality assurances and restricted collection for defined purposes, in accordance with the requirements of PHIPA. (The Union did not seriously pursue the argument that the Policy breached MFIPPA.) Analogous policies have been upheld where the collection/use of vaccination status was minimally intrusive, purpose-limited for health and safety, and accompanied by safeguards. On the record before me, there is no basis to conclude the Policy, as written or implemented, violated the Code, PHIPA or MFIPPA.

CONCLUSION

30. For the foregoing reasons:
- a. I declare that the Policy, as introduced in September 2021 and implemented through December of that year, was a reasonable exercise of management rights and a responsible and proportionate health and safety measure in the face of an unprecedented global pandemic.
 - b. I further find that, subject to accommodations required under the Code, employees who chose not to comply with this reasonable health and safety policy over an extended period of time and despite repeated warnings regarding the consequences of non-compliance were properly terminated for cause.
 - c. However, such failure does not amount to “wilful misconduct, disobedience or willful neglect of duty” within the meaning of the jurisprudence interpreting O. Reg. 288/01 to the ESA. As such, employees terminated for non-compliance with the Policy are entitled to termination pay and, if applicable, severance pay in accordance with the ESA.
31. I trust this award will assist the parties in resolving any outstanding individual matters in accordance with the principles set out above. I remain seized in the event of any disputes regarding the foregoing.

32. Finally, I would be remiss if I did not acknowledge the parties for allowing this complex matter to proceed in such an expeditious and efficient manner. The Agreed Statement of Fact was, indeed, comprehensive and the parties' submissions addressed the positions taken in a thorough and clear fashion. Counsel for the parties are to be commended.

DATED this 22nd day of January 2026 at London, Ontario.

A handwritten signature in black ink, appearing to read "C White", with a stylized, cursive flourish extending from the end.

Christopher White