

ONTARIO ARBITRATORS CONTINUE TO UPHOLD TERMINATIONS OF EMPLOYEES WHO BREACH COVID-19 SAFETY PROTOCOLS

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As previously [reported](#), Ontario labour arbitrators have found that attending work in breach of employer COVID-19 (“**COVID**”) protocols and/or lying during employer COVID screening is serious misconduct that can lead to termination for cause. A recent [decision](#) by an Ontario arbitrator further affirmed the notion that dishonesty during COVID screening protocols by an employee can lead to termination for cause.

In *Johnson Controls Canada* [1], the employee was a technician, performing maintenance work throughout a hospital. At the start of each shift, the employee attested that he was experiencing no COVID symptoms as per the hospital’s standard COVID attestation form. However, the employee did, in fact, have several COVID symptoms, which he did not report, as he believed them to be caused by allergies. After four shifts during which the employee exhibited COVID symptoms and was prompted by his colleagues to take the COVID attestation more seriously and report his symptoms, the employee tested positive for COVID.

The employer terminated the employee for cause, on the basis that the employee had committed serious violations of the hospital’s COVID infection control policies and had placed his co-workers, hospital staff, patients, and the public at serious risk.

The union grieved that the employee was discharged without just cause, because the employee honestly believed that his symptoms were related to his allergies, and that when he realized he might be sick with something else he called in sick, reported his symptoms and underwent testing.

The arbitrator found that in failing to report his symptoms and falsely attesting on multiple occasions that he was not experiencing such symptoms, the employee committed multiple, and very serious, breaches of an essential workplace policy intended to protect the health and safety of workers, patients, and the public, in a hospital environment where the importance of such protections is paramount. The employee may have genuinely believed his symptoms were due to allergies, but his false attestations deprived the employer and the hospital of the opportunity to assess his symptoms. The arbitrator found the employee’s conduct formed just cause for discipline, and upheld the termination.

This decision further reinforces that disciplinary action, including termination for cause, is appropriate in

instances where employees are dishonest and fail to comply with health & safety protocols. This decision, along with similar Ontario arbitration awards, should give employers confidence when implementing disciplinary action against employees who violate important COVID protocols.

If you have any questions relating to the above, please do not hesitate to contact a member of the [Employment & Labour Relations Group](#).

[1][ps2id id='1' target=''] *Johnson Control Canada LP and Teamsters Local Union 419*, 2022 CanLII 40 (ON LA).

by [Patrick Groom](#), [Victor Kim](#), [Sezen Izer](#) (Articling Student)

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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