

ONA WINS



SUMMARY OF ANOTHER SUCCESS AS YOUR UNION STRIVES TO IMPROVE YOUR WORKING CONDITIONS

Directives issued by Health Ministry subject to Human Rights Code

Region 4 Hospital

ONA was successful in arguing that the employer violated the *Human Rights Code* when it refused to let a pregnant nurse work because she could not take Tamiflu. Although an outbreak had been declared at the hospital, the grievor did not work on an affected unit.

The grievor had received a flu vaccine, but because the vaccine takes two weeks to be effective, she was advised that she either had to take Tamiflu during the outbreak or remain off work. Due to her pregnancy, she was unable to take Tamiflu and as a result, she missed five shifts, all of which were unpaid. The issue before the arbitrator was whether the hospital's refusal to permit the grievor to work because she could not take Tamiflu was discrimination on the basis of sex.

The arbitrator found that the hospital violated the *Human Rights Code* by requiring the grievor to stay home with no pay. The hospital's requirement (based on Ministry of Health and Long-Term Care (MOHLTC) direction) that all staff must either be vaccinated or take Tamiflu during an outbreak, was an "uncompromisingly stringent" standard, and was not reasonable in the circumstances.

The arbitrator noted that the outbreak was not on her particular unit, and that even if it had been, she could have worn a mask as a reasonable accommodation to keep her in the workplace. This was supported by the expert evidence called by the hospital. The arbitrator ordered the hospital to pay the grievor for the five days that she was unable to work.

This decision is important because it confirms that directives issued by the MOHLTC under the *Health Protection and Promotion Act* are subject to the *Human Rights Code*. Employers cannot rigidly follow those directives without considering their obligations under the *Code*.

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