



## Vancouver Coastal Health ordered to stop punitive measures against sick and injured workers

In a major victory for health care workers, the Vancouver Coastal Health Authority has been ordered to stop engaging in practices that punish workers for being sick or injured.

In response to a grievance launched last year by the Hospital Employees' Union and other health unions, arbitrator Vince Ready has ruled that the health authority must end the practice of denying overtime, reducing hours or threatening to fire workers for illness or injury.

Under the health authority's so-called Attendance Wellness Program, OT bans and reduced hours are put in place automatically for workers who experience higher than average sick time usage.

Ready ordered that the practice be stopped effective January 18 and that all OT bans should be lifted and that any worker that has had their hours reduced under the program should have them reinstated.

HEU had said that the coercive measures not only violated workers' rights, but in fact undermined employers' efforts to fight the spread of influenza in health care settings.

That's because many workers felt pressured to report to work when they were ill in order to avoid the loss of income or employment.

In fact, a poll released last fall by HEU indicated that one out of three HEU members reported to work while experiencing flu or cold symptoms because of pressure from their employer not to access sick leave.

HEU secretary-business manager Bonnie Pearson hopes that the ruling will result in health employers adopting a more enlightened approach to reducing illness and injury in health care workplaces.

"Hopefully the health authority will use this opportunity to work with health unions to develop programs that emphasize prevention and consultation rather than punishment and coercion," says Pearson.

Vancouver Coastal Health Authority's Attendance Wellness Program was implemented in 2008.

HEU, along with the Health Sciences Association, B.C. Government and Service Employees' Union, Canadian Union of Public Employees and the United Food and Commercial Workers,

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filed a policy grievance against the implementation of the program and hearings into the matter were held in 2011 and 2012.

Ready issued his decision on January 18 in which he found that:

- the Attendance Wellness Program was flawed;
- automatically refusing OT to an employee who has entered stage 1 of the AWP is punishment and will have negative financial implications for the employee. Whether a reduction in OT may be an acceptable, corrective response to employee absenteeism will depend on the specific circumstances of an employee's individual case. (For example, if an employee and her union indicate to the employer that the employee's OT shifts have contributed to her absence from regular shifts, curbing OT may be a reasonable, corrective measure);
- "FTE reduction" (i.e. reducing an employee's regularly scheduled work hours) automatically at stage 3 of the AWP) is punishment. Whether a reduction in work hours may be an acceptable, corrective response to employee absenteeism will depend on the specific circumstances of an employee's individual case; and
- the criteria (cited in the AWP brochure and other materials) for determining whether an employee should be terminated for excessive absenteeism is inconsistent with legal principles.

Ready ordered that:

- the AWP be reviewed and revised to eliminate its punitive aspects and specifically the automatic imposition of an OT ban and automatic reduction of scheduled work hours;
- effective January 18, 2013, each employee who has been subjected to an automatic OT ban and/or reduction in hours should have the ban lifted and/or her hours reinstated; and
- the employer review and revise the AWP materials to address the concerns expressed in the arbitration award, and to clarify the circumstances where an employee may legally be terminated for non-culpable absenteeism.

Ready was not prepared to order retroactive compensation for employees who have been improperly punished under the AWP. However, he did order that current OT bans and hours reductions be immediately lifted.

*January 21, 2013*