HOSPITAL EMPLOYEES' UNION
NEWSLETTER

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# Interior Health must suspend operation of substance use disorder policy immediately – arbitrator

An arbitrator has ruled that Interior Health's substance use disorder policy is flawed and must be suspended immediately pending a major overhaul.

Arbitrator John B. Hall heard evidence over 19 days in 2017 on a grievance filed by the Hospital Employees' Union alleging that the Interior Health policy discriminated against union members under the collective agreement and under the B.C. Human Rights Code.

In particular, the union alleged that the policy – including so-called "last chance" (LCA) and "return to work" (RTWA) agreements – discriminated against employees with substance use disorders or perceived substance use disorders on a number of grounds.

The arbitrator has suspended the operation of the policy pending a number of required changes that must be made to bring it into compliance with his ruling. They include the following:

- The policy will only apply to employees with severe substance use disorders.
- The employer can't automatically place employees on leave pending an assessment when they suspect the employee has a substance use disorder.
- The employer has to seek information in the least intrusive manner possible, including from an employees' family physician or other health provider, to determine whether an Independent Medical Examination (IME) is necessary – they can't go straight to an IME.
- Where an IME is required, the employer can't dictate who the employee sees – instead the employee must be given an opportunity to choose a mutually acceptable addictions specialist.
- The employer can't automatically require a second IME as a condition of return-to-work.
- Employers are much more restricted in their access to medical information and in many cases this disclosure should be limited to disability management staff.
- Employers can't automatically impose LCA or RTWAs for employees with substance use disorders, and when they are used, the union must be given the opportunity for meaningful involvement in the development of the terms of such agreements.
- The employer must notify a union representative, at minimum, when an employee is advised that they must attend an IME.

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- Employers don’t have a right to order testing in every instance where there is suspicion of relapse – only when there is reasonable cause for such testing.
- The employer may, in some cases, be required to shoulder some or all the costs of monitoring.
- The employer’s right to search personal effects of employees is much more restricted and includes a requirement that notice be given to the union.

The arbitrator also ordered the health authority to engage in good faith consultations with the union over a period of at least 90 days to address the shortcomings of the current policy.

The union has filed grievances against similar substance abuse policies in all health authorities, which have been held back pending the outcome of the Interior Health arbitration. If necessary, the union will proceed with these grievances as well.

The employer has 15 days to appeal the decision.

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