

Some Guild Members Are Being Affected by Employer Covid-related Policies
What has the Guild been doing about it?
Update #7 – December, 2021

In August, 2021 the Guild provided to members, the first of 6 information bulletins regarding upcoming vaccination requirements for Canadian seafarers. In September, all Guild Members were advised by e-mail that based on legal advice available at that time, unions in Canada, including the Guild recognized then, that being successful with assisting members, who could end up being eventually impacted by workplace Covid-related policies, could prove to be very difficult depending on that individual's specific reason for not being in compliance with such a policy.

The vast majority of the Canadian workforce is now vaccinated against Covid-19. In Canada, employers have a legal responsibility to put in place measures to provide a safe workplace by protecting the occupational health and safety of these workers. The federal government has also put in place additional policies designed to limit the spread of the Covid-19 virus. Employers are required to consider a request by an employee to be exempted from such policies if the employee provides a legitimate reason for such a request.

Workers do have a right to not comply with employer policies. However, that right has to be balanced against the rights of the rest of the workforce. In Canada, the right of an individual worker not to comply, is unlikely to outweigh the requirement to protect the rest of the workforce. No Guild members are being "forced" to be vaccinated or being forced to submit to Covid-testing. Workers have a choice of whether or not to comply with these requirements. The decision of whether or not to comply with these requirements is the right of the worker even if the consequences of this decision are severe. The Guild recognizes the seriousness of this situation.

A number of Guild members have submitted to their employer requests for "exemption" from Covid-policies, and these requests have been denied. The Guild's legal counsel has carefully reviewed all such requests for exemption and has not found any so far that are valid requests based on legitimate grounds for an exemption. The Guild has corresponded with these members and has provided them with advice. Our legal counsel has also carefully reviewed a number of employer Covid-related policies that have been submitted by concerned members and so far, we have not found examples of such policies that are illegal, or violate a Guild collective agreement, or exceed an employer's authority, with the possible exception of policies that contain a requirement to deny the use of paid banked leave.

Any members who have contacted the Guild with specific concerns about requests for exemption, or objections to vaccination and Covid-testing requirements based on individual personal views, have been provided with very lengthy and detailed responses based on the advice of our legal counsel. These members have also been advised that at this time, the Guild will only be able to support a grievance based on the non-approval of the use of banked paid leave for members who are not in compliance with employer Covid-related policies. A number of such Covid-related grievances by Guild members, who have been denied access to their paid leave, are currently being advanced to arbitration.

The Guild recognizes the serious consequences for members who have made a decision to not comply with an employer Covid-related policy. These developments, in most cases, are a new and evolving area of law. We will continue to carefully examine, on a case-by-case basis, how to address our members' Covid-related concerns, based on the up-to-date legal advice that we are being provided with.