



B·U·L·L·E·T·I·N

IMPORTANT INFORMATION

Re UBC's COVID-19 Rapid Testing Program

September 9, 2021

The Union has been getting many questions about our position regarding the increased health and safety measures at UBC in response to the fourth wave of the global COVID-19 pandemic. We have heard from members strongly advocating for increased measures such as a vaccine mandate, and from those opposing additional measures.

To be clear, the Union has advocated on behalf of our members to enable a successful and safe resumption of regular campus activities. This is vital to ensure the health and safety of our members and their continued employment at UBC. We did express to the University the need for clarification regarding updates for building ventilation systems, for the reimposition of a mask mandate, to promote awareness, education and access to approved vaccines, to have a program in place to give access to approved vaccines for international students, and to provide access to COVID-19 testing where appropriate. We did not ask UBC for mandatory vaccinations, or for mandatory testing.

We are aware that UBC's COVID-19 Rapid Testing Program announced August 26, 2021 has led to questions and confusion as to the Union's stance on the policy. To be clear, the University did not seek, nor is it required to seek, the Union's agreement to introduce this policy. Employers have the right to institute policies as long as they meet certain legal requirements. The components of a unilaterally introduced employer policy required in order to survive legal scrutiny are that:

1. It must not be inconsistent with the collective agreement.
2. It must not be unreasonable.
3. It must be clear and unequivocal.
4. It must be brought to the attention of the employee(s) affected before the employer can act upon it.
5. The employee(s) concerned must have been notified that a breach of such rule could result in their discharge if the rule is used for a foundation for discharge.
6. Such rule must be consistently enforced by the employer from the time it was introduced.

UBC has a statutory duty to provide a safe workplace and is allowed to institute policies in pursuit of that aim, if those policies are a reasonable exercise of their managerial rights. In determining the reasonableness of an employer policy, arbitrators look at reasonable cause and proportionality, weighing the harm the employer seeks to prevent with the policy against the employees' privacy interest. When weighing the intrusiveness of COVID-19 testing against the need to prevent the spread of COVID-19, arbitrators have concluded these policies are a reasonable attempt to protect the health and safety of workers. British Columbia remains in the midst of a global pandemic.

We understand these are uncertain times and hope this has provided some clarity. We do understand the concerns about the lack of information about the specifics of the testing policy. We have asked the University for information regarding implementation and administration of their policy and will provide further information when we are in receipt of it.

To date, we have assessed what we currently know of UBC's policy against the relevant legal principles and at this time we do not see any factual legal basis to challenge the employer's unilaterally imposed rapid testing policy. As always, upon receipt of new and further information, if we do find that the policy does then violate the collective agreement or any relevant legal statute, we will respond accordingly.

In Solidarity,

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