

M<sup>e</sup> Bruno-Pierre Allard  
Ligne directe : (450) 659-1717, poste 307  
[bruno-pierre.allard@chabotavocats.com](mailto:bruno-pierre.allard@chabotavocats.com)

M<sup>e</sup> Josy-Anne Charette  
Ligne directe : (450) 659-1717, poste 326  
[josy-anne.charette@chabotavocats.com](mailto:josy-anne.charette@chabotavocats.com)

**BY EMAIL**

To be used by the membership of Free to Fly

**OBJECT: Q & A in preparation for the January 11<sup>th</sup> Zoom meeting.**

---

**1. Multiple queries on the actions against the FAA over the past couple weeks and if something similar can be addressed here in Canada. ‘Can we get back our jobs if rules were broken at MOT’**

ANSWER:

Answered by Matt and Greg.

**2. Will there be a class action lawsuit:**

- a. For denied religious exemptions?
- b. For those denied medical exemptions
- c. For those that refused to answer? Part 2 (para 3) below:

ANSWER:

First, is there any grievances (general/collective and individual) filed?

If not, is there any complaint filed before the CIRB pursuant to section 37 of the Canada Labour Code (Duty of Fair Representation, hereafter “DFR”)?

The arbitrator has an exclusive jurisdiction to hear these kinds of lawsuits. If there is no grievance filed and/or submitted to an arbitrator, the only legal action is a complaint for DFR violation.

Alternative: Discrimination complaint before the Canada Human Rights Commission for those who are not unionized (because the Commission will refuse to exercise its jurisdiction if there’s a possibility of grievance).

For those who are not unionized, if the legal action is not related to discrimination, then a lawsuit / class action can be filed.

**3. If not.....**

- a. Is there any recourse for those of us that did not make high salaries, as we can't afford to go after the companies - is there crowdfunding available?

ANSWER:

It would be possible to make a group of employees who would be collectively plaintiffs in the lawsuit (this won't be a class action as only identified members will be complainant, there is not a sole representative for any unidentified members), then they would share the legal fees and it would certainly be less expensive.

For any recourse taken (DFR Complaint, Discrimination Complaint or lawsuit), members must be employees for the same employer, submitted to the same mandatory vaccination policy, and, in a DFR Complaint, be part of the same union.

**4. I want to sue my former employer for firing me on fraudulent grounds. However, the employment lawyer I retained during my attempt at getting a religious exemption based on my religious beliefs with respect to the Ontario Human Rights code was a failure. Do I have any recourse?**

ANSWER:

See answer to question 2. Employees regulated by federal legislation (including aviation) cannot file a complaint before a provincial tribunal. It's probably the reason why the recourse has failed.

**5. Unionized: I was terminated with cause on Dec 1st, 2021, for not declaring my personal medical information. I do not want my job back. I have zero interest in working for WestJet again. Is there any legal action I could possibly take to get flight benefit severance (this was offered to others when their position was outsourced)? My union told me they cannot help me.**

ANSWER:

Complaint before the CIRB pursuant to section 37 of the Canada Labour Code (DFR) will be the only one recourse that could be taken. We can make a preliminary evaluation of the case and give a cost quote for doing all the legal process (step by step).

6. **Non-unionized, helicopter pilot in a Quebec company, laid off on Nov 30 for refusing to get injected, after almost 3 years with the company. Could give me some pointers if I was to file a claim against them? What about wrongful dismissal?**

ANSWER:

If the employer is Bell Helicopter, we think it could be regulated by Quebec legislation. Then, according to Section 124 of the Act Respecting Labour Standards, a complaint should have been filed to contest the wrongful dismissal within 45 days following the date of the employment termination.

If the employed is federally regulated, according to Section 240 of the Canada Labour Code, a complaint should have been filed to contest the wrongful dismissal within 90 days following the date of the employment termination.

We can make a preliminary evaluation of the case and give a cost quote for doing all the legal process (step by step) and explain you the different steps of the process (acknowledgement of receipt, evaluation, mediation/conciliation, agreement or hearing and decision).

7. **Can I get Employment Insurance?**

ANSWER:

If you are laid off, it is not your choice not to work and you did not commit any serious misconduct, you would normally be entitled to get it. However, we've been aware of decisions refusing the claim.

We suggest you to file your claim and to see what will be the result. If it is not accepted, you can ask for a revision by the Commission within 30 days of the decision, and if it is still refused, then you can contest the decision to the Social Security Tribunal within 30 days.

8. **I work for Jazz and I have been granted a religious exemption by my company, but I have still been put on an unpaid LOA. Is there anything I can do?**

ANSWER:

If the religious exemption has been accepted, you should be allowed to go to work and be paid for it. The employer should normally offer you an alternative job that you're qualify to do and is available in the company.

If you are unionized, request a grievance filing. If you aren't, you can file a complaint before the Canada Human Rights Commission.

**La Prairie**  
1015, chemin Saint-Jean  
Tél: 450-659-1717  
Fax: 450-800-2820

**Saint-Basile-le-Grand**  
10, Montée Robert  
Tél: 450-659-1717  
Fax: 450-800-2820

**Laval**  
167, Sainte-Rose  
Tél: 450-659-1717  
Fax: 450-800-2820

9. I was transferred to Jazz from Sky Regional in April 2021 and recalled to Jazz August 2021 after having a forced 25% reduction in our pay during the transfer from Sky Regional which I thought was illegal – but it was sanctioned by ALPA who sold us all down the drain for the second time in my career. When the vaccine mandate came into effect, I asked to file a grievance and my representative basically told me ALPA’s position was that I had to be vaccinated or they would not help me. I formally requested to file a grievance and was never replied to. Do I / we have any claim against either Jazz for lost of earnings and benefits and / or ALPA for failing to uphold our individual rights in spite of paying our union dues?

ANSWER:

Complaint before the CIRB pursuant to section 37 of the Canada Labour Code (DFR) will be the only one recourse that could be taken within 90 days following ALPA’s decision not to file any grievance. We can make a preliminary evaluation of the case and give a cost quote for doing all the legal process (step by step).

If you have any concern regarding the reduction of salary, the 90 days delay to file the DFR Complaint is expired.

10. If the vaccine mandate is successfully overthrown in court, will the airlines owe us reinstatement and back pay?

ANSWER:

Yes, but first of all, the labour law recourses must have been taken. As example, if a Court finds the vaccination policy unconstitutional and unapplicable, you could not request a back pay if you never contested your leave of absence in the legal delays before.

11. Regarding time limits, if an appeal is denied does the clock for filing formal paperwork to the CIRB begin on that date? I believe I have 90 days but this all started around the beginning of November and I’m concerned about the timing with the CIRB.

ANSWER:

The delay starts at the date of the union’s decision not to fight for your rights (or neglected to do it right). If they did everything they could and you didn’t get the answer you wanted in front of the arbitrator, then it’s could be hard to pursue them for a breach of their duty of fair representation.

12. The 1996 Canadian national report on immunization says on page 3 immunization cannot be made mandatory in Canada because of the Canadian constitution, Yet the government has declared a mandatory vaccination policy on certain individuals? How will it hold up in court?

ANSWER:

See answer from a constitutional lawyer.

13. Once placed on unpaid involuntary leave from my airline, when is the appropriate time to file a claim against my employer and my union for not protecting me from this policy?

ANSWER:

You have to claim it through the union by requesting the union to file a grievance. The collective agreement sets the time limits to file each grievance.

The time limit should start at the date of the first day of salary loss. However, a general grievance could also request a recovery of salary loss for all the period of the unpaid leave. If the union refuses to file such grievance, the DFR Complaint must be filed within 90 days from the date of the union's refusal.

14. We need the names of the right kind of lawyers to retain to file these lawsuits. Can you recommend what types of lawyers or even those who are accepting these types of legal claims against the government and unions?

ANSWER:

We can handle labour law disputes, and a lawyer practicing in constitutional law can handle any motion for injunction against the government.

**15. I am an air traffic controller with NAV Canada and my employment was affected by the Vaccine Mandate. Because of all I would lose (sick leave, severance etc, and impact of the rising interest rates on my buyout) I was forced to resign so I would receive these payments that otherwise would have been lost had I been fired. In my resignation letter, I clearly emphasized that my resignation was a forced retirement under duress and was not voluntary. I outlined all that I was being robbed of only giving their employees 3 months of LWOP followed by immediate termination. Will my letter of resignation indicating my actions occurred under duress allow me to continue fighting this alongside those who will be terminated by their employer or have I given up all lights to litigation because I resigned?**

ANSWER:

According to labour law, a resignation must be clear and voluntary. If it is not the case, the resignation should be interpreted as a constructive dismissal or just be cancelled by a tribunal. Then, yes, you are allowed to continue fighting but you must be part of the battle as a complainant, not just supporting your colleagues, if you want to receive the benefits from the decision to be rendered by the tribunal.

**16. When our unions don't support us, what are the most effective and sound reasoning, facts, and legal angles we can use to successfully hold our companies liable for our loss of employment due to the mandate. Does going after individuals like an Ops Manager make sense?**

ANSWER:

Complaint before the CIRB pursuant to section 37 of the Canada Labour Code (DFR) will be the only one recourse that could be taken.

**17. Unionized pilot (ALPA) on a leave of absence until April 1st for reasons other than vaccines (I went back to school). I do not wish to get vaccinated.**

a. Can I to expect being laid off after April 1st and on what legal grounds?

ANSWER:

Yes, it could be done by the employer for the same reasons (not disclosing the vaccination status or not being vaccinated). You would be entitled to the same rights and recourses as we already discussed.

b. Can I request to prolong my leave of absence?

ANSWER:

Yes if you have reasons to give to the employer.

**18. My doctor put me on sick leave on Oct 19<sup>th</sup>. Company will not pay me the first 90 days because they say I am not vaccinated. My ROE at Service Canada also says that I am on unpaid leave therefore cannot claim. What are my options?**

ANSWER:

If you were already on LOA for not having disclosed your vaccination status, you should not be allowed to get your first 90 days because you were on unpaid LOA and you were still unvaccinated.

However, if you want to claim medical EI benefits, you could be entitled to get it because your main reason of absence is your sickness. Nothing can make the EI Commission come to the conclusion that you would still be on unpaid LOA during the full sick leave period.

**19. My employer has not responded whether they accepted my request for accommodation. (Sent to them November, 2021) I have not been notified of anything. Their only action was to wipe out my entire flight schedule. I am still receiving emails, etc. My question is ...do I REQUIRE a response from my employer regarding my accommodation request...or just assume that I am on l.o.a without notification, and if so what is my recourse?**

ANSWER:

If you are unionized, you could ask your union to put pressure under the company to request an answer within 5 days. Once the time limit is expired, a grievance will be filed. If you are not unionized, you have to do it by yourself. Once the time limit is expired, a discrimination complaint will be filed before the Canada Human Rights Commission.