

Labor Law: US Appeals Court Agrees Mandatory Flu Vaccinations Are Not Allowed By Nurses' Union Contract.

We first covered this story in February, 2006: *Labor Law: Court Says Mandatory Flu Vaccinations Are Not Allowed By Union Contract With Nurses*, Legal Eagle Eye Newsletter for the Nursing Profession, (14)2, Feb. '06 p.4.

The 2006 decision of the US District Court for the Western District of Washington has been affirmed by the US Court of Appeals for the Ninth Circuit.

Nurses' Fitness for Duty Is a Labor-Law Issue

Seeing the question as a labor-law issue was the courts' approach to the question of mandatory flu vaccinations for hospital nursing staff.

In labor law, the collective bargaining agreement provides the first-line answer to any question. Disputed interpretations of the collective bargaining agreement are resolved by arbitration. US labor-law policy says that the courts may, but rarely should disturb an arbitrator's decision.

The arbitrator first pointed out that mandatory flu vaccinations were not explicitly covered in the nurses' union contract. Hospital management argued nevertheless that more generic language in the agreement gave management the authority to implement mandatory flu immunizations.

The arbitrator disagreed. The contract's generic "management prerogative clause" applied only to hospital operational issues and did not give management the right unilaterally to impose policies like mandatory immunizations, which directly affect the terms and conditions of nurses' employment, without such policies being specifically hammered out in bilateral negotiations with the nurses' union representatives.

The Court saw no basis to overturn the arbitrator's or the lower court's decisions. **Virginia Mason Hosp. v. Washington State Nurses' Assn.**, ___ F. 3d ___, 2007 WL 4463924 (9th Cir., December 21, 2007).

Management argued the arbitrator's decision went against public policies established by state and Federal regulations mandating infection control in hospitals.

State regulations require hospitals to adopt and implement infection control policies and procedures consistent with published guidelines from the CDC. Federal regulations require a hospital to maintain an active program for the prevention, control and investigation of infections and communicable diseases.

State standards for nursing prohibit a nurse from having contact with patients while suffering from a communicable disease.

Medical literature supports the idea that hospital personnel should be vaccinated against flu and other communicable diseases.

However, the fundamental legal policy in this case is that management cannot dictate unilaterally when the rank and file have a collective bargaining agreement.

UNITED STATES COURT OF APPEALS
NINTH CIRCUIT
December 21, 2007