



Canadian Airline Employees File Class Action Lawsuit Over COVID Vaccine Mandates

Description

The three initial plaintiffs in the lawsuit — a pilot, a flight attendant and an airport station attendant — were suspended or fired from their jobs after they refused to comply with the Canadian government's COVID-19 vaccine mandates for airline workers and passengers in October 2021.

Free to Fly Canada, an organization advocating against vaccine mandates for airline pilots and aviation professionals, last week filed a class action lawsuit in federal court against the Canadian government and Canada's minister of transportation.

The three initial plaintiffs in the lawsuit — a pilot, a flight attendant and an airport station attendant — were suspended or fired from their jobs after they refused to comply with the Canadian government's COVID-19 vaccine mandates for airline workers and passengers in October 2021.

The lawsuit makes several allegations, including breaches of the Canadian Charter of Rights and Freedoms, breaches of privacy rights, aggravated and punitive damages, and breaches of contract.

According to Free to Fly Canada, the class action is open to unvaccinated aviation industry employees who were adversely affected by the mandates.

In a press release, Free to Fly said the Canadian government “induced employers to violate contractual agreements for thousands of Canadian employees, violated rights guaranteed by the Charter, and interfered with free and fair collective bargaining.”

Noting that it's the first case of its kind to be brought in Canada, Free to Fly said those interested in joining the class action can demonstrate standing “through termination of employment, coerced early retirement, or suspension.”

“These suspensions were often called a leave of absence by employers, but given their involuntary nature were not thus, by definition,” Free to Fly said.

Greg Hill, a captain with Air Canada who was suspended in 2021, is the director of Free to Fly. He told The Defender:

“For the past couple years, Free to Fly has been carefully surveying the challenging Canadian legal landscape. This action is the product of that analysis, and it’s strategically unprecedented.

“Transport Canada’s Interim Order induced the breach of contractual agreements and led to serious harm for many aviation workers. On behalf of those suspended, terminated and otherwise harmed, we look forward to an opportunity to restore what’s been lost.”

Mandates violated ‘rights to life, liberty and security’

According to the lawsuit, the Canadian government’s mandate violates the plaintiffs’ and class members’ “rights to life, liberty and security of the person” and rights to “equality, freedom of conscience and freedom of association, in contravention of the principles of fundamental justice” foreseen in the Charter of Rights and Freedoms.

The lawsuit provides a timeline of events that led to the vaccine mandate for aviation industry employees, beginning on Aug. 13, 2021, when government officials announced their intent to require COVID-19 vaccination for employees in the federally regulated air, rail and marine transportation sectors, and for travelers.

Canadian Prime Minister Justin Trudeau and Deputy Prime Minister Chrystia Freeland on Oct. 6, 2021, announced that as of Oct. 30, 2021, “the Government of Canada would require employers in the federally regulated air, rail, and marine transportation sectors to establish vaccination policies for their employees.”

The policies would apply to “airlines and airports, and other organizations who have employees who enter restricted areas of airports, such as concession and hospitality workers,” and to federally regulated railways and marine operators.

Each organization in these sectors would be obliged to develop “a provision for employee attestation/declaration of their vaccination status,” a “description of consequences for employees who do not comply or who falsify information,” and “provide for a procedure for granting an exemption ... due to medical contraindication or their sincerely held religious beliefs.”

“As a result of these obligations ... organizations which were federally regulated by Transport Canada introduced mandatory vaccination policies which added a new, hitherto not-existing, fundamental term and condition of employment within contractual employment agreements,” the lawsuit states.

Under these new terms, employees who did not agree with or adhere to the policies were either suspended or terminated or both, even though they “all had freely negotiated, valid, and binding” contracts with no stipulation for mandatory COVID-19 vaccination or disclosure of COVID-19 vaccination status.

The lawsuit states that the plaintiffs were induced to disclose private medical information, were placed on unpaid leave and/or were terminated by their employers because they “either refused to share their vaccination status or are otherwise unvaccinated and thus did not conform to the Order.”

Hill, who worked for Air Canada since 2006 and reached the rank of captain, “maintained an exemplary and unblemished record until his suspension in 2021,” according to the lawsuit.

Another of the lawsuit’s three initial plaintiffs, Alberta resident Tanya Lewis, had worked as a flight attendant for WestJet since 2011, and “maintained an exemplary and unblemished record until her suspension in 2021 and her termination in 2022,” due to her own company’s mandatory vaccination policy.

Plaintiff Brent Warren, a resident of British Columbia, worked for Air Canada as a station attendant at Vancouver International Airport. He had worked for the company since 2005 “and maintained an exemplary and unblemished record until his suspension in 2021,” again in relation to Air Canada’s vaccination policy.

The lawsuit refers to the six COVID-19 vaccines available in Canada: Pfizer-BioNTech (Comirnaty), Moderna (Spikevax), Janssen and Johnson & Johnson (Jcovden), AstraZeneca (Vaxsevia), Medicago (Covifenz) and Novavax (Nuvaxovid).

For each of the six vaccines, the lawsuit states that the product inserts do not include “any information related to the transmission of COVID-19.” As a result, the plaintiffs argue that the Canadian government cannot claim that these vaccines prevent “viral transmission of COVID-19 to other people.”

The lawsuit also argues that the Charter of Rights and Freedoms provides plaintiffs with:

“The freedom of conscience to choose to exercise that freedom and not undergo a medical procedure, such as vaccination, absent injury to their neighbor.”

The plaintiffs said their rights were violated as a result of an infringement of “their security of the person, liberty and residual liberty in mandating a medical procedure and, in consequence of non-compliance, penalizing the Plaintiffs and Class Members with significant financial and emotional harm.”

According to Free to Fly, “2,800 Canadian aviation professionals, and 40,000 passengers” have signed up in support of the organization, which partners with US Freedom Flyers, an advocacy organization that opposes vaccine mandates for American aviation employees and has supported legal challenges against such policies.

By Michael Nevradakis, Ph.D.

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