

14 JUNE 2021

EMPLOYMENT LAW ALERT

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An end to the debate: The government expressly permits mandatory workplace vaccination policies

On 11 June 2021, the Department of Employment and Labour (Department) issued an updated Consolidated Direction on Occupational Health and Safety (Directive) which, among other things, expressly permits an employer to implement a mandatory workplace vaccination policy subject to specific guidelines. When implementing a mandatory workplace vaccination policy, the Department has cautioned employers to ensure that the rights of employees to bodily integrity and religious freedoms and beliefs are taken into account.

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AN END TO THE DEBATE: THE GOVERNMENT EXPRESSLY PERMITS MANDATORY WORKPLACE VACCINATION POLICIES

On 11 June 2021, the Department of Employment and Labour (Department) issued an updated Consolidated Direction on Occupational Health and Safety (Directive) which, among other things, expressly permits an employer to implement a mandatory workplace vaccination policy subject to specific guidelines. When implementing a mandatory workplace vaccination policy, the Department has cautioned employers to ensure that the rights of employees to bodily integrity and religious freedoms and beliefs are taken into account.

1 TIMELINE

Within 21 days of the Directive coming into force an employer must amend their workplace plan to include the following (3(1) (a) (ii) and (3)(3)):





- ✓ Whether they intend to make vaccinations mandatory. 
- ✓ The category of employees that must be vaccinated. 
- ✓ The manner in which it will adhere to the Directive. 
- ✓ The measures it will take to implement the vaccination of employees as and when vaccines become available. 
- ✓ Provide employees with paid time off to be vaccinated, provided an employee shows proof of vaccination (4(1)(I)(II)). 

2 CONSULTATION (3(1) (C) AND (D))

An employer must consult with the relevant trade union on the mandatory vaccination policy together with any health and safety committee established in terms of the Occupational Health and Safety Act 85 of 1993.

The policy must also be made available for inspection by trade unions, the health and safety committee as well as an inspector.

Factors to consider when determining mandatory vaccinations (3(1)(a)(iii)):

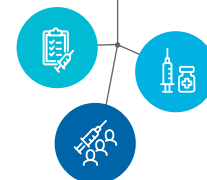
- ✓ Age. 
- ✓ Comorbidities. 
- ✓ Risk of transmission due to job role. 
- ✓ Any collective agreement in place on the subject. 

3 EDUCATION (4(1)(I)(II))

An employer must raise awareness among employees with regards to, among others, the nature, benefits and risks associated with the vaccines.

Objectives of the guidelines (Annexure C):

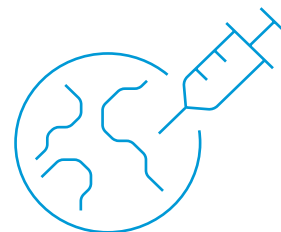
The guidelines to not supersede or undermine any collective agreement on the subject.



The guidelines are general and broad in nature and deviation may be required based on the specific workplace.


The guidelines are based on mutual respect and striking a balance between public health imperatives, the constitutional rights of employees and the efficient operation of the employers business.

AN END TO THE DEBATE: THE GOVERNMENT EXPRESSLY PERMITS MANDATORY WORKPLACE VACCINATION POLICIES



4 ESSENTIALS OF MANDATORY VACCINATION POLICY (ANNEXURE C)

A mandatory vaccination policy must include the following:





Notice to employees that they must be vaccinated as and when vaccines become available.

A right to refuse vaccination on constitutional or medical grounds.



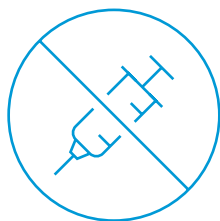
The opportunity for an employee to consult with a trade union representative, a worker representative or a representative of the health and safety committee.

Where reasonably practically possible, provide transport to vaccination sites.



Allow an employee sick leave or paid time off should they suffer side effects after having received the vaccine, alternatively make a claim on behalf of the employee in terms of the Compensation for Occupational Injuries and Diseases Act, 130 of 1993.


5 DEALING WITH REFUSALS TO BE VACCINATED (ANNEXURE C)



Where an employee refuses to be vaccinated on medical or constitutional grounds, an employer should:



Counsel an employee and allow them to confer with a trade union representative, a worker representative or a member of the health and safety committee.



Refer the employee for further medical evaluation where the objection is on medical grounds. This will however require the consent of the employee.



If necessary, take steps to reasonably accommodate the employee by making amendments to their role or work environment in one or more of the following ways: allow them to work from home where possible, require that they self-isolate in the workplace; or require the employee to wear an N95 mask while in the workplace.

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Michael Yeates ranked by CHAMBERS GLOBAL 2020 - 2021 as an up and coming employment lawyer.



AN EMPLOYER'S GUIDE

TO MANDATORY WORKPLACE VACCINATION POLICIES

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OUR TEAM

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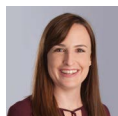
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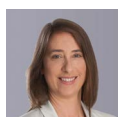
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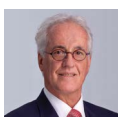
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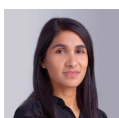
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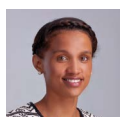
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BBBEE STATUS: LEVEL TWO CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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