

Mandatory vaccine policy: How to introduce one to the workplace

Vaccine hesitancy is a very real challenge for governments around the world, and in South Africa we are certainly not immune to this trend: only just over 10% of the population has had the jab, despite the fact that anyone over the age of 18 can be vaccinated if they so choose.



Source: ArtemPodrez – 123RF.com

While getting vaccinated is not (yet) a legal requirement, employers can now implement a mandatory vaccination policy in the workplace under specific circumstances and subject to certain constitutional checks and balances. This follows the publication of the amended Consolidation Direction on Occupational Health and Safety Measures in Certain Workplaces on 11 June 2021.

While this is an extremely emotional issue, employees working for certain companies may risk losing their jobs if they don't get jabbed.

Abigail Reynolds from the boutique law firm Reynolds Attorneys says these are some of the salient points of the Consolidated Direction which are important for employers to know if they are going to insist that all their employees are vaccinated.

Timeframes

An employer has 21 days, from the date the directive becomes enforceable (11 June 2021), to amend its workplace plan which must include the following:

- Will the employer consider or does it intend making vaccinations mandatory;
- For which category of employees would the vaccine be mandatory;
- The manner in which the employer will comply with the directive;
- What measures will the employer implement for employees to receive the vaccine when it becomes generally available;
- How and under what circumstances will employers provide its employees with paid time off to receive

the vaccine on condition an employee submits proof of vaccination.



Abigail Reynolds

Meetings/discussions with employees

Employers must meaningfully engage with any trade unions, which have a presence in their workplace, on the mandatory vaccination policy in conjunction with any established health and safety committee within the workplace.

Any subsequent policy must be open for inspection by the Department's inspectors, trade unions and the health and safety committee.

These are important features to contemplate when considering the implementation and shaping of a mandatory vaccinations policy:

- Age;
- Comorbidities;
- Risk of transmission due to the requirements of the position an employee holds;
- Any applicable current collective agreement in relation to this subject.

Fundamentals of vaccination policies

The following must be included in a mandatory vaccination policy:

- Notices informing employees that vaccinations are mandatory and they are required to be vaccinated when it becomes generally available;
- An employee's right to decline vaccination on constitutional or medical grounds.
- An employee's right to consult with a representative from either a trade union or health and safety representative from the committee or another workplace based representative;
- Provide the employee with transport to the vaccination sites where it is reasonably possible for an employer to do so;
- Permit employee to take sick leave or paid time off in the event he/she should suffer any adverse side effects after receiving the vaccine. Alternatively, assist the employee by making a claim on his/her behalf in terms of the Compensation for Occupational Injuries and Diseases Act.

Awareness education for employees

Employers are responsible to raise awareness amongst their employees with regards to, inter alia, the

nature, advantages and risks associated with the vaccines.

The aims of these procedures or guidelines should be:

- The aims should not surpass or undermine any collective agreements on the subject.
- The aims are an overall view and should be all-encompassing in nature with possible deviation required on a case by case basis in a specific workplace;
- The aims must be founded on mutual respect and creating a balance between public health imperatives, constitutional rights of employees and the proficient operation of an employer's business.

Rejection of vaccination policies by employees

Should an employee refuse to be vaccinated on constitutional or medical grounds, an employer should:

- Counsel the employee and permit him/her to discuss the matter with a trade union or health and safety representative from the committee or speak to another workplace based employee for assistance or guidance.
- Direct the employee to undergo further medical evaluation where the objection may be on any medical grounds. Please note that the employee must consent to undergo any additional medical evaluations; and
- If essential, consider and take reasonable steps to adapt the employee's job role or work environment where necessary and reasonably possible in the following manners:
 1. permit the employee to work while based at home;
 2. require the employee to self-isolate within the workplace; or
 3. issue the employee with an N95 mask and require him/her to wear it at all times while within the workplace.

“The severity of the Covid-19 variant spread is extremely challenging and getting as many people vaccinated as possible is critical. However, with such widespread vaccine hesitancy happening in South Africa, this is becoming a very real challenge. Now that employers can legally insist that employees get vaccinated, we can expect to see our statistics change. However, even with this new mandatory policy, the issue remains emotionally charged and we can expect to see legal cases in future from employees who consider this discrimination,” concludes Reynolds.