



Just after the start of the vaccination campaign, Mauritius hit an unexpected resurgence of the COVID-19 virus and a second national lock down was announced on the 10<sup>th</sup> March 2021 with gradual lifting of restrictions underway.

Our borders have been partially closed for more than a year now and a reopening is expected in the second semester on the condition that the population attains herd immunity through the resumption of the nationwide vaccination campaign. As of date more than 200 000 people have had their first injection while others are going through their second jab.

In this FAQs, our lawyers attempt to provide an insight of the application of a potential vaccination policy at the workplace from a Mauritian employment law perspective. It rests on the premise that in the absence of a clear legislative framework imposing vaccination against Covid-19 in the public interest, a person has a right to make his/her own autonomous choice with regard to medical treatment and a personal right to exercise his/her own free will to have his/her body or personhood interfered with.

This FAQ focuses on the consequences of this legal standpoint in its application to the management of health and safety risks at the workplace.

**This FAQs is provided for information purposes only and should not be construed as legal advice. Should you require legal advice or any assistance, please do not hesitate to contact us.**

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	Questions	Answers
1.	<b>Can an employer legally compel an employee to be vaccinated?</b>	As at date, there is no law in Mauritius which makes it compulsory for a person to take the Covid-19 vaccine. In the absence of an empowering law, vaccination is an invasion of the bodily integrity of a person and cannot be administered without his/her consent. No employer can therefore compel an employee to be vaccinated as it is the right of the employee to refuse to take an injection.
2.	<b>Can the employer refuse an employee who has not been vaccinated access to his workplace?</b>	The employer can refuse access to a worker when it reasonably believes that the employee shows symptoms of infection or otherwise who is reasonably suspected of being infected. The employee would then be on leave – whether it would be a sick leave, annual leave or otherwise a special leave will depend on the circumstances and conditions of employment.
3.	<b>Can an employer initiate disciplinary proceedings against an employee if he/she refuses to be vaccinated?</b>	<p>An employer cannot dismiss a worker on the ground that the latter has not been vaccinated, since it is a personal right whether to accept vaccination or not.</p> <p>There may however be circumstances where the refusal of the unvaccinated worker to comply with reasonable measures, taken in light of the particular assessment of risk to the collective body of workers at a particular place of work, may be amenable to disciplinary action.</p> <p>An employer must take careful consideration before envisaging to dismiss an employee for refusing to be vaccinated as it would not be without any risk of liability. A termination of employment may only be justified if the employer could not in good faith take any other course of action in the prevailing circumstances. This is highly fact specific and will vary from case to case.</p>
4.	<b>What are the obligations of an employer to ensure a secured workplace?</b>	Under the Occupational Health and Safety Act 2005, employers must, as far as reasonably practicable, ensure the safety, health and welfare at work of all their employees. In order to discharge its duty, an employer should ensure that it takes all reasonable actions to help prevent the spread of Covid-19, such as (amongst

		<p>others): ensuring employees wear masks, provide hand sanitizers, maintain social distancing at all times at workplace or require any employee who may present symptoms of Covid-19 to stay at home and contact a medical practitioner promptly. In short, reasonable measures adopted and enforced in practice to protect contamination of the virus would discharge the employer's duty.</p>
5.	<p><b>Can the employer persuade an employee to be vaccinated?</b></p>	<p>Although an employer cannot compel an employee to be vaccinated, it may however raise the awareness of its employees concerning the benefits and the potential risks associated with the vaccine and address any concerns or queries that the employees may have to ensure that they may take an informed decision at the time of the vaccination. But the ultimate choice should be left to the employee.</p>
6.	<p><b>What alternatives may be considered by an employer when employees refuse to be vaccinated?</b></p>	<p>Subject to the exigencies and the nature of the work, an employer may consider (amongst others) (i) setting up enhanced sanitary measures at the workplace, (ii) whether the employee may work from home or remotely, (iii) the viability for the employee to provide PCR tests on a fixed basis before allowing access to the workplace, (iv) the possibility to relocate the employee and/or (v) partially review the duties of the employee where possible (after consultation with the employee).</p>
7.	<p><b>Can an employer impose a health-oriented policy segregating the vaccinated employees from the non-vaccinated employees?</b></p>	<p>In some circumstances due to the nature and the exigencies of the work, an employer would need to consider the possibility of enforcing a mandatory segregation policy. It is advisable for the employer to first conduct a risk assessment review to determine whether there are compelling reasons to adopt a policy distinguishing between vaccinated and non-vaccinated workers.</p> <p>Several factors would need to be taken into consideration, such as (amongst others):</p> <p>1) the inherent requirements of the work;</p>

		<ol style="list-style-type: none"> <li>2) the number of vulnerable employees in the workplace;</li> <li>3) the number of employees exposed to the public;</li> <li>4) the possibility of alternative measures to limit the risk of contracting or spreading the virus in the workplace;</li> <li>5) the possibility of working from home or remotely;</li> <li>6) the possibility of temporary or permanent relocation of vulnerable employees or employees at risk;</li> <li>7) the readiness to pay for the costs of the vaccination of its employees;</li> <li>8) the risk of discrimination.</li> </ol> <p>It is advisable that this process is done in consultation with the employees or their representatives as any drastic change of company policy may constitute a substantial modification to the conditions of work of the employees. The introduction of a vaccination related policy works best when it results from a concerted effort by both employers and employees in fighting the spread of the Covid-19 virus in the general public interest.</p>
8.	<p><b>Can an employer require vaccination as a condition to recruitment of prospective employees?</b></p>	<p>It is possible to do so as the employer is in principle free to decide on the terms of recruitment. It is advisable however that the employer should have compellingly justifiable reasons before making vaccination a condition to recruitment, as the employer may otherwise be at risk of potential discrimination claims and the denial of a fundamental right of a person to make a medical choice. The issue is one of balancing the collective interest of the enterprise and the individual right of the candidate.</p>
9.	<p><b>What are the examples of sectors of activity where vaccination may be made a pre-requisite condition for recruitment?</b></p>	<p>Examples where vaccinations may be made a pre-requisite condition for recruitment are the airline, hospitality and healthcare industry. This can be justified to the extent that guests may eventually be required to be vaccinated before travelling and it may be deemed legitimate to expect employees to be vaccinated to provide a safe environment for the public. Since medical staffs are more likely to encounter persons infected with Covid-19 or put at risk vulnerable patients, employers in the healthcare industry may have a lawful basis to make vaccination a pre-requisite condition for employment.</p>

10.	<p><b>Can an employee refuse to attend the workplace or perform his/her duties on the ground that colleagues at work are not vaccinated?</b></p>	<p>The employer must ensure that the workplace is safe for all employees. If an employee has concerns, the employee must address his/her concerns to the employer. The employee cannot however unilaterally refuse to work or attend the workplace. The worker's complaint may be mediated with the help of the Ministry of Labour.</p>
11.	<p><b>Can an employer collect data on its employees' vaccination status?</b></p>	<p>The vaccination status of workers would constitute a special category of personal data under the Data Protection Act 2017 ("DPA"). Employers will therefore need to ensure that any records are collected, kept and processed in accordance with the DPA. There must be a legitimate justification for employers to do so and it is advisable for employers to communicate with its employees on this aspect and obtain their consent.</p>