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Mandatory Employee Vaccinations Globally: Can You Require Your Employees To Get The COVID-19 Vaccine Everywhere?

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The COVID-19 pandemic has dramatically impacted society at every level in every part of the globe. The activity of working has particularly changed during the pandemic. Indeed, in many places, workers have been unable to work together in the same physical space in nearly a year. Even those workers who have continued to report to a work site, physical distancing and separation remain the norm. Other workers have experienced sickness and loss due to the pandemic, preventing them from working at all.

As a result of this disruption, many employers have looked to the vaccines as a potential hope of getting back to business as usual. Many employers see the vaccines as a way to both eliminate the cost and risk associated with employees' illness and a way to bring people back together to engage in activities that support innovation and team building.

Yet, the key question remains -- can employers require employees receive the vaccine? The answer to this question varies throughout the world.

In the U.S., the answer is quite simple - U.S. employers can require employees to receive the COVID-19 vaccine. An employer's ability to require vaccination in the U.S. is only limited by employees' need for a medical accommodation, request for a religious accommodation, and the need to bargain with any existing union. While employee sentiment and public opinion may limit an employer's willingness to unilaterally require vaccinations, there is little legal basis that would hinder an employer's plan to do so.



On the other hand, employers in the U.S. who plan to incentivize, but not require employees to get vaccinated, face hurdles. Questions remain about whether financial incentives potentially run afoul of discrimination laws and protections for employees with disabilities. The safest legal course of action may be to encourage vaccination for everyone without incentive.

Outside of the U.S., however, the picture is quite different. Generally speaking in every other region of the world, employers likely are greatly restricted in their ability to mandate employee vaccinations. The basis for this prohibition varies from country to country, but the result is often functionally the same.

For example, in Australia, employers can direct workers to submit to a COVID-19 vaccination in very limited circumstances where that direction is reasonable and lawful. What is considered reasonable and lawful will depend on the specific facts relating to each worker including: the nature of the worker's role, the extent to which the worker will have close contact with others, the level of risk of exposure to COVID-19 in the job, the potential severity of any exposure to COVID-19, and the potential effectiveness of (and any safety risks with) a vaccine. Also, much like the U.S., workers can opt out of vaccinations based on religious and medical grounds.

On the other hand, in Germany, France, Italy, and much of the rest of the E.U., only the various public health ministries can specify when vaccinations are mandatory and under what circumstances. Privacy law also addresses worker privacy protections that likely would prohibit individual employers from requiring an invasive medical procedure, like a vaccination.

Similarly, in the United Kingdom, the public health regulations provide the government the authority to require mandatory vaccinations, strongly limiting individual employers' ability to require vaccinations.

Also, in Japan, employers are prohibited from requiring mandatory vaccinations. Indeed, in the past, the Japanese Ministry of Health, Labor and Welfare expressly prohibited mandatory vaccination with other diseases such as influenza.

Compulsory vaccination is the exclusive domain of public health authorities throughout Latin America as well, including Brazil, Argentina, and Columbia. The degree to which employers can require employees to be vaccinated in LATAM varies based on the industry and the individual's position.

This patchwork of regulation makes mandatory vaccination difficult to achieve globally on an employer by employer basis. As a result, employers are carefully considering the implications of developing mandatory vaccination policies in the U.S., while leaving their non-U.S. employee populations waiting for further direction from local government officials.

Stay tuned for further global developments on this emerging compliance issue. In the meantime, the K&S Global Human Capital & Compliance team stands by ready to assist multi-national companies to create a global approach to these issues, recognizing the balance between jurisdictional legal variation and the employee relations concerns.



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