

MANDATORY COVID VACCINES AND HUMAN RIGHTS: WHAT'S EXPECTED OF YOUR BUSINESS?

The COVID-19 pandemic has given rise to a complex human rights situation – how to protect the human rights to health and life while not disproportionately infringing on other human rights, such as the rights to work, move freely and assemble. As the pandemic continues to intensify, several Australian businesses are considering mandatory COVID-19 vaccinations for employees. In addition to the numerous legal considerations involved (which we do not address here) how can businesses also ensure that any such programmes align with their human rights responsibilities and commitments under the global business and human rights standards that key stakeholders expect them to follow?

WHAT DO HUMAN RIGHTS HAVE TO DO WITH COVID-19 VACCINES?

Mandatory employee vaccinations can help protect human rights, including the rights to health, life, and safe and healthy working conditions, by preventing the spread of COVID-19 between employees and to the wider community.

However, mandating vaccination for employees can also impact certain human rights, such as the right to health (if an employee suffers serious side effects), right to work (if a person is not permitted to work without having the vaccine), right to privacy (by requiring disclosure of vaccination status) and right to non-discrimination (if an employee cannot receive the vaccine for a reason that is protected by human rights principles, such as disability).

WHAT ARE BUSINESSES EXPECTED TO DO?

Although Governments are primarily responsible for safeguarding human rights, businesses have an internationally recognised responsibility to respect human rights as elaborated under core business and human rights standards, including the [UN Guiding Principles on Business and Human Rights](#) – in short, to not harm anyone's human rights (including the rights of employees) and if they do, to have processes in place to enable remediation.

SO HOW SHOULD BUSINESSES BALANCE CONFLICTING RIGHTS?

Different human rights often exist in tension with each other, and many human rights are not absolute. Most human rights can be limited by Governments in certain circumstances to safeguard other human rights, which can include public health reasons. However, rights can only be restricted when the restriction is necessary, reasonable and proportionate to safeguarding other rights. The [Australian Human Rights Commission](#) has also highlighted the need for transparency around why restrictions are necessary and the importance of considering whether restrictions may be discriminatory. While the commentary around legitimately restricting human rights focuses on Governments' roles and responsibilities, the principles outlined above can also provide guidance to businesses as they seek to balance competing human rights considerations in the context of mandatory COVID vaccines.

WHICH HUMAN RIGHTS ARE RELEVANT?

Multiple internationally recognised human rights are relevant to mandatory vaccines for workers, including:

- Right to life
- Right to health
- Right to security of person
- Right to work
- Right to safe and healthy working conditions
- Freedom of thought, conscience and religion
- Right to privacy
- Right to non-discrimination

SOME QUESTIONS TO CONSIDER

The following questions can help businesses consider whether a proposal to introduce mandatory vaccination for their employees is necessary, reasonable and proportionate, and in line with their human rights responsibilities and commitments, including in relation to the UN Guiding Principles on Business and Human Rights.

IS THE MEASURE NECESSARY, REASONABLE AND PROPORTIONATE?

- Are we in a sector where all or some employees are at high risk of contracting or spreading the virus (e.g. air crew, medical service)?
- Does our work put the community at risk, including at risk or vulnerable people (e.g. providing services to or engaging with vulnerable groups such as remote (including Indigenous) communities, older people or people with medical conditions)?
- Are there other reasons our work (either what we do or how we do it) gives rise to risks for employees or the community?
- Are there other feasible options that could adequately address the risks of employees contracting or spreading the virus (e.g. remote working, masks, working outdoors, additional spacing)?
- Will the programme be formally evaluated as the pandemic evolves?

HAVE WE CONSIDERED AND ADDRESSED THE RISK OF DISCRIMINATION?

- Have safeguards been put in place so that any potential discrimination is being considered, with a particular focus on at risk or vulnerable groups?
- Would a mandatory vaccine requirement allow exemptions in special circumstances (e.g. employees who cannot be vaccinated because of a disability)?

IS OUR PROGRAMME TRANSPARENT AND ARE THERE WAYS TO RAISE CONCERNS?

- Has sufficient information been provided to employees about the reason for mandatory vaccinations and how this will impact them?
- Have employees been meaningfully consulted about the programme?
- Will there be an effective mechanism for employees to make a complaint if they believe their human rights have been impacted?

WHO SHOULD BE INVOLVED IN MAKING THESE DECISIONS?

In-house legal, health and human resources teams are likely to be key functions involved in making decisions about mandatory vaccinations. Colleagues focused on implementing the business' human rights or broader sustainability policy or programme should also be included to ensure that mandatory vaccination decisions do not occur in a vacuum to the business' human rights responsibilities and commitments.