

Employer considerations for their employees and vaccines May 6, 2021

As of May 6, 1.17million first doses of the Covid-19 vaccine have been administered in Ireland. All signs are promising in terms of the Government's vaccination programme to ensure the majority of the population will have their first dose by June. However, supply issues are an ongoing problem and causing some delays. For example, the latest information from the Department of Health states that those aged between 35 and 59 will be vaccinated in June, however younger people won't be inoculated until July.

There is very positive news as restrictions are beginning to ease, particularly for employers who are planning to bring teams back to their workplaces. But where do employers stand when it comes to employees and vaccines? Can employers require employees get vaccinated before returning to the workplace? What guidance is there for employers to implement a vaccination policy?

Employees' rights under the Constitution

Firstly, under the Irish Constitution, every person has a right to body integrity, which effectively means that everyone has the right to have their body not interfered with; this includes vaccinations. Therefore, an employer cannot mandate or force employees to get vaccinated before returning to the workplace, regardless of where that might be. To do so would infringe on individuals' rights under the Constitution.

Privacy concerns

Employees also have the right to privacy under the Constitution as well as under GDPR and data protection legislation. So, while employers may want to know who has or hasn't been vaccinated before getting them back to the workplace, they need to consider the legal stance on this. In order to process personal data, there must be legal grounds to do so, which are set out in Article 6 of the General Data Protection Regulations. While employees are not obliged to provide personal medical information in the main, employers may seek vaccination information on the basis that they are meeting their legal obligations under the Safety, Health and Welfare at Work Acts. Realistically it will be up to individual employees to volunteer this type of information to their employer. If employees volunteer information about whether or not they have been vaccinated, employers need to take care not to disclose this to other employees.

Equality issues

If employers introduce a policy of mandatory vaccinations for employees, they may be opening themselves up to a claim under the Employment Equality Acts, 1998-2015. Under these Acts, employees have protections from discrimination on nine grounds, including religion, age and disability.

An employee may decide not to get the vaccine for a number of reasons that would come under these specific grounds, such as a medical condition or their religious beliefs.

We would also urge employers not to take any form of action against an employee who refuses to get the vaccine as it puts them at a higher risk of claims of unfair dismissal or discrimination.

Employers' Health & Safety responsibilities

Employers have a statutory duty to provide a safe workplace for all employees under the Safety, Health and Welfare at Work Act and must carry out risk assessments, take steps to minimise the risk to employees and follow current public health advice. This could create an issue for employers if an employee contracts Covid-19 as a result of inadequate measures, including contracting it from a non-vaccinated colleague, as they have grounds for a personal injury claim.

It is advisable for employers, to encourage, rather than mandate, that employees get the vaccine if at all possible. However, employers cannot force staff to get vaccinated before they return to the workplace. This may put employers at risk of legal claims under various headings outlined in above. Best practice would be for employers to remain flexible and engage with employees.

A continued focus on health and safety compliance is essential in the current and future environment and this is done through the updating of health and safety policies and procedures, the development, application and review of robust risks assessments and adherence to public health advice. Importantly employers must be respectful of an individual's right not to get vaccinated and plan accordingly by offering other working arrangements where appropriate to avoid a situation that may constitute discrimination, leading to legal issues.

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