EMPLOYMENT | Hong Kong’s COVID Vaccination Programme: Considerations for Employers

We set out here what we know about Hong Kong’s COVID-19 vaccination programme. This will evolve as more information is made available, so we will update the note regularly.

Every employer in Hong Kong should consider how the vaccination programme could impact its business and which questions it may face from employees and customers. In particular:

- Can an employer oblige its employees to be vaccinated?
- Can an employer encourage its employees to be vaccinated?
- Can an employer track which of its employees have been vaccinated?

Each of these questions is considered below.

Can an Employer Oblige its Employees to Be Vaccinated?

Every employee must comply with any lawful and reasonable direction of his or her employer. A failure to comply with such a direction is a breach of contract and may result in disciplinary action against the employee.

There is no unlawfulness involved in being vaccinated for COVID. As such, the question really becomes whether a direction to be vaccinated is reasonable.

This will depend on the circumstances in each case. For example, where the continuation of an employer’s business is dependent on employees being vaccinated (for example, in a service industry where customers expect persons with whom they come into close proximity to be free of the COVID virus), it may well be reasonable for the employer to direct employees to be vaccinated. In contrast, where the employer’s business does not require its employees to have any material interaction with
other employees or with customers, a direction requiring employees to be vaccinated is unlikely to be reasonable.

**Conclusion:** Each employer should consider its own business and the impact on such business of employees not being vaccinated. There is some emotional sensitivity around vaccinations so employers are, in our view, unlikely to mandate vaccination other than in the most obvious cases (e.g., the travel industry, care services and schools).

Can an Employer Encourage its Employees to Be Vaccinated?

Absolutely. However, employers should be careful about treating employees who refuse to get vaccinated less favourably as there is a small risk that this may fall foul of the Disability Discrimination Ordinance (treating an employee differently due to the presence of an organism in his or her body).

**Conclusion:** We anticipate that employers in Hong Kong may be active in advocating vaccination – even to the extent that senior levels of management may voluntarily advertise the fact that they have been vaccinated. Such vaccinations can be celebrated, but employers should be careful not to be seen to punish those who do not get vaccinated.

Can an Employer Track Which of its Employees Have Been Vaccinated?

The collection of information concerning vaccination will be a collection of personal data. As such it must comply with the principles set out in the Personal Data (Privacy) Ordinance.

A person collecting personal data must have a legitimate reason for such collection. For most employers, especially where employees work together in large groups or where they interact with customers, the collection of vaccination data could be justified to enable an employer to give comfort to customers or employees generally.

In seeking vaccination information from any employee an employer will need to inform the employee both:

- whether the employee is obliged to provide the information, and
- the impact if the employee refuses to provide the information.

**Conclusion:** We anticipate that many employers (especially those in the service industries) may look to track the number of staff who have been vaccinated. However, we anticipate that this will be achieved through a voluntary regime and employers will simply assume that non-responders have not been vaccinated.

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