

COVID-19 Vaccination - Hong Kong's Proposed Changes to the Employment Law and a Snapshot of Legal Requirements in Other Countries

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As part of Hong Kong's efforts to combat the COVID-19 pandemic, the Government proposes to amend the Employment Ordinance to address employment-related issues when implementing the anti-epidemic measures.

In this article, we will look at the proposed amendments and what other countries are doing to grapple with the effects of the pandemic.

Key proposed amendments to the Employment Ordinance of Hong Kong

The Government proposed amendments to the Employment Ordinance on 25 February 2022. The key amendments include:

1. If an employee is subject to any restriction on movement imposed under the Prevention and Control of Disease Ordinance ("Affected Employee") for a day, such day will count as a sick day;
2. sickness allowance is payable to the Affected Employee in certain circumstances;
3. it is not a valid reason to dismiss an employee or vary the terms of his/ her

employment contract on the ground that he/ she is an Affected Employee; and

4. it is a valid reason to dismiss an employee (other than an employee in one of certain specific categories) or vary his/ her employment contract if he/ she refuses to produce vaccination proof of COVID-19 vaccine recognised by the Government if required by the employer. Please refer to https://www.coronavirus.gov.hk/pdf/list_of_recognised_covid19_vaccines.pdf for a list of vaccines recognised by the Government.

One target group underlying the amendments is the employees who are not able to attend to work due to the prevailing legal requirements. They can be protected from termination or variation of employment terms and they will be entitled to sickness allowance.

Also, as part of Hong Kong's efforts to combat the pandemic, the above

amendments clearly set out that if an employee fails to comply with an employer's legitimate vaccination request, the employee may be regarded as being incapable of performing the work he/she is employed to do, therefore constituting a valid reason for dismissal or variation of employment terms.

According to the Government spokesperson, the amendments will be introduced into the Legislative Council as soon as possible.

Other countries' anti-epidemic measures

Let's now briefly look at some of the employment related measures imposed by other countries on how they grapple with the pandemic.¹

United Kingdom

Currently, only regulated care homes can legally require workers to get vaccinated. However, from 1 April 2022, regulated providers in the health and social care sector will also be able to legally require workers who have direct contact with patients to take a vaccination, subject to certain exceptions and medical exemptions. As vaccination is now mandatory for workers in care homes, employers in the care home sector may have a potentially fair reason to dismiss an unvaccinated worker.

Australia

An employer is responsible by law for providing a safe and healthy working

environment, including the health and safety of employees. An employer must regularly follow up and assess employees' working environment to mitigate risk factors. This may include mandating requirements for employees to be fully vaccinated in order to enter the workplace where it is lawful and reasonable to do so. Adequate actions need to be taken to safeguard individuals from infection at the workplace.

Singapore

Currently, there is no specific power for employers to demand mandatory vaccination. For unvaccinated employees, an employer may permit them to work remotely if the employer assesses that such working arrangements sufficiently meet their operational or business needs. However, as the vast majority of vaccinated employees eventually return to the workplace more frequently, the prolonged absence of the unvaccinated employees from the workplace may affect their individual performance as well as negatively impact team or organisational performance.

From 15 January 2022, for employees whose jobs require on-site working as determined by the employer and have not yet got vaccinated, the employer may:

1. redeploy them to suitable jobs which may be carried out remotely if such jobs are available, with remuneration commensurate with the responsibilities of the alternative jobs;

¹ This section only contains highlights of anti-epidemic measures and do not include all relevant details.
https://www.ey.com/en_gl/law/what-regulations-govern-returning-to-the-office-as-we-enter-the-beyond-phase

2. place them on unpaid leave based on mutually agreeable terms. By not attending the workplace, unvaccinated employees are protected from being exposed to the threat of the COVID-19 virus; or
3. as a last resort, after exploring options above, terminate their employments (with notice) in accordance with the employment contracts. If the termination is due to the employee's inability to attend the workplace to perform his/her contracted work, such termination will not be considered as wrongful dismissal.

India

Currently, the obligation of ensuring that employees are fully vaccinated has been imposed on the owners/management of the institutions. While an employer cannot force an employee to take a vaccination or dismiss an employee on the grounds of refusal to get vaccinated, the employer may mandate that only those employee(s) who are duly

vaccinated shall be permitted to enter the workplace.

In case an employee refuses to take a vaccination and consequently is unable to attend the workplace, the employer may take appropriate disciplinary actions, including termination of their employment on grounds of voluntary absenteeism.

Germany

There is a facility-based vaccination obligation in the healthcare sector. Mandatory vaccination applies to employees who work, in facilities such as hospitals, nursing homes, disabled care centers, doctors' offices, emergency medical services, and maternity facilities. For other sectors, whether public or private, vaccinations are not mandatory, and employers may not oblige employees to take a vaccination and may not dismiss employees if they are not vaccinated.

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