



## COVID-19 VACCINES IN THE WORKPLACE: CAN EMPLOYERS MAKE THEM MANDATORY?

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The ‘novel’ Covid-19 coronavirus continues to live up to its name, presenting new and evolving challenges for businesses as time goes on. The latest of these is the imposition of what some have termed ‘no jab, no job’ policies, under which employers seek to make it mandatory for their employees to be vaccinated against Covid-19. Are such policies enforceable in Trinidad and Tobago?

### Health Matters In the Workplace:

When it comes to matters of health, some could argue that there is an inherent tension between an employee’s right to privacy and autonomy on the one hand and an employer’s legitimate business interests on the other. An employee’s rights in medical matters ought not to be lightly interfered with. However, they are not necessarily absolute. Employers can and do make enquiries and impose requirements on matters relating to employee health. For example, employers can make employment conditional upon employees being medically certified as fit to work, require employees to wear personal protective equipment or even terminate employees on medical grounds.

One can understand why some intrusion into matters of employee health might be reasonable. In certain circumstances, an employee’s health might have a direct impact on their ability to perform their job and in extreme cases pose health and safety risks. For example, a forklift driver with bad eyesight or a roofer with vertigo could potentially pose a danger to

themselves and others.

That said, not every intrusion into an employee’s health is justifiable. Where does mandatory Covid-19 vaccination fall along this spectrum?

The answer will be different for each employer and may even vary from job to job or between different worksites within a single organisation. Employers must carefully consider their own specific operational needs and objectives before making any policy decisions.

Employers could have a case for implementing Covid-19 vaccination policies where such policies:

- Are in furtherance of legitimate business objectives;
- Are reasonable and proportionate to those objectives;
- Allow for legitimate exemptions; and
- Are implemented in a realistic, practical and fair manner.

### Legitimate Business Objectives:

Some employers might have legitimate business objectives in favour of mandating Covid-19 vaccination, such as promoting workplace health and safety, public health and even customer confidence. However, it will be important for employers to be guided by information and recommendations issued by local health and employment regulators and to assess whether, and to what extent, vaccination actually achieves their desired objectives. For example, the efficacy of vaccination in the prevention of asymptomatic transmission is not yet settled.

### Reasonableness and Proportionality:

Even if an employer does have legitimate business objectives, this does not automatically entitle them to impose mandatory Covid-19 vaccination policies. Such policies must be also be reasonable and proportionate.

This means conducting an examination of:

- The risks that an unvaccinated employee might pose; and
- The extent to which such risks can be mitigated by other workplace controls such as social distancing, wearing face masks, sanitisation or remote work.

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