



## Coronavirus (COVID -19)

### GENERAL GUIDANCE DOCUMENT - Re: The COVID-19 vaccine

**DISCLAIMER:** *The material and information contained in this document is meant for general information purposes only. You should not rely upon the material or information in this document to make any business, legal, or other decisions.*

*It is recommended that you seek independent legal guidance on the subject matter.*

NOTE: The Public Health Act (2002 Revision) governs the control of disease and provides the legal basis for COVID-19 pandemic control measures. You are referred to the following link for further details in this regard - <https://www.exploregov.ky/government-covid19-policies>.

To assist the general public with general guidance as it relates to the COVID-19 vaccine and the potential impact that this may have on existing and potential employees the Department of Labour and Pensions has identified the following frequently asked questions.

As at 14 October 2021 the Immigration (Transition)(Amendment) Act, 2021 brought into effect the requirement for applicants for certain immigration statuses, including work permits, to provide evidence that they are fully vaccinated in order to obtain the immigration status they are seeking. Employees on new or renewed work permits will (subject to limited exemptions) therefore be vaccinated. The below guidance, therefore, relates to employees who are not currently mandated to provide proof of vaccination, and may also be relevant to determining whether to require employees to obtain booster shots.

#### **Frequently Asked Questions**

##### **1. Would it be unreasonable for an employer to require an employee to have the vaccine?**

- The Cayman Islands do not have regulations in place concerning compulsory vaccination.
- Employers have a general duty to take reasonable steps to maintain a safe work environment for employees; however, there is no provision in the Labour Act (2021 Revision) regarding the protection of employees from the transmission of communicable diseases.
- To assist employees in making an informed decision, employers should educate their employees with independent, factual information about the risks associated with the COVID-19 virus and the specific impact on the workplace.

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- Employers should assist employees by explaining the benefits of vaccination, and encourage and employees to be vaccinated.
- Consideration should also be given to whether mandatory vaccination is a reasonable way to deal with the potential risk of exposure to the virus in specific circumstances and whether alternative measures could be taken to mitigate any such risk.

**2. Would it be unreasonable for an employer to include a requirement to be vaccinated as part of company policy?**

- A requirement for vaccination might be a reasonable measure depending on the nature of the business.
- While employers have a legal responsibility to ensure the health and safety of their employees as far as reasonably possible, engaging in a policy to mandate vaccination could raise several legal issues, for example, where an employer took punitive or disciplinary action if an employee refuses to be vaccinated or discrimination is alleged.
- Employers who are keen for their employees to be vaccinated but do not have any contractual right to mandate that they do, should obtain the employee's consent.
- It may be more practical for employers to introduce mandatory vaccination as part of its hiring practice rather than amend the agreements of existing employees.
- Employers should ensure that new hires are made aware of this requirement prior to employment.
- Employers should assess the nature and needs of their businesses and be cautious about treating job applicants differently because of their vaccination status.
- Consideration should be given to potential legal exposure and other risks associated with the implementation of a mandatory vaccination policy.

**3. Can an employee refuse to take the COVID19 vaccine?**

- There are currently no regulations in place concerning compulsory vaccination.
- Some employees may have a legitimate basis for declining the vaccine irrespective of their work environment.



- Even where there are certain elevated health and safety risks due to the nature of the job, employers need to balance this against their ability to mitigate the safety risk posed.
- Where an employer has the contractual right to require an employee to get vaccinated and the employee refuses, the employer may be able to take disciplinary action as the employee may be in breach of contract.
- Employers should approach the taking of disciplinary action with caution since dismissing an employee is not without legal risk.

#### **4. Additional Considerations**

##### Data Protection

- Employees' vaccination status is medical data and therefore constitutes "sensitive personal data" for the purposes of section 3 of the Data Protection Act (2021 Revision)
- Employers that wish to maintain a record of employees having been vaccinated must do so in accordance with the Data Protection Act (2021 Revision).
- Employers must ensure that employees are made aware of "why" the data is being collected, "who" will see it, and "how" the data will be used.

The processing of the data must comply with the data protection principles and the conditions for fair processing applicable to sensitive personal data. It is likely that the employee's consent would need to be sought prior to the processing of their sensitive personal data.

- Employers should also ensure that they only receive information which they absolutely need.

##### Voluntary Vaccination

The Cayman Islands Government is currently offering the COVID-19 vaccine voluntarily. While it is encouraged that the vaccine is taken, persons are allowed to decide whether they wish to be vaccinated.