

Is COVID-19 vaccination mandatory for employees?

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Background

Supreme Court decision

Ordinance 597

National Immunisation Programme

Comment

A recent Supreme Court decision regarding compulsory vaccination has sparked debate about employers' rights to request that their employees be vaccinated. On 18 January 2021 the COVID-19 vaccination campaign began, turning up the heat on this matter.

Background

Brazil has one of the most prestigious vaccination programmes in the world and ensures vaccination, free of charge, to all people that live in the country, regardless of nationality or visa status.

Over the past 47 years, Brazil has eradicated yellow fever, smallpox and polio. The vaccination programme has also controlled diseases such as measles and diphtheria, which is a great achievement for a developing continental country with 210 million people.

The good results created an impression that everyone in Brazil had been vaccinated against the main diseases since they were a child, so employers started not to pay attention to this matter.

However, in 2019 Brazil suffered a controlled, but still unsettling, outbreak of measles that initiated a discussion regarding compulsory vaccination. In 2020 the world, and Brazil specially, suffered from the COVID-19 pandemic and the possibility of a vaccination resulted in a more complex discussion.

Against this background, the Supreme Court was asked to declare whether legislation compels Brazilians to be vaccinated, even without their consent.

Supreme Court decision

The Supreme Court declared that COVID-19 vaccination in Brazil is mandatory. However, the authorities cannot directly force adults to be vaccinated against their will. Legislation provides indirect forms to guarantee such vaccination.

Ordinance 597

In 2004 the Ministry of Health issued Ordinance 597, pursuant to which employers had to request from employees, before hiring them, proof that they had received all of the mandatory vaccines, as defined in the National Immunisation Programme.

The ordinance set out the vaccines that all individuals must have received, highlighting the appropriate age and dosage, so that employers could check whether their employees had all the necessary vaccines through their HR or environmental health and safety teams.

However, in 2006 Ordinance 597 was revoked and a new document excluded the obligation to present vaccination cards at the hiring stage. New regulations were issued after 2006 also left out the authorisation for employers to request a vaccination certificate from their employees.

Consequently, employers may have believed that since 2006, they have been without any legal support to implement this type of internal control or inspection. However, employers have other legal ways that can guarantee their right to request that their employees be vaccinated.

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National Immunisation Programme

The National Immunisation Programme was created by federal law and states that all people must receive the vaccines that the Ministry of Health defines as mandatory. In addition, the Labour Code establishes that employers may implement internal policies as long they abide by the law.

Therefore, employers can define via an internal policy that employees must:

- receive all of the mandatory vaccines, as set out in the National Immunisation Programme; and
- present an updated vaccination certificate before hiring or from time to time.

For example, vaccination policies may grant employees 60 days to obtain such document or initiate the vaccination process, so that employers can inform them that failure to comply with this term may subject the employees to disciplinary measures.

The design and implementation of such policies currently represents a challenge for companies, considering the lack of law and court precedents on the matter. However, it may be the most effective measure for employers to offer a safe work environment for their employees.

If a COVID-19 vaccine becomes part of the National Immunisation Programme, it will guarantee that it is a mandatory vaccination in Brazil and employers will have a legal basis to support their policies and request such vaccination from their employees.

Such request will have no cost for companies, since the National Immunisation Programme guarantees free access to vaccines. Further, such measure may represent a reduction of costs, as employers could have fewer employees on sick leave.

Comment

At present, COVID-19 vaccination is focused on key risk groups, so the majority of employees will be unable to be vaccinated yet. However, it is likely that the majority of Brazilians will be vaccinated by the end of 2021, so employers should consider implementing internal vaccination policies as soon as possible.

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