

# Mandatory Vaccination?

A brief review of employment issues relating to COVID19 vaccinations

The Government of the Bahamas has announced that it could receive 100,000 doses of the AstraZeneca vaccine starting the second half of February and into the end of the second quarter of 2021.

The prospects of COVID19 vaccines in country is indeed welcomed news for some and perhaps signals some return to normalcy, especially to boost the Bahamian economy.

This news no doubt has caught the attention of many employees, who may have asked the question,

*“Must I be vaccinated in order to keep my job?”*

If an employer *mandates* that its existing, permanent employees be vaccinated, there is reasoning to believe that such a demand may be based upon section 4 of the Health and Safety (‘Health Act’),

*“It shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees”*

Relying on section 4 of the Health Act, an employer *may* argue that the requirement to be vaccinated is a “reasonable” order and must be obeyed.

It is accepted that in certain sectors, most especially where there is a large number of employees and guests, vaccination along with strict adherence to other COVID19 protocols, may be best to minimize the risk of the spread of COVID19.

Having said that, an employer ought to exercise much caution when seeking to impose vaccination as a requirement for continued employment. Such an imposition may result in the following:

- i. **A unilateral variation of the employment contract.** Vaccinations were [are] not an incorporated term in the contract of employment. To make vaccinations mandatory without consent of the employee, may result in a claim of constructive dismissal.
- ii. **Discrimination.** If only non-vaccinated employees are terminated or lose a benefit, *i.e. reduced work hours /change of position or title*. Regard must also be had to the Persons with disabilities (Equal Opportunities) Act 2014. There may be employees who have, “*a long term disability including physical, mental, intellectual, development or sensory impairments and other health related illnesses*”, which prohibits them and/or they have been advised not to take any COVID19 vaccinations. To insist that such a person be vaccinated to keep his/her job would be discrimination.
- iii. **Infringement of Constitutional rights.** It may be the claim of some employees that vaccinations are against their religion. Article 22 of the Constitution provides:

*22. (1) Except with his consent, no person shall be hindered in the enjoyment of his freedom of conscience, and for the purposes of this Article the said freedom includes freedom of thought and of religion*

At present, there is still much to be learnt about COVID19 vaccines. The timeline of availability of vaccines in country for “*all*” is unknown. The Government has confirmed [for the moment] that COVID19 vaccination will not be mandatory. This may be instructive to private employers.

Given these variables, and the risk of potential claims by employees, serious consideration ought to be given to alternative policies for minimizing the spread of COVID19.

Employers and employees are encouraged to:

- **make use of working remotely where possible**
- **continuously engage in consultation/dialogue**
- **make use of established COVID19 protocols**



328-8119  
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