



**Discussion notes from our sponsor Ashurst Lawyers on:
"No Jab, No Job"**

EMPLOYER'S Q&A ON VACCINATION PROGRAMS IN PAPUA NEW GUINEA

1. WHAT SHOULD EMPLOYERS BE DOING ABOUT VACCINATIONS FOR EMPLOYEES?

B4H suggests that employers should offer awareness and encouragement to employees participate in vaccination programs. The current COVID-19 vaccination program will be ongoing and overtime it will change. Employees should check and keep their own vaccination records because it is likely that this topic will be relevant for everybody's work life going forward.

2. SHOULD EMPLOYERS HAVE A "MOBILITY AND ACCESS POLICY" WHICH HAS DISCRETION ABOUT VACCINATION REQUIREMENTS?

It is prudent for employers to have policies that reserve the employer's ability to give directions about work travel/ locations, and public access, which may include vaccination requirements.

For example, it is already the case that, by law, domestic air travel for the workforce is limited to "essential business travel" (under Measure 3 of the National Pandemic Orders). It follows that an employer should have policies to determine what employee travel is essential.

3. CAN UNVACCINATED WORKERS TRAVEL DOMESTICALLY?

There is no legal restriction on travel for unvaccinated workers at the time of writing, but it is conceivable that this may change.

If it became apparent that there was a particular risk in a time, location or mode of travel, it would be reasonable for an employer to restrict travel or to limit travel to vaccinated workers, since they are at lower risk of contracting COVID-19.

4. CAN UNVACCINATED WORKERS BE ON THE "FRONT LINE"?

The answer is much the same as question 3. There is no legal restriction for unvaccinated workers being frontline workers (for example, healthcare workers exposed to persons with suspected COVID-19 symptoms) at the time of writing, but it is conceivable that this may change.

Since an employer cannot force employees to be vaccinated, other steps may be needed to satisfy the employer's duty to provide a safe system of work which will vary from setting to setting. For example, health workers are at greater risk from COVID-19 if PPE is not available. A failure to provide PPE to a worker in a specific risk scenario could potentially lead to a breach of duty by an employer. Similarly, workers in high risk settings should at least be advised that the employer strongly recommends that the employee obtains vaccinations and uses PPE.

5. CAN AN EMPLOYER ADOPT A "NO JAB LOSE YOUR JOB" POLICY?

An employer probably could not terminate an existing employee merely for the reason that they had refused to participate in a vaccination policy. At present the only strict legal exception would be if, with the approval of a Department of Health quarantine officer, an employee in quarantine was directed to be vaccinated and refused to do so, since that is

the only setting under the law at present where it is mandatory to be vaccinated.¹ This is purely hypothetical because the Department of Health, at present, does not make vaccination compulsory in quarantine. (It is of course a different situation for international travel, and it is conceivable that restrictions on domestic travel could change).

In Fiji, a different approach has been taken under workplace health and safety regulations,² and it is speculated that these could be subject to legal challenge. In Papua New Guinea, workplace health and safety regulations of that kind would need very specific legislative amendments which would probably need to go further than the arrangements put in place for the *National Pandemic Act 2020*. The reason is that the Papua New Guinea Constitution has a set of guaranteed rights which, in order to be modified, must have very specific requirements approved by legislation. An employer cannot adopt policies that go further than the applicable legal requirements.

6. **WILL PNG VACCINATIONS BE RECOGNISED OVERSEAS?**

At the time of writing, there was no official recognition of PNG vaccinations overseas- for example, the United Kingdom has indicated it will only accept its own vaccination programs. This will of course be a very important topic and hopefully one where change will occur.

7. **IS THERE ANY ANTI-DISCRIMINATION LAW THAT EMPLOYERS SHOULD BE AWARE WHEN DEALING WITH UNVACCINATED EMPLOYEES OR PROSPECTIVE EMPLOYEES?**

There are no anti-discrimination laws relating to health (except anti-discrimination in relation to a person's HIV/AIDS status, plus anti-discrimination in relation to gender in employment, and in relation to citizens, race, tribe, place of origin, political opinion, colour, creed, religion or sex).

An employer could amend or adopt a vaccination policy and use it "going forward", such that new employment offers (or renewal for contract officers) are subject to that policy.

Given vaccinations are likely to be a more regular occurrence going forward, it would be desirable for this policy to be fairly general (and not limited to COVID-19).

Accordingly, B4H suggests that employers address their general workforce safety, and workforce composition, requirements rather than advocating for "no jab no job".

Employers should of course consult their legal advisers about their rights and obligations in relation to their workforce.

Businesses for Health Papua New Guinea Inc. is a registered not-for-profit association supported by the private sector of PNG. Our mission is to reduce the burden TB & HIV places on businesses, their employees, families and their local communities. Since February 2020, we have worked to support the national effort to mitigate the impact of the global Coronavirus disease (COVID-19) pandemic.

Annual subscriptions and private sector sponsors fund the PNG team. Our annual subscription program which includes training your non-health staff in TB, HIV and COVID-19 related infection prevention, management and health promotion. We support your trainees to become TB wardens who can identify cases of TB in their workplaces, support those found to have TB to complete their treatment, and to get them back to work in the shortest period of time.

We provide workplace health advocacy, policy and workplace TB, HIV and COVID-19 services and coordinate with all levels of the National Department of Health, the PNG National TB program and the National AIDS Council.

For more information about our work, how to support or make a donation to our program please contact Dr Ann Clarke, annmclarke@businesses4health.com

Please call our bmobile toll-free info-line for any concerns about people with TB or HIV in your workplace 7676 2482.



¹ *Quarantine Act* (Chapter 234 of the Revised Laws) Section 97.

² *Health and Safety at Work (General Workplace Conditions) (Amendment) Regulations 2021* (Fiji).