



Client Alert - Saudi Arabia: Mandatory Vaccination to Attend the Workplace

In brief

Employers have been facing many difficult and untested employment law issues over the last year and a half with COVID-19 and the impact it is having on their business. One of the most critical of these issues is whether they can make vaccination compulsory for their employees.

On 7 May 2021, the Saudi Ministry of Human Resources and Social Development ("**MHRSD**") announced that it would be mandatory for public and private sector workers to be vaccinated in order to attend the workplace. On 18 May 2021, the Ministry of Interior ("**Moi**") clarified that this mandate would come into force on 1 August 2021. In this article, we provide a brief background on how the new requirement works in practice.

Mandatory Vaccination

In order to enter all public and many private facilities, an individual must present proof of their health status, as displayed on the Tawakkalna App. (The Tawakkalna App is the official Saudi contact tracing App. All citizens, resident and visitors to the Kingdom must download the App on their smartphone to verify or provide proof of their vaccination status, current infection, or history of infection.)

As of 1 August 2021, employers must request to see each employee's health status on the Tawakkalna App, and keep a record of the same, showing that the employee is:

- vaccinated by one or two doses of the vaccines that are approved for use in Saudi Arabia (which are: Pfizer/BioNTech, Oxford/AstraZeneca, Moderna, and Johnson & Johnson. If a visitor has two doses of Sinopharm or Sinovac, they will be allowed to enter the Kingdom provided they have also received one dose of one the vaccines that are approved in the Kingdom); or
- recovered from COVID-19; or
- exempt due to medical reasons or non-medical reasons (at this stage, it is unclear precisely which medical and non-medical reasons would exempt an individual from being vaccinated, although we

understand from a Ministry of Health announcement, that a non-medical reason for exemption is where the individual is under the age of 12).

If an employee is not vaccinated, recovered, or exempt, the employer must request the employee to work remotely. To the extent the employee's position does not permit them to work remotely, the employee should not attend the workplace, and will be considered to be on annual leave.

Once the employee's annual leave days expire, the employee will be placed on unpaid leave for 20 days. (If the employee becomes immune, recovers from COVID-19, or exempt during their annual or unpaid leave, they may return to the workplace.) Once the 20 days unpaid leave expires, the employee's contract will be considered suspended, unless the parties agree otherwise. If there is no agreement between the parties, the employer may impose any of the disciplinary penalties provided for in the Labor Law (discussed below), and inform the employee of its decision on the matter. Nevertheless, there is nothing to prevent an employee from resigning if they are adamant about not taking the vaccine or are not in one of the exempt categories (but they would be unable to work in the public or private sector in Saudi Arabia).

Disciplinary Penalties

The Labor Law identifies the following disciplinary penalties (which an employer may impose following the disciplinary process outlined in the law):

- a warning;
- a fine (an employee may not be fined more than five days' wage in a month);
- withholding or postponing allowance for a period not exceeding one year if prescribed by the employer;
- postponing promotion for a period not exceeding one year;
- suspending the employee from work and withholding their wage (this may not exceed five days a month); and
- dismissing the employee from their job on the bases set forth in the law.

Article 80 of the Saudi Labor Law lists a number of permissible bases to terminate an employee for "cause", which does not require notice or payment of an end of service award. One of these bases, is where an employee "fails to perform essential obligations arising from the labor contract, or to obey legitimate orders ..." An employer might seek to rely on this provision of Article 80 to terminate an employee who is not vaccinated, recovered, or exempt, and refuses to take the vaccine (once the employee has used all their annual leave and has been on unpaid leave for at least 20 days).

It is difficult to predict whether a Saudi labor court hearing a dispute would find that an employee's refusal to take the vaccine is a sufficient ground to terminate for cause under the above cited provision of Article 80,

considering that vaccination in the workplace only became mandatory on 1 August (so any such cases would unlikely be before the courts yet). In any case, the Saudi labor courts, like other adjudicatory authorities in Saudi Arabia, have no system of binding precedent or case reporting system. Having said that, mandatory vaccination in the workplace are government orders, not only employers' orders, which would likely bolster the case for a "for cause" termination.

Possible Sanctions on Employer

Mandatory vaccination in the workplace is based on official instructions from the MHRSD and Mol; employers must follow such instructions and ensure that their employees attending the workplace are vaccinated. Penalties could be imposed on an employer for failure to ask employees to show their health status; not keeping a record of the same; or permitting non-vaccinated, non-recovered, or non-exempt employees to enter the workplace.

Also on 1 August 2021, the Ministry of Commerce's representative announced the penalties on an entity for failure to comply with COVID-19 prevention measures (which include checking employees' / customers' temperature and health status on the Tawakkalna App when entering the workplace / store, and requesting employees / customers to wear a mask at all times). The penalties include a fine between SAR 10,000 to SAR 100,000 depending on the entity's size, and temporary closure of the entity for five days. Fines are doubled if a violation is repeated up to SAR 100,000, and closure of the establishment could be up to six months.

The authorities have requested individuals to report violations of any COVID-19 precautionary measures to the authorities, by calling 911 in Riyadh and Makkah, and 999 in all other regions of the Kingdom, therefore, it is important that employers and employees comply with the relevant measures.

Contact us



Abdulrahman AlAjlan
Partner
abdulrahman.alajlan
@legal-advisors.com



George Sayen
george.sayen
@legal-advisors.com



Zahi Younes
zahi.younes
@legal-advisors.com



Christiana O'Connell-Schizas
christiana.o'connell-schizas
@legal-advisors.com