



Jackson, Etti & Edu



COVID-19 VACCINE: MANDATORY OR OPTIONAL FOR EMPLOYEES?

March 2021



Introduction

It is no longer news that about five pharmaceutical companies worldwide have rolled out vaccines for the prevention and treatment of the Covid-19 virus. These vaccines are already being administered in single and double doses in Europe, America, United Kingdom, etc., and the first batch has been received in Nigeria. Some employers are of the opinion that remote working is the new normal; others believe that it is an anomaly and only a return to office will bring back normalcy to most businesses. The question is, can employers mandate their employees to take Covid-19 vaccines not only as part of their obligations to provide a safe working environment but also to protect the employees as they travel to and from the office to their respective homes daily?

Generally, employers are obligated to provide a safe working environment. Before the Covid-19 pandemic, this would typically include providing personal protection equipment, education, and training on workplace safety, prevention or management of occupational hazards, and cultivating a general culture of safety. On the other hand, the employees have an obligation to co-operate with the employers to fulfill their obligations regarding workplace safety. The employees' obligations include taking reasonable care of their health and having due consideration for the protection of others that may be affected by their acts or omissions, complying with lawful/reasonable safety instructions, and using health, safety, and other protective equipment/devices properly.

The peculiarity of the Covid-19 virus has, however, altered the pre-existing safety measures. In addition to the safety measures identified above, employers now have an obligation to take preventive measures in the spread of the virus, most of which are supported by law. These include ensuring that employees wear a face mask, providing and ensuring the use of hand sanitizers and washing facilities, ensuring social distancing, and checking body temperature. The latest development in the prevention and cure of the virus is vaccination. This would require injecting the Covid-19 vaccine into the human tissue, which is eventually processed and delivered to the immune organs.

As of the date of this publication, there is no law that mandates a citizen of Nigeria to take the vaccine. This is more so due to the other preventive measures that can be adopted to reduce the spread of the virus and the recovery rate of those infected. Thus, whether an employer could mandate its employees to take the Covid-19 vaccine as part of its obligations to provide a safe working environment would depend on the facts of each case, including the nature of the employment and the rate at which the employees interact with members of the public.

What Options Are Available to Employers?

Employers may educate the employees on the many benefits of taking the vaccine and advise that it is the optimal option for ensuring a safe working environment for all employees. It may also, without discrimination, provide certain incentives for employees who have taken the vaccine. These incentives should be connected to workplace safety, such as redeployment or change in job roles. Employers must avoid discrimination based on vaccination, as vaccination is



only one of the options in the treatment and prevention of the spread of the virus. Employers should also ensure strict compliance with the other lawfully recognized means for preventing the virus, such as face masks and hand sanitizers, maintaining social distance at the workplace, and checking body temperature.

Upon discovery of a suspected case of Covid-19, or where the body temperature of an employee is beyond the ideal degree, it may, in compliance with its obligation to ensure safety at the workplace, direct such an employee to conduct a Covid-19 test, and provide the result to the employer as a condition for resuming work at the office place. It may also direct an employee to work remotely. Employers must also consider the legal requirements for data protection and the maintenance of employees' privacy when dealing with information connected to Covid-19 or the employees' vaccination.

Regarding recruits, an employer is at liberty to make vaccination a condition precedent to recruit new employees or one of the conditions to be satisfied during the probationary period. This is contractual and may be enforced accordingly.

Can Employers Terminate the Employment of Employees Who Refuse To Take The Covid-19 Vaccine?

Generally, an employer cannot terminate the employment of employees for not taking the vaccine, where it does not form part of the terms of employment. This is because employment relations are contractual, and employment termination must comply with the terms of the contract. However, an employer can terminate an employee's employment where the directive to take the vaccine is considered reasonable in the circumstance based on the nature of employment and job function of the employee. Redeployment, workforce restructuring, or remote working may be considered before resorting to termination.

Also, an employer can terminate the employment of an employee who has refused to comply with the lawfully recognized measures in the prevention of the virus, such as refusal to wear a face mask, use hand sanitizers, comply with the social distance mechanism at the workplace, or refuse to have his/her body temperature checked. For instance, where a body temperature has been checked, and it is beyond the medically acceptable degree, the refusal to leave the premises or to subsequently provide Covid-19 test results may be seen as justifiable reasons for termination of employment. Termination of employment for these reasons will fall under the breach of the employee's duty to co-operate with the employers to fulfill their obligations regarding workplace safety.



Conclusion

Until there is a statutory provision mandating vaccination of citizens of Nigeria or any category of people in Nigeria, or a contractual obligation, an employer may struggle to mandate the taking of vaccines by its employees. It may also struggle to legally enforce any action taken in that regard under the guise of ensuring a safe working environment due to the existence of other legally recognized options.

While there may be instances where a directive by the employer for the employees to take the vaccine may be considered reasonable, legal advice must first be sought before pursuing this line of action.

Authors

Taiwo Adeshina

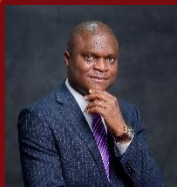
Partner

Obioma Okonkwo

Senior Associate



Key Contacts



Taiwo Adeshina

Partner, Corporate Commercial

e: taiwoadeshina@jacksonettiandedu.com



Obioma Okonkwo

Senior Associate, Corporate Commercial

e: obiomaokonkwo@jacksonettiandedu.com

Jackson, Etti & Edu is a full -service law firm with a sector focus, rendering legal services to Nigerian, Pan-African and International clients in diverse jurisdictions. We have earned a reputation for delivering commercial advice across all the key sector s: energy & infrastructure, fast moving consumer goods (FMCGs), financial services, health & pharmaceuticals, public sector, and technology, media & entertainment.

Further information about the firm is available at www.jacksonettiandedu.com. This is a publication of Jackson, Etti & Edu and is for general information only. It should not be construed as legal advice under any circumstances.



Jackson, Etti & Edu

RCO Court 3-5, Sinari Daranijo Street,
Victoria Island, Lagos, Nigeria.

t: +234 (1) 4626841/3, +234 (1) 2806989f: +234 (1) 2716889

e: jacksonettiedu@jacksonettiandedu.com

www.jacksonettiandedu.com