

HR Law Hotline

August 31, 2021

BANGALORE CITY AUTHORITY MANDATES EMPLOYERS TO VACCINATE THEIR EMPLOYEES

- Bangalore city authorities have issued a circular mandating *inter alia* commercial establishments and offices in Bangalore to ensure that its staff are vaccinated against COVID-19.
- The circular provides a deadline of August 31st, 2021 to ensure that the staff is vaccinated with at least one dose of the COVID-19 vaccine.
- The vaccination cost is to be borne by the employer.

The Chief Commissioner of the Bruhat Bengaluru Mahanagara Palike ("BBMP") has issued a circular (which has been published on the official twitter account of the BBMP Commissioner on August 26, 2021 ("BBMP Circular") casting an obligation upon employers of commercial establishments/industries/hotels & restaurants and other offices within BBMP jurisdiction to ensure vaccination of their employees.

In view of the reduced number of COVID-19 infections in Bangalore (also known as Bengaluru), the state government had previously allowed operation of most commercial establishments in compliance with the COVID-19 protocols. However, in view of the high chances of COVID-19 transmission in closed workspaces and in order to ensure that return to work does not lead to a spike in the number of COVID-19 cases, the BBMP Commissioner has issued the BBMP Circular which *inter alia* contains the following directions for employers:

1. Ensure that all employees have completed at least one dose of the COVID-19 vaccination by August 31, 2021;
2. Ensure regular COVID-19 testing of its staff; and
3. Ensure that all working staff are vaccinated at the employer's cost.

The BBMP Circular also requires employees to maintain proof of their vaccination status at the workplace and produce the same as and when required by the authorities. The BBMP Circular authorizes BBMP marshals and health officials to enter the workplace during working hours with effect from September 1, 2021 for verifying compliance with the above requirements.

Any violation of the BBMP Circular may subject the employer to penalty and may be punishable under Sec. 188 of the Indian Penal Code, 1100% as provided under the Epidemic Diseases Act, 1897 (which is the penal provision for disobeying an order duly promulgated by a public servant).

ANALYSIS

The BBMP Circular has taken employers in the municipal city limits of Bangalore by surprise, especially given the limited time-frame for ensuring compliance thereunder. A similar direction has also been issued by the Tamil Nadu health authorities¹. In fact, the Madras High Court has reportedly directed the State of Tamil Nadu to vaccinate all transgender persons within three months as a beneficial measure in response to a public interest litigation filed in that respect².

As India and the world at large is at the cusp of a historic health crisis, keeping in mind the common good, health and safety of its population at large, the government is persuaded to impose vaccination mandates. However, the constitutional validity of such a circular which prescribes mandatory vaccination continues to remain debatable, since Indian government has made vaccination voluntary for individuals. Recently, the Meghalaya High Court passed an order declaring a similar mandate by the Meghalaya state government as unconstitutional³. Please see our article on this topic available at: <https://www.internationalemplemtlawyer.com/news/vaccinating-india-weighing-public-and-individual-worker-rights> for more details. Subsequently, the same matter was litigated in the north-eastern states of India and different benches of the Gauhati High Court have consistently taken the position that no one can be compulsorily vaccinated.

In view of the afore-said legal jurisprudence coming up across India and given the fact that vaccinations in India continue to remain voluntary, it is legally unclear as to the basis of how local government can hold employers liable if the employees are not vaccinated. The Ministry of Health and Family Welfare continues to state in its FAQs on COVID-19 vaccination⁴ that vaccination in India is voluntary for individuals. There is lack of clarity on the legal position if an employee refuses to be vaccinated, in spite of the employer organizing vaccination camps or otherwise reimbursing the cost. For instance, can continued employment be linked to vaccination and could an employee's refusal to be vaccinated be a legal basis for terminating employment, as it could in turn be seen to deny the employee's livelihood? Such a circular could potentially be challenged on the basis of Article 21 of the Constitution

Research Papers

Handbook on New Labour Codes

April 29, 2024

Compendium of Research Papers

April 11, 2024

Third-Party Funding for Dispute Resolution in India

April 02, 2024

Research Articles

Private Client Insights - Sustainable Success: How Family Constitutions can Shape Corporate Governance, Business Succession and Familial Legacy

January 25, 2024

Private Equity and M&A in India: What to Expect in 2024?

January 23, 2024

Emerging Legal Issues with use of Generative AI

October 27, 2023

Audio

Third-Party Funding: India & the World

April 27, 2024

IBC allows automatic release of ED attachments: Bombay HC reaffirms

April 15, 2024

The Midnight Clause

February 29, 2024

NDA Connect

Connect with us at events, conferences and seminars.

NDA Hotline

Click here to view Hotline archives.

Video

Q&A 2024 Protocol to the Mauritius India Tax Treaty

April 22, 2024

Boost to India's Space Potential: India Liberalizes Foreign Direct

of India, which encompasses the fundamental right to life and personal liberty.

Until there is further clarity on this matter, employers are advised to permit only fully vaccinated employees at the workplace.

– Sayantani Saha, Preetha S & Vikram Shroff

You can direct your queries or comments to the authors

¹ Guidelines issued by the Tamil Nadu Director of Public Health dated July 24, 2021 available at: https://drive.google.com/file/d/1GNLtFc-QTnhx1_QPmFd56aTeCPIFWdRk/view?usp=sharing

² <https://www.livelaw.in/news-updates/madras-high-court-covid-vaccine-priority-transgender-international-travel-175356>

³ *Registrar General v State of Meghalaya [PIL No.6/2021]*

⁴ https://www.mohfw.gov.in/covid_vaccination/vaccination/faqs.html

DISCLAIMER

The contents of this hotline should not be construed as legal opinion. View detailed disclaimer.

This Hotline provides general information existing at the time of preparation. The Hotline is intended as a news update and Nishith Desai Associates neither assumes nor accepts any responsibility for any loss arising to any person acting or refraining from acting as a result of any material contained in this Hotline. It is recommended that professional advice be taken based on the specific facts and circumstances. This Hotline does not substitute the need to refer to the original pronouncements.

This is not a Spam mail. You have received this mail because you have either requested for it or someone must have suggested your name. Since India has no anti-spamming law, we refer to the US directive, which states that a mail cannot be considered Spam if it contains the sender's contact information, which this mail does. In case this mail doesn't concern you, please unsubscribe from mailing list.