



Looking Ahead: Global Changes and Employment Challenges

Live Webinar | 15:00-17:00 Israel Time | 08.02.22





Employment law landscape

An overview

Employment landscape

Key themes and trends in 2022



RTW post-COVID and vaccination policies

Hybrid/flexible working

- EU Work-life balance directive

Employment landscape

Key themes and trends in 2022



Employment status

- EU Platform work directive

Equality

- Protection against sexual harassment
- Regulation of NDAs
- Equality reporting

Employment landscape

Key themes and trends in 2022



Whistleblowing

- EU Whistleblowing directive

Regulation on restraints of trade

Employment landscape

Key themes and trends in 2022 – what we are seeing in the UK



Extended protection against sexual harassment and regulation of NDAs

Further rights to flexible working and extended family-friendly rights

Focus on equality reporting: Disability and ethnicity pay

Panel I - Working Remotely: a blessing or a curse? Pros, Cons and thoughts

Moderator:

Moria Tam-Harshoshanim, partner, labour law practice, Herzog

Participants:

DLA Piper partners: Johnny Choi, China | Iain Skinner, Dubai |
Pilar Menor, Spain | Evan Parness, New York



Question 1:

Are there any specific legal arrangements addressing remote work in your country?

China



- **No specific legal requirements**
- **Zero Covid policy still being pursued aggressively**
- **Remote work has not been the norm for vast majority of the past 2 years**
- **Nevertheless, more people are working remotely, and issues are decided on a bilateral basis in light of pre-existing legal framework**

UAE



- **No specific homeworking laws like other western jurisdictions**
- **Remote working during COVID-19 pandemic**
- **Article 17(6) UAE Labour Law**
- **Remote work visa**

Spain



- Remote work is regulated by recent Law 10/2021, 9 July, on remote work
- It applies to employees working remotely over 30% of their working time within a 3 months reference period
- It does not apply to remote work implemented to prevent Covid-19
- CBAs may regulate remote work conditions (i.e. expenses, reversibility rights etc.)
- Parties must enter into a remote working agreement

USA



- **No laws specifically requiring or prohibiting remote work**
- **Remote work may be a reasonable accommodation for employees who seek medical or religious accommodation**
- **Employers may choose to offer remote work for other reasons – health and safety concerns, childcare/eldercare**

Israel



- **There is no legislative arrangement (except during lockdowns, which made remote work mandatory);**
- **A general recommendation for employers to encourage remote work;**
- **In the public sector - collective agreements;**
- **In the private sector - many companies have adopted work-from-home policies;**

Question 2:

Do employees working remotely have certain entitlements or rights? obligations?

China



- **Rights and obligations are addressed via the remote work agreement or internal policies**
- **Work safety – commercial work injury insurance**
- **Confidentiality and information security reminders**
- **Employee's right to keep employment terms and conditions unless they give written consent**

UAE



- **No reimbursement obligations or allowances**
- **Employer's duty to provide a safe working environment**
- **Employer's discretion**
- **Best practice to provide some equipment**

Spain



- **Employees working remotely specific RIGHTS and OBLIGATIONS**
- **Right to training, professional promotion, adequate equipment, expense compensation, working time registry, health & safety, data protection, digital disconnection and collective rights (association, etc.)**
- **Obligation to follow employer instructions for data protection and security of the information**
- **Companies must respect equal treatment and avoid discrimination, including gender-based, age, disability...**

USA



- Same employment laws apply whether working remotely or in office
- Employees must continue to abide by employer's policies
- Depending on state, employees may have right to reimbursement for certain home office and other remote-work expenses

Israel



- **This issue was not regulated in legislation and therefore there are no binding rights or obligations;**
- **Employers have “translated” the duties and rights of employees at the workplace to work from home (e.g. reimbursement of expenses and allowances, budget for establishing a “home office” and more);**

Question 3:

Which challenges do employers in your Country face regarding remote work?



China



- **Tracking of work hours and overtime pay**
- **Remote working in a different city**
- **Remote working in a different country/region**

UAE



- **No legal challenges**
- **Addendums v policy**
- **Practical challenges: hours / overtime; performance management; supervision and monitoring**
- **Tracking / monitoring: New Federal Data Protection Law; individuals have a constitutional right to privacy**

Spain



LEGAL CHALLENGES

- Digital disconnection of employees
- Health and safety issues
- Security of communications and confidentiality of information
- Expenses reimbursement

HR CHALLENGES:

- Keeping employees motivated and engaged
- Keeping up with the sense of belonging
- Supporting employees mental health and wellbeing

USA



- **Cybersecurity**
- **Wage and hour**
- **Mental health / employee morale**
- **Discrimination and harassment**
- **Jurisdictional issues**

Israel



- **Compliance with regulatory requirements such as working hours supervision: monitoring; registration; working overtime hours**
- **Maintaining confidentiality and data protection policies**
- **Prevention of sexual harassment (in light of the vast number of video calls)**
- **HR challenges**

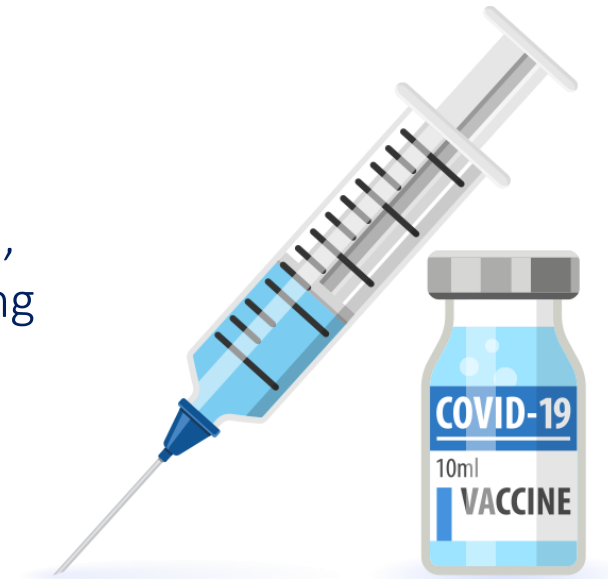
Panel II - Covid Vaccinations and the Workplace: a Global Overview

Moderator:

Orly Gerbi, partner, labour law practice, Herzog

Participants:

DLA Piper partners: Dr Kai Bodenstedt, Germany | Vinita Arora,
London | Fabrizio Morelli, Rome | Helen Colquhoun, Hong Kong



Question 1:

Are vaccinations mandatory in your country, and under which conditions?



Germany



- **Vaccinations are mandatory for certain industries (hospitals etc.), but there is no general requirement to be vaccinated for everyone...**
- **Currently heated public discussion about mandatory vaccination**
- **De-facto mandatory requirement through 2G....**

United Kingdom



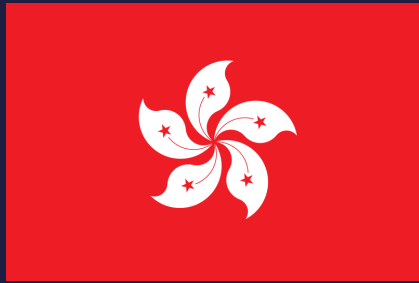
- **Generally, vaccination is entirely voluntary in the UK**
- **Exception: workers in care homes, includes any person who comes into direct contact with resident**
- **Plans to mandate vaccinations for frontline NHS staff from April 2022 recently scrapped. Above exception for care home staff now also under review (and could be revoked)**

Italy



- **Mandatory vaccination is based on age and sector of activity**
- **Exemptions are set for health reasons to be duly certified**
- **Administrative fines applied to the individual in case of non-fulfillment**

Hong Kong



- **Generally not mandatory – some industry exceptions**
- **Government policy of ‘strongly encouraging’ vaccination**
- **Medical exemptions can (generally) apply**

Israel



- No
- Local debate is Green Pass or no Green Pass (Meaning, including the option of negative Covid19 test results)
- However, certain implications of not being vaccinated

Question 2:

Can an employer dictate that being vaccinated is a prerequisite for employment, or for entering the workplace in general (visitors, clients, etc.)?

Germany



- **Employer cannot mandate employees to be vaccinated in order to enter workplace**
- **Currently heated public discussion about mandatory vaccination**
- **Access of customers, partners etc. may be restricted to vaccinated customers, but in practice does not happen**

United Kingdom



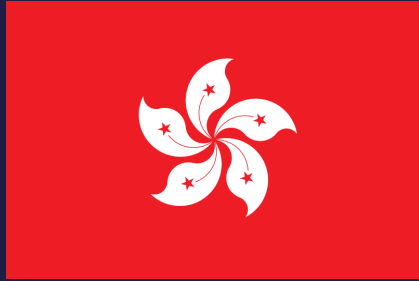
- **Generally, vaccination not mandated for employees by UK Government (apart from care home sector which is now under review), so difficult for an employer to justify outside of this setting**
- **Recent challenge to mandatory vaccination for NHS-employees**
- **Imposing a vaccination requirement may be seen an unreasonable management instruction**
- **Data protection issues surrounding asking staff to disclose vaccination status**
- **Any dismissal based on vaccination status is likely to be unfair (other than were mandated i.e., in a care home setting (for the time being))**

Italy



- **Vaccination is not a prerequisite for employment, unless the individual belongs to certain categories (age and sector of activity)**
- **Complex regulation to access workplaces – Green Pass as a condition to work in presence**

Hong Kong



- Existing employees – need to show lawful and reasonable instruction
- New employees – likely permissible
- Risk of successful challenge likely low absent discrimination issues
- Visitors/clients – likely permissible but not common practice (at least for now)

Israel



- Vaccination only? - No authority under law; High risk
- Mandatory Green Pass restriction – Only certain employers
- Voluntarily Green Pass restriction - Common + certain risk

Question 3:

Can an employer segregate vaccinated and unvaccinated employees?

Have you come across this practice?

Germany



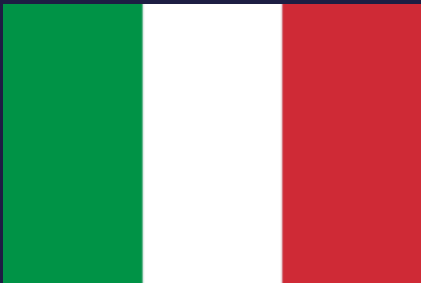
- **No, that would not be possible, and we have not seen this in practice**
- **Would culturally be perceived as difficult**
- **H&S measures to be determined based on the results of the h&s risk assessment**

United Kingdom



- Generally, there are no legitimate grounds to segregate employees according to their vaccination status (therefore, this is a rare occurrence in practice)
- Risk of constructive dismissal (i.e., the employee resigns)
- If you were to segregate unvaccinated employees, there is also a potential risk of discrimination claims on the basis of:
 - Religion/belief grounds; or
 - Disability grounds; or
 - Pregnancy grounds

Italy



- **No segregation between vaccinated and unvaccinated employees can be imposed by employer**
- **Strict control system to be put in place by the employer to check right to access the workplace**

Hong Kong



- **Would need to show reasonably necessary to protect health and safety – other options?**
- **Not seen in practice (yet)**
- **Possible discrimination issues**

Israel



- Depends on the circumstances – Balance of interests at a given time in given circumstances;
- Yes, it occurs – It's all about the circumstances



Thank You

