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CLIENT UPDATE



COVID-19 Update

August 10, 2021

Dear All,

Due to the spread of the COVID-19 and the rising morbidity in recent weeks, the government has amended the COVID-19 regulations^[1], which apply the Green Passport regulation in several businesses, regardless of the number of people.

At this point, the regulations do not explicitly refer to workplaces, but they do impose restrictions on dining rooms, conferences, gyms, and other complexes that may be located in workplaces, and accordingly, the regulations also apply on them.

Therefore, operating such places requires presentation of a Green Passport or a negative COVID-19 test upon entry, mask wearing, signage regarding mask wearing, and, in places where there is a public address system, notification once every half hour of the obligation to wear masks.

We also believe that due to the rise in morbidity, the return of the Green Passport, and the employer's duty to protect the health of its employees, as mentioned by recent court rulings,^[2] employers may choose to voluntarily adopt the Green Passport regulation in relation to entrance of employees to the workplace. In workplaces where there are workers' organizations, it is advisable to consult with such organization before voluntarily adopting the Green Passport regulation.

In order to avoid allegations of discrimination on the part of employees, if an employer chooses to voluntarily adopt the Green Passport regulation, it must offer unvaccinated employees alternatives; such as presenting a negative COVID-19 test with a reasonable frequency, working from home (for a certain period and as long as the employee's role enables it), working in an isolated space, going on leave (against accrued leave days of the employee), unpaid leave (with the employee's consent), etc.

To the extent that the above options have been exhausted, and since no other, less severe, alternative solution can be found, we believe it is possible to begin the dismissal procedure of an employee who refuses to be vaccinated, refuses to provide COVID-19 tests and refuses any other reasonable solution. Such step should only be after discussing with the employee the various options and bringing to the employee's attention the intention of the company to consider terminating his employment. It should be noted that this is a drastic and harsh step that should be used very carefully and as a last resort. It is recommended to contact us for advice before making a decision on the matter.

With respect to employer's right to ask whether his employees are vaccinated or not, we wish to note that in the Avishai case against the Kochav Yair local council,^[3] it was determined by the labor court that the information regarding the employee's vaccination is relevant information for the employer so that he can calculate his steps and organize the workplace as he sees fit, particularly when morbidity rises.

In addition, no provisions concerning the Purple Seal have been renewed to this date. Accordingly, there is no obligation on employers to appoint a person in charge of COVID-19 in the workplace or to limit the capacity in the workspace.

[1] Special Regulations for Dealing with the New Corona Virus (Temporary Order) (Restriction of Activities of a Public or Business Place), 5721-2021

[2] For example, see Labor Dispute (Tel Aviv-Yafo) 2819-03-21 **Moran Vizensky - Raanana Municipality** (02/06/2021); and Labor Dispute (Tel Aviv Regional Court) 28266-03-21 **Yoni Mehart - Brinks Israel Ltd.** (19/07/2021).

[3] Labor Dispute (Tel Aviv) 42405-02-21 **Sigal Avishai - Kochav Yair Tzur Yigal Local Council** (21/3/21) which is absolute (see the decision of the National Labor Court in Request for appeal (National) 3955-04-21 **Avishai Kochav Yair Council** (10/4/21)).

Please note that the aforementioned is not enshrined in the legislation or a binding precedent ruling. Therefore, reasonable and proportionate conduct on the part of employers will reduce (but not prevent) future exposure to legal claims. In any case, it is likely that over time the legal situation on these issues will become clearer.

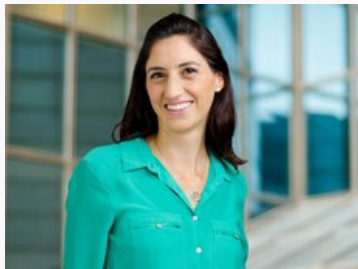
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