



CLIENT UPDATE

Employers' Rules of Conduct - Coronavirus Vaccinations and Tests

April 7, 2021

The following is a set of rules that have been formulated, based on the known legal situation, regarding the coronavirus vaccinations policies and tests. Please note as the issue has not been legally settled and there is no binding legal precedent, so these rules herein below must be exercised in the most cautious manner possible, in order to reduce, as much as possible, future legal exposure.

Is it legitimate to ask employees whether they received the vaccination?

In the case of *Avishai vs the Kochav Yair local council*^[1] ("Avishai case") the Labor Courts of Israel ruled that the information regarding the actual immunization of employees is relevant information to the employer, so that he can calculate the steps and organization of the work as he sees fit, wholly for the health and safety of employees and the general public entering the workplace. In addition, a Joint Announcement of the Israeli Business Sector Association and the Israeli General Workers' Union, dated 23/02/2021, (the "Joint Announcement") indicates that employers have the right to know about the vaccination status of their employees.

Is it obligatory to create a registered database in order to save information collected about the employee immunization?

This is a complex question, which varies from employer to employer and from case to case, and requires an individual examination by an expert in the field of privacy protection.

Is it permissible to prevent entry into the workplace of someone who does not comply with the rules of the Green Badge (immunization certificate or recovery certificate)?

Employers have a duty to maintain the health of their employees and provide them with a safe work environment. Although there is no law requiring employees to be vaccinated, an employer may prevent entry into the workplace of anyone who is not eligible for the GreenBadge, after considering alternative and less harmful measures – such as a requirement to present a negative corona test regularly, or allowing the employer to work from home (for a period of time and as long as their role allows this), or send the employee on unpaid leave, etc.

Is it permitted to request a routine corona test, as an alternative to the GreenBadge? If so, how often?

In the Avishai case, the Labor Court of Israel ruled that in the absence of a possibility or desire to be vaccinated, an employee can be obliged to present a negative corona test at regular intervals. However, the requirement of the employee to present a negative test must be done proportionately and frequently - on one hand not to the burden the employee beyond what is necessary, but on the other hand providing the employer with some certainty regarding the employee's condition. It should be emphasized that should be done only after other employment options have been examined and on the employee's private time.

The aforementioned also arises in the Joint Announcement, mentioned above, that unvaccinated employees who receive the public on a regular basis, or employees that as part of their job are regularly in contact with the population at risk, and cannot be integrated back to their regular job, will be required to present an updated negative corona test result every 72 hours, and in some cases even more often.

In the same announcement, it was also proposed, that if said test results cannot be presented, to move the employee to a remote place far from employees and others, or to work remotely from home, or to assign the employee a different position that can be done far from employees and others.

Is there an obligation to allow an unvaccinated employee to continue working from home, as long as it is possible, and if so, for how long?

As stipulated in the Avishai case, the employer must allow the employee to continue working from home, as long as it is possible as a workplace.

Is it possible to force an unvaccinated employee to take paid leave?

Generally, employers have the right to determine the vacations dates of their employees; however, this right must be exercised in good faith. A unilateral decision on leave days can be made immediately for a period of up to 7 days and with 14 days' notice in advance for a longer period, all subject to the amount of accrued vacation days of the employee. An arrangement to take agreed leave, for employees who refuse to be vaccinated and undergo corona tests, can in many cases constitute an appropriate agreed temporary solution. However, the amount of accumulated leave days is limited in scope, and given the fact that COVID-19 is not disappearing from our lives in the near future, it seems that this is not a long-term practical solution.

Is it possible to force unvaccinated employees to take unpaid leave?

Unpaid leave requires a mutual agreement that depends on both the employer's consent and the employee's consent. Therefore, an employee cannot be forced to take unpaid leave. However, it is possible to agree with the employee on unpaid leave, as a temporary and less offensive step than dismissal, as long as the workplace allows it.

Is it possible to dismiss unvaccinated employees who refuse to undergo corona tests regularly?

As long as all of the above options have been exhausted (working from home, working without contact with other employees or the general public, paid or unpaid leave), we believe that it is possible to begin the dismissal proceedings of an employee who refuses to be vaccinated, refuses to be tested and refuses any other reasonable solution (or that any such a solution is not possible), and after the various options have been discussed with the employee, and the consideration of the termination of his employment, based on these grounds, were brought to his notice. This is a drastic and difficult step, which must be taken with great care and as a genuine last resort.

[1] 42405-02-21 Sigal Avishai v. Kochav Yair Local Council - Tzur Yigal (21/03/2021)

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.

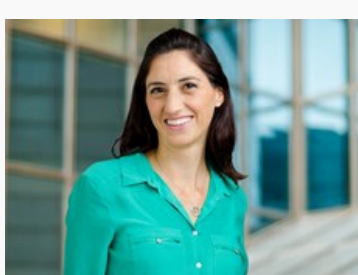
Contact Information



Hila Silverstein, Partner
+972-3-6103183
hilas@meitar.com



Rami Landa, Partner
+972-3-6103152
ramil@meitar.com



Lilach Shacham Kaneti, Partner
+972-3-6103899
lilachk@meitar.com



Hedvat Yanko Wollman, Partner
+972-3-6103898
hyanko@meitar.com



David Apfeldorf, Associate
+972-3-6103100
davida@meitar.com

For additional information about our firm's Labor Law Department, click [here](#).

This memorandum is provided solely for informational and educational purposes and should not be construed as a legal advice.



To join our newsletter click here