

The vaccinated vs. non-vaccinated and job security



The vaccination of health workers against Covid-19 has begun without encountering any significant resistance from their ranks. The second phase of vaccination, which involves the vaccination of essential workers, persons in congregate settings, as well as those with underlying comorbidities, will follow around May, and the largest group of the remaining employees will hopefully have their turn by the end of 2021.

While Covid-19 is destroying lives and livelihoods, a legal debate is raging whether an employer could make vaccination compulsory. However, there are rumours about amendments to the disaster management regulations to reinforce the right to a safe workplace, which could advance mandatory vaccination at the workplace.

With the wage negotiation season set to commence soon, it is ideal for unions and especially big employers to conclude talks on vaccination issues before the vaccines arrive and the wage negotiations commence, otherwise outstanding issues will make their way to the wage negotiation table.

To avoid unnecessary litigation and to protect jobs, individual employers and unions need to agree on the approach to deal with the non-vaccinated. For instance, where vaccination could be regarded as an inherent requirement of the job, or where workers work together in confined spaces, there is uncertainty about the handling of these workers opposed to vaccination. On the other hand, workers working in a low-risk environment who also need to be vaccinated to achieve herd immunity, will have a stronger argument against vaccination, and an agreement is also required on dealing with this situation.

When the wage negotiations eventually commence, the initial thorny issue will be the handling of those participants not vaccinated, be that of own free will or because they have not yet qualified for vaccination in terms of the vaccination roll-out priorities. The question would then be if they would be allowed to physically participate in the wage negotiations. Bearing in mind that vaccination is not an absolute bar to contracting the virus, however it is said to reduce one's chances of infection.

The list of wage demands may also look very different this year with Covid-19 having such an impact on lives and livelihoods. The focus will most likely shift to the social wage and job security.

To counter a union wage demand for a moratorium on retrenchments, employers may see an opportunity to push for mandatory vaccination as a quid pro quo. Productivity will be linked to the aforementioned, and it will strengthen an employer's motivation for mandatory vaccination when Covid-19-related absenteeism of non-vaccinated employees (especially vulnerable employees) impacts productivity.

Not all vaccination issues will be subject to negotiation processes as the practical consequences may determine an employee's fate in certain instances. For example, with a "vaccination passport" that should become mandatory for international travel, migrant workers from neighbouring countries and employees who need to travel as part of their job, may have no choice but to be vaccinated to be able to travel across national borders. Also, with so many contractors and service providers utilised at many workplaces, employers will probably also insist that only those service providers whose employees have been vaccinated may provide services at a workplace - to keep your job, you will have to be vaccinated. It is also likely that employers will amend their conditions of service to make vaccination a prerequisite for new entrant employment, which in turn will complicate job-hopping for the non-vaccinated.

Meanwhile, during this window period, various employers are following a sensible approach to persuade workers to agree to vaccination through awareness campaigns. This initiative will ensure a more informed workforce, making the mandating process for union-employer negotiations around vaccination much easier.

In the absence of workplace vaccination agreements, in navigating their approach to the vaccine, employers will need to balance health and safety obligations with the constitutional rights of their employees.

From an employee perspective, indirect consequences for non-vaccination and the difference in death statistics between those who have been and those who have not been vaccinated, as well as information on side effects and a choice between vaccines will enable workers to make an informed decision about what is best for them and for their dependents' lives and livelihoods.

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