

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.internationalemploymentlawyer.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

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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

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