

Get the job if you want the job

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PETALING JAYA: Many companies are looking into making Covid-19 vaccinations mandatory for employment, even in the post-pandemic era.

However, a labour lawyer has questioned the legality of such a requirement and whether it would be discriminatory against unvaccinated job seekers.



Malaysian Employers Federation president Datuk Dr Syed Hussain Syed Husman said that it was well within a company's rights to determine the terms and conditions of employment, including requiring vaccination against Covid-19.

"Such a condition is important and relevant as a precautionary measure to ensure the workplace is free of Covid-19," he said when contacted yesterday.

He pointed out that under Section 15 of the Occupational Safety and Health Act 1994, it shall be the duty of each employer to ensure the safety, health and welfare of all their employees.

"Failure to ensure the health of employees at the workplace, including taking reasonable steps to safeguard employees from being infected with Covid-19, may amount to a breach of the statutory duty of an employer under the Act.

"Making sure that current and future employees are vaccinated against Covid-19 is a reasonable action that should be implemented by employers," he said.

For new hires, he added, a company may ask the question on whether the applicant is vaccinated against Covid-19 in the company's application form.

Syed Hussain also pointed out that to ensure candidates are not potential Covid-19 carriers, a company may pick those who have already been vaccinated, as opposed to those who have not, for face-to-face

job interviews.

“(Also), with the current pandemic, interviews may be done online and if a candidate is suitable and to be offered employment, the company may state that, among others, the offer of employment is subject to the candidate being properly vaccinated against Covid-19,” said Syed Hussain.

Labour and employment law expert Datuk Thavalingam Thavarajah said although there is no law mandating compulsory vaccination in the workforce, employers can still set it as a pre-condition of employment for job seekers.

“There is an implied duty on the part of the employer to provide a safe system at work,” he added.

However, Thavalingam said for existing employees, companies would have to obtain their consent, given that every staff member has the right of refusal to be vaccinated for whatever reason they deem fit.

“As the law is silent, it is basically a contractual issue as per the terms and conditions of employment.

“You, therefore, cannot force the vaccine upon a worker. Consent would be the best option, especially for employees who do not have such a vaccination provision in their contracts,” he said.

Thavalingam also stressed that vaccination is one way to curb surging Covid-19 infections.

“Standard operating procedure enforcement isn’t easy and has its limitations. But once you get jabbed, it is in your system,” he added.

Medical assessments are a common requirement by most employers at present, where job seekers would usually be screened for various diseases in order to determine whether the individual is fit for work.

Those in the food and beverage industry are also typically vaccinated against typhoid in order to ensure food handlers are free of such infections, which can spread the Salmonella bacteria on food.

Malaysian Muslim Restaurant Owners Association president Datuk Jawahar Ali Taib Khan said such a vaccination requirement was reasonable to ensure the safety of workers, employers, and customers.

“We in the food and beverage sector can also be considered frontliners.

“If the authorities allowed us to do this, we would set such a condition,” he said.

Bumiputera Retailers Organisation president Datuk Ameer Ali Mydin concurred, saying that such a requirement would be good for the sector.

“Yes, I am okay with the suggestion,” he said, adding that it was important for all Malaysians to be vaccinated.

However, Malaysian Association of Hotels vice-president CS Lim said it is not right to set vaccination as a strict term, given that there are people who cannot be immunised against Covid-19 due to a variety of reasons, which are not limited to medical conditions.

“Having said that, the industry supports the call to encourage all who can be vaccinated to do so at the first opportunity.

“With such a direction, there would be no discrimination against those who have not (been vaccinated),” he said.

Stressing the importance of awareness, Lim said every Malaysian has a role to play in promoting the importance of being vaccinated against Covid-19.

“It should take on a path similar to other vaccinations such as typhoid for F&B workers that is already the norm now,” he added.

At the same time, Lim added that it was important to vaccinate tourism workers as soon as possible, given that they are frontliners who have to physically deal with customers due to the nature of the industry.

“Although technology has reduced some physical contact, tourism workers still have to deal with people,” he added, citing as examples front office and restaurant workers, security personnel at hotel lobbies and lifeguards at swimming pools.