

The New Normal: Return to Work Arrangements

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*This illustration is inspired by the original painting of **The Starry Night** by Vincent van Gogh.*

Introduction

As a result of the COVID-19 pandemic, the United Arab Emirates (“**UAE**”), the Kingdom of Saudi Arabia (“**KSA**”) and Qatar governments put in place a number of health and safety measures to ensure the welfare of their country and reduce the spread of COVID-19. One of the main initiatives adopted was the requirement to work from home and not attend the office.

At the beginning of 2021, the UAE, KSA and Qatar started to provide COVID-19 vaccinations to nationals and expatriate residents and as a result, there has been a relaxation on the requirement to work from home and many employees have returned to work from the office.

Employers across the UAE, KSA and Qatar have an obligation to protect the health and safety of their employees in the work place and provide a safe working environment and therefore it is important that employers carefully consider their obligations prior to requiring employees to return to office based working. This is particularly prevalent in the healthcare sector where a large proportion of employees are often exposed to individuals who may be infected with COVID-19 including patients, caregivers etc.

Within this article, we consider the factors that healthcare employers should bear in mind when requiring employees to take the vaccine and/or return to office based working.

Can an employer require its employees to return to the office?

UAE

Yes, the previous capacity restrictions have been lifted across the UAE and 100% of employees are now permitted to return to the office.

KSA

Yes, employers can require employees to return to the office with the exception of any groups who may be medically exempted from receiving the vaccine.

Qatar

Effective, 3 October 2021 the previous capacity restriction has been lifted and 100% of employees in both the public and private sector are permitted to return to the office.

Do employees need to be vaccinated in order to return to the office?

UAE

No, there is no requirement for employees to be vaccinated. The Abu Dhabi government has confirmed a requirement that all employees (vaccinated and unvaccinated) employed in the private sector must undertake a PCR test every 14 days to ensure that they remain COVID-free. There has been no similar guidance issued in Dubai or any of the other Emirates.

KSA

Yes. The Saudi authorities announced that, with effect from 1 August 2021, employees must be vaccinated in order to attend the office. There are exemptions for workers who are unable to be vaccinated for any reason, including medical reasons. Further, the Saudi authorities announced that, with effect from 10 October 2021, employees will need to have completed the required doses of an approved vaccine in order to attend the workplace. Moreover, employers must also require employees to prove their vaccination status through the 'Tawakkalna' smartphone application as a condition for entry to the workplace. *With effect from 1 February 2022, all citizens and residents of Saudi Arabia must also take a booster dose of the vaccine to maintain their status as being "immune" on the Tawakkalna application. The booster dose will become mandatory eight months after receiving the second dose of the vaccine.*

Qatar

No, it is not mandatory for employees to be vaccinated. However, employees who are neither (a) fully vaccinated nor (b) recovered from COVID-19; need to undertake weekly COVID-19 tests (rapid or PCR).

Can an employer require its employees to take the vaccine?

UAE

Given that the requirement to take the vaccine is not mandatory, employees can choose whether to take the vaccine and an employer cannot legally force its employees to do so. Notwithstanding this, employers have an obligation to protect the health and safety of their employees in the workplace and therefore employers could argue that an employee's refusal to take a vaccine would result in the employer breaching its obligations. As such, there is a clear conflict between an employee's right to choose whether to be vaccinated and the employer's health and safety obligations.

Employers should be mindful that there are a number of reasons as to why an employee may not be able to take the vaccine, for example, where an employee has certain health conditions including compromised immune systems, many medical practitioners are advising those employees not to take the vaccine.

The requirement to take the vaccine should therefore be considered on a case by case basis with respect to each employee's personal situation (in addition to their role, and the levels of risk of contracting or passing on the virus in the workplace).

Requiring doctors and front-line workers to be vaccinated could be considered as reasonable due to the high-risk nature of the work, and the fact that being vaccinated in these circumstances is essential to prevent the spread of the virus and protect their patients.

However, for administrative staff or employees who have limited contact with other individuals, it may be more difficult for an employer to show that the instruction is reasonable.

KSA

COVID-19 vaccinations remain voluntary in KSA but any employees who are not vaccinated will not be permitted access to their workplace. Employers must therefore require employees to take the vaccine in order to attend the office. Moreover, as the Saudi authorities have required that all employees must be vaccinated in order to attend the workplace, employers must implement different rules for vaccinated and unvaccinated individuals. The Saudi Ministry of Human Resources and Social Development has issued guidance for employers to manage any unvaccinated employees, and this includes requiring them to work remotely, utilizing annual leave, taking unpaid leave or ultimately taking disciplinary action.

Qatar

Vaccination is not mandatory in Qatar and, as such, employers cannot force employees to be vaccinated. However, Qatar authorities have mandated that employees should provide evidence of vaccination, COVID-19 recovery or weekly negative COVID-19 test results (rapid test or PCR) in order to be allowed to enter the work premises. Given that other options are available, an employer would not have any legal basis to mandate obligatory vaccination for their employees.

What protective measures should an employer put in place when requiring employees to return to the office?

UAE

The UAE authorities have confirmed that despite the fact that the vaccine is being administered (with approximately 80% of the population having received the vaccine to date), this does not mean that

protection measures fall away. Employers must therefore continue to ensure that they have taken all of the necessary health and safety measures recommended by the authorities for the workplace and any specific measures required for the employee's role (including the requirement to wear masks, social distancing etc).

KSA

Notwithstanding that employers in KSA must require employees to be vaccinated to attend the workplace, government guidance on protective measures are still in place. This includes a number of restrictions, such as wearing face coverings in communal areas, observing social distancing, temperature checks upon entry to the premises, having separate entrances and exits, provision of an isolation room on site, and reporting requirements if any employees test positive for Covid-19. Employers should monitor government guidance from time to time to ensure they are complying with any updated requirements.

Qatar

Even though the vaccination is widely available in Qatar, the majority of employees have already been vaccinated and weekly COVID-19 test results will need to be presented for the unvaccinated, there are still mandated health and safety measures that should be observed, such as mandatory wearing of masks in closed spaces, mandatory activation of the Ehteraz application upon leaving home (the Ehteraz app is a government mandated smart phone app that residents and visitors to Qatar must install). There are also restrictions on the maximum capacity of individuals being present at work meetings, being 30 persons at the time of writing. There are also other measures that an employer is free to follow provided the same are recommended by health experts.

Conclusion

It is clear that, in light of the roll out of the COVID-19 vaccine, working life across the UAE, KSA and Qatar is slowly starting to return to normal. As a result of employees beginning to return to the office, it is important that employers continue to ensure that they remain compliant with their health and safety obligations towards their employees. This is particularly prevalent in the healthcare industry where a large number of employees are likely to come into contact with individuals infected with COVID-19. Care should therefore be taken to ensure the safety of employees, and employers should be mindful of this when implementing any return to work arrangements.

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