

**1ST GPDRL INTERNATIONAL SYMPOSIUM ON SAUDI ARABIA VISION 2030:
LEGAL, SOCIO-ECONOMIC ISSUES AND WAY FORWARD**

Opening Session Link: <https://www.youtube.com/watch?v=jTFJliXE6I>

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Date: 11 April 2021
Time: 11:00-12:15
Group joining: 01:00-04:00
Venue: Prince Sultan University

1ST GPDRL International Symposium on Saudi Arabia Vision 2030: Legal, Socio-Economic Issues and Way Forward provides an opportunity for national and international researchers to present their unpublished novel research findings and exchange information with the research community.

GROUP 1

<https://meet.google.com/gzb-bkdx-bis>

1. Dr Emna Chikhaou (Moderator)
2. Dr Ashgar Ali Ali Mohamed
3. Mr Robert Cutumli & Dr Fazluz Zaman
4. Ms Puteri Sofia Amiruddin
5. Dr Chithra Latha Ramalingam
6. Dr Mohamed Alshaleel
7. Dr Maha AlMaiman
8. Dr Mohammad Hassan Ahmad

GROUP 3

<https://meet.google.com/mmk-mfeb-dyf>

1. Dr Rehana Parveen (Moderator)
2. Mr Mohamad Fateh Labanieh
3. Dr Wahid Habib
4. Ms Misbah Saboohi
5. Dr Saghir Munir Mehar
6. Mr Abdul Wasii Isiaq
7. Dr Shafiqul Hassan

GROUP 5

<https://meet.google.com/vrd-gsep-gwt>

1. Dr Yusuff Jelili Amuda (Moderator)
2. Dr Nor Azizan Che Embi, Dr Salina Kassim, Dr Roslily Ramlee, Dr Wan Rohaida Wan Husain
3. Mr Ibrahim Dahiru Idriss
4. Mr Bukar Umar Ngohi
5. Mr Badmus Najeem Akingbemi & Mr Abdul Hakim Bin Abdullah
6. Mr Balogun Daud Ishola
7. Mr Ibrahim Dahiru Idriss
8. Mr Ruqayya Aminu Gar
9. Mr Adekunle Daoud Balogun
10. Mr Ibrahim Alli Adelani
11. Mr Muhammad Alhaji Ibrahim & Mr Wun Thiam Yew

GROUP 2

<https://meet.google.com/znq-wizw-ugd>

1. Prof. Dr Zlatan Meskic (Moderator)
2. Dr Mohamad Albakjaji
3. Dr Assaduzzaman Khan
4. Ms Anita Duraković & Ms Jasmina Alihodžić
5. Mr Mateja Durovic
6. Dr C. Sengottuvelu and Ms Dhivya P
7. Ms Nevena Jevremovic
8. Prof. Dr Slavko Đorđević

GROUP 4

<https://meet.google.com/iwr-thax-dqi>

1. Dr Zbida Atim (Moderator)
2. Dr Elham Saleh
3. Ms Taisseer Osman
4. Mr Adam Oriyomi
5. Mr Raliat Alimi and Prof. Ganiyah Adesina
6. Dr Tareck Alsamara & Mr Farid Khalidi
7. Mr Mohsin Dhali

GROUP 6

<https://meet.google.com/npc-axuz-igb>

1. Dr. Ouarda Belkacem Layachi (Moderator)
2. Mr Ishaq El-Mubarak, A. M. O.
3. Mr Gafar Almhamad, Mr Ali Alkerdi, Dr Tareck Alsamara, Mr Omar Hijazi, Mr Safwan Mohammed
4. Mr Mohammed Amin Umar & Mr Mohammad Aliyu Babakano
5. Mr Abdurrauf Ibrahim Adeniyi
6. Mr Muhammad Tanveer
7. Dr Ahmad Tijani, Surajudeen

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1ST GPDRL INTERNATIONAL SYMPOSIUM ON SAUDI ARABIA VISION 2030: LEGAL SOCIO-ECONOMIC ISSUES AND WAY FORWARD

DATE & TIME:

SUNDAY, 11TH OF APRIL 2021

VENUE: PRINCE SULTAN UNIVERSITY

Opening Session Link: <https://www.youtube.com/watch?v=jTFJliXE6I>

PROGRAM SCHEDULE:

| | | | |
|---|---|---|----------------|
| 1 | Professor Dr Ahmed Yamani, the President, Prince Sultan University | Opening Address | 11:00-11:10 am |
| 2 | Dr Fahad Mohammed AlMajid, Dean College of Law | Research at College of law | 11:10-11:15 am |
| 3 | Dr Anis Koubaa | Research at PSU | 11:15-11:20 am |
| 4 | Prof Andrew McGee University of Manchester, UK | Keynote Speaker | 11:20-11:40 am |
| 5 | Prof Dr Nik Ahmad Kamal Bin Nik Mahmod International Islamic University Malaysia | Keynote Speaker | 11:40-12:00 pm |
| 6 | Dr Emna Chikhaou | Vote of Thanks/Closing of First Session | 12:00-12:05 pm |
| 7 | Individual Group joining | Presentation of Papers | 01:00-04:00 pm |

GROUP-1

<https://meet.google.com/gzb-bkdx-bis>

| | Name of the Presenters | Manuscript Title | Time |
|--------------------------------------|-------------------------------------|---|----------------|
| Dr. Emna Chikhaou (Moderator) | | | |
| 1 | Dr Emna Chikhaou | Ethical and Legal Challenges of Artificial Intelligence (AI) in the Medical Sector in The Kingdom of Saudi Arabia. | 01:00-01:15 pm |
| 2 | Prof Dr Ashgar Ali Ali Mohamed | Dismissal for Wearing Headscarves at Work: Whether Discrimination Against Muslim Women? | 01:15-01:30 pm |
| 3 | Mr Robert Cutuli Dr Fazluz Zaman | Reviewing Australian Vocational Education and Training (VET) Performance from Students' Induction Evaluation Practices | 01:30-01:45 pm |
| 4 | Dr Maha AlMaiman | Saudi Women's Rights and The Efforts to Align with International Standards | 01:45-02:00 pm |
| 5 | Dr Chithra Latha Ramalingam | Transforming Legal Education Teaching and Learning via Remote Communication Technology | 02:00-02:15 pm |
| 6 | Dr Mohamed Alshaleel | 'The UK and the EU's Fifth Anti-Money Laundering Directive: Exceeding Expectations' | 02:15-02:30 pm |
| 7 | Ms Puteri Sofia Amirmuddin | Company Covid-19 Vaccination: Whether Refusal by Employee Justifies Termination? | 02:30-02:45 pm |
| 8 | Dr Mohammad Hassan Ahmad | Employment Opportunities and Accessibility by Employers Towards Disabled Employee: An Analysis of the Laws and Practice in Selected Jurisdictions | 02:45-03:00 pm |

GROUP-2

<https://meet.google.com/znq-wizw-uqd>

| | Name of the Presenters | Manuscript Title | Time |
|--------------------------------------|--|--|----------------|
| Dr. Zlatan Meskic (Moderator) | | | |
| 1 | Prof. Dr Zlatan Meskic Dr Mohamad Albakjaji | Jurisdiction for Cross-Border E-Commerce Contracts Under the New E-Commerce Law of Saudi Arabia – A Comparative View to EU Law | 01:00-01:15 pm |
| 2 | Dr Assaduzzaman Khan | Cross-Border Public Policy and its Application in International Arbitration | 01:15-01:30 pm |
| 3 | Ms Anita Duraković Ms Jasmina Alihodžić | Private International Law Aspects of <i>Talaq</i> in the Law of The EU and Bosnia and Herzegovina | 01:30-01:45 pm |
| 4 | Mr Mateja Durovic | Smart Contracts - Contracts for the Future? | 01:45-02:00 pm |
| 5 | Dr C. Sengottuvelu Ms Dhivya P | A Study on Issues and Challenges in Administering Some of The Conditions of Contracts | 02:00-02:15 pm |
| 6 | Ms Nevena Jevremovic | Future of Contracting: Practical and Legal Considerations of Digital Agreements under CISG & UNIDROIT Principles | 02:15-02:30 pm |
| 7 | Prof. Dr Slavko Đorđević | Civil Liability Regime for Artificial Intelligence - Some Remarks from an EU Perspective | 02:30-02:45 pm |
| 8 | Prof. Dr Zlatan Meskic Ms Nevena Jevremovic Dr Elham Saleh Dr Christiane Bou Khater | Ethical Considerations in Technology Driven B2b Cross-Border Contracts | 02:45-03:00 pm |

GROUP-3

<https://meet.google.com/mmk-mfeb-dyf>

| | Name of the Presenters | Manuscript Title | Time |
|---------------------------------------|---|--|----------------|
| Dr. Rehana Parveen (Moderator) | | | |
| 1 | Dr Rehana Parveen | Privacy and Confidentiality Issues with Special Reference to Covid-19 Pandemic in India | 01:00-01:15 pm |
| 2 | Mr Mohamad Fateh Labanieh, Mr Mohammad Azam Hussain and Nazli Mahdzir | The Regulatory Framework Governing Traditional Arbitration in Resolving Islamic Banking Disputes in Malaysia: Lessons to Learn | 01:15-01:30 pm |
| 3 | Dr Wahid Habib | Analyzing Online Reviews to Investigate Visitor Behavior: The Case of Bangabandhu Safari Park | 01:30-01:45 pm |
| 4 | Ms Misbah Saboohi | Building the Case for Jus Cogens Norm of Universal Jurisdiction in International Crimes; A Hope for Extra-Territorial Justice | 01:45-02:00 pm |
| 5 | Dr Saghir Munir Mehar Mr Khuram Shahzad | Darknet and Cryptocurrency A Lethal Partnership; The Current State of Global Legislation | 02:00-02:15 pm |
| 6 | Mr Abdul Wasiu Isiaq | The Reintegration of Ex-Combatants of Boko Haram to The Society: An Appraisal of Successes and Challenges | 02:15-02:30 pm |
| 7 | Dr Shafiqul Hassan | Application of Principle of <i>Takhayyur</i> : An Accepted Method to Remove the Hardships of Islamic Family Law. | 02:30-02:45 pm |

GROUP-4

<https://meet.google.com/iwr-thax-dqi>

| | Name of the Presenters | Manuscript Title | Time |
|-----------------------------------|--|---|----------------|
| Dr. Zbida Atim (Moderator) | | | |
| 1 | Dr Zbida Atim | Covid-19 and Precautionary Measures to Protect Consumer Rights in the Kingdom of Saudi Arabia. | 01:00-01:15 pm |
| 2 | Dr Elham Saleh | مسؤولية المدراء في أموالهم الخاصة عن ديون وإلتزامات الشركة ذات المسؤولية المحدودة للغير في نظام الشركات السعودي | 01:15-01:30 pm |
| 3 | Ms Taisseer Osman | أثر نظام الميراث على التنمية المستدامة في ضوء رؤية المملكة ٢٠٣٠ | 01:30-01:45 pm |
| 4 | Mr Adam Oriyomi | أدب التعامل مع الكفار وآثاره في واقعنا المعاصر | 01:45-02:00 pm |
| 5 | Mr Raliat Alimi Prof. Ganiyah Adesina | Can Islamic Economics Revive and Sustain the Nigerian Economy Post Covid-19 | 02:00-02:15 pm |
| 6 | Dr Tareck Alsamara Mr Farid Khalidi | Electronic documentation of real estate transactions in Morocco | 02:15-02:30 pm |
| 7 | Mr Mohsin Dhali | Smart Contracts: Sustainability of the Current Regulatory Framework | 02:30-02:45 pm |

GROUP-5

<https://meet.google.com/vrd-gsep-gwt>

| | Name of the Presenters | Manuscript Title | Time |
|--|---|--|----------------|
| Dr. Yusuff Jelili Amuda (Moderator) | | | |
| 1 | Mr Ibrahim Dahiru Idriss | Covid-19 Pandemic and Survival Strategies of Small and Medium Scale Enterprises In Borno State, Nigeria: Implications for Counselling | 01:00-01:15 pm |
| 2 | Mr Bukar Umar Ngohi | Influence of Covid-19 Pandemic on The Economy of Tokumbo Vehicles Trade in Borno State: Implications for Counselling | 01:15-01:30 pm |
| 3 | Mr Badmus Najeem Mr Akingbemi and Abdul Mr Hakim Bin Abdullah | The Coronavirus and Covid-19: The Situation of Academic Leadership in The Period of Pandemic Crisis | 01:30-01:45 pm |
| 4 | Mr Balogun Daud Ishola | Covid-19 Pandemic and Insecurity: The Bane of High Prices Of Agricultural Food Products In Nigeria | 01:45-02:00 pm |
| 5 | Mr Ibrahim Dahiru Idriss | The Financial Problems of Tsangaya System of Education and its Effects on Almajiri in Potiskum Yobe State Nigeria | 02:00-02:15 pm |
| 6 | Mr Ruqayya Aminu Gar Mr Adekunle Daoud Balogun | Changes in Political Behaviour and The Causative Internal Factors: A Case Of Bauchi State Nigeria | 02:15-02:30 pm |
| 7 | Mr Adekunle Daoud Balogun | Coronavirus Pandemic: Case of the Aviation Industry as New Challenge to the Global Economy | 02:30-02:45 pm |
| 8 | Mr Ibrahim Alli Adelani | Technical Education in Madrasah Schools in Shout-West Nigeria: Issues, Challenges and a Way Forward | 02:45-03:00 pm |
| 9 | Mr Muhammad Alhaji Ibrahim Mr Wun Thiam Yew | Teacher Education Training in Nigeria: Assessment of Pre-Service Mathematics Teachers' Level Mathematics of Knowledge of Secondary School Mathematics Subject Matter | 03:00-03:15 pm |
| 10 | Dr Nor Azizan Che Embi Dr Salina Kassim Dr Roslily Ramlee | The Demand Factors in Waqf Affordable Housing Project For Middle Income (M40) Group In Malaysia | 03:15-03:30 pm |

| | | | |
|----|---------------------------|---|----------------|
| | Dr Wan Rohaida Wan Husain | | |
| 11 | Dr Yusuff Jelili Amuda | Made in Saudi Products: Towards Diversification of Saudi Arabian Economy as a Panacea for Human Development | 03:30-03:45 pm |
| 12 | Dr Yusuff Jelili Amuda | Application of TakĀful Surplus as an Islamic Financial Instrument for Needy Students in Malaysia | 03:45-04:00 pm |

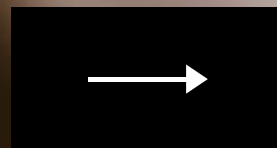
GROUP-6

<https://meet.google.com/npc-axuz-jgb>

| | Name of the Presenters | Manuscript Title | Time |
|--|---|---|----------------|
| Dr. Ouarda Belkacem Layachi (Moderator) | | | |
| 1 | Dr Ouarda Belkacem Layachi | Towards Activating the Mechanisms of International Law to Regulate and Control the Use of Cyber Force in the Field of International Relations | 01:00-01:15 pm |
| 2 | Dr Ahmad Tijani, Surajudeen | Review of Educational Laws and Policies in Nigeria: Towards Covid-19 Legal Framework in the Education Sector | 01:15-01:30 pm |
| 3 | Mr Moyosore Olalekan Mohammed | Formulating Cyber-Security Policy as a Response to Cyber Terrorism: A Case of The Gulf Cooperation Council | 01:30-01:45 pm |
| 4 | Mr Gafar Almhamad, Mr Ali Alkerdi, Dr Tareck Alsamara, Mr Omar Hijazi, Mr Safwan Mohammed | Social Entrepreneurship Research in the Middle East (Systematic Review) | 01:45-02:00 pm |
| 5 | Mr Mohammed Amin Umar, Mr Mohammad Aliyu Babakano | Appraisal of Statutory Prohibition of Female Circumcision and Violence Against Women in Nigeria | 02:00-02:15 pm |
| 6 | Mr Abdurrauf Ibrahim Adeniyi | The Importance of Waqf Concept for Alleviating Poverty for the Masses in Nigeria through Guidance of Shariah Governance | 02:15-02:30 pm |
| 7 | Mr Muhammad Tanveer Mr Ikram Ul Haq | The Use of Social Media by Managers During the Covid-19 to Accomplish the Tasks | 02:30-02:45 pm |
| 8 | Mr Ishaq El-Mubarak, A. M. O. | Covid-19 calls to Muslims from Innovation Policy Dimension | 02:45-03:00 pm |



COMPANY COVID-19 VACCINATION



Whether refusal
by employee
justifies
termination?



Presenters



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Mohamad Hassan Ahmad

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A close-up photograph of a person's face, focusing on the eye and forehead. A syringe needle is positioned near the eye, suggesting a medical procedure or vaccination. The lighting is dramatic, with strong highlights and deep shadows.

Introduction

Balancing employer's obligation to provide a safe and healthy work environment vs employee's right to decline vaccination

- The recent COVID-19 outbreak has raised several pertinent issues, one of which is the request by the company management for its workers to be vaccinated.
- Many, however, are reluctant to be vaccinated due to fear of its side effects.

- The issue arises as to whether the employees can refuse the management's request of being vaccinated.
- This paper therefore discusses the above issues with reference to workers in the private sector.

**Total cases in
MALAYSIA**

353,000

cases

As of April 11, 2021



Brief accounts of COVID-19 outbreak and preventive measures in Malaysia

3 February 2020

Malaysia first saw its COVID-19 patient

18 March 2020

Movement Control Order

4 May 2020

Conditional Movement Control Order

26 May 2020

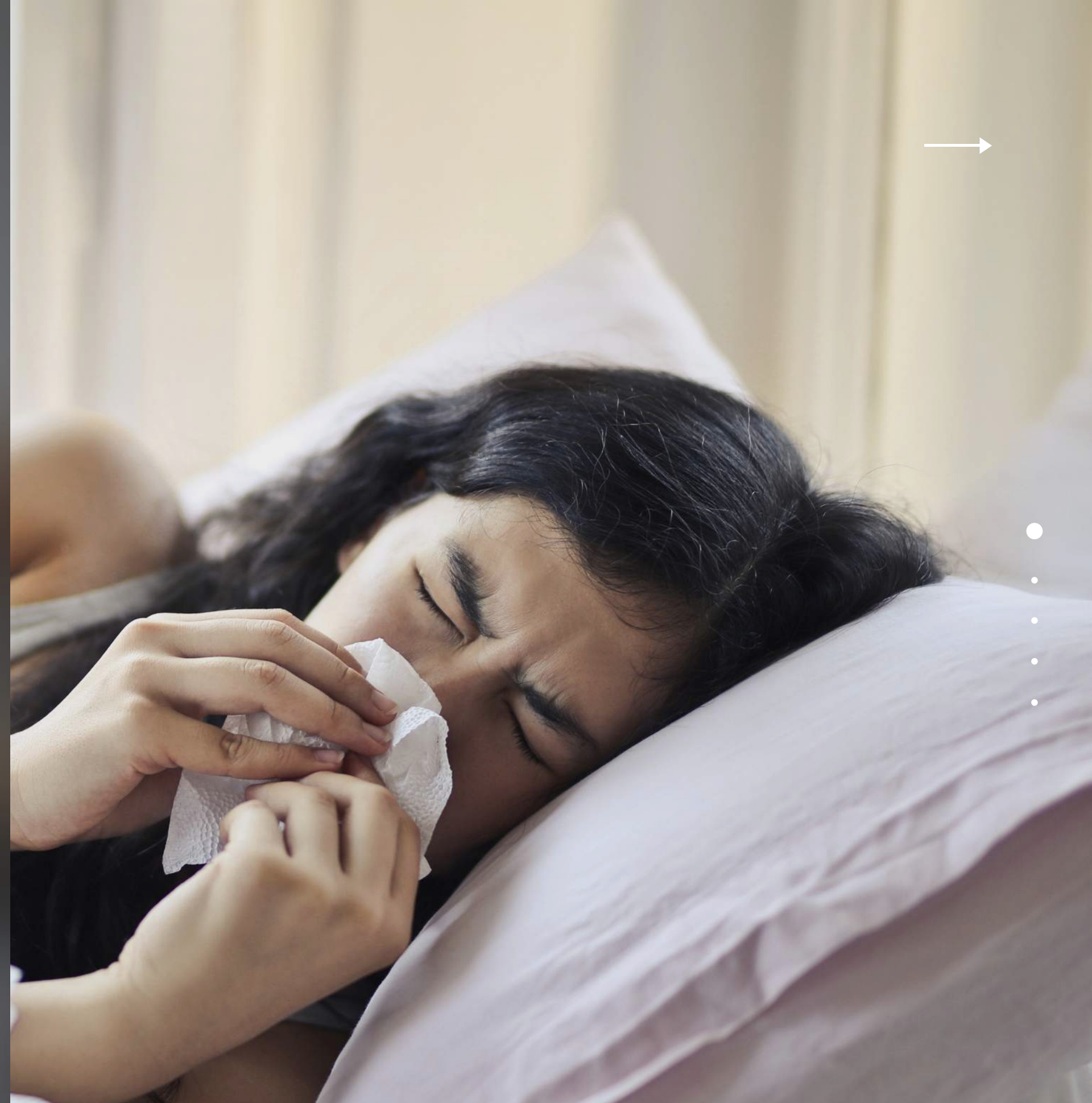
Enhanced Movement Control Order

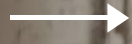
7 June 2020

Recovery Movement Control Order

11 January 2021

Reimposition of Movement Control Order & Declaration of State of Emergency





Refusing Vaccinated and Termination from Employment

- Key sources of infections in Malaysia

occurring at workplaces, with hundreds of cases traced to private companies as well as government agencies

- Production of COVID-19 vaccines

Pfizer-BioNTech Covid-19 vaccine; the Moderna Covid-19 vaccine; the Oxford AstraZeneca vaccine, in the United Kingdom; Coronavac, developed by Sinovac, in China; the Sputnik V vaccine, in Russia; and the Covaxin, developed by Bharat Biotech, in India

- COVID-19 vaccinations - compulsory?

Covid-19 vaccine will be given free to both Malaysian citizens and foreign nationals living in Malaysia including the migrant workers. The government has no plan to make the vaccination compulsory, the vaccine will be administered only to those who agree to take it voluntarily

- Occupational Safety and Health Act 1994 and the Factories and Machinery Act 1967

Any breach of the above obligation may expose the employer to penal sanction, a possible civil claim for negligence namely, the failure to exercise the required degree of care that a reasonably prudent employer would exercise in like circumstances



Possible measures taken by employers

— Termination of employment

This managerial power must be exercised bona fide and not capriciously or with motives of victimisation or unfair labour practice

— Vaccination requirement by the management

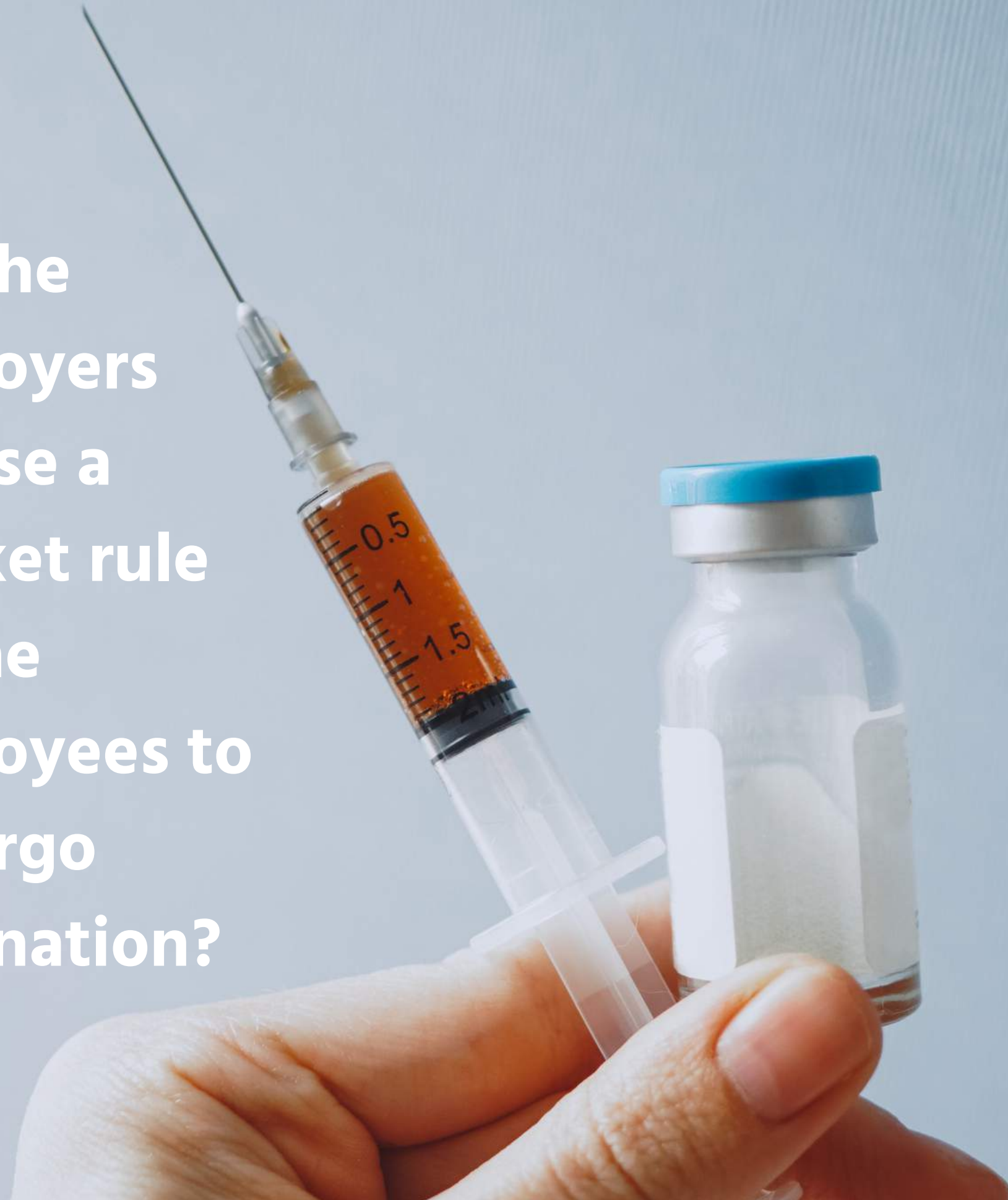
- Workers are expected to obey the legitimate directives or orders issued by the management and any wilful disobedience thereto is an act of insubordination
- Ngeow Voon Yean v Sungei Wang Plaza Sdn Bhd/Landmarks Holdings Bhd (FC) stated: 'working as instructed is the employee's basic consideration under a contract of employment just as providing remuneration is the basic consideration of his employer
- Tuan Hj Mohd Noor Sandiman v Federal Power Sdn Bhd: the Industrial Court stated an employee should abide by all lawful and reasonable orders or instructions of his employer or superior because only with full cooperation and mutual respect can industrial harmony in a workplace be achieved or maintained

— Unfair dismissal?

- Any form of victimisation of the employee may warrant court's interference
- The tasked of determining whether or not the dismissal was with or without just cause or excuse is that of the Industrial Court



Can the employers impose a blanket rule for the employees to undergo vaccination?



Malaysian government has not made COVID-19 vaccination mandatory

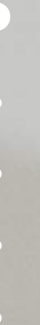
Therefore employers cannot impose a blanket rule of insisting their workers to be vaccinated as a condition for returning to work



Exception

unvaccinated workers could pose a direct threat to the health or safety of others in the workplace such as those in the healthcare, restaurants, education, child and elderly care sectors among others.

**Alternative measures:
educate, encourage,
communicate, flexible to other
working arrangements**





Conclusion

COVID-19 pandemic has seen the government-mandated lockdowns with harsh restrictions on human movements, which is primarily intended to curb the spread of the virus and in the process, the businesses have suffered huge losses for months.



Businesses in Malaysia are considering making vaccination compulsory



Employees must be reminded that employer has a duty of care to all its employees and are obliged to provide them with a Covid-19 free workplace



Employees must be reminded that COVID-19 outbreaks commonly occurred in workplaces.



Employers should organise open communication sessions stressing on vaccination of its workforce



Those with pre-existing medical conditions may seek to work remotely

THANK YOU.



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COMPANY COVID-19 VACCINATION: WHETHER REFUSAL BY EMPLOYEE JUSTIFIES TERMINATION?

By

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Introduction

Workers' safety and health at the workplace is the duty placed on the employer and the breach thereof could expose them to penal sanctions under the occupational safety and health law and with potential civil liability for negligence. The Coronavirus outbreak (Covid-19) with the government's interstate and inter-district travel restrictions on the advice of the Malaysian National Security Council had seen many companies operating with minimum force with many staff ordered to work from home. The distribution of Covid-19 vaccine recently would surely come as a relief for businesses and the employers. To ensure covid free workplace, employers are now requiring all their employees' to be vaccinated before they return to the workplace. Unfortunately, a handful workers are refusing vaccination due to several reasons such as the efficacy of the vaccine, its side effects especially for those with pre-existing medical conditions and for fear of its potential side-effects, among others.

As there is no law mandating the vaccination, the issue arises as to whether the employer can force their employees to be vaccinated before allowing them to return to work or as soon as the vaccination for them is made available. Whether refusal by the employee to comply with the management request for vaccination can be a basis for terminated from employment. Recently, the Inspector-General of Police (IGP) had said that the police officers who refuses to take the Covid-19 vaccine will be asked to resign.¹ The question will then arise whether such a departure was voluntary resignation or a dismissal from employment. It is important to consider whether the employee's refusal to comply with the management's request was based on legitimate reasons. Hence, this article discusses the above issues with reference to workers in the private sector. At this juncture, it is noteworthy that an employee's right to decline vaccination need to be balanced against the employer's obligation to provide a safe and healthy work environment. In this regard, workers who refuses vaccination otherwise than the pre-existing medical conditions could potentially risk others at the workplace of this disease and hence, undermining the employer's workplace safety and health obligation.

¹ 'Cops encouraged to get Covid-19 vaccine: IGP' 12 March 2021 at <https://www.thevibes.com/articles/news/20387/cops-urged-to-get-Covid-19-vaccine-igp>

Covid-19 Pandemic and Vaccination

It would be worthwhile first to provide a brief account of the Covid-19 pandemic and the various measures initiated by the government to control the spread of the disease including the vaccination programme. Way back in 1965, human coronaviruses were first identified and characterized as an infection that could cause upper respiratory tract infections particularly amongst children.² Ongoing research has shown that there are other coronavirus strains contributing to the enormous variety of strain differences in the family of coronaviruses.³ Almost 5 decades later, there was an emergence of a new severe acute respiratory syndrome called SARS which emerged in 2002 – 2003. The coronavirus began from southern China and spread through 29 countries across North America, South America, Europe and Asia at a quantifiable speed.⁴ It remains unclear how the virus entered human population but the coronavirus can grow speedily and easily in human tissue, enabling quick sequencing of the human genome resulting in 8098 infected individuals and 774 SARS-related fatalities.⁵

However, in the late December 2019, the officials in Wuhan City, China reported that there was a continuous occurrence of an unknown deadly infectious disease causing severe acute respiratory tract infection (SARS-CoV-2).⁶ The initial amplification of the outbreak was suggested that the new coronavirus originated from the Hunan South China Seafood Market in Wuhan City, China⁷ and thereafter the market was forced to close on 1 January 2020. Despite the closure of the market, the novel coronavirus continued to spread at an alarming speed where it has subsequently reached Malaysian ground on 25th January 2020.

In Malaysia, the first threat of Covid-19 became a nationwide concern when its neighbouring country, Singapore reported its first imported Covid-19 case in the republic.⁸ Within less than 48 hours of the first reported case in Singapore, Malaysia identified a confirmed Covid-19 positive case, an imported case from Wuhan, China, marking the first wave of infection in the country that lasted for about 3 weeks.⁹ The number eventually increased to 22 confirmed positive cases, 20 of which were imported cases with Malaysia saw its first Malaysian testing positive for Covid-19 on 3 February 2020, only nine days later after the first confirmed

² Jeffrey S. Kahn, and Kenneth McIntosh, 'History and Recent Advances in Coronavirus Discovery' (2005) 24 (11) *The Pediatric Infectious Disease Journal* 223, 223

³ Ibid

⁴ Drosten C, Gunther S, Preiser W, et al. 'Identification of a novel coronavirus in patients with severe acute respiratory syndrome' (2003) *N Engl J Med* 348 and Peiris JS, Lai St, Poon, LL et al. 'Coronavirus as a possible cause of severe acute respiratory syndrome' (2003) *Lancet* 1319, 1319 –1325

⁵ Jeffrey S. Kahn, and Kenneth McIntosh, 'History and Recent Advances in Coronavirus Discovery' (2005) 24 (11) *The Pediatric Infectious Disease Journal* 223, 224

⁶ World Health Organization, 'Coronavirus disease 2019 (COVID-19) Situation Report – 94' (*WHO*, 23 April 2020) <https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200423-sitrep-94-covid-19.pdf> accessed on 15 March 2021

⁷ Ibid

⁸ Ain Umaira Md Shah et al, 'COVID-19 outbreak in Malaysia: Actions taken by the Malaysian government' (2020) 97 *International Journal of Infectious Disease* 108, 110

⁹ N.H. Abdullah, 'Pengesanan kes baharu yang disahkan dijangkiti 2019 novel Coronavirus (2019-nCoV) di Malaysia [Press release]' (*Ministry of Health*, 21 January 2020) http://www.moh.gov.my/index.php/database_stores/store_view_page/21/1301 accessed on 15 March 2021 and *Ministry of Health*, 'COVID-19 Media Centre: Press Release' (*MOH*, 2020) <http://moh.gov.my/index.php/pages/view/2019-ncov-wuhan-kenyataan-akhbar> Accessed on 15 March 2021

Covid-19 positive case. The patient was a 41-year old man who had returned from Singapore to attend a conference which was also attended by delegates from China.¹⁰

A second wave of Covid-19 infections broke out on 27 February 2020 becoming the highest number of positive confirmed cases in South East Asia following from a large religious gathering that took place at Sri Petaling, Kuala Lumpur.¹¹ It was attended about 14,500 participants and resulted in Malaysia to record the first 3-digit jump in a day with 190 new cases.¹² The exponential rise of Covid-19 cases in Malaysia resulted in the Prime Minister of Malaysia, Tan Sri Muhyiddin Yassin to officially declare a nationwide Movement Control Order (MCO) under the Prevention and Control of Infectious Diseases Act 1988 and the Police Act 1967 commencing from 18 – 31st March 2020, as a soft cordon sanitaire to alleviate the mass panic of new cases and also to protect the public health from the third wave of Covid-19 infections.¹³

(a) Movement Control Order (MCO)

In the early stage of the second wave, the measure taken under the strict nationwide MCO includes the restriction of mass movements and gathering across the country.¹⁴ The restriction of movement prohibits all religious, sports and social cultural activities with the exception of businesses that provides essential services such as supermarkets and public markets selling necessities.¹⁵ There were also travel prohibitions preventing all Malaysian from travelling abroad and also restrictions on international entry of all tourists and foreign visits into the country.¹⁶ The federal government also ordered compulsory closure for all kindergartens, government and private schools, public and private higher education institutions and skills training institutes.¹⁷ Similarly, when it comes to offices and workplaces, all government premises and private businesses were ordered to close except those involved in essential services such as water, electricity, energy, telecommunications, postal, transportation, irrigation, oil, gas, fuel, lubricants, broadcasting, finance, banking, health, pharmacy, fire, prison, port, airport, safety, defence, cleaning, retail and food supply.¹⁸ The national MCO was extended multiple times until 12 May 2020 in order to prevent another wave from recurring if the MCO is being lifted prematurely.

In addition to the restriction of movement, the federal government also imposed penalties for violators of the MCO's regulations to the extent where the Attorney General's Chambers released a Federal Government Gazette Infection Diseases Prevention and Control (Measures

¹⁰ Bernama, 'First case of Malaysian positive for coronavirus' (*Bernama*, 4 Feb 2020) https://www.bernama.com/en/general/news_covid-19.php?id=1811373 accessed on 15 March 2021

¹¹ S Birrunha, 'Six biggest Covid-19 clusters in Malaysia' (*The Malaysian Reserve*, 4 January 2021) <https://themalaysianreserve.com/2021/01/04/six-biggest-covid-19-clusters-in-malaysia/> accessed on 15 March 2021

¹² Chris Fook Sheng Ng et al, 'Characteristics of COVID-19 epidemic and control measures to curb transmission in Malaysia' (2020) 101 *International Journal of Infectious Disease* 409, 409-410

¹³ Ain Umaira Md Shah et al, 'COVID-19 outbreak in Malaysia: Actions taken by the Malaysian government' (2020) 97 *International Journal of Infectious Disease* 108, 110

¹⁴ Chris Fook Sheng Ng et al, 'Characteristics of COVID-19 epidemic and control measures to curb transmission in Malaysia' (2020) 101 *International Journal of Infectious Disease* 409, 409-410

¹⁵ Bernama, 'Covid-19: Movement Control Order imposed with only essential sectors operating' (*Bernama*, 16 March 2020) <https://www.nst.com.my/news/nation/2020/03/575177/covid-19-movement-control-order-imposed-only-essential-sectors-operating> accessed on 15 March 2021

¹⁶ *Ibid*

¹⁷ *Ibid*

¹⁸ *Ibid*

in Local Areas of Infection) Regulations 2020 as permitted under the Prevention and Control of Infectious Diseases Act 1988 to allow the police force to fine MCO violators up to RM1,000 and/or jailed not more than six months of both.¹⁹ The penalties were proved to be ineffective in reducing MCO violations and therefore on 14 April 2020, the Senior Minister Datuk Seri Ismail Sabri Yaakob announced that MCO offenders will be arrested and reprimanded.²⁰ In order to restrict and monitor travellers, the police force together with the military forces were mobilized to conduct road blocks at the key points nationwide.²¹ However, over time, the government had eased the restrictions by announcing Conditional Movement Control Order (CMCO) which permits certain business sectors to resume operations until 9 June 2020.²² The government emphasized on strict compliance with the standard operating procedures (SOPs) but still prohibits interstate movement during festive seasons.

(b) Conditional Movement Control Order (CMCO)

The national MCO was replaced with Conditional Movement Control Order (CMCO) on 4 May 2020 in the spirit of reopening the national economy to allow economic sectors and activities to operate in a controlled matter. Businesses were required to ensure that social distancing are being practiced at the business premises in a strict manner with the customers' names, contact number, date of visit and body temperature are recorded, either with the use of scanning QR code via MySejahtera, MyTrace or to be recorded manually in a log book on a daily basis.²³ The ease of movement is only limited to certain types of businesses as religious, social cultural and sports activities are still prohibited from operating.²⁴ During CMCO period, inter-state travel are still not allowed except for work purposes.²⁵ Although the government has allowed certain workplace to resume operations at the business premise, the government strongly encouraged all employers to implement flexible working hours or work-from-home as part of the continuous effort to prevent congestion at the public places such as office lifts, public transportations stations and public vehicle.²⁶ These strategies were proved to be effective with some early reports noted the combining multiple measures have minimized the risk of further lockdowns.²⁷

(c) Enhanced Movement Control Order (EMCO)

¹⁹ Azyyati Ahmad, 'Perintah Kawalan Pergerakan digazet, hukuman 6 bulan penjara, tambahan sektor penting' (Astro Awani, 18 March 2020) <https://www.astroawani.com/berita-malaysia/perintah-kawalan-pergerakan-digazet-hukuman-6-bulan-penjara-tambahan-sektor-penting-234108> accessed on 15 March 2021

²⁰ Nuradzimmah Daim and Rahmat Khairulrijal, 'No more compounds, only remand for MCO violators from tomorrow' (*New Straits Times*, 14 April 2020) <https://www.nst.com.my/news/nation/2020/04/584206/no-more-compounds-only-remand-mco-violators-tomorrow> accessed on 15 March 2021

²¹ Bernama, 'Movement Control Order: Services of military to be mobilised effective from Sunday' (*Astro Awani*, 20 March 2020) <https://www.astroawani.com/berita-malaysia/movement-control-order-services-military-be-mobilised-effective-sunday-234473> accessed on 15 March 2021

²² Zakiah Koya, 'Conditional MCO extended for another four weeks to June 9' (The Star Online, 10 May 2020) <https://www.thestar.com.my/news/nation/2020/05/10/conditional-mco-extended-for-another-four-weeks-to-june-9> accessed on 15 March 2021

²³ Bernama, 'Essence of Conditional Movement Control Order' (*Bernama*, 1 May 2020) <https://www.bernama.com/en/general/news.php?id=1837487> accessed on 15 March 2021

²⁴ Ibid

²⁵ Ibid

²⁶ Ibid

²⁷ Chris Fook Sheng Ng et al, 'Characteristics of COVID-19 epidemic and control measures to curb transmission in Malaysia' (2020) 101 *International Journal of Infectious Disease* 409, 409-410

However, in certain specific locations, the federal government announced the Enhanced Movement Control Order (EMCO) where a large Covid-19 cluster has been detected.²⁸ The EMCO imposed a stricter order as compared to the CMCO and it lasts for 14 days to enable the government to conduct a thorough Covid-19 test towards all residents within the location in order to contain the spread of the virus.²⁹ The stricter restrictions include prohibiting all residents within the area from exiting their homes during the EMCO, prohibiting non-residents and visitors from entering into the area subjected to the EMCO and all businesses were required to shut down. The residents, nonetheless are provided with sufficient food supplies by the Social Welfare Department during the period of EMCO in addition to a medical base established within the area.³⁰

(d) Recovery Movement Control Order (RMCO)

On 7 June 2020, Prime Minister announced that the Conditional Movement Control Order would end on 9 June and to be replaced with the Recovery Movement Control Order (RMCO) between 10 June and 31 August 2020.³¹ Under the RMCO, the public are allowed to attend to religious activities, meetings, incentives, conventions and exhibitions, travel and trade fairs, spa, wellness and reflexology centres, government and private pre-schools, kindergartens, nurseries and daycare centres provided in compliance with strict social distancing measures such as to limit crowds to 200-250 people, check customers' temperatures, wear face masks, and provide hand sanitizer.³² The RMCO was further extended for another four months until 31 December 2020.³³

(e) Re-imposition of MCO restrictions

On 11 January 2021, Prime Minister Tan Sri Muhyiddin Yassin announced that Movement Control Order restrictions would be reinstated in five states namely Malacca, Johor, Penang, Selangor, Sabah and the Federal Territories of Kuala Lumpur, Putrajaya, and Labuan between 13 until 26 January 2021 in response to a surge of clusters of Covid-19 cases in the five states and three federal territories.³⁴ The government has allowed only five essential economic sectors to operate such as manufacturing, construction, services (including supermarkets, banks and health services), trade and distribution and plantations whilst non-

²⁸ The Borneo Post, 'Chronology of MCO phases in the country' (The Borneo Post, 12 January 2021) <https://www.theborneopost.com/2021/01/12/chronology-of-mco-phases-in-the-country/> accessed on 15 March 2021

²⁹ Nursyazwani Saiful Sham, 'COVID-19: PKPD dikuat kuasa di dua kawasan di Simpang Renggam' (Astro Awani, 26 May 2020) <https://www.astroawani.com/berita-malaysia/covid19-pkpd-dikuat-kuasa-di-dua-kawasan-di-simpang-renggam-235454> accessed on 15 March 2021

³⁰ Nursyazwani Saiful Sham, 'COVID-19: PKPD dikuat kuasa di dua kawasan di Simpang Renggam' (Astro Awani, 26 May 2020) <https://www.astroawani.com/berita-malaysia/covid19-pkpd-dikuat-kuasa-di-dua-kawasan-di-simpang-renggam-235454> accessed on 15 March 2021

³¹ Cindi Loo, 'CMCO ends June 9, Recovery MCO from June 10 to Aug 31 (Updated)' (The Sun Daily, 7 June 2020) https://www.thesundaily.my/home/cmco-ends-june-9-recovery-mco-from-june-10-to-aug-31-updated-EM2538754#pk_campaign=MASwpn&pk_kwd=CMCO+ends+June+9%2C+Recovery+MCO+from+June+10+to+Aug+31 accessed on 15 March 2021

³² Ibid

³³ Amir Yusof, 'Malaysia's recovery movement control order extended to Dec 31, tourists still not allowed in: PM Muhyiddin' (CAN, 28 August 2020) <https://www.channelnewsasia.com/news/asia/malaysia-recovery-movement-control-order-extended-dec-31-mco-13047724> accessed on 15 March 2021

³⁴ MalaysiaKini, 'Eight states and FTs go back into partial lockdown' (MalaysiaKini, 11 January 2021) <https://www.malaysiakini.com/news/558499> accessed on 15 March 2021

essential activities are prohibited.³⁵ The reinstatement of MCO was further extended until 4 February 2021 due to a continuation of rising cases and deaths related to Covid-19. The reinstatement of MCO in the five states and three Federal Territories did not reduce the number of Covid-19 infections and the MCO restrictions were then extended to all states except Sarawak from 5 to 18 February 2021.³⁶ Despite the re-imposition of MCO to almost all states in Malaysia, Senior Minister Ismail Sabri Yaakob has allowed certain activities to be gradually reopened under a strict operating procedure.³⁷

(f) Declaration of Emergency

A day after the Prime Minister announced the imposition of stricter movement control measures in the states that were badly affected by the Covid-19 outbreak, the Yang di-Pertuan Agong has declared a state of emergency for the whole Federation effective from 11 January 2021 to 1 August 2021 unless cases were brought under control earlier. The Emergency (Essential Powers) Ordinance 2021 was accordingly gazetted on 14 January 2021 which was enacted in accordance with Article 150 (1) of the Federal Constitution, a proactive measure to contain the Covid-19 pandemic in Malaysia.

And beginning from 11 March, pursuant to the Emergency (Prevention and Control of Infectious Diseases) (Amendment) Ordinance 2021, individuals who violate the standard operating procedures (SOPs) stipulated for the prevention and control of the Covid-19 pandemic can be fined up to RM10,000. The ordinance also holds that companies or corporations that violate the SOPs can be fined up to RM50,000. Further, the Emergency (Essential Powers) (No. 2) Ordinance 2021 will be invoked during the emergency period to deal with misinformation and individuals who create, publish, or circulate fake news on Covid-19 or on the emergency proclamation would be subject to heavy penalties including a fine of up to RM100,000 or imprisonment of up to three years, or both.

In short, the all the above-mentioned measures are primarily aimed at containing the spread of Covid-19 or as aptly noted by the Prime Minister Tan Sri Muhyiddin Yassin: “if the movement of the people is not controlled, we will not be able to break the chain of COVID-19 infection. Cases will continue to increase, hospitals in our country will not be able to accommodate the rapidly increasing number of new cases, our public health system will be paralysed, and the lives of the people will be threatened. This is also a situation we must avoid.”³⁸

It is also worthwhile mentioning that despite the implementation of MCO, EMCO, RMCO and CMCO, the number of Covid-19 infections continue to rise. It was pointed out that the key source of Covid-19 infection in Malaysia is commonly occurring at workplaces, with hundreds of cases traced to private companies as well as government agencies.³⁹ With the third wave of Covid-19 infections begins on 20 September 2020, a total of 476 new clusters

³⁵ Ibid

³⁶ Ibid

³⁷ Ibid

³⁸ Actions taken under the Emergency Ordinance (Essential Powers) 2021, Malaysia 5 February 2021 at <https://www.humanresourcesonline.net/actions-taken-under-the-emergency-ordinance-essential-powers-2021-malaysia>

³⁹ Hazlin Hassan, ‘Workplace clusters are key source of Covid-19 infections in Malaysia’ (The Straits Times, 23 January 2021) <https://www.straitstimes.com/asia/se-asia/workplace-clusters-are-a-key-source-of-covid-19-infections-in-malaysia> accessed on 15 March 2021

were reported as of 10 January 2021 involving 259 clusters (54.41%) of workplaces.⁴⁰ The data also revealed a significant increase in the number of new clusters in the third wave compared to 110 new clusters recorded during the second wave with 25 clusters (22.72%) involving workplaces.⁴¹ The workplace clusters form approximately 30% of the Covid-19 clusters reported since the start of the pandemic in January 2020.⁴² The workplace clusters remain a serious concern for the country in curbing the spread of Covid-19 infections particularly in light of five new emerging clusters linked to workplace.⁴³ Despite the arrival of Covid-19 vaccinations in Malaysia on 21 February 2021, there remain a high concern on the new Covid-19 variant, known as B1525 and E484K, that can be more transmissible, resistant to antibodies and can evade the immune system.⁴⁴

An example of workplace cluster is the I.N. Cluster, being the first workplace cluster reported on 24 March 2020 when the first confirmed Covid-19 case was diagnosed.⁴⁵ The number of workers screened were 577 and a total of 22 confirmed Covid-19 positive case, with a positive rate of 3.81%.⁴⁶ Other workplaces affected include factories, palm oil plantations, educational institutions and wholesale market where some of these workplaces have been ordered to shut down in order to undergo deep cleaning and proper sanitisation process. Apart from the I.N cluster, there was also an outbreak of Covid-19 infections at the Glovemaker Top Glove Corp Berhad's worker dormitories, known as the 'Teratai' cluster. The Top Glove infections were reported in Negeri Sembilan, Kedah, and Selangor with more than 5,000 foreign workers at Top Glove infected and one fatality, being the largest workplace cluster.⁴⁷ The Ministry of Defense has ordered 27 out of 28 Top Glove factories to suspend operations starting 25 November 2020 until it is considered safe to resume operations.⁴⁸

Another example of workplace cluster is the Setia Alam construction site where the infected clerk working for the construction company had spread the virus to other workers.⁴⁹ Although the construction company adhered to the SOP, the government had taken the action

⁴⁰ Prime Minister's Office of Malaysia, 'Speech Text of The Special Announcement of Emergency' (*PMO*, 12 January 2021) <https://www.pmo.gov.my/2021/01/teks-ucapan-pengumuman-khas-darurat/> accessed on 15 March 2021

⁴¹ *Ibid*

⁴² Syafiqah Salim, '30% of Malaysia's Covid-19 clusters linked to the workplace' (*The Edge Markets*, 27 October 2020) <https://www.theedgemarkets.com/article/30-malaysias-covid19-clusters-linked-workplace> accessed on 15 March 2021

⁴³ Syafiqah Salim, 'Covid-19: Five workplace-linked clusters, five community clusters detected' (*Edge Prop*, 12 March 2021) <https://www.edgeprop.my/content/1814766/covid-19-five-workplace-linked-clusters-five-community-clusters-detected> accessed on 15 March 2021

⁴⁴ CNA, 'Malaysia detects two cases of new COVID-19 variant' (CNA, 5 March 2021)

⁴⁵ Ministry of Health, 'UPDATES ON THE CORONAVIRUS DISEASE 2019 (COVID-19) SITUATION IN MALAYSIA (Press Statement) (*MOH*, 9 July 2020) [http://covid-19.moh.gov.my/terkini/072020/situasi-terkini-09-julai-2020/Kenyataan%20Akhbar%20KPK%20COVID-19%20\(9%20Julai%202020\)%20-%20EN.pdf](http://covid-19.moh.gov.my/terkini/072020/situasi-terkini-09-julai-2020/Kenyataan%20Akhbar%20KPK%20COVID-19%20(9%20Julai%202020)%20-%20EN.pdf) accessed on 15 March 2021

⁴⁶ *Ibid*

⁴⁷ Hazlin Hassan, 'Workplace clusters are key source of Covid-19 infections in Malaysia' (*The Straits Times*, 23 January 2021) <https://www.straitstimes.com/asia/se-asia/workplace-clusters-are-a-key-source-of-covid-19-infections-in-malaysia> accessed on 15 March 2021 and Reuters, 'Malaysia's Top Glove reports COVID-19 outbreak at four factories' (Reuters, 16 January 2021) <https://www.reuters.com/article/us-health-coronavirus-top-glove-idUSKBN29L0DS> accessed on 15 March 2021

⁴⁸ Alyssa Pong, 'What Malaysia's Biggest COVID-19 Cluster Reveals About Migrants' Working Conditions' (*The Organization of World Peace*, 16 December 2020) <https://theowp.org/reports/what-malaysias-biggest-covid-19-cluster-reveals-about-migrants-working-conditions/> accessed on 15 March 2021

⁴⁹ Arfa Yunus, 'Setia Alam construction site cluster not due to non-compliance' (*News Straits Times*, 11 May 2020) <https://www.nst.com.my/news/nation/2020/05/591644/setia-alam-construction-site-cluster-not-due-non-compliance> accessed on 15 March 2021

to close the construction site in Setia Alam and other construction sites where clusters have been discovered.⁵⁰ Despite the government slowly lifting the MCO restrictions, there still exists a major concern that workplaces remain the riskiest places to catch Covid-19⁵¹ especially in light of the emergence of Covid-19 variant. The government has reiterated that stern actions including closing down of the premises will be enforced for any violation that causes the spread of Covid-19 infections.⁵²

Refusing Vaccinated and Termination from Employment

It must be reiterated that the Covid-19 disease brings serious and life-threatening complications and the world had witnessed millions of people succumbing to this disease and therefore, ending the pandemic is the utmost priority of the world leaders so as to revive the countless activities of a functioning society. Getting the Covid-19 vaccination may offer some best protection to oneself and prevent him/her from spreading the virus that causes Covid-19 to others. In early 2021 saw many Covid-19 vaccines approved for use in various countries include the Pfizer-BioNTech Covid-19 vaccine; the Moderna Covid-19 vaccine; the Oxford AstraZeneca vaccine, in the United Kingdom; Coronavac, developed by Sinovac, in China; the Sputnik V vaccine, in Russia; and the Covaxin, developed by Bharat Biotech, in India.

It is worth mentioning that a vaccine would need to pass through several stages of clinical trials before the manufacturer can apply for approval from a country's health authority. This is to ensure that the vaccine significantly reduces the probability of contracting the virus. While the wearing of masks and maintaining social distancing does help reduce one's chance of being exposed to the virus or spreading it to others, such measures alone however are inadequate to curb the virus and hence, vaccination is necessary so that the people with the vaccine have a 95% lower risk of Covid-19. In Malaysia, the Covid-19 vaccine will be given free to both Malaysian citizens and foreign nationals living in Malaysia including the migrant workers. As the government has no plan to make the vaccination compulsory, the vaccine will be administered only to those who agree to take it voluntarily.⁵³

Having said the above, and in relation to workplace safety and health, the workers safety, health, and welfare is the obligation imposed on the employer pursuant to Occupational Safety and Health Act 1994 (OSHA)⁵⁴ and the Factories and Machinery Act 1967. The OSHA requires the employers to take all reasonably practicable steps to secure the safety, health and welfare of persons at work and to protect others against risks to safety or health in connection with the activities of persons at work. The workers safety and health include both the safe system of work and safe place of work used by employee in connection with and in furtherance of the employment. Any breach of the above obligation may expose the employer

⁵⁰ Ibid

⁵¹ Danial Dzulkiyly, 'Workplaces remain riskiest places in Malaysia to catch Covid-19 as clusters spread across four states' (*Malay Mail*, 9 February 2021) <https://www.malaymail.com/news/malaysia/2021/02/09/workplaces-remain-riskiest-places-in-malaysia-to-catch-covid-19-as-clusters/1948452> accessed on 15 March 2021

⁵² Prime Minister's Office of Malaysia, 'Speech Text of The Special Announcement of Emergency' (*PMO*, 12 January 2021) <https://www.pmo.gov.my/2021/01/teks-ucapan-pengumuman-khas-darurat/> accessed on 15 March 2021

⁵³ 'COVID-19 vaccine to be given free to Malaysians – PM Muhyiddin', 27 November 2020 at <https://www.pmo.gov.my/2020/11/covid-19-vaccine-to-be-given-free-to-malaysians-pm-muhyiddin/>

⁵⁴ Section 17 of the OSHA 1994 prescribes a duty on all employers to also ensure that persons, not being its employees, are not exposed to risks to their safety or health at the workplace.

to penal sanction pursuant to the above instruments and further, a possible civil claim for negligence namely, the failure to exercise the required degree of care that a reasonably prudent employer would exercise in like circumstances.

In relation to the issue whether an employer can terminate its employees who refuses to be vaccinated it would be appropriate to consider the circumstances which may justify termination of employment.⁵⁵ The employer's workplace prerogative include dismissing an employee for various reasons such as unsatisfactory or poor work performance, incompetency, absenteeism, insubordination, stealing, assault, bullying, drunkenness, serious violation of employer's policies and practices, damaging employer's property and using employer's property for personal business, among others. This managerial power must be exercised bona fide and not capriciously or with motives of victimisation or unfair labour practice.

Any form of victimisation of the employee, whether arbitrary, perverse or baseless actions by the management that are unnecessarily harsh or is not just or fair, or other mala fide action on the part of the management, may warrant court's interference. A dismissal of an employee would be unjustifiable when it deals with membership or proposed membership of a trade union or engaging in trade union activities outside working hours; on grounds of religious or political opinions; legal proceedings against an employer where the employee is a party or a witness; race, colour, sexual orientation, pregnancy, availing of rights under legislation such as maternity leave; or unfair selection for redundancy, among others.

In relation to vaccination requirement by the management before the workers can resume work or enter the workplace, it is worth mentioning that workers are expected to obey the legitimate directives or orders issued by the management and any wilful disobedience thereto is an act of insubordination⁵⁶ which undeniably undermines the orderly system of conduct and discipline within an undertaking.⁵⁷ In *Ngeow Voon Yean v Sungei Wang Plaza Sdn Bhd/Landmarks Holdings Bhd*,⁵⁸ the Federal Court stated: 'working as instructed is the employee's basic consideration under a contract of employment just as providing remuneration is the basic consideration of his employer.' Again, in *Tuan Hj Mohd Noor Sandiman v Federal Power Sdn Bhd*,⁵⁹ the Industrial Court stated, *inter alia*, that an employee should abide by all lawful and reasonable orders or instructions of his employer or superior because only with full cooperation and mutual respect can industrial harmony in a workplace be achieved or maintained.

⁵⁵ The law is settled in that there is no distinction between a unilateral termination of a contract of employment and a dismissal, as either must be with just cause or excuse. In *Goon Kwee Phoy v J & P Coats (M) Bhd* [1981] 2 MLJ 129, the Federal Court stated that: 'There is no material difference between a termination of the contract of employment by due notice and a unilateral dismissal of a summary notice. The effect is the same and the result must be the same.'

⁵⁶ Insubordination happens when an employee wilfully refuses to obey or disregards the employer's reasonable orders or instructions.

⁵⁷ In *Kesatuan Pekerja-Pekerja Perusahaan Alat-Alat Pengangkutan & Sekutu and Kilang Pembinaan Kereta-Kereta Sdn Bhd* (Award 54 of 1980), the Industrial Court stated: 'Insubordination on the part of an employee undermines the orderly system of conduct and discipline within an undertaking, and amounts to a breach of the implied obligation of the employee to be subject to the system of conduct governing the employer-employee relationship, and also the accepted norms of the relationship between an employee and his superior. Where this implied obligation is breached, the supervisory position of the superior is undermined, and this could lead to indiscipline, thereby jeopardising the projected result of the undertaking.'

⁵⁸ *Ibid.*

⁵⁹ [2008] 3 ILR 382.

Whether or not the insubordination warrants dismissal is determined with reference to the nature and degree of the alleged misconduct; its significance in relation to the employer and to the position held by the employee; its effect on the confidential relationship between the parties; and the misconduct must be such that it goes to the heart or root of the contract.⁶⁰ The question here is whether termination of an employee would be justifiable when he disobeys the superior's order to be vaccinated before returning to work. Further, the punishment meted out for the proven insubordination has to be proportionate to the nature and gravity of the wrongdoing.⁶¹ The reasonableness of the employer's decision to terminate the employee is determined with reference to the reaction of a reasonable employer in the given circumstances.⁶² The task of determining whether or not the dismissal was with or without just cause or excuse is that of the Industrial Court⁶³ which will be arrived at after considering the facts and the circumstances surrounding the case.⁶⁴ Where the punishment meted out on the employee is so strikingly disproportionate to the gravity of the misconduct, it may justify interference by the Industrial Court.⁶⁵

Having said the above, it is important for workers to be vaccinated as a protection against contracting the covid-19 and would likely decrease the risk of them spreading the virus in the workplace. This is aside from reduce absenteeism and decrease employee health care costs. However, since the government has not made covid-19 vaccination mandatory, the employer therefore cannot impose a blanket rule of insisting their workers to be vaccinated as a condition for returning to work. The exception however is when the employer can establish that the unvaccinated workers could pose a direct threat to the health or safety of others in the workplace such as those in the healthcare, restaurants, education, child and elderly care sectors among others. Considering the type of industry and the job responsibilities, such workers are much more likely to be exposed to Covid-19 and pass it to others and hence, requiring vaccination of them would be lawful and reasonable. A vaccinated worker is much less likely to transmit the virus to others who they come into contact with such as patients, school children, customers and service users, among others.

Undeniably, all employers would want to ensure that their workplace is 'Covid secure' and this would be possible only when the vast majority of the workforce are vaccinated. Some companies have warned the Covid-19 vaccine-hesitant employees of potential termination. Before resorting to such drastic measure, it would be appropriate for the employer to first inform, educate and encourage their employees to seriously consider the vaccination. Not only should the employer communicate with the workforce of the reasons why vaccinations are considered necessary but also show how the unvaccinated employees could pose a substantial health or safety harm to other individuals in their organisation. They should also consider the reason why certain of their workers are declining vaccination.

Workers who refused vaccination for medical reasons for example pregnant women, those with pre-existing health condition that puts them at greater risk such as those with severe allergies, among others are eligible to request an exemption. For such workers the company may consider reassigned them to some other suitable position in the organisation that have limited contact with others and who could adopt alternative measures to protect themselves

⁶⁰ *Cyril Leonard & Co v Simo Securities Trust Ltd and others* [1971] 3 All ER 1313.

⁶¹ *Malaysian Airlines v Teo Chui Ping* [2005] 2 ILR 15.

⁶² *Taylor v Parsons Peebles Nei Bruce Peebles Ltd* [1981] IRIR 119.

⁶³ *Norizan Bakar v Panzana Enterprise Sdn Bhd* [2013] 9 CLJ 409.

⁶⁴ *Johnson Matthey Metals Ltd v Harding* [1978] IRLR 248.

⁶⁵ *Norizan Bakar's case* at footnote 61.

such as wearing the personal protective gear. The employer may also consider continuing such workers to work from home in that the worker fulfils the essential responsibilities of his/her job while remaining at home, using information and communications technology.⁶⁶ Such arrangement would not require any permanent adjustment to the terms and conditions of employment but the employer would need to provide a clear guideline for such arrangements particularly, to establish measurable performance goals and expectations. However, an employee who declined vaccination simply because they are conscientious objector of the vaccine are taking the risk of being terminated after various attempts by the employer to convince them to get vaccinated failed as such workers are compromising the employer's legal obligation of ensuring a safe and healthful workplace.

Conclusion

Covid 19 pandemic has seen the government-mandated lockdowns with harsh restrictions on human activities worldwide, which is primarily intended to curb the spread of the virus and in the process, the businesses have suffered huge losses for months. As businesses are desperately looking to return to profits, the recently discovered Covid-19 vaccine is a significant step towards the control of the pandemic and bringing the economic life back to normal. In Malaysia, the vaccine would be provided free to all Malaysian citizens and foreigners living in the country, including the document and undocumented migrant workers. The Malaysian government has repeatedly stressed that Covid-19 vaccination will not be made compulsory.

However, many businesses, ranging from care-home operators to big multinational companies are contemplating making the Covid-19 vaccination mandatory before workers return back to work which is primarily to ensure safer workplace apart from easing job roles of certain sectors such as business travel or client meetings. It must be emphasised that the employer has a duty of care to all its employees and are obliged to provide them with a Covid-19 free workplace. As vaccinated employee pose less risk to others in the workplace, it is therefore important for the employee to adhere to the reasonable management request to be vaccinated.

Those who refused vaccination may be terminated from employment, unless they can establish that the refusal was based on medical grounds. Those with pre-existing medical conditions, their employer may seek to redeploy them into some other position in the organisation where they would not be required to come into contact with many people or may seek to have them continue to work remotely until such time as the country has reached full vaccination or declared Covid-19 free. However, before terminating the worker who refuses the vaccination on invalid grounds, the employer should organise open communication sessions with them to ensure that these workers understand the vaccines better and the employer's reasons of stressing on vaccination of its workforce. Currently, there are a lot of Covid-19 vaccine misinformation circulating via social media which need to be addressed. It is worth reiterating that workers are expected to obey the legitimate directives or orders of the management and any wilful disobedience thereto is an act of insubordination that undermines the orderly system of conduct and discipline within an undertaking.

⁶⁶ See 'International Labour Organisation: An employers' guide on working from home in response to the outbreak of COVID-19' at https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---act_emp/documents/publication/wcms_745024.pdf

Certificate of participation

THIS CERTIFICATE IS PROUDLY PRESENTED TO:

Dr Mohammad Hassan Ahmad

for presenting the papers titled

Dismissal for Wearing Headscarves at Work: Whether Discrimination Against Muslim Women?

Transforming Legal Education Teaching and Learning via Remote Communication Technology.

Company Covid-19 Vaccination: Whether Refusal by Employee Justifies Termination?

Employment Opportunities and Accessibility by Employers Towards Disabled Employee: An Analysis of the Laws and Practice in Selected Jurisdictions

in the

**1st GPDRL International Symposium on Saudi Arabia Vision 2030:
Legal Socio-Economic Issues & Way Forward**

on the 11th April 2021 organized by GPDRL, Prince Sultan University, Riyadh



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