



COMPANY COVID-19 VACCINATION



Whether refusal
by employee
justifies
termination?



Presenters



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A close-up, high-contrast photograph of a person's face, focusing on the eye and forehead. A medical needle is visible, positioned near the person's eye, suggesting a vaccination or medical procedure. 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

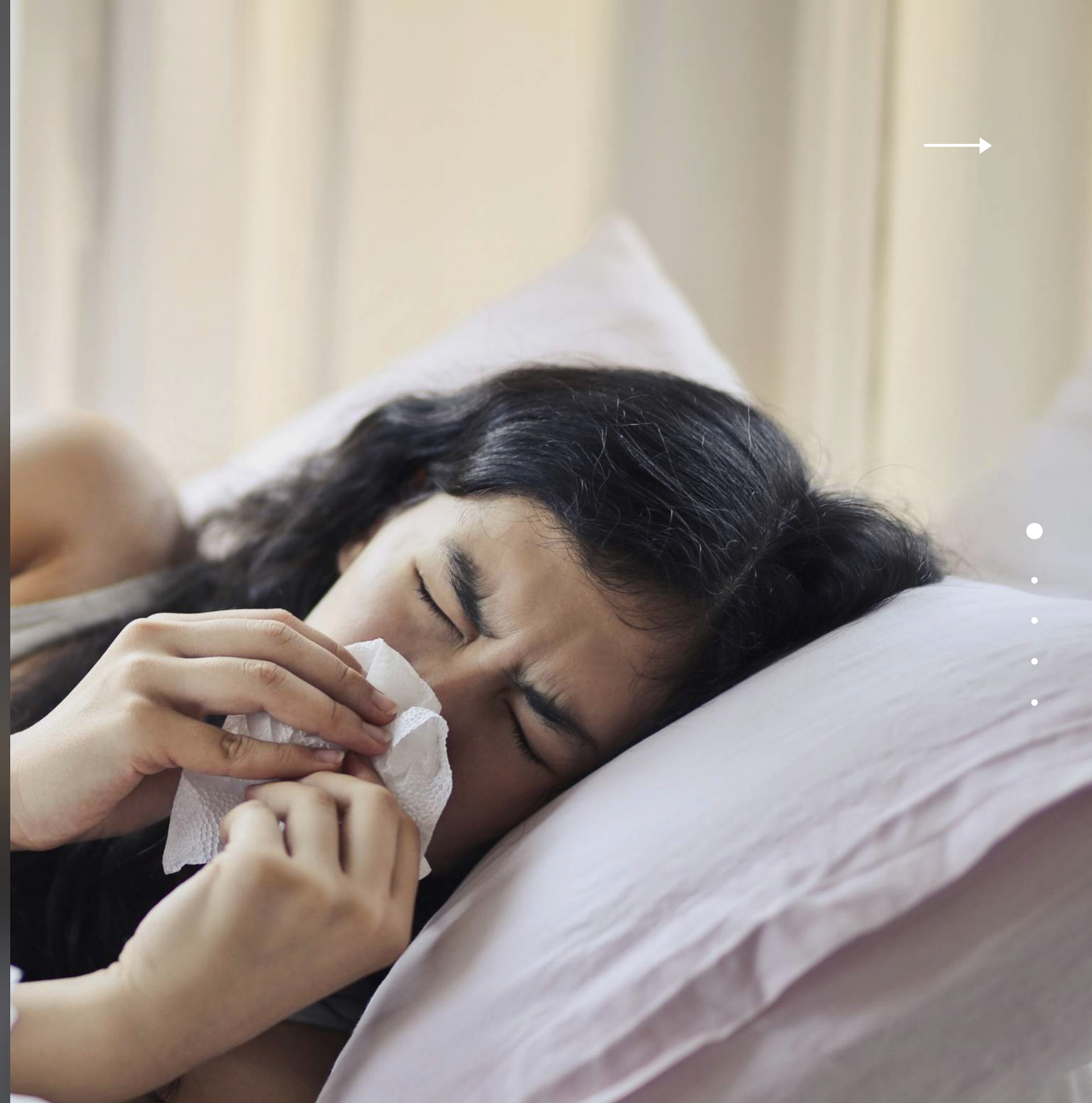
Enhanced Movement Control Order


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

Company Covid-19 Vaccination: Whether refusal by employee justifies termination?

— 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 task 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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