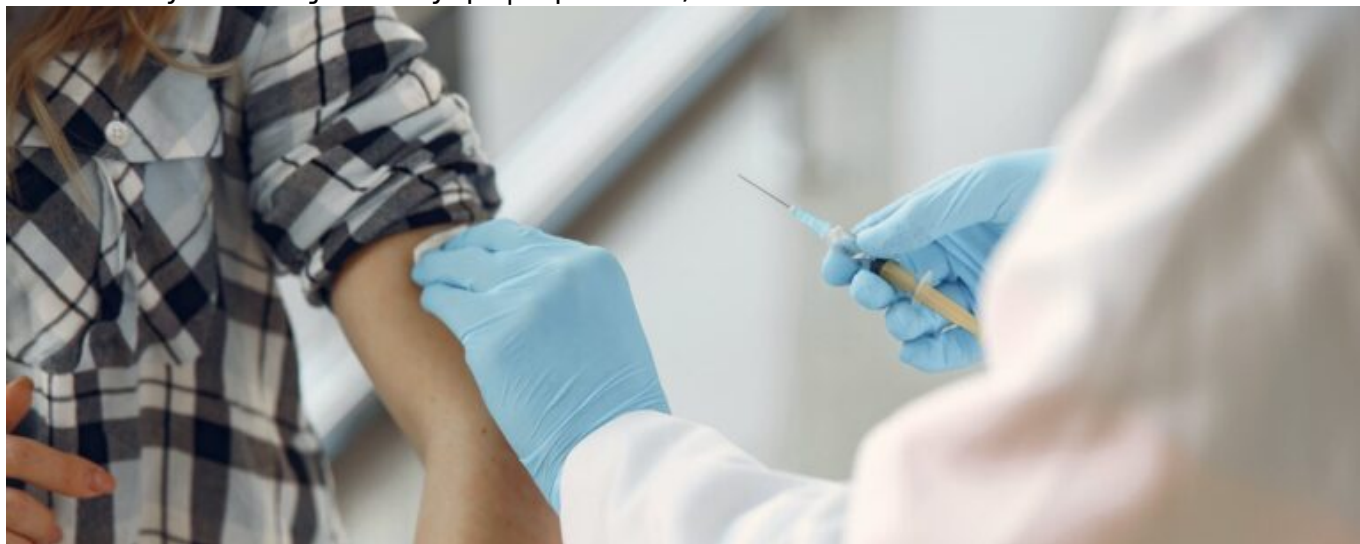


Covid-19 Vaccination: Covid Guide For Employees

written by Sindhuja Kashyap | April 22, 2021



While the world fights with Covid-19, India is struggling to keep the positive numbers down and its citizens away from hospitals. India has presently approved two vaccines namely COVISHIELD being developed by Oxford – AstraZeneca and manufactured by the Serum Institute of India, and COVAXIN being developed by Bharat Biotech. India rolled out the vaccination drive (Covid guide for employees) in a phased manner giving priority to the health care workers and frontline workers in phase I (January 16, 2021), senior citizens and vulnerable citizens (March 01, 2021) and all citizens above 45 years of age in Phase II (April 01, 2021).

The Government of India has released the *“Liberalised Pricing and Accelerated National Covid-19 Vaccination Strategy”* [1] wherein it stated that every citizen above the age of 18 years shall be vaccinated from May 1, 2021. While all citizens as covered under Phase I and II shall be eligible for vaccination from Government of India vaccination centres, the citizens falling within the age group of 18 to 45 years shall be vaccinated from other than the Government of India channel. [2] This news comes as a relief to a huge number of working sectors which comprise a huge set of employees/workers between the age group of 18 to 45 years.

With the announcement by the government, employers all across the country are now looking forward to getting their employees vaccinated and back to the workplace at the earliest and to avoid any loss of life. As a law firm, we have come across varied queries from employers intending to understand how and in what way they can help their employers in the vaccination drive. Therefore, we have created a concise FAQ for the employers that would guide them throughout the vaccination process:

- Is the vaccine mandatory or can the employers mandate the employees to get vaccinated?
- Government of India has kept the vaccination as a voluntary drive under the law. Further, there has not been any government rule or notification, permitting employers to make it mandatory for their employees. Therefore, employers can under no legal ground make the vaccination mandatory for their employees. However, the employer can, as part of its new contract for employment, put down a term/condition for the new employees to submit their vaccination certificate as a mandatory document for the employment to safeguard its already existing and vaccinated employees.

- Since the vaccination cannot be mandated, how can the employer regulate the vaccination of its employees?
- Employers cannot mandate the employees but can always guide and educate their employees to get vaccinated to promote workplace health care.
- Can an employer mandate its employees to submit a vaccination certificate as proof of vaccination, in order to permit the person to visit workplace?
- Such a mandate could be brought under the purview of the employer's internal policy making it a general obligation of the employee towards the wellbeing and ethics of the workplace. The employer can mandate submission of a vaccination certificate for the purpose of visiting the workplace by an employee, however, it is pertinent to mention here that the vaccination certificate shall fall under the category of "medical records" which thereby falls under the category of "sensitive personal information" under Section 3 of the Information Technology (Reasonable security practices and procedures and sensitive personal data or information) Rules, 2011 ("Rules")^[3]. Therefore, all certificates as provided by the employees and the linked information shall be processed and retained as per the Rules. Further, the employer shall always ensure that the express consent of the employee is obtained prior to submission of such vaccination certificate. Further, employers should not be stringent with their approach to submission of proof of vaccination as a document of entry in the workplace for employees who can provide adequate reason/medical proof to substantiate their denial of vaccination.
- Is it mandatory for an employer to provide paid leave to the employees scheduled to be vaccinated?
- Presently, no law mandates employers to provide paid leave to employees scheduled to get the vaccination. However, it is always a suggested approach for employers, to encourage their employees to get vaccinated. Employer can mandate submission of vaccination certificate as documentary proof for their claim to a paid leave
- In case of vaccination and side effects, can an employer be held responsible under any circumstances?
- In case the employee gets vaccinated only on the ground of being mandated to visit the office post vaccination, it is likely that the employee may file a lawsuit against the employer claiming a medical expense or such other damages for any medical side effects suffered by him/her. However, given the vaccination is a voluntary decision under the law and the mandate by the employer for the purpose of visiting the office does not in any way leads to a threat to the employment of the employee, the chances of the employer being guilty is very low. However, in case the employee is able to prove before the court that the employer made it mandatory for the employee to get the vaccination and that the employee had no voluntary choice but to get vaccinated could bring liability on the employer. Therefore, it is advisable that the employers always convey that the vaccination is voluntary and not mandatory.
- What are the rights employer has, in case an employee voluntarily refuses to take vaccine?
- It is pertinent to mention that the employer cannot terminate the employees on the ground of employees refusing the vaccine. However, the employers can deny entry of such employees at the workplace, ensuring that the rights and obligations of the employees under the employment agreement are not being

affected due to such denial of entry. Further, the employers can incentivise such employees who have been vaccinated and deny such incentives to employees that refuse to get the vaccine.

- Can an employer organise a vaccination drive at its workplace for its employees?
- Recently, the Government of India has issued a "Guidance on COVID-19 Vaccination at Work Places"[4] wherein workplaces having 100 eligible and willing beneficiaries can organise a vaccination session at their own workplace. While the guidelines state that the District Task Force chaired by District Magistrate and Urban Task Force chaired by Municipal Commissioner will identify such work places, the employers can also voluntarily approach the said officials to bring themselves under consideration. Only employees above the permitted age group shall be eligible for vaccination at such workplace covid-19 vaccination centers and not their family members or other persons. Such employees shall be registered on the Co-WIN platform to prove themselves as willing beneficiaries for the vaccine session. Employers should ensure availability of three rooms as waiting, vaccination and observation rooms at workplace. Employers are mandated to ensure compliance with the guidance note for the purpose of organising a covid-19 session.
- In case of employers not having 100 eligible and willing beneficiaries to be qualified for organising the vaccination session, how can they help and encourage their employees for vaccine?
- During this tough time, any kind of relief from an employer is always an ethical and appreciated step. Employers, in order to encourage, can reimburse the vaccination costs to their employees upon submission of vaccination certificate. This would encourage the employees falling in the lowest hierarchy, that actually form the backbone of the workforce of each employer, to get the vaccination.
- [1]<https://www.mohfw.gov.in/pdf/LiberalisedPricingandAcceleratedNationalCovid19VaccinationStrategy2042021.pdf>
- [2]<https://www.mohfw.gov.in/pdf/LiberalisedPricingandAcceleratedNationalCovid19VaccinationStrategy2042021.pdf>
- [3] <https://www.wipo.int/edocs/lexdocs/laws/en/in/in098en.pdf>
- [4]

<https://www.mohfw.gov.in/pdf/GuidelinesforCOVID19VaccinationatWorkplace.pdf>

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