

Can employees refuse to enter a workspace with unvaccinated co-workers?

As some companies opt not to implement mandatory Covid-19 vaccine policies, a new challenge arises in the workplace for some employees - office working without vaccination.



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Companies in South Africa are rebooting the office and restarting traditional ways of working. A reality that has several repercussions, not least of which being the management of vaccination policies. Many are ditching the demand for mandatory Covid-19 vaccines which puts employees in a tight spot, especially those who are immune-compromised or have comorbidities. However, as Nicol Myburgh, Head: CRS Technologies HCM Business Unit points out, the law is on the side of the business, not the employee. So if the business says back to work, employees either return, resign or face retrenchment.

“It all comes down to the reasoning behind having a mandatory vaccination policy in place,” he explains. “If a company has undertaken a safety and risk assessment, considered the various risk factors, yet still finds it unnecessary to have a mandatory vaccination policy, then employees have to come in to work. If someone refuses to come in based on health concerns, the company simply refers back to the assessment that says it is safe to work and that person has to go back to the office.”

Of course, this is the hard line that companies can take. They can insist that a person come in to the office and if there is an issue, the person has to weigh up whether or not they should continue working for that company. However, many companies are likely to take each person’s unique circumstances into account – if the employee can work from home and has a legitimate health concern, then they may be allowed to continue doing so, but if they have to be physically on site for operational or productivity reasons, the situation becomes complicated. The hard reality is that if a business says come to work, employees have to go to work, even with unvaccinated people who put them at risk.

“If an employee continues to refuse to come in to the office, the employer can conduct a hearing and the outcome will be balanced against operational requirements and business expectations,” says Myburgh. “This is a messy situation, however, because if a person has comorbidities, and has had these since they first started working at the company, but is unable to continue working in their original role because of the health risk, they can be dismissed. But they have equally good justification to go to the CCMA. After all, many people in this situation have been successfully working from home for the past two years so companies really have to prove that the employee must be in the office.”

There are options, of course, that can be implemented to ease the situation for both company and employee. The latter could be provided with a separate office and not be forced to interact with other employees, or employees could be asked to wear a mask when engaging with them. There are multiple routes to easing the transition for employees and making it possible for people to work together more effectively.

“A lot of factors go into weighing up whether or not the approach a company takes is fair or unfair,” concludes Myburgh. “In a case like this, when an employee is required to return to the office and no middle ground can be found, the employee can be dismissed and may not have recourse with the CCMA. There are multiple factors that play a role in managing the complexities of this situation, but one thing is clear – more work is needed with the current labour laws around the nuances of vaccinated vs. unvaccinated and managing a pandemic within the workplace.”

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