Article Information

Authors: Emily Haar, Tim Capelin
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Webinar Q&As: Beat the Clock | Substantive Law – Workplace Lessons from the Pandemic

Piper Alderman provides the Answers in response to the Questions received during our *Beat The Clock | Substantive Law – Workplace Lessons from the Pandemic webinar on 15 February 2022.*

Some of your other questions may have been answered after the ***Beat the Clock – Substantive Law | Workplace Lessons from the Pandemic*** webinar. Please find the link to the Q&As from that webinar here.

To view the on demand webinar, please register here.

Q1: What considerations need to be addressed when dealing with employees who are unvaccinated, where the company wants all staff to return to the office (apart from consultation)?

A1: The first step is to determine whether it is lawful to require employees to return to work under the public health orders (or equivalent) in the relevant jurisdiction. If it is lawful to permit unvaccinated persons to return, there will still be HR and WH&S issues as the unvaccinated people will be more exposed to severe outcomes if infected with COVID-19, and unvaccinated persons if infected may be more likely to transmit the virus to other workers.

Q2: Do you have any guidance for managing staff who do not want to return to work at the office?

A2: Clearly formulate your commercial reasons for wanting people in the office (e.g improved collaboration, professional development by being around experienced people, efficiency etc), explain these to hesitant employees, consider their positions, try to convince, if can't convince by persuation, decide whether the benefits of a direction to return outweigh the negatives of such a mandate.

Q3: Is it legal to put staff on furloughs knowing that the local Australian operations is profitable for that financial year?

A3: The short answer is no. However, there might be more information of which we are not aware that may allow a more nuanced answer.

Q4: In relation to consultation requirements, is it reasonable to formulate a proposal and then consult to confirm the proposal?

A4: Yes, providing you truly consider the feedback on the draft.

Q5: How does insurance cover work for an employee working from home during work hours? How is this managed and which cover protects the employee?

A5: This is a question best put to your organisation's insurance broker.

Q6: In relation to the Consultation process from a WHS perspective, how far do we need to consult? e.g. Is it enough to speak with HSR's or do we need to communicate/send info out to all staff?

A6: You should give all workers the opportunity to be consulted. You will likely find most don't take up the opportunity, with likely a disproportionate response rate from the vaccine opposed.

Q7: Who must consultation be with i.e all employees or certain representatives?

A7: You should give all workers the opportunity to be consulted. You will likely find most don't take up the opportunity, with likely a disproportionate response rate from the vaccine opposed.

Q8: What about customer requirements (not government requirements) to be vaccinated when performing work at their premises or on their assets? Do we need to consult with impacted employees given we have no choice but to comply with the customer requirement?

A8: You will need to consider what you do with employees unwilling to meet the client's demands. Consultation won't be required about the client's site access rule, but you will need to provide due process in discussions with the employee with regard to the ramifications if they do not comply with the rule.

Q9: What if the employee is taken on after the policy has been decided?

A9: We recommend making it a precondition of employment that they are compliant with the policy.

Q10: When implementing a Vaccination Policy, is it best to keep this separate to an overarching Covid Policy? Or should we have 2?

A10: We recommend having it all covered in a single policy.

Q10: Does the necessary 'consultation' need to be with ALL affected employees, or could an employer merely go to say union reps, or a focus group, or even a random sample?

A10: You should give all workers the opportunity to be consulted. You will likely find most don't take up the opportunity, with likely a disproportionate response rate from the vaccine opposed.

Q10: With more equipment leaving the work environment due to WFH, what leverage is available to recover property from employees that cease employment, but do not return equipment?

A10: There may be discretionary payments that can be used as leverage. Additionally, communication of the fact that your organisation is the legal owner of the property and that failure to return would be unlawful might also improve compliance. You cannot withhold employee entitlements to provide leverage, but a threat of proceedings may achieve a change in attitude.

Q11: Discuss any legal implications an employer should be aware of when allowing an employee to work outside Australian jurisdiction when the situation in Australia is that working from home is the preferred option.

A11: The way this is allowed will be relevant. We would recommend any commitment is expressed as only temporary, noting preference that working from home occur within Australia and that it will be under review. This will allow you to

provide a direction, if you wish, for the employee to return to Australia and potentially the office, in the future. You should have valid commercial, HR, WH&S reasons for requiring the person to be within Australia, e.g. safety, problems with time differences etc.

Disclaimer: The contents of this Q&A are intended only to provide a summary and a general overview on issues of interest. The responses are not intended to be comprehensive, they do not constitute legal advice and do not take into consideration your specific circumstances. You are encouraged to seek legal advice from a member of Piper Alderman's Employment Relations team before relying on any of the content.