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## **An Employers' Guide To Navigating The Murky Waters of COVID-19 Vaccination VoRT Regulations**

### **I. INTRODUCTION**

1. The COVID-19 pandemic has caused uncertainty in our lives and the ever-changing legal landscape surrounding the pandemic have certainly not made life easier.
2. This short article sheds light on the following issues surrounding the “*Vaccinate or Regular Test*” (“**VoRT**”) regime announced by the Singapore government which will be implemented from 1 October 2021:
  - (a) What is the VoRT regime?
  - (b) Which industries are subjected to the VoRT regime?
  - (c) Can employers request for vaccination statuses of employees?
  - (d) Can employers implement vaccination-differentiated workplace measures under the VoRT regime?
  - (e) Who bears the additional costs incurred by unvaccinated employees under the VoRT regime?
  - (f) Can employers terminate the services of employees based on their vaccination statuses?

### **II. WHAT IS THE VoRT REGIME?**

3. The VoRT regime distinguishes between vaccinated and unvaccinated persons. At this time, a person is deemed fully vaccinated either (a) two weeks after he/she has received the full regimen of Pfizer-BioNTech/Comirnaty, Moderna, or any World Health Organisation's Emergency Use Listing vaccines or (b) 2 weeks after he/she has received one dose of Pfizer-BioNTech/Comirnaty or Moderna vaccines upon recovery from COVID-19. It is, for now, unclear if the definition of a “vaccinated” person will change if (or when) the Singapore government deems a third dose of such vaccines (commonly referred to as the “booster”) necessary.

4. Under VoRT, unvaccinated persons are required to be tested with an Antigen Rapid Test (“ART”) kit twice a week. This will allow infections among them to be picked up quickly and mitigate the risk of community transmission.
5. For persons who are medically ineligible to be vaccinated, the Singapore government will subsidise the costs of all their required tests (be it under the VoRT regime or otherwise) until 31 December 2021. Given the public policy to encourage testing, it is unlikely for such subsidy to continue thereafter.

### **III. WHICH INDUSTRIES ARE SUBJECT TO THE VoRT REGIME?**

6. The following sectors (non-exhaustive) will be required to implement the VoRT regime from 1 October 2021:
  - (a) Healthcare (e.g. hospitals and Traditional Chinese Medicine clinics)
  - (b) Eldercare (e.g. nursing homes)
  - (c) COVID-19 front-line industries (e.g. government quarantine facilities, patient transporters, swabbers)
  - (d) Border front-line industries (e.g. air, land, and sea checkpoints)
  - (e) Settings with children 12 years and below (e.g. schools, student care centres, tuition centres)
  - (f) Workers in construction and process construction and maintenance
  - (g) Food services
  - (h) Gyms and fitness studios
  - (i) Personal care services with extended close contact between individuals (e.g. spa, massage, etc)
  - (j) Retail malls and large standalone stores
  - (k) Supermarkets
  - (l) Arts classes
  - (m) Pivoted bars, nightclubs, discotheques, and karaoke establishments
  - (n) Markets
  - (o) Last-mile delivery personnel (e.g. parcel and food delivery personnel)
  - (p) Cleaners in the abovementioned sectors
  - (q) Public and private transport
  - (r) Public service (including uniformed services)

As can be seen, the sector definitions are generally worded. If in doubt, your company/organisation should check with the Ministry of Manpower or Ministry of Health. It is possible, and indeed likely, for the list of sectors to be expanded.

#### **IV. CAN EMPLOYERS REQUEST FOR VACCINATION STATUSES OF EMPLOYEES?**

7. Employers may request for employees' vaccination status for business purposes (e.g. business continuity planning). Such a request is likely to fall within the current parameters of express or implied terms in employment agreements with employees.
8. Employers under the VoRT regime may further require employees to produce proof of vaccination. Employees who refuse to produce such proof are deemed as unvaccinated for the purposes of the vaccination-differentiated measures.
9. Nevertheless, employers should be mindful of their obligations under the Personal Data Protection Act when requesting for such information. Among other things, information regarding the employees' vaccination status should be stored in a safe manner to avoid unauthorised access, collection, use, disclosure, etc.

#### **V. CAN EMPLOYERS IMPLEMENT VACCINATION-DIFFERENTIATED WORKPLACE MEASURES UNDER THE VoRT REGIME?**

10. Employers may adopt vaccination-differentiated workplace measures for vaccinated and unvaccinated employees, for example:
  - (a) Subjecting unvaccinated employees to additional COVID-19 tests. Under the Ministry of Health's guideline for the VoRT regime, unvaccinated employees in the specified industries should be tested (e.g. Fast and Easy Testing, Rostered Routine Testing, Polymerase Chain Reaction testing) twice a week.
  - (b) Subjecting unvaccinated employees to undergo Pre-Event Testing before participating in workplace events, or restrict the size of such events if participated by unvaccinated employees.
  - (c) Redeploy unvaccinated employees to another job with lower risk of COVID-19 infection in line with the employer's current redeployment policies. If no such policies exist, the employer and employee should mutually agree to the terms of the redeployment.
  - (d) While employers may implement other vaccination-differentiated workplace measures, they must be able to justify that such measures are reasonable and necessary for business operations and safety in the event of a dispute.
11. For employers who have implemented vaccination-differentiated workplace measures policies, such policies should not be seen as discriminating or punishing unvaccinated employees (e.g. deducting the salary of unvaccinated employees based in their vaccination status alone).

12. One interesting issue is whether employers are under a duty of care to their employees to ensure that all employees who can be safely-vaccinated have done so. After all, employers have a common law duty of care to employees (and even visitors to the employment premises) to ensure their health and safety. In fact, section 12 of the Workplace Safety and Health Act (Cap. 354A) makes this a statutory obligation and requires employers to take necessary steps that are reasonably practicable. Breach of section 12 creates an offence punishable by law. At this time, this remains an untested point in Singapore, but it would appear to be a matter of time before this comes before the Singapore courts.

**VI. WHO BEARS THE ADDITIONAL COSTS INCURRED BY UNVACCINATED EMPLOYEES UNDER THE VoRT REGIME?**

13. Under the VoRT regime, employers may require medically eligible but unvaccinated employees to bear the following additional costs:
- (a) Costs related to COVID-19 beyond those incurred for vaccinated employees (e.g. costs of test kits, costs of Stay-Home Notice (“SHN”) accommodation). Employers may request unvaccinated employees to pay suppliers directly or deduct such costs from the employee’s salary.
  - (b) As unvaccinated employees may receive longer treatment or movement restrictions (e.g. SHN) which may encroach into their normal working hours, employers may require such additional days be deducted from the employees’ leave entitlements (or require employees to take no-pay leave if leave entitlements have been exhausted).
  - (c) Employers may omit to provide medical benefits specifically associated with COVID-19 (e.g. COVID-19 insurance) but not medical benefits required under legislation.

**VII. CAN EMPLOYERS TERMINATE THE SERVICE OF AN EMPLOYEE BASED ON HIS/HER VACCINATION STATUS?**

14. Employers should generally not terminate or threaten to terminate the service of an employee on the basis of his/her vaccination status alone unless there is a lawful and reasonable basis to do so. Otherwise, employees may raise a wrongful dismissal claim against their employers.
15. An employer may have a reasonable basis to terminate the services of an employee who is medically eligible to be vaccinated but refuses to be vaccinated, pay for the additional COVID-19 related costs such as ART test kits, and/or accept alternative work arrangements such as working from home may be terminated.
16. The services of an employee who is medically ineligible to be vaccinated may be terminated if he/she refuses to comply with reasonable vaccination-differentiated workplace measures (e.g. requirement to undergo Pre-Event Testing before participating in workplace events).
17. For the same reasons given above, employers should avoid placing unvaccinated employees on long term no-pay leave without their written consent.

## **VIII. CONCLUSION**

18. While this article may have provided some insights on how to navigate the COVID-19 VoRT regulations, employers should be alert about the ongoing changes in the legal framework and their obligations as the pandemic situation evolves over time.
19. For further enquiries, please feel free to reach out to us and we will be glad to assist.

**Coleman Street Chambers LLC**  
6 September 2021