



Federation of International  
Civil Servants' Associations

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## **Information Newsletter for International Civil Servants**

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### **COVID-19 Vaccination Requirements and the International Civil Service**

#### Introduction

Government actions related to COVID-19 (quarantines, social distancing requirements and lockdown measures) and measures to ensure that citizens are vaccinated against COVID-19 have directly and indirectly impacted the lives of international civil servants. In particular, staff members have been impacted by new rules and practices implemented by their employers to address COVID-19 and align practices with their host governments.

These practices may include requiring all staff members who work from the employer's premises to be fully vaccinated against COVID-19, requiring all new employees to be fully vaccinated,<sup>2</sup> or travel restrictions to certain countries due to COVID-19 vaccination status.<sup>3</sup> Alternatively, some employers may also oblige unvaccinated employees to either work remotely, to wear masks in the office place, or to demonstrate through regular testing that they are not infected with COVID-19.

The relationship between an employer and employee must be built on dignity and respect, and uphold the duty of care. From a legal perspective, it is of no defense for an employer to merely assert that they were intending to follow local law, especially if local norms run afoul of internationally established rights and standards. This is because the conditions of employment of staff are subject exclusively to the organization's Staff Regulations and to

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<sup>2</sup> For example, the World Trade Organization presently requires all new employees to confirm and provide evidence that they are fully vaccinated against COVID-19, except where in the opinion of the WTO medical service a medical condition does not allow for such vaccination. The International Organization for Migration in principle also requires vaccinations for individuals hired after 15 November 2021.

<sup>3</sup> As staff members who are assigned internationally are frequently not nationals of their duty station, such measures can significantly impact aspects such as home leave, rest & recuperation and duty travel.

general principles of the international civil service (unless national law is specifically referenced in the organization's rules).<sup>4</sup>

This article briefly highlights a framework of rights and standards impacted by an organizations' practices concerning COVID-19 and possible vaccine requirements and provides some considerations for staff members and staff associations who may be affected by an employer's measures. Given the broad scope of the issues involved, it is not intended to be conclusive.

### International Organizations should be Guided by the Siracusa Principles and the Oviedo Convention

International instruments, such as the Siracusa Principles and the Oviedo Convention, provide a strong framework for examining the thorny issues of COVID-19 restrictions and vaccination requirements.

The 1984 Siracusa Principles set forth guidelines for governments on the restriction of human rights during an emergency.<sup>5</sup> They indicate that governments may only justify restrictions that support a legitimate aim and are provided for by law, strictly necessary, proportionate, of limited duration and subject to review against abuse. The severity and duration of a restriction of a right must be strictly required by the exigencies of the situation. Governments should also individually assess the necessity of the measures they intend to put in place.<sup>6</sup>

The 1997 Oviedo Convention<sup>7</sup> is the only international treaty on the protection of human rights in the biomedical field, designed to preserve human dignity rights and freedoms, through a series of principles and prohibitions concerning bioethics, medical research, consent and other topics. It is therefore highly relevant as a framework to examine potential vaccine requirements. The treaty builds on other human rights instruments, such as the International Covenant on Civil and Political Rights. Currently, 29 Council of Europe countries have ratified the Oviedo Convention.

The Oviedo Convention stresses the "**primacy of the human being**", declaring that the "**interests and welfare of the human being shall prevail over the sole interest of society or science**". In Article 2, the Convention highlights that "[a]n intervention in the health field may only be carried out after the person concerned has given **free and informed consent**". This requires the person to be given information "beforehand" about the medical intervention, including its purpose, nature, consequences and risks.

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<sup>4</sup> ILOAT Judgment 4401, cons. 6. The officials of international organizations are entitled under the organization's host state agreement to immunity from immigration restrictions, which could otherwise include heightened admission criteria based on compliance with COVID-19 regulations. See for instance Convention on the Privileges and Immunities of the Specialized Agencies (1947), para 19(c).

<sup>5</sup> The Siracusa Principles were established following a high-level international conference to examine the limitation and derogation provisions of the International Covenant on Civil and Political Rights in Siracusa, Italy, from 30 April to 4 May 1984. It was sponsored by the International Commission of Jurists, the International Association of Penal Law and others. See UN Commission on Human Rights, *The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*, 28 September 1984, E/CN.4/1985/4.

<sup>6</sup> N. Sun, *Applying Siracusa*, *Health and Human Rights Journal*, 2020 Jun; 22(1) 387-390.

<sup>7</sup> This treaty is known as the *Convention for the protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine (ETS No. 164)*

In addition to these instruments, the European Parliament has highlighted that compulsory vaccination potentially impacts the fundamental rights entrenched in the European Union Charter, including the **right to integrity**, which includes free and informed consent of those undergoing medical treatments, the **right to privacy and data protection**, the **freedom of thought, conscience and religion**, and the **prohibition of discrimination**, among other rights.<sup>8</sup>

Unfortunately, a survey of 51 COVID-19 emergency orders from 39 leading countries appears to demonstrate that most of them did not comply with the Siracusa Principles.<sup>9</sup> Half of the orders included punitive measures such as criminal sanctions for non-compliance, which are generally viewed as being disproportionate or unnecessary, and at odds with the Siracusa Principles.<sup>10</sup> Additionally, only half of the orders were of limited duration and nearly none of them provided for judicial review to curtail potential abuse. Finally, less than 15% of the orders even claimed that they had been enacted out of “*necessity*” or referenced the need for “*proportionality*” in the emergency response.<sup>11</sup>

Similarly, the text of the Oviedo Convention contains a major caveat, which may weaken its protection of fundamental rights: that no restrictions shall be placed on the exercise of rights unless it has been prescribed by law and is necessary in a democratic society in the interest of public safety, for the protection of public health or for the protection of the rights and freedoms of others.<sup>12</sup>

### **How should staff members and staff associations claim their fundamental rights in terms of COVID-19 restrictions and compulsory vaccinations?**

Staff members and staff associations should refer to international instruments such as the Siracusa Principles and the provisions of the Oviedo Convention when addressing employer practices in this context that may relate to fundamental rights and international standards. Although international instruments may not necessarily directly bind the organization, they should at least inform an employer’s duty of care to its staff.

Outside of the COVID-19 context, there is ample evidence of these principles being operationalized to protect fundamental rights in terms of public health. For example, actions of most governments in the HIV-related context show that the principles of necessity and proportionality and restricting rights only when strictly required by the exigencies of the situation, are fully applicable. UNAIDS has successfully advocated against HIV-related travel restrictions and HIV testing requirements for work and study permits on the basis

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<sup>8</sup> European Parliament Briefing, “Legal Issues Surrounding Compulsory COVID-19 Vaccination”, dated 17 March 2022, available at [https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/729309/EPRS\\_BRI\(2022\)729309\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/729309/EPRS_BRI(2022)729309_EN.pdf)

<sup>9</sup> See Sun N, Christie E, Cabal L, et al, Human rights in pandemics: criminal and punitive approaches to COVID-19 BMJ Global Health 2022.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> *Convention for the protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine (ETS No. 164)*, Article 26. These limitations duplicate the conditions under which a state may interfere with the enjoyment of protected rights in Articles 8 – 11 of the European Convention of Human Rights (specifically the right to respect for private and family life, home and correspondence; the freedom of religion; the freedom of expression and the freedom of assembly and association).

that they are discriminatory, violate the fundamental right of freedom of movement, and cannot be justified on public health grounds.<sup>13</sup>

The ILO Administrative Tribunal has not yet considered a legal challenge against a mandatory vaccination requirement. However, it has highlighted that in claims alleging negligence and willful misconduct against an employer's medical service concerning a possible vaccination, a critical issue is whether the employee was provided **sufficient information to make an informed decision**.<sup>14</sup> The European Court of Human Rights (ECHR) in *V.C. v Slovakia*, cited the Explanatory Report to the Oviedo Convention, which states that consent is "*considered to be free and informed if it is given on the basis of objective information from the responsible health care professional as to the nature and the potential consequences of the planned intervention or of its alternatives, in the absence of any pressure from anyone.*"<sup>15</sup>

In light of the above, if an international civil servant seeks to oppose a compulsory vaccination requirement, it is important for them to record their objections to their organization's medical service in writing and to provide evidence that refers to their personal situation. For example, some staff members may have a legitimate medical basis to decline a medical intervention. Similarly, the ICSC Standards of Conduct underscores that staff members are entitled to their personal views,<sup>16</sup> including freedom of thought, conscience and religion, but in line with these standards, objections on these grounds should be presented with tact and discretion. In both circumstances, an exemption from any compulsory vaccination requirement should be sought in writing.

It is also generally not advisable for employees to sign forms indicating that they have given informed consent to a medical intervention if instead they feel coerced or if their consent has not been freely given. This is because there is a high bar to demonstrate that an agreement has been vitiated by a breach of the duty of care, good faith, or fraud. It is better instead to record one's objections with the employer in writing.

In July 2022, United States-based health care employees of NorthShore University Health System obtained a \$10 million settlement after a dozen former employees filed a lawsuit, claiming that the hospital had improperly denied religious exemptions to a COVID-19 vaccination mandate. This led to hundreds of employees either receiving a vaccination, being

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<sup>13</sup> UNAIDS, "Still Not Welcome: HIV-Related Travel Restrictions", 2019, available at [https://www.unaids.org/sites/default/files/media\\_asset/hiv-related-travel-restrictions-explainer\\_en.pdf](https://www.unaids.org/sites/default/files/media_asset/hiv-related-travel-restrictions-explainer_en.pdf) (In particular, UNAIDS highlighted that travel restrictions based on HIV status fuel stigma against people living with HIV and that there is no evidence that people living with HIV engage in riskier behaviours than people who are not living with HIV. UNAIDS also opposes mandatory HIV testing and restrictions that limit or restrict movement based on HIV-positive status.

<sup>14</sup> ILOAT Judgment 1889 (2000), cons. 2. (This case concerned an individual who contracted hepatitis B and claimed that the medical service should have vaccinated him against the illness.)

<sup>15</sup> *V.C. v Slovakia*, no. 18968/07, ECHR 2011, para 77 (citing to the Explanatory Report to the Oviedo Convention, paragraph 5.) In this case, the ECHR found that a hospital had failed to obtain informed consent of a 20-year old patient who had been sterilized, noting that the procedure was irreversible, was not imminently necessary from a medical point of view and the patient's agreement had been sought while she was in labor prior to the performance of a Caesarean section. The ECHR noted that the intervention led negative psychological effects and difficulties with her partner and her community.

<sup>16</sup> ICSC Standards of Conduct (2013), paras 9 – 10.

terminated from their jobs, or submitting a resignation.<sup>17</sup> In addition to financial compensation, the settlement included an undertaking to rehire any employees who were terminated from employment for refusing a vaccination. The case is reported as the first example in the United States of a private employer being held responsible for denying religious exemptions to a COVID-19 vaccine mandate.<sup>18</sup>

The ILOAT has found that organizations may reassign a position to a duty station for which the incumbent is not medically fit to work and this may well lead to the termination of the staff member's appointment.<sup>19</sup> In such circumstances, it is important for staff associations to ensure that opportunities for reassignment to suitable duty stations are considered by management and when no reassignment is available that indemnities set out under the organization's rules are paid.

For staff associations, it is also important to ensure that organizations uphold their duty of care to staff when dealing with requests for exemptions from any compulsory medical interventions because infringements of rights could set a negative precedent for other staff. Similarly, for organizations seeking to promote the uptake of a particular medical intervention, there are other elements such as providing easy and free access, educational materials and organizational leadership that can contribute to such a goal.<sup>20</sup>

When dealing with questions concerning mandatory vaccine requirements for COVID-19 it is important to bear in mind the words of the late Mr. Jose Luis Martin Gascon, the Human Rights Chairperson of the Philippines, who stated that human rights are enjoyed in community with others, which conflicts with a "*two-tier system where one class of people, vaccinated, are allowed every opportunity, while another set of people are denied certain rights*".<sup>21</sup>

#### Disclaimer

*These resources and articles are provided for the convenience of FICSA members and do not constitute legal advice, are not intended to be a substitute for legal advice and should not be relied upon as such. You should seek legal advice or other professional advice in relation to any particular matters you or your organisation may have. The views expressed are those of the author(s) and do not necessarily reflect those of FICSA.*

<sup>17</sup> L. Schencker, "NorthShore agrees to pay \$10.3 million settlement in COVID-19 vaccine lawsuit over religious exemptions", dated 2 August 2022, available at <https://www.chicagotribune.com/business/ct-biz-northshore-employee-covid-vaccine-settlement-20220801-hbqgrua6xnczbojhusupqy4nq4-story.html>

<sup>18</sup> International financial firms, Goldman Sachs, also recently announced that employees may enter its offices in the company's Americas offices regardless of vaccination status after competitor Morgan Stanley announced similar measures. See D. Ennis, "Goldman Sachs, Morgan Stanley Drop Vaccine Requirements", dated 31 August 2022, available at <https://www.bankingdive.com/news/goldman-sachs-morgan-stanley-drop-covid-vaccine-requirement-september-office-return-nyc-cdc/630891/>

<sup>19</sup> ILOAT Judgment 4173, cons. 15-16.

<sup>20</sup> See for example, H. Hollmeyer et al, "Review: Interventions to Increase Influenza Vaccination Among Healthcare Workers in Hospitals", *Influenza and Other Respiratory Viruses* 7(4), 604–621.

