

THE END OF AN ERA OR A PERMANENT LIFE (EMERGENCY) SITUATION? THE (AFTER)EFFECTS OF THE “CORONAVIRUS DECREES” IN EMPLOYMENT RELATIONS (PART 2)*

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In the first part of this series of articles (Varga 2022), we could see what sort of mostly justified changes our law on employment relations, i.e. Act I of 2012 on the Labor Code (hereinafter: LC), underwent as a result of the so-called “coronavirus decrees.” In the second part of the series, we aim to look at an extremely controversial area, which, in addition to causing social division, also put the parties involved in the employment relationship in a difficult situation. This area covers the issue of the vaccinations against COVID-19 and the employers’ acts instructing the employees to take these, as well as their possible consequences.

Keywords

labor law, state of emergency, COVID-19, vaccination

Introduction

The present study aims to look at an extremely controversial area, which, in addition to causing social division, also put the parties involved in the employment relationship in a difficult situation. This area covers the issue of the vaccinations against COVID-19 and the employers’ acts instructing the employees to take these, as well as their possible consequences. As it is widely known in Hungary, Government Decree 598/2021. (X. 28.) on the protection of workplaces against the coronavirus [hereinafter: Government Decree 598/2021. (X. 28.)], which was in effect until March 7, 2022, granted employers the right to unilaterally choose to require their employees to be vaccinated against COVID-19.

1. Mandatory vaccination at the workplace: is there nothing new under the sun?

The inclusion of mandatory and recommended vaccinations related to the job as a legal norm has always been familiar to us in the field of labor law and occupational safety regulations. According to § 9 of *NM* [Hungarian abbreviation of Ministry of Public Welfare] Decree 18/1998. (VI. 3.) on the pandemic measures required to prevent contagious diseases and pandemics, employers are obliged to survey and assess workplace biological exposures that endanger the health and safety of employees in

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accordance with the provisions of the separate legislation. In order to reduce these effects – as a condition for employment – the employers must ensure the vaccination of individuals employed in vulnerable positions in accordance with Directive 61/1999. (XII. 1.) of the Ministry of Health. Section (3) of § 13 of the Ministry of Health directive stipulates that, depending on an estimate, the employer must define in writing the range of employees for whom special protective measures are necessary, including specifically those for whom the provision of vaccinations according to Annex No. 3 is justified. In addition to all of this, the letter of the *Nemzeti Népegészségügyi Központ* [National Public Health Center] on methodology provides more information on the vaccination related to each individual job.

Based on the above, employers have been able to order the necessary vaccinations in certain health-threatening jobs, but this was based on an all-encompassing, preliminary consideration as well as the resolutions and opinions of professional authorities. In contrast to all this, I agree with the position shared in the relevant literature according to which Government Decree 598/2021. (X. 28.), by providing employers with unprecedented authorization, may become the source of a number of constitutional problems, despite the fact that the legislator's intention deserves appreciation (Herdon & Rab 2021). However, in this present paper, I do not wish to get involved in constitutional analyses, so I will refrain from a more extensive assessment at this point.

2. Can vaccinations against COVID-19 be made mandatory in economic employment relationships following March 7, 2022?

Perhaps the answer to this question seems relatively simple based on the above. However, several factors may influence the decision before answering. By reviewing the relevant regulations of the LC, we can see that one of the essential obligations of the employer is to ensure safe employment conditions (Pál 2020). This is then supplemented with the need of maintaining the occupational safety standards set out for certain jobs, contained in the above regulations, mainly on occupational safety.

In connection with the above obligation, it is not enough to comply with the current epidemiological regulations and to make others comply with them. In addition, it is also necessary to ensure that individual employees should not endanger the health of each other or that of potential customers. Whether this may be ensured by mandatory imposition of vaccinations – with due care – after March 7, 2022, can be defined as a decision within the employers' own discretion. Therefore, I cannot provide a specific or exact answer to the above question. It is only an overview of all the aspects that can be taken into account to provide a certain reference point for making the right decision.

Based on all this, in my opinion, among the aspects to be considered, the issue of the job specification bears a particularly strong emphasis. For employees who are employed in a position in which, in the course of the performance of tasks arising from it, they personally provide public services and come into contact with people who are at increased risk of infection or serious illness, making vaccination compulsory may be justified, so an obligation to vaccinate can be imposed. Beyond this, however, since the legislator did not define additional criteria, it is the employers' task to consider these aspects and actually impose the obligation to vaccinate only for jobs where it is indeed justified (Herdon & Rab 2022).

3. Do employers have the opportunity to increase the “willingness to vaccinate”?

As it has already been mentioned, the employees concerned can only be required to administer the vaccination in accordance with the above conditions. However, the fact that certain “incentives” can be used to achieve the highest saturation of vaccination in the workplace is still not prohibited. These incentives could be, for example, extra days off ordered by the employer or possibly some additional monetary allowance (Joó 2022). In relation to such possibilities, however, it is important to mention the fact that whatever is an advantage on one side is a disadvantage on the other. Thus, unvaccinated employees could rightfully complain about the discrimination against them (Gárdos-Orosz & Pap 2021).

When applying the individual “incentives,” the employers must pay attention to maintaining the requirement of equal treatment and opportunities. Thus, as long as they can prove that there is a reasonable and objective reason or the protection of the interests, lives and health of unvaccinated employees behind the application of different levels of entitlements, I do not think there would be any violation of the principle mentioned.

4. Inappropriate working environment: what can the employees do?

As already mentioned in this study, it is the employer’s obligation to ensure a safe and healthy working environment for all their employees. As a result, the following question needs to be posed: what can the employees do if the working conditions are not suitable for them?

In this regard, § 54 of the LC may offer a solution, based on which the employees can refuse the employer’s instruction if it endangers their own life, physical integrity or health. However, they have to take into account that, in this case, the end result could easily be an employment lawsuit, which would make it necessary to prove in court that the employer did not do everything to maintain a safe working environment.

On the basis of all of this, it can be concluded that, subject to the observance of the appropriate conditions, due care and balance, it is still possible to order compulsory vaccination in certain job positions (Kozma & Pál 2021). However, during its short existence, the government decree, which is no longer in force but grants employers right and at the same time obligation, may potentially result in court settlements of serious issues arising in the future. During these, an extremely sensitive and difficult substantiation would need to be presented in any potential legal proceedings that may be initiated to be carried out, drifting the parties involved in the employment relationship into a costly and protracted process.

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