

**THOUGHT
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COVID-19 VACCINATION – IS VACCINATION OBLIGATORY FOR HEALTH-CARE WORKERS IN NIGERIA?

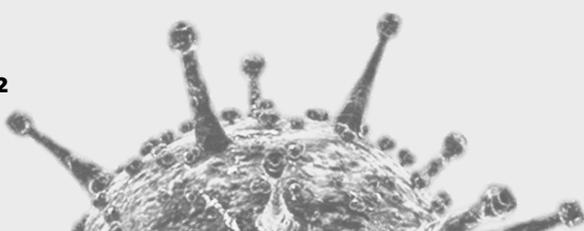
The COVID-19 disease is presently being combated with Vaccines in most jurisdictions, and the management of the disease has moved, to a large extent, from not just patient care, but to prevention through vaccination. An important consideration is the right to decline treatment by way of vaccination particularly for healthcare workers, in view of the provisions of the National Health Act which mandates health care institutions to take every caution to prevent to transmission of diseases within their health care facility. This article seeks to shed light on the position of the liability of healthcare institutions in this regard and whether healthcare workers can be mandated to take the COVID-19 vaccination in the effort to comply with the provisions of the National Health Act.

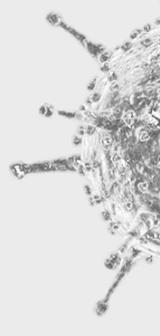
Relevant Laws and Practices

There is presently no regulation or law that particularly requires any person to take the COVID-19 vaccination. In the circumstance, vaccination would appear optional. Indeed, there is a constitutional right to accept or decline consent to medical treatment (See the case of *MEDICAL AND DENTAL PRACTITIONERS DISCIPLINARY TRIBUNAL V. OKONKWO*¹), thus an healthcare worker in a healthcare institution, has a legal right to decline vaccination for COVID-19, if he so wishes, in view of the above-mentioned general principles.

Despite these principles, the healthcare worker's personal rights must be weighed against International Best practices in Labour matters, which has been given statutory recognition in the Constitution of the Federal Republic of Nigeria 1999 (as amended).

1 (2001) 7 NWLR (Pt.711) 206





Apart from the statutory recognition of international best practices, the National Health Act would also have significance, where the employee declining vaccination is a health worker or care-giver. It appears the considerations may more extensive here.

A Healthcare organisation's obligation to provide and maintain a safe work space.

The International Labour Organisation Convention on Occupational Safety and Health 1981 (No. 155) provides generally that an employer has a duty to ensure that risk of accidents and adverse health hazards are minimal. The employer therefore has a duty to provide a safe working environment.² Further the said Convention provides that employees have a duty to cooperate with the employer in fulfilling the obligations for a safe working environment.³ The implication of this provision is that a safe working environment must be provided by the employer, and the employee has a duty to comply with regulations and policies that encourages safety at the work place.

It is crucial to note that the National Industrial Court is constitutionally required to exercise jurisdiction in labour matters, in order to enforce international best practices⁴, thus the above provisions on Occupational Safety and Health is a mandatory requirement for both employees and employers.

The National Health Act further provides that *“every health establishment shall implement measures to (i) minimize injury or damage to the person and property of health care personnel working at that establishment; and (ii) disease transmission”*⁵.

The duty to provide a safe working environment was recognized by the National Industrial Court in the case of *KABO AIR LIMITED V. MOHAMMED* (2014) LPELR-23614(CA), where the Court held that an employer has the duty to take reasonable care for the safety of employees in their employment.

Effect and Implication of the duty to provide a safe working environment.

In applying the above principles, it is clear that whilst the employee has a fundamental right to decline treatment by refusal to take vaccination, the same employee has an obligation to comply with an employer's policies geared towards a safe working environment. The employee's legal rights must therefore be balanced with the employer's obligation to provide a safe working environment for other employees as well, including patients that would visit the hospital in this case.

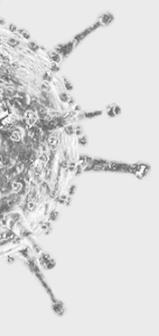
The above principles presupposes that an employee, particularly a health worker or care giver, has an implied statutory duty to obey a Health Establishment's policies that seeks

2 See Article 19 of the Convention C155 on Occupational Safety and Health 1981 (No. 155)

3 See Article 16 of the Convention C155 on Occupational Safety and Health 1981 (No. 155)

4 See section 254C (1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

5 See section 21(2) of the National Health Act



to minimize disease transmission. Nevertheless, where there is a refusal to comply with a request for vaccination, and the employer is considering termination, there is a risk that the employee's constitutional rights to consent or decline to medical treatment may outweigh the provisions in the National Health Act and the International Labour Organisation Convention on Occupational Safety and Health.

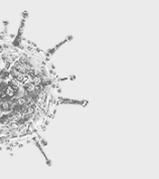
A Plan of action – Issuance of internal policies on COVID-19 vaccination for healthcare workers

To significantly reduce the risk posed by the health care worker's constitutional rights to refuse vaccination, the Healthcare establishment may resort to the issuance of a fresh Policy for health and safety that may include mandatory vaccination subject to an internal appeal procedure where employee or healthworker declines to take such mandatory vaccination. The effect of the issuance of the Policy is that the employee may be constrained to waive his/her constitutional rights by agreeing to the Police or may be constrained to leave the employment due to breach of terms of employment that constrains such employee to comply with the Healthcare establishment's policies and regulations.

Thus, where the healthcare worker declines to agree to the fresh policy on vaccination, such worker may be requested to provide reasons for his refusal, and if the refusal is unreasonable, the healthcare establishment may explore the option of terminating the employee's employment with reasons. In the case of *U.B.N PLC V SOARES*⁶, the National Industrial Court held that where there is a breach of duties in a contract of employment, an employer has the right to terminate the employment contract.

On the other hand, where the employee provides or advances good reasons (e.g. high risk of a blood clot due to vaccination) for the refusal to agree to the policy or refusal to comply with the policy, reasonable consideration may be made in the circumstance, due to health reasons.

CONCLUSION



On the whole, both the health worker and the healthcare organisation have obligations to comply with safety requirements. However, this should be balanced reasonably in a manner that does not compromise patient safety and ensures that the health worker's fundamental rights are protected. It is important to find this balance during this health emergency period tied to the Covid-19 pandemic.

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