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UP IN THE AIR

THE CURRENT STATE OF BUSINESS TRAVEL IN ASIA

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Daniel Chia, Shannon Donnelly, Tomoko Fuminaga, K Lesli Ligorner,
Charles Mo, and Vivien Yu

Agenda

- Can employers mandate business travel?
- Are vaccination mandates permissible for business travel or in the workplace?
- Risks of re-entry after business travel
- Current entry/quarantine requirements

Can employers mandate business travel?

Whether an employer can or cannot mandate that its employees vaccinate and take business trips is contingent on whether the employer can mandate vaccines in the workplace

Can employers mandate business travel?

Japan

- Employers may give a business instruction (including for business travel) to their employees, which employees need to follow
- On the other hand, employers generally owe an obligation to consider the safety of their employees
- Employers need to carefully determine the purpose and necessity of the business travel, the level of detrimental impact on the employees caused by the business travel, whether another approach is available other than the business travel, especially under the COVID-19 pandemic situation
- If the business travel is not immediately necessary, employers should voluntarily refrain from ordering business travel to employees, especially to infected areas
- If the business travel is necessary and unavoidable, employers should:
 - send the employees with their sufficient understanding of the above consideration
 - take measures to control infection risks to protect other employees in the office

Can employers mandate business travel?

China

- Employers may give a business instruction (including for business travel) to their employees, which employees generally need to follow
- On the other hand, employers generally owe an obligation to provide a safe working environment to their employees
- Employers need to carefully determine the purpose and necessity of the business travel, the level of detrimental impact on the employees caused by the business travel, whether an approach other than the business travel is available, especially under the COVID-19 pandemic situation
- If business travel is not necessary, employers should voluntarily refrain from ordering business travel to employees, especially to infected areas
- If the business travel is necessary and unavoidable, employers should:
 - send the employees with their sufficient understanding of the above considerations
 - take measures to control infection risks to protect other employees in the office

Are vaccination mandates permissible for business travel or in the workplace?

China

NO

- According to PRC National Health Commission, the vaccination should be conducted based on the principle of “being informed, with consent, and voluntariness”
- Employers need to be careful that their policies are not deemed as forcing the employee to get vaccinated and violating the above principle
- If the employees suffer any salary deduction or any other losses due to such policy, they may raise a claim for such losses due to this policy, and they would likely succeed
- In addition, the employee may submit a complaint to the National Health Commission or labor bureau, and the authorities may direct the employer to nullify this policy

Are vaccination mandates permissible for business travel or in the workplace?

- If the employee does not suffer any economic loss, the legal risk for this approach is remote
- The legal risk does not change if employer requires either vaccination or the production of a negative test before an employee is permitted to return to the office, unless either is required by government mandate
- An employee has the right to decide voluntarily whether to get the vaccine and/or whether to take a COVID-19 test (unless the employee shows any symptoms of COVID-19 or is otherwise required by a government body)

Are vaccination mandates permissible for business travel or in the workplace?

Japan

NO

- Vaccination cannot be mandated for any reason (i.e., even if the employee is not vaccinated before the business travel or coming to the office, the employer cannot penalize the employee or treat the employee in a disadvantageous manner)
- Treating unvaccinated employees differently from vaccinated employees may be viewed as forcing employees to vaccinate
- In such case, non-vaccinated employees may make a claim for power harassment (as defined by the MHLW) caused by the different treatment
- Further, while there is no precedent, in an extreme case where an employee is forced by the employer to obtain the vaccine, the vaccinated employee might make a potential tort claim against the employer for damages that may be caused by the side effect of the vaccination

Are vaccination mandates permissible for business travel or in the workplace?

Hong Kong

- Currently no law in Hong Kong that allows employers to mandate that employees receive the vaccine
 - The Hong Kong government had previously announced plans to require mandatory vaccination for foreign domestic workers, but the government retracted its plan less than two weeks after the announcement due to international criticism and negative backlash in the international community
- It is currently untested if an employer can mandate that employees receive the vaccine
 - The general legal principle is that an employee is obliged to comply with a lawful and reasonable order from the employer
- A “reasonable” order would depend on various factors
 - the nature and role of the employee
 - the health and safety risk (such as the number of cases and deaths)
 - the efficacy and safety of the vaccines
 - the employee's reasons for refusing vaccination
 - whether there are alternatives to vaccination etc.

Are vaccination mandates permissible for business travel or in the workplace?

- The proposed vaccination program also identified groups of people who are not suitable for vaccination (e.g. pregnant women, those with existing medical conditions etc.) and those employees would need to be excluded from such requirement
- Potential legal risks associated with mandatory vaccination
 - **Employees' Compensation Ordinance (Cap. 282)**
 - May entitle an employee to claim compensation for personal injury by accident arising out of and in the course of the employment if they suffer illness or death through mandatory vaccination
 - **Disability Discrimination Ordinance (Cap. 487) (DDO)**
 - "Disability" covers conditions which presently exists, previously existed but no longer exists, may exist in the future or is imputed to a person (e.g. including those susceptible to COVID-19)
 - Section 61 of the DDO provides that it is not unlawful to discriminate against a person with a disability if: (i) the disability is an infectious disease listed under the Prevention and Control of Disease Ordinance (i.e. COVID-19) and (ii) the discriminatory act is reasonably necessary to protect public health. However, the question of "reasonably necessary" is highly fact dependent

Are vaccination mandates permissible for business travel or in the workplace?

- Based on the present COVID-19 situation in Hong Kong, it is questionable whether mandatory vaccination would be reasonably necessary for the protection of public health (due to very low number of cases, existing measures such as face mask wearing, social distancing, body temperature and symptom screening, mandatory quarantine rules, etc.)
- Given the potential legal and reputational risks for employers in imposing a mandatory vaccination requirement, most employers now choose to focus on encouraging employees to get vaccinated

Are vaccination mandates permissible for business travel or in the workplace?

- An employer may restrict an employee's entry into the workplace based on lawful and reasonable grounds, for example, the protection of the health and safety of the workforce and occupiers of the premises (whether this is reasonable is fact dependent) or if the employment contract provides that the employer has the right to restrict the employee's entry based on specific circumstances (e.g. garden leave).
- Nevertheless, restricting access of unvaccinated employees may also turn on a discrimination issue

Are vaccination mandates permissible for business travel or in the workplace?

Singapore

- Currently no law or guidance that allows employers to mandate that employees receive the vaccine
- The government has stated that it will not compel vaccinations and has stated it has no intention to implement a compulsory COVID-19 vaccination programme
- It is untested whether an employer can
 - i. mandate that its employees or certain staff receive vaccinations;
 - ii. hire based on whether an individual has received the vaccine.
- Given the Tripartite Alliance for Fair & Progressive Employment Practices prohibits discrimination in hiring and firing practices, it is unlikely that employers may hire or dismiss employees based on their refusal to get a vaccine
- This position may change depending on whether new government regulations are introduced once the majority of the population is vaccinated

Are vaccination mandates permissible for business travel or in the workplace?

Singapore

- Currently employers cannot mandate that employees receive the vaccine
- The government has stated that while it will not compel vaccinations and has stated it has no intention to implement a compulsory COVID-19 vaccination programme, it has implemented a vaccinated differential program where employees who are unvaccinated may be barred from returning to the office in certain settings and may also lose medical cover.
- Unvaccinated employees generally must also take ART test before returning to any workplace.
- Unvaccinated individuals may also not be considered for certain “high risk” positions and employers may terminate (with the necessary benefits) employees who are unable to perform their duties due to their unvaccinated status.

Are vaccination mandates permissible for business travel or in the workplace?

- Assuming that the employer makes reasonable accommodations for those who are medically unable to have the vaccine, the risk of discrimination claims by employees if the employer requires vaccinations for office entry is possible in theory though very unlikely
- From 1 January 2022, employers must ensure only the following employees can return to the workplace: (i) employees who are fully vaccinated with a vaccine under the National Vaccination Programme or WHO Emergency Use Listing and their respective post-vaccination duration, (ii) employees who have recovered from COVID-19 within the past 270 days, (iii) unvaccinated employees who have tested negative for COVID-19 within 24 hours of returning to the workplace, via a Pre-Event Test at an [MOH-approved COVID-19 test provider](#). Employees who are medically ineligible for all the vaccines under the National Vaccination Programme, including Sinovac, are exempted from the testing requirement above if they need to work on-site.

Risks of re-entry after business travel

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Risks of re-entry after business travel

Japan

- All entrants must submit a “valid” certificate of inspection taken within 72 hours prior to departure
 - ⇒ If the entrant is unable to submit a valid certificate of inspection, entrants will not be allowed to enter in Japan
- Entrants will be asked to pledge to:
 - not use public transportation for 14 days
 - stay at home or in accommodation (depending on the countries and regions in which entrants stayed, entrants will be required to stay in the accommodation appointed by the government and take a COVID-19 test)
 - save and present location information
 - install a contact confirmation application etc.

Risks of re-entry after business travel

- ⇒ If the entrant violates the pledge:
 - the entrant is subject to suspension measures based on the Quarantine Law
 - **Japanese**: (a) name and (b) information that may contribute to the prevention of the spread of infection may be publicized
 - **Foreign nationals with a resident status holder**: (a) name, (b) nationality, and (c) information that may contribute to the prevention of the spread of infection may be publicized
 - Also, subject to revocation of status of residence and deportation proceedings

Risks of re-entry after business travel

China

- PRC nationals and holders of long-term residence permits issued for work, personal affairs and reunion should not require approval or a re-entry visa to return to China
- The government discourages any non-essential travel
- To ensure a smooth return to China, the traveler should first obtain pre-approval from the destination country/state's PRC Embassy/Consulate
- All returning travelers needs to complete mandatory quarantine in China after each trip which can be up to 21 days or even 28 days

Risks of re-entry after business travel

Hong Kong

- Strict entry restrictions apply to both Hong Kong and non-Hong Kong residents
- Tightened measures due to latest COVID-19 development
 - As of December 15, 2021, most popular business travel destinations are classified as Group A High risk places, including Australia, Canada, most EU countries, the UK and the US
 - Only fully vaccinated Hong Kong residents may return to Hong Kong after travelling to Group A High risk places, additional quarantine measures apply to those who have travelled to countries with Omicron variant

Risks of re-entry after business travel

Singapore

- Entry restrictions into Singapore apply. 3 main modes of entry
 - VTLs – most of Europe, USA and some Asian Countries
 - General Work Visa lanes – restrictions and applications before booking
 - Returning Singaporeans and PRs
- Only fully vaccinated may enter

Current entry/quarantine requirements

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Current entry/quarantine requirements

Japan

- The Japanese government has once relaxed its restrictions on new entries of foreign nationals and on activities for COVID-19 vaccination certificates holders as of November 8, 2021
- However, due to the rapid expansion of the Omicron variant infection around the world, the Japanese government has again tightened its restrictions as of December 1, 2021, and it will continue until December 31, 2021
- This restriction could be extended depending on infection status

Current entry/quarantine requirements

	One-Month Temporary Measures	Before Temporary Measures are Adopted
New entry of foreign nationals	Suspended from all countries until December 31, 2021 except for those under special circumstances	Suspended from all countries but “special circumstances” will include cases if a sponsor company (not an employee): <ul style="list-style-type: none">• obtain a certificate of inspection clearance• be responsible for such foreign national’s activities
Vaccination certificate holder’s activities	Subject to mandatory 14-day isolation at a designated location	Valid vaccination certificate holders may conduct activities designated in an activity plan from the designated day even during the 14-day quarantine period. If such holders take a PCR test or quantitative antigen test on or after designated timing (and before the 14-day quarantine period is over) and submit a negative result, the remaining quarantine period can be shortened to the day when the negative result is submitted.

Current entry/quarantine requirements

China

- Strict entry restrictions for both PRC and non-PRC residents holding residence permits for work/personal affairs/reunion
 - Most cities have a 14+7 quarantine policy

Current entry/quarantine requirements

Hong Kong

- Strict entry restrictions for both Hong Kong and non-Hong Kong residents
 - Group A High risk places – fully vaccinated Hong Kong residents, 21-day quarantine, additional quarantine and surveillance measures apply to those who have travelled to countries with Omicron variant
 - Group B Medium risk places and Taiwan – Hong Kong residents and fully vaccinated non-Hong Kong residents, 14-day or 21-day quarantine depending on vaccination status
 - Mainland China or Macao – Hong Kong and non-Hong Kong residents, 7-day or 14-day quarantine depending on vaccination status
- Return2HK and Come2HK schemes
 - Quota based quarantine exemption schemes for Hong Kong and non-Hong Kong residents from Mainland China and Macao

Current entry/quarantine requirements

Singapore

- If allowed to travel through the vaccinated travel lanes no quarantine needed.
- Some Safe Travel Lanes to Singapore require travelers to serve an SHN, if they have travel history to certain countries/regions. These are listed as Categories 1 to 4.
 - Depending on the travel history and categories, there may be quarantine or self isolation periods required up to 14 days.
 - PCR Test required and negative test results required before release.

Coronavirus COVID-19 Resources

We have formed a multidisciplinary **Coronavirus/COVID-19 Task Force** to help guide clients through the broad scope of legal issues brought on by this public health challenge.

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To help keep you on top of developments as they unfold, we also have launched a resource page on our website at www.morganlewis.com/topics/coronavirus-covid-19

If you would like to receive a daily digest of all new updates to the page, please visit the resource page to [subscribe](#) using the purple “Stay Up to Date” button.

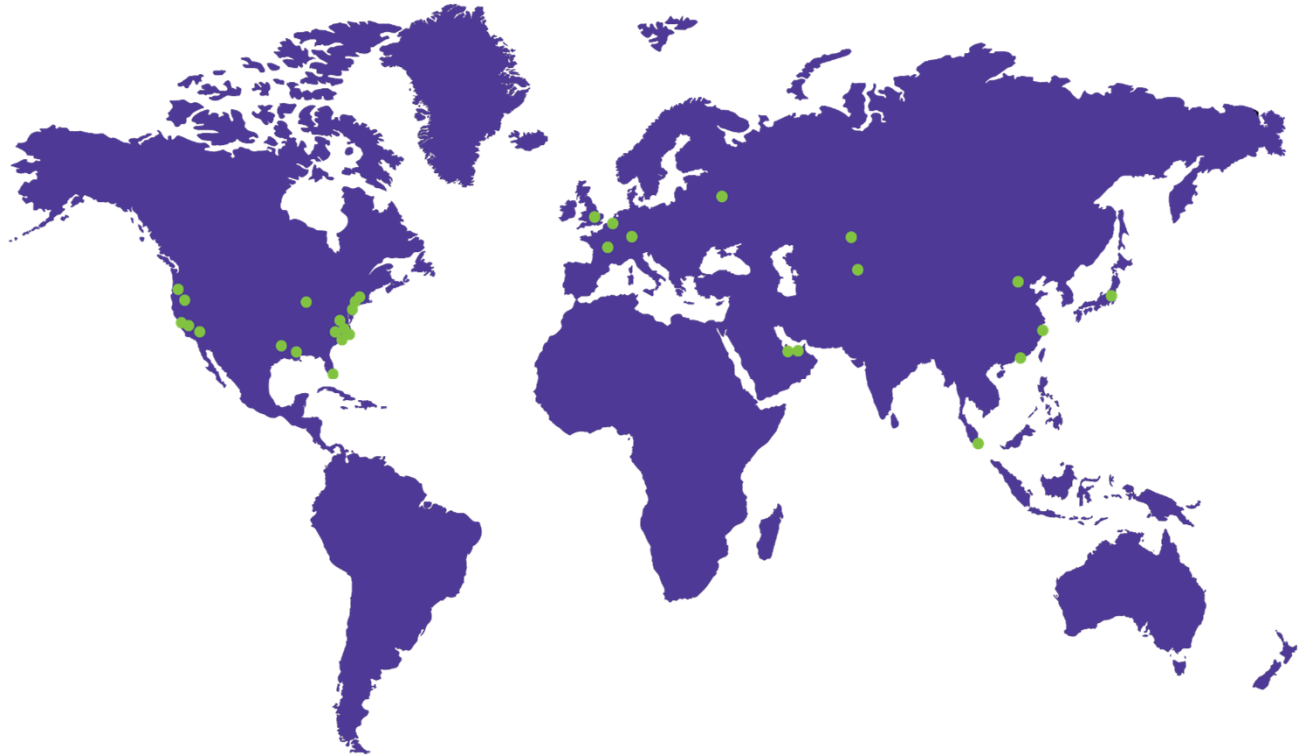


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