

Workplace vaccinations - liability trap for employers?

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I. Integrating workplaces into the vaccination campaign

Efforts are currently made to involve company doctors in the nationwide vaccination campaign from June 2021. Large companies especially are currently considering offering their employees a vaccination using company doctors or external service providers. The risks for the employer that this could entail are scrutinised below.

II. Potential liability risks for employers

1. Are employers liable for vaccine injuries or other losses of the employee?

Employers who offer their employees a vaccination may be liable for errors made by the vaccinating doctor depending on how the vaccination offer is designed.

A deciding factor for the question of employer liability is whoever the treatment contract for the vaccination is concluded with. The Federal Labour Court (Bundesarbeitsgericht, BAG) has already laid down criteria to that end in a decision in 2017 about flu vaccinations.

In the event of a treatment contract between the employer and the recipient of the vaccine it should be considered that the employer may be liable, in particular for treatment errors and incorrect medical advice given by the doctor (as an agent of the employer). Incorrect medical advice may, at worst, lead to the employer being liable for vaccination injuries if the doctor did not sufficiently explain any serious potential side effects to the recipient of the vaccine and then such side effect occurs.

It also must be noted that the prevailing opinion is that medical advice must be given by the doctor personally and cannot be delegated to staff who are not doctors.

2. Is the accident insurance provider liable?

Generally vaccination complications are not classed as workplace accidents and therefore are not an insured event in terms of Section 104 German Social Code Book VII (Sozialgesetzbuch VII, SGB VII), which means that the accident insurance provider will not assume any liability.

Something different may apply if the vaccination is causally linked to the employment contract between the employer and the employee; it is assumed that such circumstances apply where there is a hazard associated with the job which makes vaccination a requirement as part of the general health protection (such as an increased infection risk of hospital staff).

III. Summary

If an employer wishes to offer their employees a vaccination it should be carefully examined beforehand how the offer is to be designed and organised so that the employer's liability risk is reduced as far as possible.

We would be happy to assist you with the legal aspects of designing an in-house vaccination campaign.

Note

This overview is solely intended for general information purposes and may not replace legal advice on individual cases. Please contact the respective person in charge with GÖRG or respectively the author Dr. Katharina Landes on klandes@goerg.de or +49 221 33660 284. For further information about the author visit our website www.goerg.com.

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