



# Lunch & Learn

## with Donegal Business Network

Boyd HR  
Co-creating Stronger Workplaces

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# Who we are..

**Michael Boyd**

Owner / Director



- Founded Boyd HR in 1999.
- Science Graduate & Diplomas in Employment Law & Corporate Governance.

**Sabrina Price**

Senior HR Advisor



- Qualified in Human Resource Management and Employment Law.
- Background in retail management, pharmacy and human resource management.

# Returning to the Workplace

## – Can you require an employee to disclose their COVID-19 vaccination status?

No, there is no legal basis as things currently stand for an employer to ask an employee if they have received the vaccine. There is Data Protection considerations in this, as this information would be considered “special category” data. The role of the employer is to communicate facts around the Covid 19 vaccination and encourage employees to avail of the vaccine.

## – Can an employer mandate their staff to take the vaccine?

No, the employees’ right to choose is protected by legislation. Irish citizens enjoy a broad set of personal rights that are protected by the Constitution. These rights include a right to refuse medical treatment. To mandate the vaccine would cause potential legal and ethical issues for the employee.

# Returning to the Workplace

## – **Should employers encourage their staff to avail of the vaccine?**

Yes, the most appropriate course of action for employers is to encourage their employees to avail of the vaccine and accommodate any requests for vaccinations during working hours. Also, to provide information on the benefits of the vaccine.

## – **What is needed to protect the Health & Safety of staff returning to work?**

Employers need to carry out a risk assessment prior to their employees returning to the workplace. This will highlight areas of high risk and an action plan should be put in place to mitigate those risks.

It is important to carry out a risk assessment even if you have already done this last year.

It is important that workplaces have a nominated Lead Representative person, that pre-return to work forms are in use and that the Work Safely Protocol is being followed.

# Returning to the Workplace

## – How can you ensure a balance between ‘individual rights’ and the ‘protection of co-workers’?

It is a balancing exercise, because an employer has a legal obligation to maintain a safe place of work and an employees' have the right to medical information privacy. Employers must ensure the rights of both vaccinated and unvaccinated employees' are fully protected.

It is important to remember that employees have the right to make their own decision about the vaccine. If employers make decisions on the basis of employees vaccination status, it will lead to segregation in the workplace and potential discrimination claims.

It comes back to the Work Safely protocol. The employer must have completed a risk assessment and followed the guidelines from the protocol. If employees have concerns talk to them. Each issue must be treated on a case-by-case basis, there is no blanket answer. A clear policy should be in place detailing the company's stance on vaccinations, informing employees that there will be no difference made between vaccinated and unvaccinated employees and most importantly, if an employee has an issue, they report straight to their manager.

# Returning to the Workplace

## **– What are the Data Protection implications of seeking information on an employee’s COVID-19 vaccination status?**

You are in breach of the General Data Protection Regulation (GDPR), therefore if a complaint is made, the employer will be subject to the penalties.

A person’s vaccination status represents part of their personal health record and is therefore considered to be special category personal data under the General Data Protection Regulation (GDPR). Such special category personal data is afforded additional protections and may only be processed in limited circumstances and on narrow processing grounds.

You need to have a purpose for collecting the data. And currently there is no public health guidance as to what actions employers would be expected to take on foot of being informed of employees' vaccination status (do you send non-vaccinated employees home or segregate vaccinated and non-vaccinated employees in workplaces?). Therefore, it remains unclear what the purpose justifying the collection of vaccination data would be.

# Managing Remote Workers

- Can an employee refuse to return to work?
- Can employers prevent staff from travelling and working abroad?
- Will remote workers want to return to the workplace?
- Do they have the right to continue working remotely?
- How do you keep staff engaged and productive when working remotely?

## **Can an Employee refuse to return to work?**

The current Public Health Guideline is that employees should work from home if possible and only return to work if absolutely necessary.

It would be important that, an employer would in the first instance conduct a workplace risk assessment, highlighting any area of high risk and take steps to mitigate the risk.

An employer can have staff return to work for specific purposes such as Training; Planning & Team Meetings.

Our advice is to keep up-to-date with and follow Public Health Guidelines.

## **Can employers prevent staff from travelling and requesting to work abroad?**

There is currently no legal framework in place for travelling.

There are risks associated with travelling. It may be difficult to arrange the required PCR test results for the journey back to Ireland within the required 72-hour timeframe.

If you get COVID-19 when abroad, you may face delays in travelling back to Ireland

Countries may be added to Category 2 list of countries and you may be required to complete and pay for 14-days hotel quarantine on return to Ireland.

## **How would you respond to a request from one of your staff to working abroad?**

*With caution!!*

Our advice is to be proactive and have a Company Policy on it that covers:

Taxation; applicable Employment Legislation; Health & Safety measures; Data Protection & Security; Insurance issues; Performance Management; Right to Disconnect; Managing Absences; Team / Collaboration challenges; Different Time Zones.

Working abroad may be a disproportionate burden on an SME. Principle should be to consult with and agree a 'win/win' outcome.

## **Will remote workers want to return to the workplace?**

Some will & some won't! We anticipate that there will be a hybrid working arrangement with staff working both from home and in the workplace.

**Principle:** - first consult with Staff on decisions that directly affect them – get their input.

Make it clear from the outset that you will make the final decision (based on what is in the best interest of the Business / Customer service delivery).

## **Our experience in Boyd HR of keeping staff engaged and focused when working remotely**

We have daily Zoom calls at 9am. We each hold ourselves accountable to one another.

We ask the following 3 questions:

- 1. What did you achieve yesterday?**
- 2. Did you encounter any problems / obstacles?**
- 3. What are your priorities for the coming day?**

# Employment Legislation

## **New legislation – WRC Hearings to be held in public from July 29, 2021**

Following a recent supreme court ruling, the Workplace Relations (Miscellaneous Provisions) Act 2021 was introduced on 29<sup>th</sup> July 2021. The act outlines the following guidance on WRC Hearings:

1. The WRC must now operate on the basis that all hearings are to be open to the public.
2. The provision for a private hearing no longer applies and decisions will be published including the names of the parties – so the names of the parties will no longer be anonymised.
3. There may be a requirement for an oath to be administered. Adjudication Officers will determine whether they consider the oath to be necessary.

# Employment Legislation

## Consequence of not providing an Employment Contract

Where a complaint is upheld, an employee may be awarded compensation not exceeding four weeks' remuneration for not receiving a contract of employment. The **Terms of Employment (Information) Act, 1994**, provides that an employer must issue its employees with a written statement of terms and conditions relating to their employment within two months of commencing employment.

Also, in March 2019, the 5 core terms were introduced. An employer must also notify each new employee, in writing, within five days of commencement of employment, 5 core terms:

1. the full names of the employer and the employee;
2. the address of employer;
3. the expected duration of the contract, or the end date if the contract is a fixed-term contract;
4. the rate of pay;
5. the number of working hours.

We recommend that a Job offer letter (with the 5 core terms) and contract of employment is sent out together, prior to the start date.

Aside from the legal requirements, there is also the relationship between the two parties. It needs to be regularised and expectations need to be outlined from the outset. Therefore, it is good practice to forward the contract as soon as possible.

# Employment Legislation

## The Right to Disconnect

The Right to Disconnect came into effect in April 2021. It gives employees the right to switch off from work outside of normal working hours, including the right to not respond immediately to emails, telephone calls or other messages.

It recognises that occasionally legitimate reasons arise when it is necessary to contact staff outside of normal working hours. Contact due to roster cover, emergency etc.

Employers must be clear about what their employees normal working hours are. And employees must manage and record their working time.

Employees must be mindful of other people's right to disconnect by not routinely emailing or calling outside normal working hours.

The reality is owner/managers tend to work outside normal working hours. In that case, we recommend using an email footer stating that there is no obligation to respond outside of working hours.

# Employment Legislation

## Introduction of Statutory Sick Pay Scheme

The government has committed to bringing statutory sick pay into legislation by the end of 2021.

The governments statutory sick pay scheme is due to be phased in over a 4-year period.

It is planned to begin with 3 paid sick days per year for each employee starting in 2022, rising to 5 days in 2023 and 7 days in 2024. And eventually, 10 sick days per year by 2025.

Sick pay will be paid by employers at a rate of 70% of an employee's wage, subject to a daily threshold of €110.

Other features of the scheme are that an employee will have to obtain a medical certificate to avail of statutory sick pay, and the entitlement is subject to the employee having worked for their employer for a minimum of 6 months.

It is believed it will come into effect in January 2022.

# Recruitment & Selection

- ‘People are your greatest asset’ – wrong!! ‘The RIGHT people are your greatest asset’
- Tips to ensure you select the ‘right person’ which is critical to your business success
- The critical importance of a proper Induction / onboarding process and the Probationary Period

**We in Boyd HR are Solution Providers. Clients come with employee issues/challenges**

A Gallup survey of more than 1.2m employees showed that:

- ✓ 33% of Staff were actively engaged in the organisation
- ✓ 54% of Staff were not engaged
- ✓ 13% of Staff were actively disengaged (did not want to work and prevented others from working)

Maxim: If you have to manage someone, you have the wrong person.

## **Tips to ensure you select the ‘right person’ which is critical to your business success**

Problems start at the Selection Stage

Employers need to satisfy themselves with:

1. Can they do the job?
2. Will they do the job?
3. Will they be a fit into the team?
4. Have they the potential to develop and grow with your business?

## **Tips to ensure you select the 'right person' which is critical to your business success**

Past performance is the best predictor of future performance

What is the individual skilled at / experienced in?

What was their most notable achievements in their past role?

Have they the requisite knowledge, skills, experience, motivation?

## **The importance of a Character Reference**

Remember: 'paper doesn't refuse ink'!

Employers are increasingly reluctant to provide written references

ALWAYS contact previous employer by telephone and ask:

Would you have any hesitation whatsoever in re-employing this person?

All job offers should be in writing and conditional upon passing a probationary period

## **Key activities of Managers in ensuring engaged staff:**

1. Have I selected the right person?
2. Have I set clear expectations in terms of performance and behaviour?
3. Have I created a motivating environment?
4. Have I helped to develop the individual to achieve his/her potential?

## **Guiding Principles in deciding on taking COVID-19 Vaccination**

1. What is the consensus competent medical opinion?
2. What is the sociably responsible action to take?
3. What is in the 'common good'?

It is up to each individual to make their own decision.



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