

**SOME ASPECTS OF REGULATORY REGULATION
ISSUES OF COMPULSORY MEASURES RELATED
TO THE PANDEMIC IN UKRAINE**

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At present, it is necessary to analyze in detail the legislative and regulatory documents that define the algorithm of enforcement measures related to sovid in Ukraine.

Although the quarantine caused by COVID-19 has been in force in Ukraine for more than a year, the quarantine regime and relevant restrictive measures are not permanent and are constantly changing depending on the epidemiological situation in the country. In this regard, ordinary citizens and entrepreneurs must keep abreast of the latest quarantine changes in order to understand what their actions may be considered an administrative offense.

Liability for violation of quarantine restrictions is still provided by Article 44-3 of the Code of Administrative Offenses of Ukraine, according to which the basis for bringing to administrative responsibility, in particular, is a violation of quarantine rules provided by:

- 1) The Law of Ukraine «On protection of the population from infectious diseases»;
- 2) Decisions of local governments on the fight against infectious diseases;
- 3) Other legislation.

So, not only on the Constitution of Ukraine Everyone for whom the Basic Law is the first shield on guard against the restrictions and rules dictated by the threat of a global pandemic should be remembered.

From the outset of the pandemic, it became clear that the associated restrictions and any coercive measures, including vaccination, would soon become very problematic and controversial. And so it happened – doctors, lawyers, politicians and the general public express their doubts, arguments and theories. But in the process of finding solutions, balance and clear algorithms, many people suffer – especially business and employees.

Recently, we can see that the state's approach to compulsory vaccination has become much bolder. In turn, in the field of labor relations, employers are forced to use much more radical approaches. How is this regulated by law?

Resolution of the Cabinet of Ministers of Ukraine of December 9, 2020 № 1236 («Resolution 1236») on the introduction of quarantine measures in the country provides, for example, a ban on a number of businesses in the territory that fell into the red zone in terms of morbidity. In fact, the only way to continue working for restaurants, malls and gyms in such areas is to provide vaccination against COVID-19 or regular testing of employees.

At the same time, today almost everyone knows that in the legislation of Ukraine, fortunately, there is no norm that allows for compulsory vaccination. Namely, even if vaccination is mandatory, it is impossible to force anyone to be vaccinated. That is, on the one hand, for example, a cafe waiter has the right to refuse to do a vaccine or even a test at his own discretion without any contraindications or other serious reasons. On the other hand, the employer is not entitled to allow him to work, because then he will violate the quarantine prohibitions. How to be in such a situation?

Current legislation allows for the dismissal of some workers without pay in the absence of vaccination. But this opportunity is not available to all employers.

Since the beginning of the pandemic, nothing has changed in the rules of labor law on dismissal. In particular, Article 46 of the Labor Code of Ukraine provides for the possibility of dismissal of employees only in cases expressly provided by law. Until recently, COVID-19 did not provide for such cases. However, from November 8, 2021, the order of the Ministry of Health «On approval of the list of professions, industries and organizations whose employees are

subject to mandatory preventive vaccinations» from October 4, 2021 №2153 comes into force. As is well known, this order makes coronavirus vaccination mandatory for employees of executive bodies, local administrations and educational institutions. The order was adopted on the basis of Article 12 of the Law of Ukraine "On Protection of the Population from Infectious Diseases". This article also provides for the possibility of removing workers who refuse or evade vaccination.

In continuation of this idea, Resolution 1236 will be amended, which now contains paragraph 41-5, which obliges employers to dismiss unvaccinated employees according to the list of the Ministry of Health. A literal interpretation of this clause indicates that even if the employee agrees at the expense of the owners to be tested every three days - he is still subject to removal. In this case, payment should be made only for the actual work - that is, if the employee does not perform any duties, he will not receive a salary at all.

Taken together, these regulations were not perfect. Aside from the boldness of the very idea of compulsory vaccination against COVID-19, many, many rightly complain that there is no alternative to "earning" workers to save money. For example, switching to remote work or home work or the possibility of regular testing. There is also the question of the objectivity of the list itself, which lists all, without exception, employees of government agencies and educational institutions, even those who do not come into contact with visitors or students or even other employees. At the same time, the legislation is coming into force, and the way to combat it by referring to the constitutional rights or practice of the ECtHR does not seem overly optimistic and, moreover, quick.

Unfortunately, the simplest and most convenient option for employers in these cases will be to remove unvaccinated workers "from the list" from work without saving earnings. Moreover, according to public statements by the authorities, it is expected that this list may expand in the near future.

What to do with employees who directly refuse to be vaccinated against COVID-19, such as cafe waiters in the red quarantine zone? In this case, unfortunately, the problem is transferred solely to the employer. Thus, employers have no legal grounds for dismissal from non-payment of wages. Here, apparently, employers may have a number of alternatives. The first of them is regular testing of such employees with the periodicity provided by Resolution 1236.

If the employee refuses to test or such an approach is too expensive for the parties - the employer still has ways to quarantine Resolution 1236, although they will not always be economically justified. Yes, if relevant, employees can be sent to work remotely or moved to jobs outside the location of the cafe or store. Another way to resolve the situation could be unpaid leave, of course, if the employee agrees.

Some employers are considering dismissing an employee who regularly refuses to be vaccinated for non-compliance with work discipline or declaring a downtime due to the employee's own fault. Such approaches are still highly controversial, given the additionality of vaccinations and the fact that businesses in general can operate without these employees, subject to vaccination or testing of others.

The issue of actual non-admission of unvaccinated employees to work also remains controversial. Thus, since they cannot be removed from work, the practical legal grounds for non-admission to the workplace may be to establish a mode of remote work or move to another place. However, the validity of such actions, for example, in relation to waiters or restaurant chefs is quite questionable.

That is, it is obvious that for employers in the field of service legislation does not provide any mechanisms that can safely avoid penalties for non-compliance with quarantine regulations and labor disputes at the same time. Legislation and jurisprudence may clarify the situation, but so far the most optimal solution for business is dialogue with its own staff.

Specific quarantine restrictions, for violation of which there is a threat of administrative prosecution, are set out in the resolution of the Cabinet of Ministers of 09.12.2020 №1236.

In case of misunderstandings with Ukrzaliznytsia employees, passengers should refer to

the provisions of the Procedure for servicing citizens by rail (approved by the Cabinet of Ministers Resolution №252 of 19.03.1997), which provides an exhaustive list of grounds for refusing to carry passengers.

Clause 65 of this Procedure stipulates that the carrier has the right to refuse the passenger to carry him personally and his luggage or to disembark the passenger from the train. 2006 № 1196) provides that a passenger may be removed from the train if he is in a state of illness and needs medical care. In this case, the passenger with his belongings is removed from the train with the obligatory participation of medical staff.

The executive and legislative authorities responsible for imposing quarantine restrictions should either amend the above-mentioned rules of carriage as regards passenger refusals, or provide at the legislative level for the sale of tickets only if the person presents a relevant vaccination document.

Railway passengers should keep in mind that the absence of a negative COVID-19 test or vaccination certificate is not a ground for refusing a passenger to be transported or disembarking from a train if they have a travel document, but may be grounds for administrative prosecution.

Owners of catering establishments, entrepreneurs of the trade and entertainment sphere of the red zone may also be held administratively liable under Article 44-3 of the Code of Administrative Offenses of Ukraine in case of detection of:

- employee / visitor without a protective mask;
- employee / visitor without a negative test result or vaccination certificate.

All entrepreneurs in the service sector are responsible not only for their own employees, but also for customers who use their services. Violation of quarantine restrictions by visitors to institutions may result in the imposition of a fine on the head of such institution

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ЭЛИТЫ И ВЛАСТЬ В СОВРЕМЕННОМ МИРЕ

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Этимология понятия «элита» берет начало из французского языка и буквально означает «лучший», «избранный». В общественных науках, в социальной философии, политологии, культурологии, данное понятие получило широкое распространение после работ В. Парето и является тесно связанным с понятиями «власть» и «влияние». К элите, в самом широком ее понимании, относятся те, кто способен осуществлять влияние, то есть обладают определенной властью. Если обратиться к классификации элит то, в общем, их можно разделить на две категории: тех, кто осуществляет влияние на основе личностных и профессиональных качеств, так называемые «духовные лидеры», «моральные авторитеты» и тех, кто осуществляет влияние благодаря высокому положению и богатству. В первом случае речь идет об аксиологическом подходе при рассмотрении элит, во втором – о так называемом альтиметрическом подходе.

Власть имеет несколько измерений, она потенциальна (это – возможность осуществлять влияние, как уже было сказано) и актуальна. Как актуально осуществляющая влияние, власть является векторной характеристикой. Власть интенциональна. Она может быть направлена сверху вниз (подавлять) и снизу вверх (устремлять), когда элиты воодушевляют своим примером и порождают желание следовать им. О второй ситуации прекрасно сказано в стихотворении Рильке: «Он ждет, чтобы высшее начало, его все чаще побеждало, чтобы расти ему в ответ». Такое влияние