



Can I get my job back if I get the COVID-19 vaccination after termination?

In 2020, the emergence of COVID-19 saw workplaces quickly implement policies relating to their stance on vaccinations in order to protect their staff and the wider community.

Legally, an employee has a legal obligation to comply with any direction of their employer if the direction is considered “lawful and reasonable”.

A major issue of contention for many employees was whether they had the right to say no to getting vaccinated either due to medical or other reasons.

In a number of cases where employees were dismissed after refusing vaccination, the Fair Work Commission found that the employer’s direction to undergo vaccination was lawful and reasonable and, therefore, the dismissal was not harsh, unjust or unreasonable – [see previous articles here](#).

But what happens if an employee gets vaccinated post termination?

A recent case addressed this situation.

The Case of Bradley John Dean v Regional Express Holdings Ltd

Bradley John Dean (Mr Dean) brought an unfair dismissal case against Regional Express Holdings Ltd (Rex) in relation to his dismissal pursuant to its COVID-19 vaccination policy.

Mr Dean was dismissed on 1 December 2021 after 27 years employment with the regional airline.

Mr Dean was considered an “employee of long standing”, “well regarded”, and was the recipient of an “outstanding achievement” award.

During the COVID-19 pandemic, Rex implemented a policy requiring frontline customer-facing staff to be fully vaccinated against COVID-19 by 1 November 2021.

Mr Dean failed to be vaccinated by the date set because of his belief that a friend had died, and other family members had experienced adverse effects, as a result of receiving a COVID-19 vaccination.

Consequently, Rex terminated Mr Dean’s employment. In the letter of termination Rex invited Mr Dean to re-apply for employment if he became vaccinated.

Mr Dean lodged an unfair dismissal claim in the Fair Work Commission.

Soon after, the Novavax vaccine became available and Mr Dean underwent vaccination so that, by 10 March 2022 he was fully vaccinated. He then applied for reinstatement to his role but that application was denied.

In the subsequent hearing before the Fair Work Commission, the Single Commissioner held that Mr Dean had been unfairly dismissed and ordered his reinstatement. The Commissioner was influenced by the fact that Rex had intimated in the termination letter that Mr Dean could be reinstated should he become fully vaccinated.

Although the FWC ordered that Mr Dean should be reinstated, it did not – as it was entitled to do – order that Rex compensate him for the income he had lost in the meantime. In the Commissioner’s view, this would not be appropriate as it had been Mr Dean’s decision not to be vaccinated initially.

Does this mean that anyone who was dismissed for not complying with a vaccination policy can

get their job back if they are subsequently vaccinated?

The short answer to this question is “not necessarily and, probably not”. This case was unusual and the fact of Mr Dean’s long employment, valued status, and Rex’s invitation to Mr Dean to apply for employment if fully vaccinated when dismissing him were all significant factors in the decision. Furthermore, the circumstances were advantageous in that, by the time the FWC came to decide the unfair dismissal claim, Mr Dean was fully vaccinated.

Unfair dismissal claims must be lodged within 21 days. The FWC is reluctant to extend this time limit except in very exceptional cases. If Mr Dean had waited until he was vaccinated to lodge his unfair dismissal claim, he would not have been able to proceed and would not have secured an order for reinstatement. Conversely, if he had not been vaccinated by the time the FWC decided the matter, based on previous decisions of the FWC, in all likelihood he would have lost the unfair dismissal claim and would not have been reinstated.

How Can Andersons Help?

If you are an employer who has imposed a mandatory COVID-19 vaccination policy, or an employee who believes they were unfairly dismissed because of an employer’s COVID-19 policy, we recommend you seek legal advice.

Andersons Solicitors expert [Employment Law](#) team are available to provide legal advice to both employers and employees about all issues relating to dismissal of employment.

This article was written by [Margaret Kaukas, Special Counsel](#).