

Mr Leo Varadkar TD,
Tánaiste and Minister for Enterprise, Trade and Employment,
Department of Business, Enterprise and Innovation
23 Kildare Street,
Dublin 2.

Dear Mr Varadkar,

This note follows the receipt on our membership helpline of multiple calls on a daily basis concerning the Work Safely Protocol, of which a revised version was published on 14th May.¹ Regrettably, we must observe that the failings in the protocol noted below would not have occurred if LEEF was not fatally undermined by the absence of SME representatives. Like the original Work Safely Protocol produced last year, this revised version remains entirely compromised because it has been written with large companies only in mind.

The proximate issue is the fact that, in not providing for more robust guidance on the handling of unvaccinated employees in the workplace, the Department is unfairly exposing employers to the potential of enforcement action by either the HSA (in the absence of adequate measures) or the WRC (in the enforcement of measures). Both of these organisations fall under your Department's remit.

In the case of those businesses where colleague-to-colleague or colleague-to-client proximity is essential, inevitable, or unavoidable, the employer must know the vaccination status of employees, and must be able to presume employees are unvaccinated in default.

We acknowledge the absolute right of citizens to refuse vaccination. We have reports from workplaces in situations where employees have communicated their intention not to be vaccinated; as well as reports from other workplaces where staff have voiced personal safety concerns about working close to colleagues or customers who may not be vaccinated. As you can appreciate, the capacity in a micro or a small business to redeploy someone who does not wish to be vaccinated, as is propounded by the Protocol, is extremely limited. Where an employee exercises their right not to be vaccinated, the Work Safely Protocol must explicitly acknowledge that the duties of an employer under the Safety Health and Welfare at Work Act (which can result in the indictment of an employer), take precedence.

We are advised that the vaccination status of employees is a matter of confidentiality and personal privacy, which an employer cannot request to be disclosed to them. Individuals have, incorrectly in our opinion, invoked GDPR as a bar to sharing their vaccination status with their employer. It is well established that employers may request and hold information on employees which is of a confidential nature but they are not precluded from requesting it as it is a matter that is essential to

¹ <https://enterprise.gov.ie/en/Publications/Work-Safely-Protocol.html>

their employment. The GDPR regulation also makes clear that the preservation of life takes primacy over privacy at any point where there is a conflict between the two.

Therefore, unless it is the intention of the Department to absolve employers of their responsibilities to employees and clients under the SHAWAW Act, the Work Safety Protocol must acknowledge that the provision of the vaccination status of employees is a matter for both Public Health and one that an employer is legitimately entitled to request in order to ensure the safety of all people associated with the employment activity.

Lastly, while the section of the protocol dealing with the setting up of a RADT Testing Regime in the workplace is reasonably comprehensive, it is far from encouraged in the workplace, and the messaging from NPHE is inconsistent with the science on antigen testing.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Neil McDonnell', with a stylized flourish at the end.

Neil McDonnell
Chief Executive

CC Minister Health Stephen Donnelly TD
Minister of Justice Heather Humphreys TD
Minister of State Robert Troy TD.
Minister of State Damien English TD
Dr Orlaigh Quinn, Secretary General DETE
Mr Declan Hughes, Assistant Secretary General DETE
Liam Kelly, Director General, Workplace Relations Commission
Dr. Sharon McGuinness, Chief Executive Officer, Health and Safety Authority