

# 疫情期間 雇主強制受僱者接種疫苗 所引起之勞動法爭議 —美國之經驗

Labor Disputes Arising from Mandatory Vaccination  
in the Workplace During the Covid-19 Pandemic  
—Lessons from the United States

焦興鎧 Cing-Kae Chiao \*



## 摘要

本文之目的希望檢視在新冠肺炎疫情期間，美國雇主強制受僱者接種疫苗所引起之勞動法爭議，諸如就業歧視、職業安全衛生及失業救濟等議題，並探討美國之經驗可否供我國參考攻錯。在私部門方面，該國勞資關係一向深受僱用自由意志原則之影響，雇主擁有極大之解僱權，兼以工會運動在近年之衰微，因此，雇主這種強勢作為雖曾遭到持反對意見者之抗

\*中央研究院歐美研究所兼任研究員（Adjunct Research Fellow, Institute of European and American Studies, Academia Sinica）

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拒，但阻力並不大；至於聯邦最高法院最近在*Biden v. Missouri*一案，所作不利大型企業雇主立場之判決，對僱用員工100人以下事業單位之雇主，並沒有任何之影響。在公部門方面，拜登總統透過頒布總統行政命令之方式，也使得軍方及公務員體系不得不全面遵循。從而，根據美國之經驗，我國雇主如希望在這方面採行強制之作為，所面臨之勞動法挑戰應不難克服。

The purpose of the paper is to examine labor law controversies arising from mandatory vaccination measures adopted by employers during the Covid-19 pandemic in the United States, such as employment discrimination, occupational safety and health, and payment of unemployment benefits. It also tries to learn whether American experiences can provide Taiwan with relevant policy guidance. Due to the fact that employers have traditionally enjoyed extensive managerial prerogatives in the workplace under the influence of employment-at-will doctrine in the private sector, along with the rapid decline of the labor movement in that country, they have been able to proceed with this mandatory measures with little opposition. Although the U.S. Supreme Court has blocked President Joseph R. Biden's effort to vaccinate employees in private business entities with over 100 employees in *Biden v. Missouri*, the ruling has almost no impact on small and medium enterprises. Also, since President Biden has much more leverage over federal employees in the public sector, mandatory vaccination measures are also easily implemented extensively in the military and government

agencies. Therefore, judging from the American experience, this paper concludes that similar mandatory vaccination measures will encounter little legal challenges in Taiwan.

## 壹、序言

自新冠肺炎疫情（Covid-19 pandemic）肆虐2年以來，對全球勞動市場及勞工之權益，都產生極大之衝擊。以美國為例，除各類防疫措施，諸如封鎖（lock-downs）等所造成嚴重之失業問題外，初期對第一線所謂「必要性勞工」（essential workers），未能提供足夠之個人防護裝備（Personal Protection Equipment, PPE），所引發之勞工安全衛生爭議，也曾是一廣受矚目之課題。嗣後雇主採用社交距離或其他措施所產生遠距（或在家）工作之現象，勢必形成勞資關係之質變。更重要的是，自各類疫苗問世後，對防疫固能發揮一定之效益，而大幅降低感染可能性，或減少染疫者惡化成重症甚至死亡之機率，且在群體免疫效果開始產生後，與此一病毒共存之概念，已逐漸得到國際之共識，更有助於疫後之經濟復甦。然而，接種疫苗固然對抗疫確有一定之成效，但若雇主為善盡其保護受僱者安全之一般法律義務，以及避免未接種者會傳染給已接種之受僱者或服務對象，是否可以強制受僱者必須接種疫苗（mandatory vaccination），即曾引發諸多之勞動法爭議。舉例而言，受僱者可否以宗教或其他健康因素為由拒絕，並對雇主這種強制作為提出就業歧視之訴求？雇主對此應如何提出抗辯？在其他受僱者或服務對象拒絕接種時，已接種之受僱者，可否以雇主未善盡提供安全之工作環境為由，而拒絕提供勞務？工會在這類新興之勞資爭議中所扮演之角色為何？至於政府公部門可否強制公務員必須接種？也都曾引發熱烈之討