

Corporate Social Responsibility policies and practices on unvaccinated employees during the COVID-19 pandemic: case studies of Israel and United States

CSR policies and practices

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Abstract

Purpose – The article addresses the tension between Corporate Social Responsibility (CSR) and the right to work in times of the COVID-19 pandemic. Accordingly, it explores the operation of corporations in adopting policies of mandatory vaccination and the role of the courts regarding these CSR patterns.

Design/methodology/approach – The article examines court case studies of CSR practices regarding unvaccinated employees during the COVID-19 pandemic in Israel and the United States.

Findings – The findings show that the Israeli system adopted the regulating for individual discretionary CSR approach, whereas the American system adopted the regulating for ethical-public CSR approach. Adopting the latter infringes upon the right to work of unvaccinated employees. While in Israel, the possibility of compelling employees to vaccinate is denied, in the American model, mandatory vaccination is possible. As opposed to the American model, in the Israeli model, there is an obligation to consider proportionate measures to isolate the employees while allowing them to continue working.

Originality/value – The article introduces two possible notions of regulating CSR in times of the pandemic – regulating for individual discretionary CSR which is labor-oriented and regulating for ethical-public CSR which is focused on public aspects. While the former posits that corporations should advance individual interests of employees and their right to work, the latter claims that corporations should advance the public interest in health. Following the problems resulting from the Israeli and American cases, the article draws on the lines for a suggested approach that courts should embrace.

Keywords Individual discretionary CSR, Ethical–public CSR, Carroll's CSR pyramid, Mandatory vaccination policy, COVID-19

Paper type Research paper

Introduction

Unemployment is endemic in the economy of Western countries and so is a demand for recognition of a right to work as a remedy for that situation. In many Western countries, a right to work and freedom of occupation have not been recognized in constitutional documents or as fundamental rights (Elster, 2021). Yet a need to recognize a right to work has been put forward in the last decades as a way of addressing situations of inability to work.

Novel circumstances of inability to work have been raised due to the spread of the COVID-19 pandemic. In January 2020, scientists identified a new COVID-19 virus responsible for unknown pneumonia (Ramesh *et al.*, 2020). Soon after the virus had spread to most parts of



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the world, governments established emergency policies, including forced social isolation and lockdowns in attempt to cope with the virus. The COVID-19 regulations usually included the closing of many businesses, restaurants, theaters, and public services, causing layoffs, forced unpaid holidays, and massive unemployment. For instance, in Israel in April and May 2020, around a half million workers were unemployed (including those in forced unpaid vacation) (Aviram-Nitzan, 2020). Following the spread of the virus, governments advanced the use of the vaccine, while some employees refused to be vaccinated based on ideology or a fear of future side effects of the vaccine. The COVID-19 measures, which caused vast unemployment in many countries and situations of unvaccinated employees who were not permitted to work, raised the issue of the right to work.

The coronavirus crisis has indeed had an impact on the labor market around the world. Pandemics have the potential to cause harm to employees and the COVID-19 pandemic affected employees' rights. It weakened the labor force and strengthened corporations while widening the gap in the bargaining power between workers and employers (Tham, 2020). Previous literature on COVID-19 mostly analyzed the influence of the closure and other restrictions and induced daily activities on various aspects of individual life. Some scholars found a negative influence on physical health and social life during the pandemic (Mujahid *et al.*, 2021). Other research on the impact of COVID-19 on employees has shown that the reduction of economic activities during the pandemic resulted in a rise in poverty and unemployment and hence affected workers (Ajmal *et al.*, 2021a; 2021b). Scholars have also found the development of inequality in unemployment (Möhrling *et al.*, 2020). Other literature on COVID-19 and employees has addressed the impact of closures on International Labor Organization standards (Ewing and Hendy, 2020). This article wishes to contribute to the literature by exploring the application of different policies regarding the right to work of unvaccinated employees.

The global crisis of the COVID-19 pandemic has raised new issues regarding the operation of corporations in relation to their employees. Following the pandemic, corporations adopted different practices of Corporate Social Responsibility (CSR). CSR is the activity of corporations aimed at fulfilling social responsibility targets as opposed to the economic goals of the corporation (Wood, 1991). CSR practices in times of a pandemic could indeed take different paths, giving rise to either labor-focused patterns of CSR or public interest-focused CSR. Hence, CSR patterns could involve attempts to preserve employees' rights or, on the other hand, mainly advance public prevention of the pandemic but while doing so, disregarding employees' interests. During the pandemic, many corporations decided to adopt self-regulation policies of mandatory vaccination. These CSR practices created a tension between the fundamental rights of employees who refuse to be vaccinated and the public interest in the prevention of infection and the spread of the virus. Such CSR practices might lead to infringing on the right to work of unvaccinated employees. These employees are usually not allowed to enter the working place or are forced to take a holiday without pay and can even be dismissed upon non-vaccination.

Previous literature on CSR has mainly discussed stakeholders' theory (Freeman, 1984) and motivations of corporations to adopt CSR (McBarnet, 2007). Nevertheless, previous literature has not thoroughly discussed the impact of a crisis on CSR and the role of the courts in this regard. It has also not discussed the conflict between labor rights and attempts of attending health and safety-at-work concerns during a national crisis. This article aims to address that gap and explore the tension between CSR and employees' right to work in times of a global pandemic. The article focuses on the contribution of CSR in emergency situations. Accordingly, it explores the operation of corporations in advancing the use of vaccines against COVID-19 infections by employees. It also explores the tendency of corporations to use various practices in relation to unvaccinated employees in an attempt to prevent the infection of customers, suppliers, and/or other stakeholders.

Scholars have discussed the interplay of regulations and CSR practices (McBarnet, 2007), suggesting that regulations may influence the motivation of corporations to develop CSR (Karassin and Bar-Haim, 2015; 2019). The literature has not related to different judicial approaches to regulating CSR in times of a pandemic nor has it related to the connection between judicial regulation of CSR and employees' rights. This article discusses the role of the courts in regulating CSR practices in times of a pandemic in an attempt to preserve employees' rights. CSR is often analyzed through the Corporate Social Performance (CSP) model which includes a few categories: institutional or organizational, and individual (Wood, 1991; Carroll, 1979). This article further develops the individual dimension of CSR which, in our case, refers to self-regulation regarding individual employees. It discusses the individual dimension of corporations' policy as opposed to the public dimension. It also develops the institutional dimension of the CSP model which involves the role of court rulings (Wood, 1991; McBarnet, 2007; Marquis *et al.*, 2007; Carroll, 1991; Carroll, 2016)

Carroll (1979; 1999) proposed four dimensions of CSR embedded in the CSP model, composed of economic and ethical or legal and discretionary components, relating to the issues for which social responsibility exists. The article focuses on two responsibilities which extend beyond obedience to the law: the ethical responsibility and the discretionary one. The ethical aspect represents the kind of behavior that society expects businesses to follow. The discretionary aspect represents voluntary roles that corporations adopt which do not follow public expectations. These include, for instance, in-house activities and behavior regarding employees' needs and interests.

The problem raised following CSR practices regarding unvaccinated employees is the infringement of the right to work and freedom of occupation of these employees. In this respect, this article considers distinct approaches by the judiciary regulating CSR practices regarding policies which affect the right to work of unvaccinated employees. The article explores different CSR practices in Israel and the United States during the COVID-19 pandemic by looking at case studies regarding these issues. The research question is: which approach have the Israeli and American courts adopted in relation to CSR practices regarding unvaccinated employees? Another research question is: which approach should the courts embrace in relation to regulating CSR practices regarding unvaccinated employees?

Drawing on the dimensions of the CSP model and the CSR pyramid, the article presents two possible notions of CSR in times of a pandemic: individual discretionary CSR and ethical-public CSR. While the former posits that corporations should advance the individual interests of employees and their right to work, the latter claims that corporations should advance public interest in health. Hence, corporations should mainly consider the health of suppliers, customers, and other employees and their interest not to be infected by COVID-19. Individual discretionary CSR is based on the discretionary dimension of Carroll's pyramid of CSR, representing voluntary roles which do not follow public expectations and the article further develops this discretionary dimension. These voluntary activities include advancing employees' needs and interests and, in particular, the right to work. On the other hand, ethical-public CSR is based on the ethical aspect in Carroll's pyramid of CSR, representing the behavior that society expects and further develops it.

Following these two CSR practices, the article presents two approaches that courts could embrace regarding these CSR patterns in emergency situations of a pandemic. The first approach deals with regulating for individual discretionary CSR and promoting the liberty of individual employees and their right to work. The second approach deals with regulating for ethical-public CSR, according to which the court advances ethical-public CSR practices, while rejecting the recognition of the right to work. In attempt to solve the problems resulting from CSR practices that infringe on the right to work, the article advances the adoption of regulating for an individual discretionary approach by the courts.

The sections are structured as follows. It discusses CSR and the right to work, as well as the effects of the pandemic on employees' rights. Next section analyses the possible CSR approaches regarding the pandemic: individual discretionary CSR which is labor-oriented, and ethical-public CSR which revolves around public interests. It also elaborates on the issue of regulating CSR practices by the courts in an attempt to preserve employees' rights. After that, the cases from Israel and the United States courts regarding CSR practices during the COVID-19 pandemic will be examined. The last section presents a suggested model that courts could embrace.

CSR, COVID-19 pandemic, and the right to work

The COVID-19 pandemic has raised different challenges to firms and the market regarding the right to work. The right to work as defined regarding the relationship of the employee with the employer is the right to retain a job that one holds and the right to continue working, that is, the right to work is the unconditional right against unfair dismissal and a right to job security (Elster, 2021). States differ as to the willingness to recognize the right to work as a fundamental right.

In American jurisprudence, the right to work has not been considered a fundamental right. Hence, a doctrine of employment at will is quite prevalent. Mostly, the employer has the freedom to terminate employment with no need to show due cause, whereas, in Israel, the right to work and freedom of occupation have been considered fundamental rights (Litor *et al.*, 2020). Hence, an employee can, in many cases, sue against dismissal without due cause and might also be granted reinstatement to a job. The differences in the status of the right to work also reflect upon the tendency to embrace an approach that regulates for individual discretionary CSR.

One of the issues that has been raised both in Israel and the United States concerns employees who pose a threat to the health of others. The pandemic has raised a debate between public health and the personal choice of employees and their human rights, and corporations have grappled with a dilemma regarding unvaccinated workers.

It should be noted that the COVID-19 public health restrictions have affected employees' rights and unemployment has sharply risen (Tham, 2020). In many countries, regulations limited the capability to continue the normal operation of most working places and had far-reaching implications on various human rights and the right to work (Ewing and Hendy, 2020; Albin and Mundlak, 2020).

During the COVID-19 pandemic, many corporations adopted a self-regulation policy of mandatory vaccination or no-entrance policy to various categories of unvaccinated employees. In some cases, unvaccinated employees were either dismissed from work or compelled to take time off. These issues involve a tension between the right to work and the right to health of various stakeholders (Wise, 2021). In Israel and the United States, vaccines for the whole population have been available since March 2021. Neither Israeli nor American legislation has thoroughly addressed this issue of unvaccinated employees, and CSR practices in this regard have been mostly voluntary.

Corporations applying CSR practices operate in an attempt to enhance the public interest and the right to health of various stakeholders, such as service recipients and other employees. By requiring their employees to be vaccinated, corporations attempt to advance vaccination of the population and prevent the spread of the pandemic. The tools employers use regarding unvaccinated employees might infringe on human rights. Various fundamental labor rights might be affected by a policy regarding unvaccinated employees and mostly the right to work. The right to work is a basic right of employees which has been recognized as a major freedom within the working place in universal human rights' treaties. The right to work, as other social rights, is anchored in the International Convent of Social and Economic and Cultural Rights of the United Nations 1966 (ICCPR). Article 6 recognizes the right to work and to occupation. The ICCPR recognized the right for the opportunity to gain

one's living by work which is freely chosen. Article 7 also recognizes the right to equal treatment at work.

In Israel, following the introduction of two basic human rights laws in 1992: The Basic Law – Dignity and Liberty, and The Basic Law – Freedom of Occupation, the Supreme Court declared a constitutional revolution which determined constitutional status of human rights (Litor, 2019). The Basic Laws included several rights such as a right to privacy, a right to dignity, and to occupation. Even though they included only a closed list of rights, over the years, the Israeli Supreme Court has recognized a number of other rights as constitutional, such as the right to a minimum standard of living, which could also relate to the rights of employees to make their living through work.

In the United States, several human rights were recognized by the Constitution, such as freedom of speech. The American Constitution disregards social rights and labor rights, such as the right to work and occupation. Yet employees have various constitutional rights, such as their right to due process of law, which could be relevant to our case and might be infringed upon by a mandatory vaccination policy.

There are a number of reasons justifying the protection of the right to work of unvaccinated employees. Dismissals of unvaccinated employees might raise unemployment rates, which bears severe consequences both for those unemployed who lose income and for society, in general, because of production loss (Elster, 2021). It also affects people's confidence in the economic system.

Different CSR patterns and approaches to judicial CSR regulation at times of pandemic

In the last two decades, corporations have adopted CSR practices. In this vein, preventing unvaccinated employees from entering the workplace or applying different restrictions regarding these employees raises the issue of CSR.

The article introduces two possible approaches to CSR: individual discretionary CSR which is labor oriented, and ethical-public CSR which focuses on the public interest. The ethical-public CSR approach advances the safety of the workplace and the health of different stakeholders and the public in general. Nevertheless, it advances adopting a policy that affects the freedom of individual employees. Meta-regulation of CSR advances the adoption of legal practices aimed at encouraging corporations to develop CSR patterns (Lobel, 2004; McBarnet, 2007; Parker, 2007). Such-meta regulation could be enacted via judicial regulation of CSR.

Following different CSR practices in times of a pandemic, the article presents two approaches that courts could embrace regarding these CSR patterns. The first approach deals with regulating for individual discretionary CSR and promoting the liberty of individual employees while applying a fundamental right to work. The second approach deals with regulating for ethical-public CSR, according to which the court advances ethical-public CSR practices while rejecting the application of the right to work as a fundamental right.

The issue of judicial regulation of CSR should consider the motivation of corporations to adopt CSR. Regarding this motivation, we should bear in mind that CSR was developed partly in attempt to advance financial performance by attracting consumers and partly for institutional reasons (Marquis *et al.*, 2007), such as binding norms within the legal system and court rulings (Karassin and Bar-Haim, 2019). Corporations tend to develop CSR practices due to both intrinsic and extrinsic motivations (Feldman and Perez, 2009). The intrinsic motivation relates to self-interest, whereas the extrinsic motivation refers to external institutions and rules, such as norms set by court rulings.

CSR literature presented societal pressure as a motivation for corporations to adopt CSR practices (Feldman and Perez, 2009). Since corporations usually tend to enhance practices which follow consumers' expectations, they would normally be inclined to advance the public

interest in preventing the pandemic while disregarding employees' rights. Corporations would tend to refrain from self-regulation that preserves employees' rights and prefer to adopt self-practices which promote efficiency and profit. Hence, setting external motivation for preserving employees' rights via judicial regulation is of importance. In this vein, it should be noted that fulfilling employees' rights would not be part of what the public considers or expects. Therefore, embracing an approach that promotes fulfilling labor rights by the courts is needed.

Israeli jurisprudence: adopting regulation for an individual discretionary CSR approach

While Israel executed a large operation to vaccinate its entire adult population, there were still around 15 percent of eligible citizens unvaccinated in October 2021. Ten percent of this group were over 20 and part of the working force. This group has constituted most of Israel's deaths and serious cases of hospitalization since the beginning of the vaccination operation (Sokol, 2021). Following the growing availability of vaccinations, some corporations decided to adopt a mandatory vaccination policy.

The Commission of Civil Servants of the State of Israel issued internal directions regarding governmental employees which enabled the demand to present a "Green Pass" indicating vaccination or negative results of coronavirus tests for unvaccinated employees. These regulations did not apply to the private sector and were binding for a period of a few months. New emergency regulations enacted in October 2021 also included a demand, for a period of a few months until the beginning of February 2022 from employees working in public places including universities, theaters and hotels to present a Green Pass indicating vaccination or a negative coronavirus test (Emergency regulations – green pass – October 2021). An appeal against the regulations was rejected (HCJ 5322/21 *Casby v. The State of Israel*).

Israeli jurisprudence has embraced regulation for an individual discretionary CSR approach. Contrary to American jurisprudence, commercial corporations are considered subject to constitutional rights. Having considered the fundamental right of employees to work and to occupation has led to denying the possibility of compelling employees to vaccinate. Rather than allowing employers to adopt a mandatory vaccination policy, the jurisprudence only enabled a policy requiring employees to be tested for the virus. Furthermore, employers are considered under the obligation to apply proportionate measures and consider the possibility of isolating the individual employee from others by allowing work in a closed office or without physical connection to consumers and suppliers or work from a distance.

In the *Aguda* case (HCJ 1441/21 *Haaguda Lezchuiot Haezrach v. The Knesset* 2020), it was held that employees had a right to privacy within the workplace in relation to COVID-19 vaccinations and a right to work. Yet employers could demand the presentation of a Green Pass, indicating that a person was not infected by COVID-19. Hence, in the private sector, employees had the possibility to refuse vaccination, but employers could apply measures regarding non-vaccination.

In the *Chen* case, the Court held regarding a social worker in a childcare facility that even though a policy of mandatory vaccination by itself would not be legitimate, requiring a regular test for the COVID-19 virus was possible (Labor Appeal 1568105/21 *Chen v. Natanya municipality* 2021). The Court emphasized the right to work which should be balanced with the need to ensure the health of the children treated in the facility and their families.

In the *Avishai* case (Labor Appeal 395504/21 *Avishay v. Kochav Yair* 2021), a school banned a teaching assistant who refused to be vaccinated or undergo coronavirus tests from entering the school premises. The Court held that a school might prevent unvaccinated employees from coming to work. The Court ruled that even though every employee has the right to be vaccinated or not, there are consequences for each action. It was held that despite a worker's rights to privacy and work, the need to preserve the rights of pupils or parents to

avoid a COVID-19 infection resulted in requiring employees to take coronavirus tests as a condition for the entrance of unvaccinated persons to the workplace.

In the *Shupersal* case (Labor Appeal 2279604/21 *Fikshtein v. Shupersal* 2021), a cashier in a supermarket chain who refused to take COVID-19 tests was deprived of the possibility to enter the workplace. The Court held that even though adopting a mandatory vaccination policy would not be justified, corporations could compel employees to undergo regular tests for the virus. The Court ruled that the corporation should apply proportionality tests and try to find another position for the employee which did not have a close connection to customers and suppliers. The Court emphasized that the supermarket chain was subject to individual rights of employees to privacy and the right to work and freedom of occupation.

In the *Vizansky* case (Labor case 281903/21 *Vizansky v. A.L.A Sports Association Raanana* 2021), which involved a yoga instructor, the Court held that the right to privacy and the right to work should be balanced with concerns for public health. Following the refusal of the unvaccinated yoga instructor to take regular coronavirus tests, the employer, a sports association hired a temporary replacement for the yoga classes as well as asking the yoga instructor to take time off from work. While the instructor claimed that his right to work was violated upon the demand to present a negative coronavirus test, the Association claimed that its policy regarding sports instructors is derived from concerns for the health of the customers attending the sports club. The Court held that even though the right to privacy and the right to occupation of an employee is of importance, the right to life of the customers should also be taken into consideration. The Court held that, in this case, the fact that the duty of the sports instructor included being present in an indoor closed gym, the interests of the customers – some of which were elderly people and at greater health risk – justified the demand to have a regular medical test for coronavirus.

In the *Aharoni* case (Case 15897/06/21 *Aharoni v. Mphal Hapayis* 2021), an employee was forced to take a holiday and was not allowed to enter the workplace. The Court held that an employer was bound to allow an unvaccinated employee to return to work since the employee was willing to take necessary precautions. The Court emphasized the right to work and occupation of the employee which led to the duty of the employer to consider in good faith the possibility of taking different measures to allow unvaccinated employees the ability to work and enter the workplace. The Court noted that the constitutional rights of employees to occupation and their rights to dignity were of importance. Based on the constitutional rights of employees, it was held that the employer must consider arrangements that could allow the employee to continue working. It was noted that the employee was subject in his actions to proportionality and rationality requirements and, as a result, a total ban placed on all unvaccinated employees denying them the right to work would violate the workers' fundamental rights and would be illegal.

American jurisprudence: adopting regulation for an ethical-public CSR approach

In the United States, only about 63 percent of the population had been vaccinated by December 2021 ([Centers for Disease Control and Prevention, 2021](#)). Up until October 2021, legislation initiatives had not addressed the issue of unvaccinated employees, and the CSR practices of corporations regarding these matters were mostly voluntary.

In October 2021, the U.S president announced his intention to ask the federal agency of Occupational Safety and Health Administration (OSHA) to issue orders mandating vaccination for federal employees and large corporations. Nevertheless, these regulations were eventually overturned by the Supreme Court. The Court held that OSHA lacked the authority to regulate such risks (21A 244 *National Federation of Independent Businesses v. Department of Labor, Occupational Safety and Health Administration*). Yet, the Supreme Court upheld mandatory vaccination regulations for healthcare employees issued by

Medicare. Hence, mandatory vaccination policies of most employers remained voluntary as part of CSR policies.

The American jurisprudence adopted regulations for an ethical-public CSR approach regarding employees during COVID-19. In the United States, mandating vaccines by private corporations is considered legitimate. American jurisprudence is characterized by a denial of the recognition of the right to work as a fundamental right. Private corporations are, in principle, not subject to constitutional rights of employees but only to federal and state laws. A private corporation's ability to embrace a CSR policy of dismissing unvaccinated employees is only restricted by the possibility of discrimination on the grounds of a medical situation or religious beliefs. In this respect, the Equal Employment Opportunity Commission issued guidance stating that employees may be exempt from mandated employer vaccination under the American Disability Act (ADA) or Title VII of the Civil Rights Act of 1964. Section VII requires an employer to accommodate an employee who sincerely holds religious beliefs unless it would cause undue hardship for the business.

According to the regulations for an ethical-public CSR approach adopted by the American system, an employer might have a workplace policy requiring that an employee not be a direct threat to the health and safety of the workplace. Yet, if a vaccination requirement screens out a worker with a disability, the employer must consider a reasonable accommodation, such as allowing the employee to work remotely or take a leave of absence. Hence, an employer, in most circumstances, may dismiss employees upon their refusal to vaccinate.

Past adjudication regarding unvaccinated employees could reflect upon the current pandemic. In the *Jackson* case in 1905, the Supreme Court rejected the claim that a Cambridge regulation requiring residents to be vaccinated against smallpox (then a pandemic) violated the due process of the 14th amendment. The same policy would also be prevalent regarding the COVID-19 vaccines.

Following the development of the mandatory vaccination policy by corporations during the COVID-19 pandemic, employees turned to the courts. In the *Houston Methodist Hospital* case (Civil Action H-21-1774 U.S. District Court Southern District *Jennifer Bridges v. Houston Methodist Hospital* 2021), employees were suspended without pay and later dismissed upon refusal of vaccination. The Court held that private employers could order employees to get vaccinated unless the refusal was based on religious or medical reasons and employees could be dismissed upon refusal to get vaccinated.

In the *University of Indiana* case, the Court dismissed a lawsuit against a mandatory vaccination policy. The Court refused to bar Indiana University from mandating vaccination for students and employees attending the school (United States Federal Court of Appeals for the Seventh Circuit *Klaassen v. Trustees of Indiana University*, Appeal no. 1:21-cv-238, No. 21-2326. 7th Cir. 2021). The Court held that the mandate, which included health and religious exceptions, did not violate any constitutional right. The Court held that the vaccination protected not only the vaccinated persons but also those in contact with them and, at a university, close contact is inevitable. On 12 August 2021, the U.S. Supreme Court upheld the Federal Court's ruling.

The ruling in both cases – the *University of Indiana* case and the *Houston Methodist Hospital* case – seems problematic since the Court ignored the infringement of employees' rights. In the *United Airlines* case, the Court stressed the possibility to be exempted from vaccination based on religious beliefs (Case 4:21-cv-1074psw-United States District Court for the Northern District of Texas *David Sambrano v. United Airlines* October 2021). The judge issued a temporary restraining order and held that healthcare workers had the possibility to raise demands for exemption from mandatory vaccination based on religious beliefs.

In a *New York City* case, in October 2021, the Supreme Court upheld the decision of a circuit court ruling that a mandated vaccination policy for public school employees was legitimate

(Supreme Court App. 21A50 N/A *Rachel Maniscalco v. New York City Department of Education* 30 September 2021).

In the *Bauer* case (2:21-cv-02952 DCN *Bauer v. Summey* U.S. District Court), employees of City of North Charleston challenged the mandatory vaccination policy by bringing constitutional claims. The constitutional claims alleged that the policies violated their due process rights as well as their first amendment rights that free exercise and equal protection were dismissed, and the Court rejected the claimed against mandatory vaccination policy.

Table 1 summarizes the differences between the Israeli and American models. Whereas in Israel, private corporations are subject to constitutional and fundamental rights of employees including the right to work, in the American model, corporations are not subject to the constitutional rights of their workers. Whereas in Israel, the possibility of compelling employees to vaccinate is denied, in the American model, mandatory vaccination is possible. Contrary to the Israeli model, it is possible to dismiss unvaccinated employees unless there is discrimination on religious or health reasons. As opposed to the American model, in the Israeli model, there is an obligation to consider proportionate measures to isolate the employee while allowing continued work.

Drawing on the lines for the approach that courts should embrace

Having considered the importance of fundamental rights of employees and the widening gap in negotiations between employers and employees during the pandemic, the conclusion is that the courts should embrace the individual discretionary approach to regulating CSR with modification. The courts should apply the suggested approach according to a number of judicial tests and guidelines. The courts should take into account the circumstances of each case, applying the individual discretionary approach while considering proportionate measures. Such approach posits that not only should public health be taken into consideration, but also the basic rights of employees at work, including the freedom of occupation and the right to work. Contrary to the perception of the American jurisprudence

<i>Issues</i>	<i>Application of constitutional /fundamental rights of employees</i>	<i>Whether mandatory vaccination is legitimate</i>	<i>The issue of dismissing employees upon non-vaccination</i>	<i>Application of proportionality test</i>
<i>Israeli jurisprudence: regulating for individual discretionary CSR</i>	Private corporations are subject to constitutional rights of employees. Corporations are subject to a right to work.	Denial of the possibility of compelling employees to vaccinate	Dismissing unvaccinated employees is considered unjustified when other measures have not been considered.	Obligation to consider proportionate measures to isolate the employee: allowing work
<i>American jurisprudence: regulating for ethical-public CSR</i>	Private corporations are not subject to constitutional rights of employees. Corporations are not subject to a right to work.	Mandating vaccines is considered legitimate.	Ability to dismiss unvaccinated employees unless there is discrimination based on religious or health reasons	No application of proportionality demand

Table 1.
Israeli jurisprudence compared to American jurisprudence

which ignores the individual rights of workers, corporations should take into consideration employees' constitutional rights.

The following five judicial tests and guidelines are proposed. The first guideline posits that neither a total ban on the entrance of all unvaccinated employees to the workplace nor an absolute mandatory vaccination of employees should be considered legitimate. Taking into consideration various constitutional rights of employees should lead to a policy that requires employers to consider, in good faith, taking measures enabling specific unvaccinated employees to continue working. Such measures could include taking regular COVID-19 tests.

The second guideline directs courts to apply proportionality tests, according to which employers would be required to consider taking proportionate measures. These are measures which could isolate the unvaccinated employee from others while enabling the staff to continue working. Such measures include working conditions which would not endanger other employees and the public. In this respect, the employer should be directed to consider the possibility of alternative tasks that the employee could fulfil which do not involve physical contacts with other people. Furthermore, the suggested policy should require the employer to examine whether the employee could continue working from home or remotely. Employers should also consider the type of tasks of the specific employee and the physical conditions of the workplace, i.e., whether the worker meets with people and the possibility to enable physical separation. In this respect, it should be considered whether the employee can work in a separate office.

The third guideline includes the need of the courts to consider the specific field of operation of the corporation. If the field includes essential services of which interruption could endanger the health and life of the whole or part of the population, applying restrictions on employees would be justified. For instance, in the field of home care, there would be more justification for extreme measures regarding unvaccinated employees.

The fourth judicial test and guideline considers the kind of service recipients or consumers involved. For instance, in hospitals it would be more justified to demand vaccination because of the connection to the patients who are vulnerable and could be exposed to the virus.

The fifth judicial test should consider whether the employee has a special medical condition because of which the employee did not get vaccinated. Courts should understand non-vaccination of employees due to medical conditions as legitimate.

Conclusion

The article presents a new approach for regulating CSR practices regarding unvaccinated employees by the courts. On the theoretical aspect, the article contributes to the literature by introducing a novel linkage between CSR, COVID-19 research and the policy regarding unvaccinated employees. It also addresses the interplay of the role of courts, and the regulation of CSR. On the practical level, the article presents policy guidelines that courts worldwide could embrace in coping with the need to regulate CSR practices regarding unvaccinated employees.

Drawing on the dimensions of the CSP model and Carroll's CSR pyramid (1991), the article presents two possible notions of CSR in times of a pandemic: individual discretionary CSR which is labor oriented, and ethical-public CSR. The two possible CSR patterns, which are both beyond the demands of the law, differ in the target of social responsibility and the specific stakeholders they concern: either the public in general or individual employees. While the former posits that corporations should advance the individual interests of employees and their constitutional rights, the latter claims that corporations should advance the public interest in health. Hence, corporations should consider mainly the health of suppliers, customers, and other employees and their interest not to be infected by COVID-19.

Following these two CSR practices, the article presents two approaches that courts could embrace regarding these CSR patterns in emergency situations of a pandemic. The first approach is regulating for individual discretionary CSR and promoting the liberty of individual employees and their rights at work. The second approach deals with regulating for ethical-public CSR, according to which the court supports ethical-public CSR practices.

The article advances the application of the individual discretionary approach while modifying it according to suggested judicial tests and guidelines. The suggested model enables considering the constitutional rights of employees and the gap in the bargaining power between individual employees and their employers during a pandemic while preserving the public interest in health. Future research could explore the impact of regulation of CSR by the courts on the motivation of corporations to adopt different CSR practices in relation to unvaccinated employees. It is also worthwhile to explore what causes the differences in CSR practices regarding unvaccinated employees and in the approaches of courts in different countries.

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