# Nadia Mitsopoulos: You’re on morning ABC Radio Perth and nice to be with you on this Thursday, thank you so much for your company this morning. Now we’re gonna talk about something really interesting and it’s ...it’s… it’s something I think that probably people were expecting would crop at some point when you look at the way countries have opened up overseas allowing crowds back into big events and what they do is they say you need to either show us proof that you have been fully vaccinated or give us a Covid test that is negative and that you’ve had a negative Covid test in the last two days, if you can do that then you will be allowed into the big event whatever it is. So, the expectation is that we will start to see that happen here in Australia, provide that proof and you’ll be allowed back in. And there will be businesses in Australia that we expect will demand the same, international airlines for example, only excepting customers that have been vaccinated. But what about if the situation was reversed so, what about if a business owner only allowed in customers who have not been vaccinated.

# Just have a think about that for a moment, a business owner only allowing customers into their premises if they have not been vaccinated is that allowed, or is it discriminatory? Have a think about it because one man has had his booking cancelled because he is fully vaccinated. We are going to find out shortly if that is acceptable or if it is actually a form of discrimination, but I’m keen to know what you think, if you’re comfortable with a business being able to deny you entry or refuse you service based on whether or not you are vaccinated. 1300 2227 20 is the number if you would like to be part of that discussion and as I said we going to speak to the Equal Opportunity Commission about that in a moment.

# NEWS HEADLINES READ

# NM:I got this email from Dave and I want to read it to you. Dave says I recently booked a haircut by my barbers’ online booking system, one of the questions asked when booking online was my vaccination status. I am now thankfully fully vaccinated and responded accordingly. Shortly after making my booking the appointment was cancelled by the barber. I later saw via my barbers’ Facebook page that my barber was not taking any bookings from customers who are vaccinated. I had to read it twice, but yes, they were not going to take bookings from vaccinated customers. Now other than a poor business strategy, is this legal and where do I stand in the future if this happens again at another business? Can I be discriminated against because of my vaccination status? Now, Dave thank you for the email, let’s ask Jeff Rosales who is the Acting Senior Legal Officer at the W.A. Equal Opportunity Commission. Good morning, and thank you for your time, can a business refuse to serve customers that are vaccinated?

# JR: Good morning Nadia, no businesses cannot refuse on the basis of being vaccinated as that would be probably unlawful under the Act.

# NM: Can you expand on that, where is the discrimination in that situation?

# JR: Well, to begin with I have to say that I’m familiar with that post.  I’m not gonna mention that, the business but the boss makes reference to being concerned with his health, the boss’ health and that of his family and that implies there, there is a certain mistrust of the vaccine and the people who are vaccinated may have an impairment , may carry Covid, or parts of Covid, they might be contagious and that’s an imputed kind of impairment, the person is imputing impairment of people who have been vaccinated.

# NM: So so so that is the basis that you, so what basis can you discriminate?

# JR: On what basis can they discriminate?

# NM: In this case?

# JR: Well no, there’s no basis you can discriminate for having a vaccine no.

# NM: So, what about then the reverse situation, is it okay to refuse service to someone who is not vaccinated?

# JR: Hmmm, well no there is no exception under the Act for refusal for a service for not being vaccinated that will depend on laws implemented by state or federal parliament, whether they regard it as necessary for people to be vaccinated before accessing premises or services.

# NM: So, then it’s, you can’t flip it, it’s not the same in both circumstances?

# JR: No, it’s not the same.

# NM: Okay I’m speaking this morning to Jeff Rosales, he’s the Acting Senior Legal Officer at the W.A. Equal Opportunity Commission. I wonder if you are comfortable with a business denying you entry or refusing you service based on whether you’re vaccinated, and as we are hearing this morning, it clearly is not, and would be a breach of discrimination laws. I’m wondering Jeff could, couldn’t a business argue that this is just another condition of entry, and we do see businesses that do require people for instance to wear a collared shirt or covered shoes when they go into a pub, could it be the same thing?

# JR: Well they are different things, there have been different decisions in the past about pubs, for instance prohibiting people from accessing the pub because of their clothes that they wearing or for not wearing safe shoes and the decisions have been so far in terms of what’s acceptable standards for dressing in the community and matters relating to health and safety, for instance if you step on broken glass the pub may be liable. Just recently in Queensland there was a case where a man complained because he was wearing a sock and not a shoe because he had a condition on his foot, in that legislation, in that discrimination Act of Queensland, there is an exception of defence of safety that says well if there are issues of health and safety they can refuse and the Tribunal found that there was a valid concern and that the refusal was lawful.

# NM: Okay tell me what you think about the situation 1300 2227 20. I’ll take some of your calls you can text as well and there are plenty coming in on 0437 9227 20. It is 21 to 9. Jeff the vaccine is mandatory for quarantine staff and it’s due to become mandatory for aged care workers as well , so is there a difference between customers and employees?

# JR: Yes there is! Under our Act, section 66 Q provides a defence for an employer to discriminate against a person. Let’s say that an employee cannot get a vaccine because there is an underlying medical condition that will make it risky for that person, this defence is called the inherent duties of the job. It would be arguable, depending on the nature of the business, say for instance an aged care or childcare centre that the person be able to perform duties in a safe manner towards herself and towards others, in this case aged people or children. If that person cannot do these duties because of that medical condition, the employer could discriminate and say well you’re not allowed to come into work because you haven’t had the vaccine and you’re endangering other people, the people you are serving and other people who are also working with us.

# NM: I noticed that in France people will need a Covid pass to get into museums, swimming pools, cinemas, bars, cafes and restaurants, so people will have to prove they are vaccinated or they’ve had a recent negative test. Here in Australia are there different rules for private businesses, is it easier for them to deny people entry?

# JR: N0, no it’s not as easy as that. It would have to be assessed depending on the circumstances, depending on what is the nature of the business, what is the nature of the people that they’re looking after and that it is a balanced exercise between the individual and those that are around this person.

# NM: There’s a federal discrimination law as well, where does that come into to this kind of…

# JR: Assuming that the nature of the post, this is on the basis of an imputed impairment, that could also apply to the Disability Discrimination Act, that Act like ours forbids discrimination on the basis of impairment whether its real or imputed, forbids it in the area of goods and services and access to premises.

# NM: You’ve been staying in touch Jeff with the Human Rights Commission about this, are they getting a lot of enquiries about these sorts of questions?

# JR: Covid is such an interesting phenomena and that is throwing up lots of enquiries about many things, about vaccination, about wearing masks and those kind of things and different jurisdictions have different bits to prove, so yes they have been getting quite a lot of enquiries and complaints.

# NM: And they, what it, what are the basis of a lot of those complaints, is it… is it just about vaccination requirements or is it to do with mask wearing and other issues as well?

# JR: No, they are the main two topics, wearing a mask or not wearing a mask or being vaccinated or not being vaccinated.

# NM: And are people are making official complaint about this, and if there are people who want to make a complaint about this how do they do that?

# JR: Well they contact the Australian Human Rights Commission if they want to go down that way or they can contact the Equal Opportunity Commission – 9216 3900 on our enquiry line or they can go to our website eoc.wa.gov.au.

# NM: Okay, it sounds like you’ve done a lot of research in this area and it also sounds like it’s something you’ve been preparing for, these sort of questions.

# JR: Well yes we are, we have been receiving these since the beginning of Covid, so people are becoming more and more aware of these issues and they want to know where they stand.

# NM: Thank you very much I appreciate your time this morning. Jeff Rosales there, Acting Senior Legal Officer at the W.A. Equal Opportunity Commission, well what do you think?