

Media release

Federal Supreme Court disregards fundamental right to physical integrity

Dangerous precedent for employees

by "Aktionsbündnis freie Schweiz" (ABF Switzerland)*

(CH-S) A new ruling by the Swiss Federal Supreme Court has caused a stir: At the end of 2021, two flight attendants employed by the airline "Swiss" were dismissed because they refused to comply with the company's compulsory Covid vaccination policy. The Federal Supreme Court has now ruled in favour of the employer. ABF Switzerland analyses the judgement.

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The Federal Supreme Court has ruled in favour of Swiss against two flight attendants who had been dismissed for refusing to comply with the company's compulsory Covid vaccination policy. The decision disregards the fundamental right to physical integrity and opens the floodgates to arbitrary action regarding workplace vaccination mandates – even for substances that are only provisionally authorised and whose safety and efficacy have not been proven. This sets a dangerous precedent with implications for potentially all employees in Switzerland.

It is incomprehensible that the Federal Supreme Court has sided against the dismissed employees and in favour of their employer, Swiss (judgements 4A_612/2025 of 27 May 2026 and 4A_60/2026 of 30 June 2026). This effectively gives the highest court's stamp of approval to the reckless use of experimental vaccines. Not only do these rulings conflict with the fundamental right to physical integrity, which the Federal Supreme Court is supposed to protect – they also open the floodgates to arbitrary action regarding mandatory workplace vaccination policies extending beyond flight crew.



"The fundamental right to physical integrity must not be eroded or undermined by a provision under private law (the employer's right to issue instructions)."
(Picture ch.pinterest.com)

This sets a dangerous precedent with implications for potentially all employees in Switzerland and beyond.

Such a vaccination requirement under private law stands in contrast to a vaccination mandate under public law and to the statements made by Federal Councillor *Elisabeth Baume-Schneider*, who has repeatedly emphasised that there is no compulsory vaccination in Switzerland. These Federal Supreme Court rulings effectively undermine that assertion.

High-risk products at the trial stage
The decisive question before the Labour Court and, ultimately, the Federal Supreme Court was: Which interests take precedence in the balancing of interests required under labour law (in accordance with Art. 328(1) of the Swiss Code of Obligations; Art. 321d of the Swiss Code of Obliga-

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Our focus is on making reliable information accessible, developing analyses and arguments, and supporting and connecting people so they can take action. We develop strategies for the public and policymakers, engage in health policy lobbying at the Federal Parliament, and work closely with members of the National Council and the Council of States from various political parties.

tions and Art. 27f of the Swiss Civil Code) when an employer seriously infringes upon an employee's personal integrity? Does the airline's interest in the continuation of flight operations take precedence? Or does the interest of its employees in not having to undergo a treatment with an uncertain outcome take precedence? Around 1,300 pilots and 3,500 cabin crew members were affected; they had been required by a directive from Swiss to receive two doses of the Covid vaccine by 1 December 2021. Those who refused had to leave.

The cabin crew had consistently pursued and substantiated two lines of argument from the court of first instance right up to the Federal Supreme Court: 1.) No operational necessity: the continuation of flight operations had at no point been dependent on Swiss's internal vaccination mandate; 2.) The Covid-19 vaccine is experimental and carries risks: Furthermore, the prescribed vaccine is based on novel (mRNA) technology and is still at the trial stage, as its efficacy and safety could not yet have been demonstrated anywhere in the world in accordance with the usual standards at the time the vaccination mandate was introduced. In terms of their classification under pharmaceutical law, the Covid-19 vaccines are therefore "products at the trial stage".

Lack of evidence of safety and effectiveness

According to the legal submission by the lawyers responsible, *Therese Hintermann* and *Philipp Kruse*, authorisation was granted on the basis of the "*principle of hope*", i.e. on a wing and a prayer. It was not based on the evidence of efficacy and safety that is otherwise mandatory (placebo-controlled, randomised two-year Phase III clinical trials), but on the manufacturers' own declarations.

Furthermore, in their legal submissions, the appellants set out in detail that, even according to official databases, the risk profile of these vaccines was significantly higher than that of properly authorised products. The risk was therefore not merely higher in an academic or abstract sense, but real and empirically demonstrable.

Federal Supreme Court justifies "serious interference with legal rights"

The lawyers involved were quite astonished when even the Federal Supreme Court attached no particular significance to the fact that the

vaccines were experimental. A vaccination is generally only an intervention of "relatively low intensity", according to the Federal Supreme Court. The fact that refusal to be vaccinated risked dismissal – meaning that free choice (in the sense of "informed consent") was thus completely ruled out – was of no legal relevance to the Federal Supreme Court, nor was the experimental nature of the programme.

But that is not all: the Federal Supreme Court even goes so far as to make the far-reaching assertion that the employees' interest in their physical integrity must be subordinated to the employer's operational interests even if one were to assume that "the Covid-19 vaccination constitutes a serious encroachment on the legal sphere of the person concerned, given the uncertain long-term consequences".

In other words: however serious the intrusion may be – even if, in extreme cases, it were to lead to disability or death – the employer's motive of wishing to maintain business operations always carry greater weight. A stark statement! Not only because the flight attendants repeatedly refuted Swiss's arguments and were able to demonstrate viable alternatives for maintaining flight operations, not least by citing the example of Swiss's competitors. But also, because the *general prohibition on serious physical harm and on human experimentation with an uncertain outcome without legally valid consent* is one of the most important pillars of our legal culture.

Accordingly, the lawyers in the proceedings had emphasised from the outset that the prohibition on medical experiments on human beings constitutes an absolute limit, both under the *UN Covenant II on Civil and Political Rights* (Art. 7(1) and Art. 4(2) ICCPR) and under Art. 10(3) of the Federal Constitution, it constitutes an absolute limit that applies even in times of a declared state of emergency, and that this prohibition must also be observed in private law (Art. 35(1) and (3) FC). Yet the Federal Supreme Court would have none of it.

Accepting the risk of disability or death?

The significance of these two judgements cannot be overestimated: the Federal Supreme Court has set precedents here which massively weaken the legal position of employees in times of crisis and leave them at the mercy of their employer's arbitrary decisions. The employer's interest in the continued operation of their busi-

ness is to take precedence over the interests of their employees at all times, *even if the prescribed medical treatment could lead to permanent physical harm or even death.*

The Federal Supreme Court is thus granting not only Swiss, but all employers a *free pass to issue instructions with unforeseeable consequences – in other words, a free pass to cause physical harm to the workforce.*

The prohibition on protecting people from involuntary participation in medical trials is, as of now, no longer in force in Switzerland, says lawyer Kruse. From the perspective of the lead lawyers, this is “an outrage of historic proportions” which must be rectified – whether through further pending legal proceedings or by the legislature.

Demands from ABF Switzerland

The two Federal Supreme Court rulings could set in motion a development whose full implications are as yet scarcely foreseeable. In view of this, the “Aktionsbündnis freie Schweiz” demands:

- There is an urgent need for a *public and political debate* on how far the right of private em-

ployers to issue instructions may extend, what scientific evidence must be required, and what protective mechanisms employees need.

- The issue of *compulsory vaccination must not be decided solely within the context of individual employment relationships or courtrooms.* If employers can make medical measures a condition of continued employment, this affects the fundamental rights of a large section of the population.
- The *fundamental right to physical integrity must not be eroded or undermined by a private-law directive (the employer’s right to issue instructions).* Otherwise, the significance of physical integrity will be reduced to insignificance. Fundamental rights are the individual’s rights of defence against the state. If employers are now granted such powers under private law, the entire system of fundamental rights will be thrown into disarray.

Please do not hesitate to contact us if you have any questions.

Source: <https://abfschweiz.ch/wp-content/uploads/Mediennitteilung-ABF-Schweiz-17.09.26.pdf>, 17 September 2026

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