

COVID-19 Vaccination

A Littler Global Guide on Legal & Practical Implications
in the Workplace

January 2021



The rollout of the COVID-19 vaccines represents the beginning of the end of a terrible pandemic and the “light at the end of the tunnel” to return to some semblance of a pre-COVID workplace. As governments around the world are developing or implementing ambitious plans to vaccinate millions of their citizenry, employers are left to ascertain their response, in light of their duties to protect workers’ health and safety and the need to resume normal operations.

Littler’s global team is pleased to provide you with the “COVID-19 Vaccination” report, a global guide on the legal and practical implications of the COVID-19 vaccine in the workplace.

Covering over 45 jurisdictions, this guide addresses various topics, including:

- Can an employer require employees or applicants to be vaccinated?
- Is there legal protection to be excused from being vaccinated (e.g., religious accommodation/disability accommodation)?
- Are employees entitled to reimbursement for the cost of the vaccination?
- What are the privacy implications?
- Can employers unilaterally mandate employee vaccinations in a collective representation setting?
- Related topics within the context of employee benefits, teleworking, etc.

This guide is for informational purposes only, and not intended to substitute for legal advice. Please review our [Important Notice](#). Because the COVID-19 situation is dynamic, with new governmental measures each day, employers should consult with counsel for the latest developments and updated guidance on this topic.

Please visit our [COVID-19 Resources](#) page for public-facing resources for multinational employers and subscribe to [Littler Global Guide](#), an online platform Littler developed, which enables users to create country-to-country survey comparisons on important topics.

Kind regards,

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COVID-19 Vaccination



ARGENTINA

Current as of December 29, 2020

Access to Vaccine

1. Is there a priority list for the distribution of the COVID-19 vaccine? (include summary list)

The Government has announced that the following citizens will have priority regarding its application:

1. health care personnel;
2. security and armed forces personnel;
3. professors;
4. people over the age of 60;
5. people between 18 and 59 years old who have previous illnesses (risk group); and
6. other strategic populations defined by each jurisdictions and depending on the availability of the vaccine (e.g., people who live in popular neighborhoods, homeless people, migrants, and imprisoned individuals, among others).

Cost of Vaccine

2. Will the vaccine be paid for by the applicable jurisdiction?

The vaccine will be free of charge and provided by the National Ministry of Health.

Requirement of Vaccine

3. Is there a general requirement for individuals to be vaccinated after the COVID-19 vaccine is available?

No, there are no general requirements. Once the vaccine is available, priority groups (see Question 1) will be vaccinated first.

4. Is the vaccine mandated in certain industries after it becomes available?

The vaccine against COVID-19 has not yet been included in the National Vaccination Program (NVP); therefore, it is not mandatory for Argentine citizens in any industry to date.

Employer-Mandated Vaccinations

5. Can an employer require current employees to be vaccinated?

No. Currently, employers cannot require or force employees to get the COVID-19 vaccine, unless further regulation on this matter establishes such an obligation. Otherwise, employees may file a claim alleging a violation to their constitutional right to privacy.

If the COVID-19 vaccine is included in the NVP and, therefore, made mandatory, the employer would be allowed to impose disciplinary measures on employees who refuse to get vaccinated, based on the employer's general duty to maintain a healthy and safe workplace.

COVID-19 Vaccination



6. If so, is there legal protection to be excused from being vaccinated (e.g., religious accommodation/disability accommodation)?

Currently, no information is available.

Applicants for Employment (Pre-Hire Stage)

7. Can an employer require applicants to be vaccinated as a condition of hire?

No. For the moment, employers cannot require applicants to be vaccinated as a condition of hire, unless the vaccine against COVID-19 is included in the NVP and, therefore, it is mandatory to be vaccinated. Otherwise, applicants may file a claim alleging a violation to their constitutional right to privacy.

8. Can employers ask applicants if they have been vaccinated?

Not for the moment. See Question 7.

9. Can employers refuse to hire applicants that are unwilling to be vaccinated or have not yet been vaccinated?

Not for the moment. See Question 7.

10. Is there legal protection for applicants to be excused from being vaccinated (e.g. religious accommodation/disability accommodation)?

Currently, no information is available.

Wage and Hour

11. If vaccinations are required, are employees entitled to reimbursement for the cost of the vaccination?

The national government has announced that the COVID-19 vaccine will be administered free of charge. In case vaccination is mandatory and the employee is vaccinated during working hours, such hours may be considered "compensable time" and the employer must pay them as regular working hours, provided the employee submits the corresponding certificate evidencing the vaccination.

Other Legal Risks in Mandating

12. Are there any other legal risks to consider in requiring employee vaccinations? (Please list)

An employee claiming to have been treated differently based on whether he or she was vaccinated may consider filing a claim alleging discrimination and constructive dismissal. If such a claim is successful, the employee may be entitled to compensation in the form of a severance payment.

COVID-19 Vaccination



Employee Benefits

13. Can an employer provide inducements under its employee benefits plans (e.g., wellness programs) for those who are vaccinated?

Employers cannot force employees to be vaccinated. If the vaccine is included in the NVP and, therefore, made mandatory, the employer would have no reason to grant additional benefits to induce employees' vaccination.

Note, under Argentinean legislation, employers may treat employees differently, granting them additional benefits, based on objective criteria (such as productivity). Based on the differing treatment, unvaccinated employees may consider themselves constructively dismissed and claim severance compensation for dismissal without cause.

14. Can an employer provide a bonus to employees who get vaccinated?

See Question 13.

Union and/or Works Council Obligations

15. For workplaces in which collective representation arrangements apply, is an employer obligated to bargain with the union, or meet with the Works Council, prior to mandating employee vaccinations?

Currently, no information is available.

Privacy

16. Is the fact that an employee has, or has not, been vaccinated "health information" or "sensitive personal data" under your country's data protection law (Y/N)?

Yes. Under the Personal Data Protection Law (Habeas Data Law, No. 25,326), personal data revealing information concerning health, among other information, is considered sensitive data.

17. If so, is this health information subject to the restrictions on processing applicable to "special categories of personal data" or "sensitive personal data"?

Yes. Law No. 25,326 provides that the creation of files, databases, or records that store sensitive data is prohibited. Such type of information may be collected or treated only when a law expressly authorizes it or due to a reason of general interest. It may also be treated for statistical or scientific purposes when the owner cannot be identified.

18. If no, is that information nonetheless protected by applicable data protection law (Y/N)?

Not applicable.

COVID-19 Vaccination



Record-Keeping Requirement

19. Is an employer required to maintain a record of an employee's COVID-19 vaccination?

No. Employers are not required to record employees' vaccination, unless further regulation on this matter establishes such obligation.

20. If so, what are (if any) the specific record keeping requirements related to vaccinations?

Not applicable.

Reporting Requirements

21. If an employee is vaccinated at the employer's directive, is the employer required to notify the governmental health authorities of employee's vaccination?

Currently, no information is available.

Teleworking Requirements

22. Can an employer unilaterally implement a teleworking (work from home) arrangement if an employee cannot or will not agree to be vaccinated?

No. Employees' consent in writing is required when implementing a home office modality (pursuant to the Home Office Regime Law (Law No. 27,555)).

23. If telework is not an option, can an employer require employees who cannot or will not agree to vaccinate to not come into the workplace?

See Question 5.

COVID-19 Vaccination



AUSTRALIA

Current as of December 14, 2020

Access to Vaccine

1. Is there a priority list for the distribution of the COVID-19 vaccine? (include summary list)

Currently, no information is available.

Cost of Vaccine

2. Will the vaccine be paid for by the applicable jurisdiction?

Currently, no information is available, but likely to be covered by Australia's Medicare (free health) system.

Requirement of Vaccine

3. Is there a general requirement for individuals to be vaccinated after the COVID-19 vaccine is available?

Some months ago, the Australian Government stated that the vaccine would be mandatory but quickly reversed its statement, noting that it would not be possible to implement a mandatory vaccination. The Government has also stated that it will not implement the vaccine for Australian citizens before more information is available, based on the trials that are currently being conducted by other countries with high COVID-19 numbers.

4. Is the vaccine mandated in certain industries after it becomes available?

Currently, no information is available.

Employer-Mandated Vaccinations

5. Can an employer require current employees to be vaccinated?

For discrimination and privacy reasons, an employer absolutely cannot require employees to be vaccinated, unless the industry is specifically subject to a government mandate (which is unlikely to be implemented).

6. If so, is there legal protection to be excused from being vaccinated (e.g., religious accommodation/disability accommodation)?

Not applicable.

Applicants for Employment (Pre-Hire Stage)

7. Can an employer require applicants to be vaccinated as a condition of hire?

For discrimination and privacy reasons, an employer absolutely cannot require applicants to be vaccinated, unless the industry is specifically subject to a government mandate (which is unlikely to be implemented).

COVID-19 Vaccination



8. Can employers ask applicants if they have been vaccinated?

Currently, no information is available. However, this may breach Australia's privacy laws. We are awaiting further direction from the government.

9. Can employers refuse to hire applicants that are unwilling to be vaccinated or have not yet been vaccinated?

For discrimination and privacy reasons, an employer absolutely cannot refuse to hire applicants that are unwilling to be vaccinated, unless the industry is specifically subject to a government mandate (which is unlikely to be implemented) and/or the employer can demonstrate that the vaccine is essential for some reason related to the position. For example, it may be possible for an employer in the healthcare industry to impose a policy requiring the vaccination, except where the employee has a reason to refuse the vaccination. However, there is currently insufficient information to determine the extent to which this may be possible within certain industries.

10. Is there legal protection for applicants to be excused from being vaccinated (e.g. religious accommodation/disability accommodation)?

Discrimination laws cover protected attributes (such as religion, medical condition, etc.). If an employee or applicant elects not to be vaccinated against COVID-19, then they would be protected from adverse employment action based on their decision.

Wage and Hour

11. If vaccinations are required, are employees entitled to reimbursement for the cost of the vaccination?

The law does not have an express provision covering this situation. The law requires employers to reimburse employees for related expenses when the employer is requiring the employee to engage in a specific activity (e.g., travel, educational course, etc.). Therefore, an employer requiring an employee's vaccination would be expected to reimburse for the related expenses. Such reimbursement is not included in an employee's regular rate, but is reimbursed as a non-taxable expense. In addition, the employee may be reimbursed for the time spent receiving the vaccination, but this will depend on whether the employee is an award-covered employee subject to overtime pay.

Other Legal Risks in Mandating

12. Are there any other legal risks to consider in requiring employee vaccinations? (Please list)

In addition to discrimination and privacy laws, strict state medical record laws will apply to employee and applicant data involving vaccination or other medical information relating to COVID-19. As such, employers should obtain advice before implementing any policy, whether voluntary or otherwise. Additionally, Australia's statutory modern awards (minimum terms and conditions that apply to various industries and occupations in Australia) contain consultation obligations before an employer implements major workplace changes, including significant policy changes. As such, employers must review consultation obligations and undertake a process of consultation with employees and their representatives (if any) before implementing any policies on COVID-19 and vaccination requirements.

COVID-19 Vaccination



Employee Benefits

13. Can an employer provide inducements under its employee benefits plans (e.g., wellness programs) for those who are vaccinated?

This would possibly amount to a discriminatory practice, so extreme care should be taken and advice obtained before looking to implement such a policy.

14. Can an employer provide a bonus to employees who get vaccinated?

This would possibly amount to a discriminatory practice, so extreme care should be taken and advice obtained before looking to implement such a policy/program.

Union and/or Works Council Obligations

15. For workplaces in which collective representation arrangements apply, is an employer obligated to bargain with the union, or meet with the Works Council, prior to mandating employee vaccinations?

See Question 12. The same obligations typically apply to workplaces with enterprise agreements.

Privacy

16. Is the fact that an employee has, or has not, been vaccinated "health information" or "sensitive personal data" under your country's data protection law (Y/N)?

Yes.

17. If so, is this health information subject to the restrictions on processing applicable to "special categories of personal data" or "sensitive personal data"?

Yes. For example, specific notification and employee informed and genuine consent is required. State health records laws will also apply, which can impose more stringent obligations, as well.

18. If no, is that information nonetheless protected by applicable data protection law (Y/N)?

Not applicable.

Record-Keeping Requirement

19. Is an employer required to maintain a record of an employee's COVID-19 vaccination?

Currently, no information is available. However, employers are required to delete/destroy certain personal data pertaining to employees and applicants as soon as reasonably practical. Accordingly, it is anticipated that the same rules may apply with respect to COVID-19 vaccination employee data.

20. If so, what are (if any) the specific record keeping requirements related to vaccinations?

Currently, no information is available.

COVID-19 Vaccination



Reporting Requirements

21. If an employee is vaccinated at the employer's directive, is the employer required to notify the governmental health authorities of employee's vaccination?

Currently, no information is available.

Teleworking Requirements

22. Can an employer unilaterally implement a teleworking (work from home) arrangement if an employee cannot or will not agree to be vaccinated?

For discrimination and privacy reasons, it is unlikely that employers will be permitted to unilaterally implement a teleworking (work from home) arrangement if an employee cannot or will not agree to be vaccinated unless the industry is specifically subject to a government mandate, which is unlikely to be implemented, and/or the employer can demonstrate that the vaccine is essential for some reason related to the position. However, there is currently insufficient information to determine the extent to which this may be possible within certain industries or where an employer has a valid reason for implementing such a change. Note, however, that employee consent would still be required to implement a permanent change like this. If consent is not obtained, then it will likely amount to a redundancy situation.

23. If telework is not an option, can an employer require employees who cannot or will not agree to vaccinate to not come into the workplace?

Currently insufficient information is available. However, for discrimination and privacy reasons, it is unlikely that employers will be permitted to require employees who cannot or will not agree to vaccinate to not come into the workplace, unless the industry is specifically subject to a government mandate, which is unlikely to be implemented, and/or the employer can demonstrate that the vaccine is essential for some reason related to the position. However, there is currently insufficient information to determine the extent to which this may be possible within certain industries or where an employer has a valid reason for implementing such a change.



AUSTRIA

Current as of December 30, 2020

Access to Vaccine

1. Is there a priority list for the distribution of the COVID-19 vaccine? (include summary list)

The Ministry of Health together with the National Immunization Panel have developed an immunization strategy to administer the vaccines, as follows:

- First phase: residents and staff of nursing and retirement homes; health care sector employees;
- Second phase: elderly people and people working in critical infrastructure; and
- Third phase: general population.

Cost of Vaccine

2. Will the vaccine be paid for by the applicable jurisdiction?

Yes, the vaccine will be paid for by the government.

Requirement of Vaccine

3. Is there a general requirement for individuals to be vaccinated after the COVID-19 vaccine is available?

There will be no general obligation to vaccinate.

4. Is the vaccine mandated in certain industries after it becomes available?

Currently, no information is available. However, it can be assumed that vaccination will be mandatory in certain industries where a high degree of customer contact is necessary (e.g., health care).

Employer-Mandated Vaccinations

5. Can an employer require current employees to be vaccinated?

Since there is no legal obligation to vaccinate, an ordered vaccination by the employer would also exceed the scope of the right to issue instructions under the employment contract.

6. If so, is there legal protection to be excused from being vaccinated (e.g., religious accommodation/disability accommodation)?

Not applicable.

COVID-19 Vaccination



Applicants for Employment (Pre-Hire Stage)

7. Can an employer require applicants to be vaccinated as a condition of hire?

In principle, the employer cannot do this as it interferes with the right to physical integrity. However, due to the freedom of conclusion, if an applicant does not get vaccinated despite being requested to do so, the employer can terminate the negotiations without giving reasons for not concluding the employment contract.

8. Can employers ask applicants if they have been vaccinated?

Yes, because a communicable disease poses a risk to the health of other employees.

9. Can employers refuse to hire applicants that are unwilling to be vaccinated or have not yet been vaccinated?

Yes, because of the freedom of conclusion, the employer can choose the person who seems best qualified for the open position.

10. Is there legal protection for applicants to be excused from being vaccinated (e.g. religious accommodation/disability accommodation)?

Based on the constitutionally guaranteed right to physical integrity, no one may be forced to undergo vaccination. However, this right may be interfered with by appropriate legislation if there is a public interest and the interference is proportionate.

Wage and Hour

11. If vaccinations are required, are employees entitled to reimbursement for the cost of the vaccination?

The law does not have an express provision covering this situation. The customary practice is for employers to reimburse employees for related expenses when the employer is requiring the employee to engage in a specific activity (e.g., travel, educational course, etc.). Therefore, an employer requiring an employee's vaccination would be expected to reimburse for the related expenses. Such reimbursement is not included in an employee's regular rate.

Other Legal Risks in Mandating

12. Are there any other legal risks to consider in requiring employee vaccinations? (Please list)

- It could violate the constitutionally guaranteed right to physical integrity
- It could violate the fundamental right to data protection
- It could be a breach of the employer's duty of care to employees
- It could violate religious freedom

Employee Benefits

13. Can an employer provide inducements under its employee benefits plans (e.g., wellness programs) for those who are vaccinated?

This approach could violate legal discrimination prohibitions and equal treatment laws. Violations of non-discrimination and equal treatment laws can result in fines and compensation obligations.

COVID-19 Vaccination



14. Can an employer provide a bonus to employees who get vaccinated?

This approach could violate legal discrimination prohibitions and equal treatment laws. Violations of non-discrimination and equal treatment laws can result in fines and compensation obligations.

Union and/or Works Council Obligations

15. For workplaces in which collective representation arrangements apply, is an employer obligated to bargain with the union, or meet with the Works Council, prior to mandating employee vaccinations?

As already mentioned above, the employer cannot order mandatory vaccination. However, this is basically a matter that falls within the competence of the works council and can be regulated by a works agreement.

Privacy

16. Is the fact that an employee has, or has not, been vaccinated "health information" or "sensitive personal data" under your country's data protection law (Y/N)?

Yes.

17. If so, is this health information subject to the restrictions on processing applicable to "special categories of personal data" or "sensitive personal data"?

Yes, they are subject to the restrictions.

18. If no, is that information nonetheless protected by applicable data protection law (Y/N)?

Not applicable.

Record-Keeping Requirement

19. Is an employer required to maintain a record of an employee's COVID-19 vaccination?

Currently, no information is available. However, personal data may only be stored for as long as it is necessary for the purposes for which they are processed.

20. If so, what are (if any) the specific record keeping requirements related to vaccinations?

Currently, no information is available. However, the processing of personal data must always be limited to the necessary extent (data minimization). In addition, personal data may be stored in a form which permits identification of the data subject only for as long as it is necessary for the purposes for which it is processed.

Reporting Requirements

21. If an employee is vaccinated at the employer's directive, is the employer required to notify the governmental health authorities of employee's vaccination?

Currently, no information is available.

COVID-19 Vaccination



Teleworking Requirements

22. Can an employer unilaterally implement a teleworking (work from home) arrangement if an employee cannot or will not agree to be vaccinated?

No, because a teleworking arrangement requires an agreement between the employer and the employee. This does not apply to employees whose employment contract contains a transfer clause.

23. If telework is not an option, can an employer require employees who cannot or will not agree to vaccinate to not come into the workplace?

This question cannot be answered in a generalized way for all professions. It will depend on the industry (e.g. frequent customer contact, close contact with colleagues) whether an unvaccinated employee poses a health risk to those around him and therefore can be forced to not come into workplace. Furthermore, it is important to consider whether there are alternatives to vaccination (e.g. regular tests). As long as the employee declares his willingness to work, he is in principle also entitled to remuneration.



BELGIUM

Current as of December 21, 2020

Access to Vaccine

1. Is there a priority list for the distribution of the COVID-19 vaccine? (include summary list)

The government taskforce for the vaccination strategy has suggested a phased distribution, based on prioritization of groups of population, with the priority being:

1. residents and staff of residential care centers and collective care centers (including volunteers);
2. health care professionals in hospitals and first line health care professionals;
3. other collaborators in hospitals and health care services;
4. people 65 years and older,
5. people 45-65 years with specific health issues; and
6. people with essential social and/or economic functions, the criteria of which to be determined.

Other groups will receive vaccines in the coming months, as more vaccines are made available.

Cost of Vaccine

2. Will the vaccine be paid for by the applicable jurisdiction?

Vaccination will be free of charge for all citizens.

Requirement of Vaccine

3. Is there a general requirement for individuals to be vaccinated after the COVID-19 vaccine is available?

Vaccination will be voluntary.

4. Is the vaccine mandated in certain industries after it becomes available?

Vaccination will be voluntary.

Employer-Mandated Vaccinations

5. Can an employer require current employees to be vaccinated?

Vaccination will not be mandatory. However, it can be argued that an employer can require employees to be vaccinated insofar as this would appear necessary in the framework of health and safety at work. In such event, the subject should be discussed within the health and safety committee of the company.

COVID-19 Vaccination



6. If so, is there legal protection to be excused from being vaccinated (e.g., religious accommodation/disability accommodation)?

The general principles of the anti-discrimination legislation apply. Insofar as a vaccination would not be possible due to a disability, it can be argued that the employer should provide reasonable accommodation, insofar as possible. In the event the employee would refuse a vaccination based on religious grounds, it can be argued that – insofar as the vaccination would be necessary in the framework of health and safety at work – the employer can impose a different treatment to this employee insofar as this is proportionate and adequate. However, if measures with less impact are possible (e.g., temporary change of position), they should have the preference.

Applicants for Employment (Pre-Hire Stage)

7. Can an employer require applicants to be vaccinated as a condition of hire?

Insofar as it can be justified that a vaccination is necessary in the framework of health and safety at work.

8. Can employers ask applicants if they have been vaccinated?

This concerns medical information and thus sensitive information in the framework of the EU's General Data Protection Regulation (GDPR). The processing of such sensitive information is only possible with the applicant's consent (although it can be questioned whether an applicant can provide a free consent, given the employee's subordination) or insofar as this information is necessary in the framework of health and safety at work.

It can be argued that, insofar as the employer only asks whether the applicant has been vaccinated but does not register the answer (directly or indirectly), this does not concern a processing activity and thus that the GDPR does not apply.

9. Can employers refuse to hire applicants that are unwilling to be vaccinated or have not yet been vaccinated?

Insofar as it can be justified that a vaccination is necessary in the framework of health and safety at work.

10. Is there legal protection for applicants to be excused from being vaccinated (e.g. religious accommodation/disability accommodation)?

The general principles of the anti-discrimination legislation apply. Insofar as a vaccination would not be possible due to a disability, it can be argued that the employer should provide reasonable accommodation, insofar as possible. In the event the applicant would refuse a vaccination based on religious grounds, it can be argued that – insofar as the vaccination would be necessary in the framework of health and safety at work – the employer can impose a different treatment (i.e. refusal of the candidate) to this applicant insofar as this is proportionate and adequate. However, if measures with less impact are possible (e.g. temporary change of position), they should have the preference.

COVID-19 Vaccination



Wage and Hour

11. If vaccinations are required, are employees entitled to reimbursement for the cost of the vaccination?

The vaccine will be free of charge in Belgium. Government is investigating the possibility to distribute the vaccines through the occupational doctors.

Insofar as the employer would oblige its employees to be vaccinated, it can be argued that the employer should reimburse the cost of the doctor's visit.

Other Legal Risks in Mandating

12. Are there any other legal risks to consider in requiring employee vaccinations? (Please list)

Not applicable.

Employee Benefits

13. Can an employer provide inducements under its employee benefits plans (e.g., wellness programs) for those who are vaccinated?

This is possible insofar as this does not give rise to a discrimination based on protected criteria (e.g. disability, religion).

14. Can an employer provide a bonus to employees who get vaccinated?

This is possible insofar as this does not give rise to a discrimination based on protected criteria (e.g. disability, religion).

Union and/or Works Council Obligations

15. For workplaces in which collective representation arrangements apply, is an employer obligated to bargain with the union, or meet with the Works Council, prior to mandating employee vaccinations?

The subject should be discussed in the health and safety committee prior to its implementation.

Privacy

16. Is the fact that an employee has, or has not, been vaccinated "health information" or "sensitive personal data" under your country's data protection law (Y/N)?

Yes.

17. If so, is this health information subject to the restrictions on processing applicable to "special categories of personal data" or "sensitive personal data"?

Yes.

COVID-19 Vaccination



18. If no, is that information nonetheless protected by applicable data protection law (Y/N)?

Not applicable.

Record-Keeping Requirement

19. Is an employer required to maintain a record of an employee's COVID-19 vaccination?

Insofar as vaccination would be necessary in the framework of health and safety at work, it can be argued that the employer should register which employees are vaccinated.

20. If so, what are (if any) the specific record keeping requirements related to vaccinations?

The general principles of the GDPR apply, which means that the access to the data should be limited and that the data should be processed under the supervision of the occupational doctor.

Reporting Requirements

21. If an employee is vaccinated at the employer's directive, is the employer required to notify the governmental health authorities of employee's vaccination?

No specific directions are imposed for the time being. However, health care professionals should, in principle, register vaccinations in a government database.

Teleworking Requirements

22. Can an employer unilaterally implement a teleworking (work from home) arrangement if an employee cannot or will not agree to be vaccinated?

Telework is in principle voluntary and, thus, requires the employee's consent. As vaccination will be voluntary, there are no government measures justifying the employer to impose telework to employees unwilling to be vaccinated. However, insofar as it can be justified that vaccination is necessary in the framework of health and safety at work, it can be argued that removing the employee from the work place and imposing telework is possible as a safety measure.

23. If telework is not an option, can an employer require employees who cannot or will not agree to vaccinate to not come into the workplace?

See Question 22. The employer should seek advice concerning options outside of the teleworking framework.

COVID-19 Vaccination



BRAZIL

Current as of December 21, 2020

Access to Vaccine

1. Is there a priority list for the distribution of the COVID-19 vaccine? (include summary list)

Yes. The National COVID-19 Vaccination Plan, disclosed by the Government on December 16, 2020, establishes the following priority list:

1. healthcare personnel;
2. people aged 80 years and older;
3. people aged 75 to 79 years old;
4. people aged 70 to 74 years old;
5. people aged 65 to 69 years old;
6. people aged 60 to 64 years old;
7. indigenous people aged 18 and older;
8. river dwellers and “quilombola” communities;
9. individuals with comorbidities;
10. education personnel;
11. people with severe and permanent disabilities;
12. security and rescue forces;
13. workers in the correctional system; and
14. individuals deprived of their freedom.

Cost of Vaccine

2. Will the vaccine be paid for by the applicable jurisdiction?

The vaccine will be free for the population, according to the National Vaccination Plan.

Requirement of Vaccine

3. Is there a general requirement for individuals to be vaccinated after the COVID-19 vaccine is available?

Yes. On December 17, 2020, the Brazilian Supreme Court ruled that local governments may establish restrictive measures for individuals who refuse to be vaccinated. This means, the vaccine will be mandatory.

4. Is the vaccine mandated in certain industries after it becomes available?

See Question 3. It applies to all industries.

COVID-19 Vaccination



Employer-Mandated Vaccinations

5. Can an employer require current employees to be vaccinated?

It will depend on each local/State government. For example, in October, São Paulo's governor said that the vaccine will be mandatory in São Paulo, though it is not official, yet. In locations/States where it is mandatory, employers may require employees to be vaccinated, but we must await further government guidance, to determine how companies may implement such a mandate.

6. If so, is there legal protection to be excused from being vaccinated (e.g., religious accommodation/disability accommodation)?

So far, the government has issued no specific guidelines or rules. However, the Supreme Court has decided that no religious or personal belief is above the public interest. Further, the Court noted that: "Compulsory vaccination does not mean forced vaccination ... it can be implemented through indirect measures, which include, among others, the restriction to the exercise of certain activities or the regular attendance of certain places."

Applicants for Employment (Pre-Hire Stage)

7. Can an employer require applicants to be vaccinated as a condition of hire?

Yes, provided the local government establishes that the vaccine is mandatory, unless the government (either local or federal) establishes otherwise.

8. Can employers ask applicants if they have been vaccinated?

See Question 7. Yes, provided vaccination is mandatory.

9. Can employers refuse to hire applicants that are unwilling to be vaccinated or have not yet been vaccinated?

This is still not clear. However, if vaccination is mandatory and is widely available to the population, the employer likely will be able to request proof of vaccination as part of the recruitment process.

10. Is there legal protection for applicants to be excused from being vaccinated (e.g. religious accommodation/disability accommodation)?

See Question 6.

Wage and Hour

11. If vaccinations are required, are employees entitled to reimbursement for the cost of the vaccination?

According to the National Vaccination Plan, the vaccine will be free of charge for the public. The private healthcare system will get the vaccines only once the public health system has received the necessary amount of vaccines. If employees were required to be vaccinated at the private healthcare system, they would be entitled to reimbursement for the cost of the vaccination. Also, the time the employee spends receiving the vaccination would be considered "compensable time" if the employee needs to take time off to get vaccinated. Note, currently, no specific guidance or rules have been issued by the government; therefore, this may change over time.

COVID-19 Vaccination



Other Legal Risks in Mandating

12. Are there any other legal risks to consider in requiring employee vaccinations? (Please list)

In theory, issues may arise if the employer goes beyond its directive powers, demanding, for example, that employees get only one specific vaccine brand, lineup employees to get vaccinated inside the facilities under its control and supervision, or coerce individuals to get vaccinated at a certain place.

Employee Benefits

13. Can an employer provide inducements under its employee benefits plans (e.g., wellness programs) for those who are vaccinated?

The local government likely will establish specific rules/guidelines for employers to avoid discrimination claims regarding vaccinations. Considering the current situation, the answer would be no.

14. Can an employer provide a bonus to employees who get vaccinated?

This is not be recommended if the vaccine is mandatory, as employees should not get bonuses for doing something the law demands them to do. Based on case law, companies should not pay bonuses for employees simply to comply with the law, especially related to health and safety. Additionally, bonuses usually are linked to employers' profit and/or employee's performance. Therefore, a bonus for getting vaccinated might be controversial.

Although bonuses may be implemented and provided at employers' sole discretion, employers should wait until the local governments issue specific guidelines/rules on this issue. Employers can help by disseminating the government's vaccination information, encouraging employees to get vaccinated, and granting paid time off for employees to get vaccinated.

Union and/or Works Council Obligations

15. For workplaces in which collective representation arrangements apply, is an employer obligated to bargain with the union, or meet with the Works Council, prior to mandating employee vaccinations?

See Question 6. Depending on the industry, we anticipate that some unions may demand to be involved in certain employer-sponsored vaccination programs.

Privacy

16. Is the fact that an employee has, or has not, been vaccinated "health information" or "sensitive personal data" under your country's data protection law (Y/N)?

Yes, it is both "health information" and "sensitive personal data" (section 5, II, of Law No. 13,709/2018 – General Data Protection Law), until and unless the government establishes otherwise.

COVID-19 Vaccination



17. If so, is this health information subject to the restrictions on processing applicable to “special categories of personal data” or “sensitive personal data”?

Yes, sensitive personal data.

18. If no, is that information nonetheless protected by applicable data protection law (Y/N)?

Not applicable, as the answer to Questions 16 and 17 was “yes.”

Record-Keeping Requirement

19. Is an employer required to maintain a record of an employee’s COVID-19 vaccination?

To date, this is not required by law, but it may change.

20. If so, what are (if any) the specific record keeping requirements related to vaccinations?

To date, there are no specific requirements, but under the law (i.e., Ordinance 211/2019), companies may maintain occupational health and safety records in electronic form.

Reporting Requirements

21. If an employee is vaccinated at the employer’s directive, is the employer required to notify the governmental health authorities of employee’s vaccination?

To date, no specific guidelines or rules have been issued by the government.

Teleworking Requirements

22. Can an employer unilaterally implement a teleworking (work from home) arrangement if an employee cannot or will not agree to be vaccinated?

No, under current law, but this may change. Specifically, section 75-C, paragraph 1, of the Brazilian Labor Code, a mutual agreement between employer and employee is necessary for the implementation of a teleworking arrangement. However, this may change in the near future. It is recommended to wait for government’s guidelines and rules related to COVID-19 vaccination before implementing such an arrangement.

23. If telework is not an option, can an employer require employees who cannot or will not agree to vaccinate to not come into the workplace?

In principle, yes, but the government likely will issue rules and guidelines on what employers may and may not do if employees are unwilling to get vaccinated. If the vaccine is mandated and the employee refuses to be vaccinated, terminating the employment seems like a safer and less costly alternative for the company, provided the employee is not entitled to any type of employment protection and the termination would not otherwise violate a law or government directive.



BOLIVIA

Current as of December 23, 2020

Access to Vaccine

1. Is there a priority list for the distribution of the COVID-19 vaccine? (include summary list)

The Ministry of Health has the following priority list:

1. healthcare personnel;
2. workers in essential and critical industries;
3. people at high risk for severe COVID-19 illness due to underlying medical conditions, and
4. people 60 years and older.

After these groups have been vaccinated, the vaccine will be allocated to the general population by a different set of priorities.

Cost of Vaccine

2. Will the vaccine be paid for by the applicable jurisdiction?

Yes, it will be paid by the public sector.

Requirement of Vaccine

3. Is there a general requirement for individuals to be vaccinated after the COVID-19 vaccine is available?

No, but vaccination will be mandatory for some industries.

4. Is the vaccine mandated in certain industries after it becomes available?

Vaccination will be required for various sectors and industries, as follows: hospitals, restaurants, hotels, public service functions, police, military forces, and oil and mining.

Employer-Mandated Vaccinations

5. Can an employer require current employees to be vaccinated?

Yes, but only as it applies to the following sectors or industries: hospitals, restaurants, hotels, public service functions, police, military forces, and oil and mining.

6. If so, is there legal protection to be excused from being vaccinated (e.g., religious accommodation/disability accommodation)?

Yes, employees may be legally protected from having to get vaccinated based on a medical condition or disability.

COVID-19 Vaccination



Applicants for Employment (Pre-Hire Stage)

- | | |
|---|--|
| 7. Can an employer require applicants to be vaccinated as a condition of hire? | Yes, except that applicants may be legally protected due to a medical condition or disability. |
| 8. Can employers ask applicants if they have been vaccinated? | Yes, except that applicants may be legally protected due to a medical condition or disability. |
| 9. Can employers refuse to hire applicants that are unwilling to be vaccinated or have not yet been vaccinated? | Yes, especially in industries listed in Question 4 or if the work activities require people to be vaccinated. |
| 10. Is there legal protection for applicants to be excused from being vaccinated (e.g. religious accommodation/disability accommodation)? | Yes, applicants may be legally protected from having to get vaccinated based on a medical condition or disability. |

Wage and Hour

- | | |
|--|------|
| 11. If vaccinations are required, are employees entitled to reimbursement for the cost of the vaccination? | Yes. |
|--|------|

Other Legal Risks in Mandating

- | | |
|---|--------------------|
| 12. Are there any other legal risks to consider in requiring employee vaccinations? (Please list) | None at this time. |
|---|--------------------|

Employee Benefits

- | | |
|---|------|
| 13. Can an employer provide inducements under its employee benefits plans (e.g., wellness programs) for those who are vaccinated? | Yes. |
| 14. Can an employer provide a bonus to employees who get vaccinated? | Yes. |

COVID-19 Vaccination



Union and/or Works Council Obligations

15. For workplaces in which collective representation arrangements apply, is an employer obligated to bargain with the union, or meet with the Works Council, prior to mandating employee vaccinations?

Yes.

Privacy

16. Is the fact that an employee has, or has not, been vaccinated "health information" or "sensitive personal data" under your country's data protection law (Y/N)?

Yes, under the Political Constitution of the Plurinational State of Bolivia, Article No. 130.

17. If so, is this health information subject to the restrictions on processing applicable to "special categories of personal data" or "sensitive personal data"?

Yes. See Question 16.

18. If no, is that information nonetheless protected by applicable data protection law (Y/N)?

See Questions 16 and 17.

Record-Keeping Requirement

19. Is an employer required to maintain a record of an employee's COVID-19 vaccination?

Yes. Generally, employers are required to maintain occupational health and safety records on employees. If the employee is required to be vaccinated (e.g., due to working in one of the industries or sectors subject to the vaccination mandate, see Question 4), the employer would be required to maintain such record of vaccination.

20. If so, what are (if any) the specific record keeping requirements related to vaccinations?

The government has not issued specific guidance or regulations specifically related to vaccinations.

Reporting Requirements

21. If an employee is vaccinated at the employer's directive, is the employer required to notify the governmental health authorities of employee's vaccination?

Yes.

COVID-19 Vaccination



Teleworking Requirements

22. Can an employer unilaterally implement a teleworking (work from home) arrangement if an employee cannot or will not agree to be vaccinated?

Yes.

23. If telework is not an option, can an employer require employees who cannot or will not agree to vaccinate to not come into the workplace?

Yes, except that employers cannot dismiss employees under these circumstances and must provide reasonable accommodations.



BULGARIA

Current as of December 23, 2020

Access to Vaccine

1. Is there a priority list for the distribution of the COVID-19 vaccine? (include summary list)

The government has formed a working group to develop and adopt a vaccination action plan, with a draft working version of the action plan published recently. The latter introduces prioritized target groups, whereby the first deliveries of the vaccine are intended for the following groups, listed in order of vaccination priority:

1. healthcare and pharmaceutical personnel;
2. personnel and customers of institutions for provision of social services, as well as pedagogical specialists;
3. employees involved in maintaining the functioning of socially significant activities;
4. people at the age of 65 and older, as well as people at higher risk due to underlying medical conditions; and
5. vulnerable groups of the population due to higher epidemiological risk of infection related to their living conditions and lifestyle.

To create an organization for the supply of vaccines, the country will be divided into six regions. It is still not clear whether there will be prioritized regions.

Cost of Vaccine

2. Will the vaccine be paid for by the applicable jurisdiction?

In accordance with the agreements reached between the European Union (EU) and its Member States, the funds for purchasing of the vaccines will be partly covered by the EU and partly covered by the respective Member State. In practice, it is provided that the European Commission (EC) will enter into Advanced Purchase Agreements with individual vaccine producers on behalf of Member States. In return for the right to buy a specified number of vaccine doses in a given timeframe and at a given price, the EC will finance a part of the upfront costs faced by vaccines producers from the Emergency Support Instrument.

This funding will be considered as a down payment on the vaccines that will actually be purchased by Member States. Additional support is possible through loans from the European Investment Bank. For now, it seems that the funding of the vaccine supply logistics, training of healthcare personnel, building information systems, etc., will be left to the own resources of each Member State.

According to the above-mentioned action plan, in Bulgaria the funding matters will be handled by several authorities, among which the Ministry of Health, National Health Insurance Fund, etc.

COVID-19 Vaccination



Requirement of Vaccine

3. Is there a general requirement for individuals to be vaccinated after the COVID-19 vaccine is available?

No general requirement has been introduced. As per the current version of the action plan, the Ministry of Health will adopt and introduce recommendations for vaccination based on the specifics of each target group, number of vaccine units received, characteristics of the vaccines, etc.

4. Is the vaccine mandated in certain industries after it becomes available?

No, it will be just recommended. See Question 1 for the prioritized groups, including industries. Individuals engaged in certain sectors have been included in the prioritized target groups, including health and pharmaceutical, social services, socially significant activities, etc.

Employer-Mandated Vaccinations

5. Can an employer require current employees to be vaccinated?

No such option for the employer has been introduced at the current moment. According to the currently effective guidelines of the Ministry of Health, the employer has the right not to allow persons with visible symptoms of acute respiratory diseases to enter the work premises.

The possibility for employers to require vaccination of their employees requires prior explicit regulation in this regard. Otherwise, this might be considered discriminatory.

6. If so, is there legal protection to be excused from being vaccinated (e.g., religious accommodation/disability accommodation)?

Currently, no information is available. See Question 5.

Applicants for Employment (Pre-Hire Stage)

7. Can an employer require applicants to be vaccinated as a condition of hire?

Not applicable. See Question 5.

As mentioned above, unless there is explicit regulation on the contrary, employers are not allowed to require future or current employees to be vaccinated in order to be employed by the company.

8. Can employers ask applicants if they have been vaccinated?

Vaccination information is not regarded by Bulgarian law as relevant and mandatory for concluding employment agreements.

However, there is also no legal impediment for the employer to require such information in cases where this is justified, having in mind the specifics of the work organization, job position, etc.

Please note that the employee is entitled to refuse to provide such information. Also, there is a risk of possible discrimination claims if information about vaccination has not been collected on equal basis from all applicants.

COVID-19 Vaccination



9. Can employers refuse to hire applicants that are unwilling to be vaccinated or have not yet been vaccinated?

Not applicable. See Question 8.

Such refusal may be treated as discriminatory and may lead to imposition of sanctions or compensation claims, where there is no legal basis.

10. Is there legal protection for applicants to be excused from being vaccinated (e.g. religious accommodation/ disability accommodation)?

The vaccination action plan (see Question 1) provides that the vaccination shall be subject to consent. Therefore, it does not regulate any exclusion hypotheses.

Wage and Hour

11. If vaccinations are required, are employees entitled to reimbursement for the cost of the vaccination?

Employers are obliged to provide and ensure at their cost a healthy and safe working environment for employees. The expenses incurred by the employer for health and safety purposes are recognized for tax purposes. At the moment, there is no legal provision requiring employers to cover expenses for vaccination. Where there is an explicit governmental guideline for vaccination of certain group of employees or the nature of the work requires it, employers may be obliged to cover or reimburse any expenses incurred by employees for vaccination.

In Bulgaria it has become usual practice for employers to cover or reimburse employees' expenses for COVID-19 tests, where employers have asked the employees to take such tests.

Other Legal Risks in Mandating

12. Are there any other legal risks to consider in requiring employee vaccinations? (Please list)

In all cases, the employer must comply with the anti-discrimination legislation and ensure that all employees are treated equally to the extent possible.

Employee Benefits

13. Can an employer provide inducements under its employee benefits plans (e.g., wellness programs) for those who are vaccinated?

It is debatable to what extent this would be possible in light of the current legislation. As there are no explicit legal acts introducing mandatory vaccination or permitting employers to require vaccination, any such incentives or bonuses introduced only for vaccinated personnel may be deemed discriminatory.

14. Can an employer provide a bonus to employees who get vaccinated?

Not applicable. See Question 14.

COVID-19 Vaccination



Union and/or Works Council Obligations

15. For workplaces in which collective representation arrangements apply, is an employer obligated to bargain with the union, or meet with the Works Council, prior to mandating employee vaccinations?

There is no explicit requirement in this respect. In general, under Bulgarian Health and Safety at Work Act, the employer is obliged to consult in advance with employees' representatives and unions about the adoption of all measures which refer to the health and safety of employees. Usually, this may involve organizing meetings and conducting negotiations.

Privacy

16. Is the fact that an employee has, or has not, been vaccinated "health information" or "sensitive personal data" under your country's data protection law (Y/N)?

In general, according to Bulgarian Personal Data Protection Act and the guidelines of the local data protection authority, health-related data may be categorized as personal data if it directly points to the respective individual. This includes data related to the physical or mental health of an individual or the provision of health services that provide information about their health condition.

The fact that a person has been vaccinated may be qualified as health information and as such personal data, where the individual may be individualized on the basis of the collected health information.

17. If so, is this health information subject to the restrictions on processing applicable to "special categories of personal data" or "sensitive personal data"?

Information about undergone vaccination may qualify as special category of personal data, if it contains information about the health condition of an individual. However, such information may fall within the special derogation from the prohibition on the processing of certain special categories of personal data, when it is collected by employers for the purposes of ensuring safe and healthy working conditions.

18. If no, is that information nonetheless protected by applicable data protection law (Y/N)?

See Questions 16 and 17.

Record-Keeping Requirement

19. Is an employer required to maintain a record of an employee's COVID-19 vaccination?

There is no explicit legal requirement in this respect.

20. If so, what are (if any) the specific record keeping requirements related to vaccinations?

Not applicable.

COVID-19 Vaccination



Reporting Requirements

21. If an employee is vaccinated at the employer's directive, is the employer required to notify the governmental health authorities of employee's vaccination?

Not applicable. See Question 5.

Teleworking Requirements

22. Can an employer unilaterally implement a teleworking (work from home) arrangement if an employee cannot or will not agree to be vaccinated?

There is no explicit regulation introducing such possibility for the employer.

Currently within Bulgaria's declared emergency epidemic situation (expiring on January 31, 2021), employers may introduce teleworking unilaterally, where possible. However, the principle position of the Bulgarian law is that teleworking requires the consent of the employee.

23. If telework is not an option, can an employer require employees who cannot or will not agree to vaccinate to not come into the workplace?

This is not possible under the current legislation. If the employee refuses the teleworking arrangement and therefore the employer restricts the employee's access to the work place, the employer will be in breach of its obligations under the employment contract. Hence, the employee may seek compensation. See Question 22.



CANADA

Current as of January 6, 2021

Access to Vaccine

1. Is there a priority list for the distribution of the COVID-19 vaccine? (include summary list)

**Responses do not cover the Province of Quebec. Contact our Canada attorneys for questions on this region.*

On December 9, 2020, Canada determined that the Pfizer–BioNTech vaccine meets Health Canada’s requirements. The initial indication is for use in people 16 and older; however, this can be revised in the future. On December 23, 2020, Canada determined that the Moderna COVID-19 vaccine meets Health Canada’s requirements. The vaccine is indicated for use in people 18 years of age or older; however this can be revised in the future.

Canada’s provinces are responsible for planning and running vaccination programs, and are working together with the federal government, First Nations, experts, advisors and manufacturers on the efficient, equitable and effective allocation, distribution and administration of vaccines. Because there will be limited quantities at first, the Government of Canada has developed recommendations with the provinces and the National Advisory Committee on Immunization for the first doses. The Government of Canada recommends vaccination on a priority basis as follows:

- Residents and staff of shared living settings that provide care for seniors.
- Adults 70 years of age and older, with order of priority:
 - » beginning with adults 80 years of age and older
 - » decreasing the age limit by 5-year increments to age 70 years as supply becomes available.
- Health care workers who have direct contact with patients, including those:
 - » who work in health care settings
 - » personal support workers
- Adults in Indigenous communities.

As additional COVID-19 vaccine(s) and supplies become available, the following should be offered vaccinations:

- Health care workers not included in the initial rollout.
- Residents and staff of all other shared living settings, such as:
 - » homeless shelters
 - » correctional facilities
 - » housing for migrant workers
- Essential workers who face additional risks to maintain services for the functioning of society.

COVID-19 Vaccination



Cost of Vaccine

2. Will the vaccine be paid for by the applicable jurisdiction?

Yes. The federal government will cover vaccine costs and costs of supplies to administer them.

Requirement of Vaccine

3. Is there a general requirement for individuals to be vaccinated after the COVID-19 vaccine is available?

No. The federal government has not made the COVID-19 vaccine mandatory, nor have any provincial governments.

4. Is the vaccine mandated in certain industries after it becomes available?

No; however, this may change. Because they work with vulnerable and / or immunocompromised individuals, employees in hospitals, long-term care homes, and retirement residences may be mandated by their employers and/or public health officials to be vaccinated. Employers in other industries may, after a period of encouraging employees to be voluntarily vaccinated, eventually decide to mandate vaccination to protect the health and safety of their workforces and customers, and to satisfy their economic need to resume profitable operation. Any mandatory vaccination policy will need to balance human rights, privacy and *Canadian Charter of Rights and Freedoms* considerations with health and safety obligations (and any collective agreement obligations in a unionized workplace), and must also be consistent with future guidance from federal and provincial governments, and regulators.

Employer-Mandated Vaccinations

5. Can an employer require current employees to be vaccinated?

The answer is unclear as the circumstances are novel and unprecedented. To date, the federal government and provincial governments, and regulators have been silent on this point. We do not have existing case law addressing the mandatory vaccination of employees in the context of a global pandemic. Any existing case law relates only to mandatory flu vaccination programs in a unionized context in hospitals and long-term care homes and these decisions are inconsistent.

6. If so, is there legal protection to be excused from being vaccinated (e.g., religious accommodation/ disability accommodation)?

If employers are permitted to unilaterally require employees to be vaccinated, their vaccination policies must be consistent with the *Canadian Charter of Rights and Freedoms*, any applicable human rights and privacy legislation, and any guidance from federal government and provincial governments. An employee may be excused from being vaccinated if the reason for their refusal is (a) a ground covered by human rights legislation, e.g., religion or disability, or (b) a valid medical reason, e.g., an underlying medical condition that would make it dangerous for the employee to be vaccinated. Should an employee refuse to be vaccinated for one of these reasons, the employer has an obligation to accommodate the employee to the point of undue hardship; what constitutes "undue hardship" may vary by jurisdiction but it is generally assessed by considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

COVID-19 Vaccination



Applicants for Employment (Pre-Hire Stage)

7. Can an employer require applicants to be vaccinated as a condition of hire?

The answer is unclear as the circumstances are novel and unprecedented. To date, the federal and provincial governments and regulators have been silent on this point. We do not have existing case law addressing whether employers may require applicants to be vaccinated in the context of a global pandemic. If employers are permitted to make vaccination a condition of hire for reasons related to health and safety, they should only do so if all new and existing employees in the same job must be vaccinated. Furthermore, the requirement should be subject to the applicant's valid grounds for refusing to be vaccinated (see Question 10).

8. Can employers ask applicants if they have been vaccinated?

No. Employers should not ask applicants if they have been vaccinated because personal medical questions should not be asked of applicants in interviews.

9. Can employers refuse to hire applicants that are unwilling to be vaccinated or have not yet been vaccinated?

See Question 7.

10. Is there legal protection for applicants to be excused from being vaccinated (e.g. religious accommodation/disability accommodation)?

If an applicant's reason for refusing the vaccination is (1) a ground covered by human rights legislation, e.g., religion or disability; or (2) a valid medical reason, e.g., an underlying medical condition that would make it dangerous for the employee to be vaccinated, the employer has an obligation to accommodate the applicant to the point of undue hardship; what constitutes "undue hardship" may vary by jurisdiction but it is generally assessed by considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

Wage and Hour

11. If vaccinations are required, are employees entitled to reimbursement for the cost of the vaccination?

As the federal government is covering the cost, employees will not be required to pay for the vaccine and therefore reimbursement is likely not an issue. If, however, this is not the case and employees are required to pay, the law does not expressly cover this situation.

The customary practice is to reimburse employees for expenses when the employer requires the employee to engage in a specific activity (e.g., travel, educational course, etc.). Therefore, an employer requiring vaccination would be expected to reimburse any related expenses, and reimbursement would not be considered part of the employee's wages.

Time spent by an employee carrying out their employer's job-related vaccination requirement would be viewed as job-related duties and considered paid work time.

COVID-19 Vaccination



Other Legal Risks in Mandating

12. Are there any other legal risks to consider in requiring employee vaccinations? (Please list)

By requiring employee vaccinations, employers may be exposed to claims that they are liable for any harm caused by the vaccine.

Employee Benefits

13. Can an employer provide inducements under its employee benefits plans (e.g., wellness programs) for those who are vaccinated?

Employers should avoid offering inducements under their employee benefits plans for those who are vaccinated; if employers offer them, they may appear to be treating employees who get vaccinated better than those who refuse vaccination for religious reasons or due to a medical condition, and this could result in employees making discrimination claims on the ground of religion or on the ground of disability.

14. Can an employer provide a bonus to employees who get vaccinated?

Employers should avoid providing a bonus to employees who get vaccinated; if employers provide them, they may appear to be treating employees who get vaccinated better than those who refuse vaccination for religious reasons or due to a medical condition, and this could result in employees making discrimination claims on the ground of religion or disability.

Union and/or Works Council Obligations

15. For workplaces in which collective representation arrangements apply, is an employer obligated to bargain with the union, or meet with the Works Council, prior to mandating employee vaccinations?

In a unionized workplace, employers should review collective bargaining agreements (CBA) (especially management rights clauses) to determine whether they have a duty to bargain with the union over a vaccine program. If a CBA confirms the right to unilaterally institute a vaccination program, the employer may still wish to consult with the union when developing the program as a joint message to employees from employer and union regarding the vaccine's importance in providing a safe workplace may increase employee buy-in. Employers must also consider relevant obligations under applicable health and safety legislation, including any obligations to consult with a health and safety representative or a joint health and safety committee.

Privacy

16. Is the fact that an employee has, or has not, been vaccinated "health information" or "sensitive personal data" under your country's data protection law (Y/N)?

Yes.

17. If so, is this health information subject to the restrictions on processing applicable to "special categories of personal data" or "sensitive personal data"?

Yes.

COVID-19 Vaccination



18. If no, is that information nonetheless protected by applicable data protection law (Y/N)?

See Questions 16 and 17.

Record-Keeping Requirement

19. Is an employer required to maintain a record of an employee's COVID-19 vaccination?

Provincial statutes, which determine the record-keeping requirements for employers with respect to employee information, do not generally require vaccination or immunization information to be retained as a matter of course unless this information pertains to a medical leave that an employee has taken. More information specific to COVID-19 vaccinations may be forthcoming based on the novelty of the situation and the prevalence of the virus, and we will remain apprised of any updates to these rules.

20. If so, what are (if any) the specific record keeping requirements related to vaccinations?

Again, there does not appear to be specific record keeping requirements pertaining to vaccinations. Certain medical information, such as that which relates to a medical leave, may be kept in records and must be done so confidentially and with a view to applicable provincial privacy legislation.

Reporting Requirements

21. If an employee is vaccinated at the employer's directive, is the employer required to notify the governmental health authorities of employee's vaccination?

This is unclear because employers cannot specifically require employees to be vaccinated (see Questions 5 and 6), absent several conditions, it is possible for employers to implement a mandatory vaccine policy in a unionized context if it is consistent with the applicable collective agreement and reasonable in the circumstances. Beyond this, there does not appear to be a requirement for employers to relay information of employee vaccination to governmental authorities, though more clarity on this point will likely be available in the coming months as the COVID-19 vaccination rollout continues into the wider public.

Teleworking Requirements

22. Can an employer unilaterally implement a teleworking (work from home) arrangement if an employee cannot or will not agree to be vaccinated?

If the nature of an employee's work is such that it can be performed via telework, and the employer is permitted to require employee vaccination, the employer can, generally, implement teleworking on a unilateral basis for an employee who cannot or will not agree to be vaccinated, and generally does not require employee consent. This is subject to: (1) the specific terms and conditions of any employment agreement and possible claims for breach of contract or constructive dismissal; (2) any legislation, contract and / or policy with respect to teleworking and the expenses relating to same; and (3) any relevant considerations relating to health and safety.

23. If telework is not an option, can an employer require employees who cannot or will not agree to vaccinate to not come into the workplace?

If the employer is permitted to require vaccination, telework is not an option, and the employee lacks discrimination grounds or a valid medical reason for their refusal or inability to be vaccinated, the employer can require the employee to not come into the workplace and take an unpaid leave.



CARIBBEAN

Current as of December 22, 2020

Access to Vaccine

1. Is there a priority list for the distribution of the COVID-19 vaccine? (include summary list)

* These responses apply for multiple jurisdictions in the Caribbean, as follows:

- Aruba
- Antigua
- Bahamas
- Barbados
- Belize
- Bermuda
- Curaçao
- Cayman Islands (U.K.)
- Cayman Islands (U.S.)
- Dominica
- Grenada
- Haiti
- Jamaica
- Saint Lucia
- Saint Vincent and the Grenadines
- Sint Maarten
- Suriname
- Trinidad & Tobago
- Turks & Caicos

The Ministry of Health and Safety has prioritized the allocation of the vaccines as follows:

1. healthcare personnel;
2. workers in essential and critical industries;
3. people at high risk for severe COVID-19 illness due to underlying medical conditions; and
4. people 60 years and older.

After these groups have been vaccinated, the vaccine will be allocated to the general population by a different set of priorities.

COVID-19 Vaccination



Cost of Vaccine

2. Will the vaccine be paid for by the applicable jurisdiction? Yes.

Requirement of Vaccine

3. Is there a general requirement for individuals to be vaccinated after the COVID-19 vaccine is available? Vaccination will be mandatory for all people.

4. Is the vaccine mandated in certain industries after it becomes available? Vaccination will be mandatory for all people, especially for individuals working in hospitals, restaurants, hotels, and public service functions.

Employer-Mandated Vaccinations

5. Can an employer require current employees to be vaccinated? Yes, an employer may unilaterally require all of its employees to be vaccinated.

6. If so, is there legal protection to be excused from being vaccinated (e.g., religious accommodation/disability accommodation)? Yes, individuals may be exempted from the requirement to be vaccinated based on a medical condition, disability, or religious belief.

Applicants for Employment (Pre-Hire Stage)

7. Can an employer require applicants to be vaccinated as a condition of hire? Yes, except that applicants may be legally protected from having to get vaccinated based on a medical condition, disability, or religious belief.

8. Can employers ask applicants if they have been vaccinated? Yes, but keep in mind that applicants may be legally protected from having to get vaccinated based on a medical condition, disability, or religious belief.

9. Can employers refuse to hire applicants that are unwilling to be vaccinated or have not yet been vaccinated? Yes, especially in industries and sectors listed in Question 4 or if the work activities require people to be vaccinated.

10. Is there legal protection for applicants to be excused from being vaccinated (e.g. religious accommodation/disability accommodation)? Yes. See Question 6.

COVID-19 Vaccination



Wage and Hour	
11. If vaccinations are required, are employees entitled to reimbursement for the cost of the vaccination?	If the employee is required to receive the vaccination during working hours, such time will be considered compensable time for which the employee must be paid.
Other Legal Risks in Mandating	
12. Are there any other legal risks to consider in requiring employee vaccinations? (Please list)	None to date.
Employee Benefits	
13. Can an employer provide inducements under its employee benefits plans (e.g., wellness programs) for those who are vaccinated?	Yes.
14. Can an employer provide a bonus to employees who get vaccinated?	Yes.
Union and/or Works Council Obligations	
15. For workplaces in which collective representation arrangements apply, is an employer obligated to bargain with the union, or meet with the Works Council, prior to mandating employee vaccinations?	Yes, the employer must bargain with the union on this issue.
Privacy	
16. Is the fact that an employee has, or has not, been vaccinated "health information" or "sensitive personal data" under your country's data protection law (Y/N)?	Yes.
17. If so, is this health information subject to the restrictions on processing applicable to "special categories of personal data" or "sensitive personal data"?	Yes.
18. If no, is that information nonetheless protected by applicable data protection law (Y/N)?	See Questions 16 and 17.

COVID-19 Vaccination



Record-Keeping Requirement

19. Is an employer required to maintain a record of an employee's COVID-19 vaccination?

Yes. Generally, employers are required to maintain occupational health and safety records on employees. Currently, there are no guidance or regulations for employers specifically addressing this question.

20. If so, what are (if any) the specific record keeping requirements related to vaccinations?

See Question 19.

Reporting Requirements

21. If an employee is vaccinated at the employer's directive, is the employer required to notify the governmental health authorities of employee's vaccination?

Yes.

Teleworking Requirements

22. Can an employer unilaterally implement a teleworking (work from home) arrangement if an employee cannot or will not agree to be vaccinated?

Yes.

23. If telework is not an option, can an employer require employees who cannot or will not agree to vaccinate to not come into the workplace?

Yes, except that employers cannot dismiss employees under these circumstances and must provide reasonable accommodations.

COVID-19 Vaccination



CHILE

Current as of December 22, 2020

Access to Vaccine

1. Is there a priority list for the distribution of the COVID-19 vaccine? (include summary list)

The Department of Health and Safety has prioritized the distribution as follows:

1. healthcare personnel;
2. workers in essential and critical industries;
3. people at high risk for severe COVID-19 illness due to underlying medical conditions; and
4. people 60 years and older.

After these groups have been vaccinated, the vaccine will be allocated to the general population by a different set of priorities.

Cost of Vaccine

2. Will the vaccine be paid for by the applicable jurisdiction?

Yes, private health insurance plans will pay for the vaccines.

Requirement of Vaccine

3. Is there a general requirement for individuals to be vaccinated after the COVID-19 vaccine is available?

No, but vaccination will be mandatory for some industries (see Question 4).

4. Is the vaccine mandated in certain industries after it becomes available?

Vaccination will be required for various sectors and industries, as follows: hospitals, restaurants, hotels, and public service functions.

Employer-Mandated Vaccinations

5. Can an employer require current employees to be vaccinated?

Yes, but only as it applies to the following sectors and industries: hospitals, restaurants, hotels, and public service functions.

6. If so, is there legal protection to be excused from being vaccinated (e.g., religious accommodation/disability accommodation)?

Yes, employees may be legally protected from having to get vaccinated based on a medical condition, disability, or religious belief.

COVID-19 Vaccination



Applicants for Employment (Pre-Hire Stage)

7. Can an employer require applicants to be vaccinated as a condition of hire?	Yes, except that applicants may be legally protected from having to get vaccinated based on a medical condition, disability, or religious belief.
8. Can employers ask applicants if they have been vaccinated?	Yes, but keep in mind that applicants may be legally protected from having to get vaccinated based on a medical condition, disability, or religious belief.
9. Can employers refuse to hire applicants that are unwilling to be vaccinated or have not yet been vaccinated?	Yes, especially in industries and sectors listed in Question 4 or if the work activities require people to be vaccinated.
10. Is there legal protection for applicants to be excused from being vaccinated (e.g. religious accommodation/disability accommodation)?	Yes, applicants may be legally protected from having to get vaccinated based on a medical condition, disability, or religious belief.

Wage and Hour

11. If vaccinations are required, are employees entitled to reimbursement for the cost of the vaccination?	Assuming the employer requires the employee to get vaccinated and the employee is not covered by private health insurance, the employer must reimburse the employee for the cost of the vaccination. If the employee spends time receiving the vaccination during working hours, such time will be considered compensable time for which the employee must be paid.
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Other Legal Risks in Mandating

12. Are there any other legal risks to consider in requiring employee vaccinations? (Please list)	None to date.
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Employee Benefits

13. Can an employer provide inducements under its employee benefits plans (e.g., wellness programs) for those who are vaccinated?	Yes.
14. Can an employer provide a bonus to employees who get vaccinated?	Yes.

COVID-19 Vaccination



Union and/or Works Council Obligations

15. For workplaces in which collective representation arrangements apply, is an employer obligated to bargain with the union, or meet with the Works Council, prior to mandating employee vaccinations?

Yes, the employer must bargain with the union on this issue.

Privacy

16. Is the fact that an employee has, or has not, been vaccinated "health information" or "sensitive personal data" under your country's data protection law (Y/N)?

Yes, under Law 19,628/1999 on the Protection of Private Life (known as the "Personal Data Protection Law").

17. If so, is this health information subject to the restrictions on processing applicable to "special categories of personal data" or "sensitive personal data"?

Yes. Law 20,584/2012 regulates the rights and duties of individuals in the context of healthcare and establishes the obligation of healthcare professionals to maintain patient data confidential. Under the Law, all information contained in patient files or documentation of medical treatments are sensitive data.

18. If no, is that information nonetheless protected by applicable data protection law (Y/N)?

See Questions 16 and 17.

Record-Keeping Requirement

19. Is an employer required to maintain a record of an employee's COVID-19 vaccination?

Yes. Generally, employers are required to maintain occupational health and safety records on employees. If the employee is required to be vaccinated (e.g., due to working in one of the industries or sectors subject to the vaccination mandate, see Question 4), the employer would be required to maintain such record of vaccination.

20. If so, what are (if any) the specific record keeping requirements related to vaccinations?

See Question 19.

Reporting Requirements

21. If an employee is vaccinated at the employer's directive, is the employer required to notify the governmental health authorities of employee's vaccination?

Yes.

COVID-19 Vaccination



Teleworking Requirements

22. Can an employer unilaterally implement a teleworking (work from home) arrangement if an employee cannot or will not agree to be vaccinated?

Yes.

23. If telework is not an option, can an employer require employees who cannot or will not agree to vaccinate to not come into the workplace?

Employers cannot dismiss employees based on this reason and would need to provide reasonable accommodation.

COVID-19 Vaccination



CHINA

Current as of December 23, 2020

Access to Vaccine

1. Is there a priority list for the distribution of the COVID-19 vaccine? (include summary list)

According to the China Center for Disease Control and Prevention, the vaccine will be distributed to the following groups first:

1. import cold chain;
2. port examination;
3. fresh food market;
4. transportation; and
5. medical institutions and disease control.

Cost of Vaccine

2. Will the vaccine be paid for by the applicable jurisdiction?

No, it is not being paid by the government nor the social medical insurance.

Requirement of Vaccine

3. Is there a general requirement for individuals to be vaccinated after the COVID-19 vaccine is available?

No, there is no mandatory requirement for individuals to be vaccinated.

4. Is the vaccine mandated in certain industries after it becomes available?

Currently, no information is available.

Employer-Mandated Vaccinations

5. Can an employer require current employees to be vaccinated?

Vaccination must be subject to the voluntary consent of employees. An employer may require employees to be vaccinated – especially within an industry subject to a government mandate or if the employer receives express authorization from the government – but cannot force employees to get vaccinated if they refuse.

6. If so, is there legal protection to be excused from being vaccinated (e.g., religious accommodation/disability accommodation)?

Not applicable.

COVID-19 Vaccination



Applicants for Employment (Pre-Hire Stage)

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|---|---|
| 7. Can an employer require applicants to be vaccinated as a condition of hire? | Possibly, yes. |
| 8. Can employers ask applicants if they have been vaccinated? | Yes, subject to data privacy protection. |
| 9. Can employers refuse to hire applicants that are unwilling to be vaccinated or have not yet been vaccinated? | Yes, if being vaccinated is related to the work requirements. |
| 10. Is there legal protection for applicants to be excused from being vaccinated (e.g. religious accommodation/disability accommodation)? | No, but for employees who are pregnant or on other medicine, they need to observe the doctors' suggestions on whether it is safe to have the vaccine. |

Wage and Hour

- | | |
|--|---|
| 11. If vaccinations are required, are employees entitled to reimbursement for the cost of the vaccination? | The law does not have an express provision covering this situation. The customary practice is for employers to reimburse employees for related expenses when the employer requires the employee to engage in a specific activity (e.g., travel, educational course, etc.). Therefore, an employer requiring an employee's vaccination would be expected to reimburse for the related expenses. Such reimbursement is not included in an employee's regular rate. Additionally, the employee would be paid as normal working hours for the time spent receiving the vaccination. |
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Other Legal Risks in Mandating

- | | |
|---|---|
| 12. Are there any other legal risks to consider in requiring employee vaccinations? (Please list) | Unless the industry is specifically subject to a government mandate or the employer receives express authorization from the government, an employee's refusal to have the vaccine cannot constitute a failure to comply with a reasonable management request. |
|---|---|

COVID-19 Vaccination



Employee Benefits

13. Can an employer provide inducements under its employee benefits plans (e.g., wellness programs) for those who are vaccinated? Yes.

14. Can an employer provide a bonus to employees who get vaccinated? Yes.

Union and/or Works Council Obligations

15. For workplaces in which collective representation arrangements apply, is an employer obligated to bargain with the union, or meet with the Works Council, prior to mandating employee vaccinations? Yes, but currently, employers cannot mandate employee vaccinations, unless the employer is in a company or in an industry subject to a mandatory vaccination requirement.

Privacy

16. Is the fact that an employee has, or has not, been vaccinated “health information” or “sensitive personal data” under your country’s data protection law (Y/N)? It is likely to be considered as “health information” and “sensitive personal data” under Chinese law.

17. If so, is this health information subject to the restrictions on processing applicable to “special categories of personal data” or “sensitive personal data”? Yes, it is likely subject to the restrictions.

18. If no, is that information nonetheless protected by applicable data protection law (Y/N)? Not applicable.

Record-Keeping Requirement

19. Is an employer required to maintain a record of an employee’s COVID-19 vaccination? Currently, no information is available.

20. If so, what are (if any) the specific record keeping requirements related to vaccinations? Not applicable.

COVID-19 Vaccination



Reporting Requirements

21. If an employee is vaccinated at the employer's directive, is the employer required to notify the governmental health authorities of employee's vaccination?

Currently, no information is available.

Teleworking Requirements

22. Can an employer unilaterally implement a teleworking (work from home) arrangement if an employee cannot or will not agree to be vaccinated?

Yes. It is at the discretion of the employer to implement a teleworking arrangement, as long as other terms and conditions of employment (especially salary and benefits) remain the same.

23. If telework is not an option, can an employer require employees who cannot or will not agree to vaccinate to not come into the workplace?

Yes. It is at the employer's discretion to ask an employee not to come to the workplace, as long as the employees are fully paid.

COVID-19 Vaccination



COLOMBIA

Current as of December 18, 2020

Access to Vaccine

1. Is there a priority list for the distribution of the COVID-19 vaccine? (include summary list)

According to the Ministry of Health and Social Protection, priority will be given to the following population groups:

1. people over 60 years old;
2. young people over 16 years old with comorbidities (such as hypertension, diabetes and cancer);
3. health personnel; and
4. the general population.

Cost of Vaccine

2. Will the vaccine be paid for by the applicable jurisdiction?

Under Law 2064 of 2020, the vaccine will be free of charge to all citizens.

Requirement of Vaccine

3. Is there a general requirement for individuals to be vaccinated after the COVID-19 vaccine is available?

Currently, no information is available.

4. Is the vaccine mandated in certain industries after it becomes available?

Currently, no information is available. However, it is expected that there will be a vaccination mandate for employees in the health care system and other types of activities (such as travel to countries where the vaccine is mandatory).

Employer-Mandated Vaccinations

5. Can an employer require current employees to be vaccinated?

To date, no regulations have addressed this, yet. Our preliminary opinion is that, generally, individual's constitutional right to free development of personality prevails and, therefore, no one can be forced to receive a vaccine.

However, there may be situations in which vaccination can be required for various social or labor activities. For example, if the type of work would affect the public health (e.g., medical personnel). It can also be mandatory when it would be impossible to perform the activity if the worker is not vaccinated (e.g., if the vaccine were mandatory in other countries, as would be the case for airline crews).

COVID-19 Vaccination



6. If so, is there legal protection to be excused from being vaccinated (e.g., religious accommodation/disability accommodation)?

Our preliminary opinion is that no one can be obliged to receive the vaccine due to their constitutional rights. However, employers or government entities may require the vaccine depending on the industry or activity (e.g., to operate elderly care centers).

Applicants for Employment (Pre-Hire Stage)

7. Can an employer require applicants to be vaccinated as a condition of hire?

There are no regulations, yet, nevertheless in the selection process it would not be discriminatory to request the vaccine certificate as an admission requirement.

8. Can employers ask applicants if they have been vaccinated?

As mentioned, there is no regulation on the subject, but there are no prohibitions against employers doing so.

9. Can employers refuse to hire applicants that are unwilling to be vaccinated or have not yet been vaccinated?

There are no regulations, yet, nevertheless in the selection process it would not be discriminatory to request the vaccine certificate as an admission requirement.

10. Is there legal protection for applicants to be excused from being vaccinated (e.g. religious accommodation/disability accommodation)?

While there are no regulations specifically addressing this, it is unlikely that anyone can be forced to get the vaccine. However, the government can mandate the vaccine for some activities or social interactions.

Wage and Hour

11. If vaccinations are required, are employees entitled to reimbursement for the cost of the vaccination?

Under Law 2064 of 2020, the vaccine will be free of charge to all citizens.

Other Legal Risks in Mandating

12. Are there any other legal risks to consider in requiring employee vaccinations? (Please list)

There may be risks related to any secondary effect of the vaccine, but this issue has not been addressed by guidance, rule or regulation.

Employee Benefits

13. Can an employer provide inducements under its employee benefits plans (e.g., wellness programs) for those who are vaccinated?

Any distinction in the benefit plans must be objective, reasonable and justified.

14. Can an employer provide a bonus to employees who get vaccinated?

Any distinction in the benefit plans must be objective, reasonable and justified.

COVID-19 Vaccination



Union and/or Works Council Obligations

15. For workplaces in which collective representation arrangements apply, is an employer obligated to bargain with the union, or meet with the Works Council, prior to mandating employee vaccinations?

In Colombia, there are no requirements that a worker must be a member of a trade union or works council. If the worker is a member of a union organization, it does not mean that the worker only communicates with the employer through the union. The worker continues to have his or her own representation, except for negotiating the conditions of the demands of the union; such negotiations are conducted by union negotiators on behalf of all unionized workers.

Privacy

16. Is the fact that an employee has, or has not, been vaccinated “health information” or “sensitive personal data” under your country’s data protection law (Y/N)?

Law 1581 of 2012 and Regulatory Decree 1377 of 2013 set forth a rigorous protection of personal information. This protection is extended to the employees’ information contained in the employer’s databases and files. Especially sensitive information, such as the employee’s medical records, can only be handled by the company’s medical personnel and must be filed in special conditions and not in the worker’s folder. However, currently, there is no specific guidance on this issue.

17. If so, is this health information subject to the restrictions on processing applicable to “special categories of personal data” or “sensitive personal data”?

See Question 16.

18. If no, is that information nonetheless protected by applicable data protection law (Y/N)?

See Question 16.

Record-Keeping Requirement

19. Is an employer required to maintain a record of an employee’s COVID-19 vaccination?

See Question 16.

20. If so, what are (if any) the specific record keeping requirements related to vaccinations?

See Question 16.

Reporting Requirements

21. If an employee is vaccinated at the employer’s directive, is the employer required to notify the governmental health authorities of employee’s vaccination?

Currently, there is no official guidance addressing this issue.

COVID-19 Vaccination



Teleworking Requirements

22. Can an employer unilaterally implement a teleworking (work from home) arrangement if an employee cannot or will not agree to be vaccinated?

Currently, there is no official guidance addressing this issue.

23. If telework is not an option, can an employer require employees who cannot or will not agree to vaccinate to not come into the workplace?

The law determines the reasons for dismissals in a restricted way. Employers in this situation should seek legal counsel.

COVID-19 Vaccination



CUBA

Current as of December 22, 2020

Access to Vaccine

1. Is there a priority list for the distribution of the COVID-19 vaccine? (include summary list)

The secretary of Health has the following priority:

1. healthcare personnel;
2. workers in essential and critical industries;
3. people at high risk for severe COVID-19 illness due to underlying medical conditions; and
4. people 60 years and older.

After these groups have been vaccinated, the general population will be vaccinated also by priorities.

Cost of Vaccine

2. Will the vaccine be paid for by the applicable jurisdiction?

Yes.

Requirement of Vaccine

3. Is there a general requirement for individuals to be vaccinated after the COVID-19 vaccine is available?

Yes, vaccination will be mandatory.

4. Is the vaccine mandated in certain industries after it becomes available?

The government will be implementing a general mandatory vaccination of the population.

Employer-Mandated Vaccinations

5. Can an employer require current employees to be vaccinated?

Yes. An employer may unilaterally require all of its employees to be vaccinated. Only applicable and properly demonstrated medical exemptions apply. No religious exceptions are recognized.

6. If so, is there legal protection to be excused from being vaccinated (e.g., religious accommodation/disability accommodation)?

Individuals may be exempted from the vaccination mandate based on a proven medical condition.

COVID-19 Vaccination



Applicants for Employment (Pre-Hire Stage)

- | | |
|---|---|
| 7. Can an employer require applicants to be vaccinated as a condition of hire? | Yes. |
| 8. Can employers ask applicants if they have been vaccinated? | Yes. |
| 9. Can employers refuse to hire applicants that are unwilling to be vaccinated or have not yet been vaccinated? | Yes. |
| 10. Is there legal protection for applicants to be excused from being vaccinated (e.g. religious accommodation/disability accommodation)? | Individuals may be exempted from the vaccination mandate based on a proven medical condition. |

Wage and Hour

- | | |
|--|--|
| 11. If vaccinations are required, are employees entitled to reimbursement for the cost of the vaccination? | Yes, except that such reimbursement would not apply to employees in the public sector. |
|--|--|

Other Legal Risks in Mandating

- | | |
|---|---------------|
| 12. Are there any other legal risks to consider in requiring employee vaccinations? (Please list) | None to date. |
|---|---------------|

Employee Benefits

- | | |
|---|------|
| 13. Can an employer provide inducements under its employee benefits plans (e.g., wellness programs) for those who are vaccinated? | Yes. |
| 14. Can an employer provide a bonus to employees who get vaccinated? | Yes. |

COVID-19 Vaccination



Union and/or Works Council Obligations

15. For workplaces in which collective representation arrangements apply, is an employer obligated to bargain with the union, or meet with the Works Council, prior to mandating employee vaccinations?

No.

Privacy

16. Is the fact that an employee has, or has not, been vaccinated “health information” or “sensitive personal data” under your country’s data protection law (Y/N)?

Cuba does not have a data protection law. However, information about an individual’s vaccination is considered health information and, as such, it is private and confidential.

17. If so, is this health information subject to the restrictions on processing applicable to “special categories of personal data” or “sensitive personal data”?

Yes.

18. If no, is that information nonetheless protected by applicable data protection law (Y/N)?

See Questions 16 and 17.

Record-Keeping Requirement

19. Is an employer required to maintain a record of an employee’s COVID-19 vaccination?

Currently, there is no guidance concerning employers’ obligations to maintain a record specifically about an employee’s COVID-19 vaccination. Generally, employers may maintain occupational health and safety records on employees, but are not required.

20. If so, what are (if any) the specific record keeping requirements related to vaccinations?

See Question 19.

Reporting Requirements

21. If an employee is vaccinated at the employer’s directive, is the employer required to notify the governmental health authorities of employee’s vaccination?

Yes.

COVID-19 Vaccination



Teleworking Requirements

22. Can an employer unilaterally implement a teleworking (work from home) arrangement if an employee cannot or will not agree to be vaccinated?

Yes.

23. If telework is not an option, can an employer require employees who cannot or will not agree to vaccinate to not come into the workplace?

Yes, except that employers cannot dismiss employees under these circumstances. Rather, an employer would need to file a request to the Department of Labor and the employment agency seeking a replacement.



CZECH REPUBLIC

Current as of December 23, 2020

Access to Vaccine

1. Is there a priority list for the distribution of the COVID-19 vaccine? (include summary list)

The Ministry of Health of the Czech Republic recently introduced a document called "Vaccination Strategy against COVID-19 pandemic," which recommends a phased distribution, based on prioritization of groups of the population, with the first priority being:

1. people 65 years and older and people at high risk for severe COVID-19 illness due to underlying medical conditions;
2. healthcare personnel;
3. residential and relief social services workers and clients, home health care providers;
4. workers in essential and critical industries;
5. other employees of public health protection bodies performing state health supervision and employees of other state administrative bodies performing control activities.

Other groups will receive vaccines at a later stage, as more vaccines become available.

Cost of Vaccine

2. Will the vaccine be paid for by the applicable jurisdiction?

The vaccine will be free of charge (i.e., paid by the state from the health insurance system).

Requirement of Vaccine

3. Is there a general requirement for individuals to be vaccinated after the COVID-19 vaccine is available?

No, the vaccination will be optional.

4. Is the vaccine mandated in certain industries after it becomes available?

Currently, no information is available. However, it can be presumed that the vaccination could be mandated, for example, for some healthcare personnel, critical industries workers, etc.

Employer-Mandated Vaccinations

5. Can an employer require current employees to be vaccinated?

No. Unless required by law, an employer cannot require current employees to be vaccinated.

COVID-19 Vaccination



6. If so, is there legal protection to be excused from being vaccinated (e.g., religious accommodation/disability accommodation)?

Not applicable.

Applicants for Employment (Pre-Hire Stage)

7. Can an employer require applicants to be vaccinated as a condition of hire?

No. Unless required by law, an employer cannot require applicants to be vaccinated as a condition of hire.

8. Can employers ask applicants if they have been vaccinated?

No.

9. Can employers refuse to hire applicants that are unwilling to be vaccinated or have not yet been vaccinated?

No. It can be considered discriminatory.

10. Is there legal protection for applicants to be excused from being vaccinated (e.g. religious accommodation/disability accommodation)?

Not applicable.

Wage and Hour

11. If vaccinations are required, are employees entitled to reimbursement for the cost of the vaccination?

Not applicable (the employer cannot require the vaccination, unless required by law). However, the customary practice is for employers to reimburse employees for related expenses when the employer is requiring the employee to engage in a specific activity (e.g., travel, educational course, etc.). Therefore, an employer requiring an employee's vaccination would be expected to reimburse for the related expenses. Such reimbursement is not included in an employee's regular wages. In addition, the employee would be entitled to get vaccinated during the working time or provided time off to get vaccinated.

Other Legal Risks in Mandating

12. Are there any other legal risks to consider in requiring employee vaccinations? (Please list)

Not applicable.

COVID-19 Vaccination



Employee Benefits

13. Can an employer provide inducements under its employee benefits plans (e.g., wellness programs) for those who are vaccinated?

It can be considered discriminatory and we would not recommend taking this approach. Instead, the employees can be offered a benefit plan, including voluntary vaccination and be encouraged by the employer to get vaccinated.

14. Can an employer provide a bonus to employees who get vaccinated?

It can be considered discriminatory.

Union and/or Works Council Obligations

15. For workplaces in which collective representation arrangements apply, is an employer obligated to bargain with the union, or meet with the Works Council, prior to mandating employee vaccinations?

Not applicable.

Privacy

16. Is the fact that an employee has, or has not, been vaccinated "health information" or "sensitive personal data" under your country's data protection law (Y/N)?

Yes.

17. If so, is this health information subject to the restrictions on processing applicable to "special categories of personal data" or "sensitive personal data"?

Data on vaccination status are considered as a special category of personal data (sensitive personal data and health information) and thus require the fulfilment of the specific conditions described in Article 9 of the GDPR. Under Czech law, the employer may not require employee information that does not directly relate to performance of work and to the basic employment relationship. We are of the view that, under the current circumstances, requiring the information on a vaccination status from an employee would be a demand exceeding the acceptable measures that may be adopted by the employer in line with its general obligation to ensure health and safety at a workplace.

18. If no, is that information nonetheless protected by applicable data protection law (Y/N)?

Not applicable. See Question 17.

COVID-19 Vaccination



Record-Keeping Requirement

19. Is an employer required to maintain a record of an employee's COVID-19 vaccination? Not applicable.

20. If so, what are (if any) the specific record keeping requirements related to vaccinations? Not applicable.

Reporting Requirements

21. If an employee is vaccinated at the employer's directive, is the employer required to notify the governmental health authorities of employee's vaccination? Not applicable.

Teleworking Requirements

22. Can an employer unilaterally implement a teleworking (work from home) arrangement if an employee cannot or will not agree to be vaccinated? Under Czech law, work from home must be agreed between the employer and the employee. It cannot be ordered unilaterally by the employer.

23. If telework is not an option, can an employer require employees who cannot or will not agree to vaccinate to not come into the workplace? Yes. However, an employee will be entitled to 100% salary compensation while staying at home (from the Czech law perspective an employee stays at home for the obstacles at work on part of the employer).



DOMINICAN REPUBLIC

Current as of December 21, 2020

Access to Vaccine

1. Is there a priority list for the distribution of the COVID-19 vaccine? (include summary list)

The Minister of Health has announced the following priority list to receive the vaccine:

1. medical staff;
2. police and military groups;
3. people age 65 or older, people with underlying medical conditions (such as hypertension, diabetes, and other catastrophic health conditions).

Cost of Vaccine

2. Will the vaccine be paid for by the applicable jurisdiction?

The government of the Dominican Republic has already paid US \$40 million to AstraZeneca, for the acquisition of 10 million doses to guarantee the vaccination of the entire Dominican population. The vaccines will begin arriving in February 2021 and the application process has been set to begin in March 2021.

Requirement of Vaccine

3. Is there a general requirement for individuals to be vaccinated after the COVID-19 vaccine is available?

Currently, no information is available.

4. Is the vaccine mandated in certain industries after it becomes available?

Currently, no information is available.

Employer-Mandated Vaccinations

5. Can an employer require current employees to be vaccinated?

An employer cannot require employees to be vaccinated unless the industry is specifically subject to a government mandate or the employer receives express authorization from the government.

6. If so, is there legal protection to be excused from being vaccinated (e.g., religious accommodation/disability accommodation)?

In the Dominican Republic, the constitution guarantees freedom of religion, however, articles 64 and 68 of the General Health Law establish that the Minister of Health will determine the vaccination procedure. In some cases, even if the World Health Organization made it mandatory for the entire population to receive the vaccine, individuals may qualify for an exemption, based on their medical conditions or religious beliefs.

COVID-19 Vaccination



Applicants for Employment (Pre-Hire Stage)

7. Can an employer require applicants to be vaccinated as a condition of hire?	Yes, for the sole purpose of protecting the company. Even if it were perceived as discriminatory, the employee's right to health and safety is greater than an applicant's right to work.
8. Can employers ask applicants if they have been vaccinated?	Yes.
9. Can employers refuse to hire applicants that are unwilling to be vaccinated or have not yet been vaccinated?	Yes.
10. Is there legal protection for applicants to be excused from being vaccinated (e.g. religious accommodation/disability accommodation)?	In the Dominican Republic, the constitution guarantees freedom of religion, however, articles 64 and 68 of the General Health Law establish that the Minister of Health will determine the vaccination procedure. In some cases, even if the World Health Organization made it mandatory for the entire population to receive the vaccine, individuals may qualify for an exemption, based on their medical conditions or religious beliefs.

Wage and Hour

11. If vaccinations are required, are employees entitled to reimbursement for the cost of the vaccination?	The Dominican government will pay for the vaccine, so employees will receive it at no cost. In no case will employees pay for the vaccine.
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Other Legal Risks in Mandating

12. Are there any other legal risks to consider in requiring employee vaccinations? (Please list)	See Question 16.
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Employee Benefits

13. Can an employer provide inducements under its employee benefits plans (e.g., wellness programs) for those who are vaccinated?	Yes.
14. Can an employer provide a bonus to employees who get vaccinated?	Yes.

COVID-19 Vaccination



Union and/or Works Council Obligations

15. For workplaces in which collective representation arrangements apply, is an employer obligated to bargain with the union, or meet with the Works Council, prior to mandating employee vaccinations?

It depends on what the collective bargain with the union establishes, although in the Dominican Republic it is not frequent or usual to see this type of protection in the collective agreement.

Privacy

16. Is the fact that an employee has, or has not, been vaccinated "health information" or "sensitive personal data" under your country's data protection law (Y/N)?

Yes, in the Dominican Republic, Law 172-13 on Data Protection penalizes the use of personal information (data) without consent and prior notification to the employee. Likewise, said data should be stored under the label of "sensitive personal data."

17. If so, is this health information subject to the restrictions on processing applicable to "special categories of personal data" or "sensitive personal data"?

Yes, by virtue of article 6 of Law 172-13 on Data Protection, the person who manages the data has the duty of secrecy of this information. There is also a storage obligation to label such information as "sensitive personal data."

18. If no, is that information nonetheless protected by applicable data protection law (Y/N)?

Yes.

Record-Keeping Requirement

19. Is an employer required to maintain a record of an employee's COVID-19 vaccination?

No. Currently there is no obligation for the employer to maintain a record of an employee's COVID-19 vaccination.

20. If so, what are (if any) the specific record keeping requirements related to vaccinations?

Not applicable.

Reporting Requirements

21. If an employee is vaccinated at the employer's directive, is the employer required to notify the governmental health authorities of employee's vaccination?

The vaccination process has not yet been designated by the government; however, the prospect so far is for the government to keep records and administer the vaccine.

COVID-19 Vaccination



Teleworking Requirements

22. Can an employer unilaterally implement a teleworking (work from home) arrangement if an employee cannot or will not agree to be vaccinated?

Any arrangement of telework under the Resolution 23-2020 of the Minister of Labor must be done under mutual consent, so the employer cannot do it unilaterally.

23. If telework is not an option, can an employer require employees who cannot or will not agree to vaccinate to not come into the workplace?

In this situation, if the employer requires an employee to stay home and fails to pay him or her a salary, this would be a suspension, which cannot be maintained, and a termination without cause, which would require payment of compensation and benefits.

COVID-19 Vaccination



EGYPT

Current as of December 21, 2020

Access to Vaccine

1. Is there a priority list for the distribution of the COVID-19 vaccine? (include summary list)

According to the Egyptian Ministry of Health, distribution will be based on prioritization of different categories of the population, with the first priority being:

1. frontline healthcare workers, particularly in hospitals, isolation wards, and respiratory clinics;
2. cancer patients; and
3. those suffering organ failure, particularly kidney failure.

The anticipated prioritization is yet to be officially confirmed by decree or other regulation. There is yet no timeline by which other categories of the population will be vaccinated. Further, news reports indicate that individuals with chronic diseases and the elderly are amongst those prioritized to receive the vaccine.

Cost of Vaccine

2. Will the vaccine be paid for by the applicable jurisdiction?

According to news reports, President Abdel Fattah El Sisi has ordered the Ministry of Health to ensure the vaccine is administered free of charge to the Egyptian population. This, however, has yet to be officially confirmed or ratified by virtue of an official government statement or regulation.

Requirement of Vaccine

3. Is there a general requirement for individuals to be vaccinated after the COVID-19 vaccine is available?

Currently, there is no conclusive information in this regard. Based on news reports, it is likely that the vaccine will be optional.

4. Is the vaccine mandated in certain industries after it becomes available?

Currently, there is no information available in this regard. However, based on the above prioritization list, it seems likely that those working in the healthcare sector will be required to take the vaccine.

COVID-19 Vaccination



Employer-Mandated Vaccinations

5. Can an employer require current employees to be vaccinated?

Under Egyptian Law, there is currently no express provision allowing employers to require employees to be vaccinated. There is also no express provision prohibiting the same.

The Egyptian Labor Law requires employers to take measures to protect their employees from the risk of infection with bacteria and viruses whenever the nature of the work exposes the employees to infection. In light of this, employers may rely on this provision to require employees to be vaccinated, depending on the nature of their work and the extent to which they are likely to be exposed to the virus.

6. If so, is there legal protection to be excused from being vaccinated (e.g., religious accommodation/disability accommodation)?

According to Law No. 137 of 1958 regulating health precautions to prevent infectious diseases, which is applicable to COVID-19, an individual may be exempt from a vaccination provided they present a certificate from a licensed doctor evidencing that such individual has been vaccinated, or that the vaccination should be postponed and the reasons for such postponement, or recommending a permanent exemption from such vaccination. The law, however, does not expressly provide for the grounds according to which said exemption may be granted.

Applicants for Employment (Pre-Hire Stage)

7. Can an employer require applicants to be vaccinated as a condition of hire?

The law does not contain an express provision covering this situation. Nonetheless, the law requires employers to ensure employees undertake preliminary medical examinations prior to starting work to ensure their health and safety in accordance with the type of work to be undertaken. In light of this requirement, an employer may require applicants to be vaccinated if so required based on the type of work to be undertaken by employees and if it is deemed necessary to ensure their health and safety.

8. Can employers ask applicants if they have been vaccinated?

There is no express provision in the law prohibiting employers from asking the same.

9. Can employers refuse to hire applicants that are unwilling to be vaccinated or have not yet been vaccinated?

The law does not have an express provision covering this situation. As indicated in Question 7, employers may require employees to be vaccinated should the nature of their work require the same. In light of this, there is no express provision in the law that prohibits an employer from refusing to hire an applicant who is unwilling to be vaccinated if, based on their assessment of the nature of the work to be undertaken, taking a vaccine is crucial.

10. Is there legal protection for applicants to be excused from being vaccinated (e.g. religious accommodation/disability accommodation)?

See Question 6.

COVID-19 Vaccination



Wage and Hour

11. If vaccinations are required, are employees entitled to reimbursement for the cost of the vaccination?

The law does not expressly require the employer to reimburse employees for the cost of the vaccination or for the costs of the preliminary medical examination prior to being hired.

The customary practice is for employers to reimburse employees for expenses incurred by the employee when engaging in activities within the realm of their employment. This includes undertaking any medical examinations or procedures requested by their employer (e.g., taking a certain vaccine). If an employee is being asked to undertake a medical exam or a vaccine during working hours, then no pay shall be deducted during this time.

Other Legal Risks in Mandating

12. Are there any other legal risks to consider in requiring employee vaccinations? (Please list)

Employers should also consider employees' privacy rights (see Question 16).

Employee Benefits

13. Can an employer provide inducements under its employee benefits plans (e.g., wellness programs) for those who are vaccinated?

Yes.

14. Can an employer provide a bonus to employees who get vaccinated?

Yes.

Union and/or Works Council Obligations

15. For workplaces in which collective representation arrangements apply, is an employer obligated to bargain with the union, or meet with the Works Council, prior to mandating employee vaccinations?

Not applicable.

Privacy

16. Is the fact that an employee has, or has not, been vaccinated "health information" or "sensitive personal data" under your country's data protection law (Y/N)?

The Personal Data Protection Law states that the health status of a person is sensitive personal data that is subject to strict privacy rules. It does not elaborate on whether vaccine status is included in such definition.

COVID-19 Vaccination



17. If so, is this health information subject to the restrictions on processing applicable to “special categories of personal data” or “sensitive personal data”?

Under the Personal Data Protection Law, any data regarding the mental, physical, or genetic health of an individual is classified as “sensitive personal data.” Said data is subject to certain restrictions within the provisions of the law, including a restriction on collecting, transferring, storing, saving, or processing sensitive personal data without a license.

18. If no, is that information nonetheless protected by applicable data protection law (Y/N)?

Not applicable.

Record-Keeping Requirement

19. Is an employer required to maintain a record of an employee’s COVID-19 vaccination?

Currently, the law does not contain an express provision covering this situation.

20. If so, what are (if any) the specific record keeping requirements related to vaccinations?

Currently, the law does not contain an express provision covering this situation. The Labor Law mandates that each employer keep a physical file related to each employee, which shall be kept at the employer’s premises in Egypt. The file (which contains copies of identification documents, employment contract, etc.) must be maintained for at least one year after termination of employment.

Reporting Requirements

21. If an employee is vaccinated at the employer’s directive, is the employer required to notify the governmental health authorities of employee’s vaccination?

Currently, the law does not contain an express provision covering this situation.

Teleworking Requirements

22. Can an employer unilaterally implement a teleworking (work from home) arrangement if an employee cannot or will not agree to be vaccinated?

Currently, the law does not contain an express provision covering this situation. Nonetheless, there is no express provision prohibiting an employer from implementing the same.

23. If telework is not an option, can an employer require employees who cannot or will not agree to vaccinate to not come into the workplace?

Currently, the law does not contain an express provision covering this situation. Nonetheless, there is no express provision prohibiting an employer from enforcing the same.

COVID-19 Vaccination



EL SALVADOR

Current as of December 28, 2020

Access to Vaccine

1. Is there a priority list for the distribution of the COVID-19 vaccine? (include summary list)

El Salvador's President and the Ministry of Health have declared that there will be a phased distribution, based on prioritization of groups of the population, with the first priority being:

1. healthcare personnel, police, and army;
2. people older than 50 years and at high risk for severe COVID-19 illness due to underlying medical conditions; and
3. then the rest of the population.

Cost of Vaccine

2. Will the vaccine be paid for by the applicable jurisdiction?

According to the government, the vaccine will be free of charge and available to the general population.

Requirement of Vaccine

3. Is there a general requirement for individuals to be vaccinated after the COVID-19 vaccine is available?

Currently, no information is available.

4. Is the vaccine mandated in certain industries after it becomes available?

Currently, no information is available.

Employer-Mandated Vaccinations

5. Can an employer require current employees to be vaccinated?

An employer absolutely cannot require employees to be vaccinated, unless the industry is specifically subject to a government mandate or the employer receives express authorization from the government. To date, there is no information about such mandate or authorization.

6. If so, is there legal protection to be excused from being vaccinated (e.g., religious accommodation/disability accommodation)?

Since the vaccine will be optional, individuals will be free to decide whether to be vaccinated.

COVID-19 Vaccination



Applicants for Employment (Pre-Hire Stage)

- | | |
|---|---|
| 7. Can an employer require applicants to be vaccinated as a condition of hire? | No, it would be considered as an act of discrimination. |
| 8. Can employers ask applicants if they have been vaccinated? | No, it would be considered as an act of discrimination. |
| 9. Can employers refuse to hire applicants that are unwilling to be vaccinated or have not yet been vaccinated? | Inquiring whether a candidate is vaccinated can be considered an act of discrimination. Employers cannot refuse to hire based on this reason. |
| 10. Is there legal protection for applicants to be excused from being vaccinated (e.g. religious accommodation/disability accommodation)? | Since the vaccine will be optional, individuals will be free to decide whether to be vaccinated. |

Wage and Hour

- | | |
|--|---|
| 11. If vaccinations are required, are employees entitled to reimbursement for the cost of the vaccination? | Since the vaccine will be free for the population, employees will not be able to be reimbursed for it. Also, the law is silent on whether employees should be reimbursed for time spent receiving vaccinations. |
|--|---|

Other Legal Risks in Mandating

- | | |
|---|---|
| 12. Are there any other legal risks to consider in requiring employee vaccinations? (Please list) | In addition to what has been mentioned above, related risks pertain to the right to privacy pertaining to health information and the implications of a constructive dismissal (see Questions 16-18 and 23). |
|---|---|

Employee Benefits

- | | |
|---|--|
| 13. Can an employer provide inducements under its employee benefits plans (e.g., wellness programs) for those who are vaccinated? | This practice would be considered discriminatory because it would promote disparate treatment based on an employee's decision not to get vaccinated. |
| 14. Can an employer provide a bonus to employees who get vaccinated? | See Question 13. |

COVID-19 Vaccination



Union and/or Works Council Obligations

15. For workplaces in which collective representation arrangements apply, is an employer obligated to bargain with the union, or meet with the Works Council, prior to mandating employee vaccinations?

Even if an employer and the union agreed to implement such a mandate, such provision within the written agreement would be considered null and void for being in violation of employee rights.

Privacy

16. Is the fact that an employee has, or has not, been vaccinated “health information” or “sensitive personal data” under your country’s data protection law (Y/N)?

Yes. Generally, health information is considered sensitive information and protected under an individual’s constitutional right to privacy.

17. If so, is this health information subject to the restrictions on processing applicable to “special categories of personal data” or “sensitive personal data”?

Although no legislation expressly regulates privacy in labor matters, a person’s health data is considered sensitive information and protected under the privacy laws. Unlawful infringement of the right to privacy—such as obtaining health data without consent or unlawfully disclosing it to third parties—constitutes a tortious act, which can form the basis for damages.

18. If no, is that information nonetheless protected by applicable data protection law (Y/N)?

Not applicable.

Record-Keeping Requirement

19. Is an employer required to maintain a record of an employee’s COVID-19 vaccination?

Currently, no information is available.

20. If so, what are (if any) the specific record keeping requirements related to vaccinations?

Not applicable.

Reporting Requirements

21. If an employee is vaccinated at the employer’s directive, is the employer required to notify the governmental health authorities of employee’s vaccination?

Currently, no information is available.

COVID-19 Vaccination



Teleworking Requirements

22. Can an employer unilaterally implement a teleworking (work from home) arrangement if an employee cannot or will not agree to be vaccinated?

Teleworking cannot be implemented unilaterally in an existing working relationship. Rather, it will require the agreement of both parties. Such an arrangement can be implemented unilaterally only when a new working relationship is starting.

23. If telework is not an option, can an employer require employees who cannot or will not agree to vaccinate to not come into the workplace?

Not allowing employees to come into the workplace will be considered an act of discrimination and constructive dismissal. Employers should consider whether accommodations can be made.



FRANCE

Current as of December 23, 2020

Access to Vaccine

1. Is there a priority list for the distribution of the COVID-19 vaccine? (include summary list)

On November 30, 2020, the French National Authority for Health (HAS) issued recommendations to establish the vaccination strategy. It thus identifies five phases of vaccination, according to the types of public: Phases 1, 2, and 3 follow the vaccination of all people at risk of severe COVID-19 illness, with the aim of reducing hospitalizations and deaths, as well as people highly exposed to the virus.

Within Phase 1, to occur in January and February 2021, the priority includes elderly people living in institutions; professionals working in said institutions; and at risk for severe COVID-19 illness (over 65 years old, having underlying medical conditions). Phases 4 and 5 will grant access to the vaccination to those over 18 without underlying medical conditions.

Cost of Vaccine

2. Will the vaccine be paid for by the applicable jurisdiction?

Yes, the vaccine will be made available free of charge in France.

Requirement of Vaccine

3. Is there a general requirement for individuals to be vaccinated after the COVID-19 vaccine is available?

No, for the time being one of the core principles of the vaccination scheme is that the vaccine is available on a voluntary basis.

4. Is the vaccine mandated in certain industries after it becomes available?

No.

Employer-Mandated Vaccinations

5. Can an employer require current employees to be vaccinated?

No, an employer cannot require its employees to be vaccinated if this possibility is not provided for by the law. In France, for the time being, there are no such provisions.

Except in cases of compulsory vaccination, vaccination may solely be recommended by the employer, upon the occupational physician's recommendation and if it appears to be relevant, to employees who are not immunized against pathogenic biological agents to which they might be exposed.

Thus, if the vaccination against COVID-19 is not made compulsory by the French Public Health Code, it cannot be imposed on employees by employers.

COVID-19 Vaccination



6. If so, is there legal protection to be excused from being vaccinated (e.g., religious accommodation/disability accommodation)?

Not applicable.

Applicants for Employment (Pre-Hire Stage)

7. Can an employer require applicants to be vaccinated as a condition of hire?

The general answer is that this would be considered discriminatory.

The information requested from a candidate, in any form whatsoever: (1) should only allow the employer to assess the candidate's ability to take up the job under consideration; and (2) must have a direct and necessary link with the position. Therefore, the employer cannot ask the candidate, except in very few cases justified by the very specific nature of the position to be filled or, where applicable, the rules in force in the foreign country concerned by the position, for information about the candidate's medical condition.

Therefore, if it is not allowed to request that information, unless under very specific circumstances. Further, it is not possible to take such information into account in the hiring process unless this has a direct and necessary link with the position.

8. Can employers ask applicants if they have been vaccinated?

The general answer is that this would be considered discriminatory.

The information requested from a candidate, in any form whatsoever: (1) should only allow the employer to assess the candidate's ability to take up the job under consideration, and (2) must have a direct and necessary link with the position. Therefore, the employer cannot ask the candidate, except in very few cases justified by the very specific nature of the position to be filled or, where applicable, the rules in force in the foreign country concerned by the position, for information about the candidate's medical condition.

Therefore, the employer cannot ask the candidate about his or her medical condition, except in very few cases justified by the very specific nature of the position to be filled or, where applicable, the rules in force in the foreign country concerned by the position.

9. Can employers refuse to hire applicants that are unwilling to be vaccinated or have not yet been vaccinated?

The general answer is that this would be considered discriminatory unless it is justified by the very specific nature of the position to be filled or, where applicable, the rules in force in the foreign country concerned by the position.

10. Is there legal protection for applicants to be excused from being vaccinated (e.g. religious accommodation/disability accommodation)?

Not applicable.

COVID-19 Vaccination



Wage and Hour

11. If vaccinations are required, are employees entitled to reimbursement for the cost of the vaccination? Not applicable.

Other Legal Risks in Mandating

12. Are there any other legal risks to consider in requiring employee vaccinations? (Please list) Yes. See Questions 13-14 (employee benefits), 16-18 (privacy), and 24-25 (teleworking).

Employee Benefits

13. Can an employer provide inducements under its employee benefits plans (e.g., wellness programs) for those who are vaccinated? No. Granting a benefit of any kind whatsoever upon the injection of a vaccine might be highly questionable in terms of discrimination and violation of the employee's rights and liberties. Although employers are rather free in determining the conditions under which they may grant benefits to their employees, this allocation cannot be tantamount to a discrimination or attempt to take away the employees' rights and liberties.

14. Can an employer provide a bonus to employees who get vaccinated? No. See Question 13.

Union and/or Works Council Obligations

15. For workplaces in which collective representation arrangements apply, is an employer obligated to bargain with the union, or meet with the Works Council, prior to mandating employee vaccinations? Employee representatives must be consulted on issues such as this.

Privacy

16. Is the fact that an employee has, or has not, been vaccinated "health information" or "sensitive personal data" under your country's data protection law (Y/N)? Yes, and except in the event of unfitness declared by the occupational physician or for specific work for which the employee's medical condition is decisive, the employer cannot question the employee about his or her medical condition and collect data on this matter.

17. If so, is this health information subject to the restrictions on processing applicable to "special categories of personal data" or "sensitive personal data"? See Question 16. The employer cannot collect such information except under very specific circumstances. If collected, that information will be subject to the "specific" processing scheme provided for according to the data protection regulation.

18. If no, is that information nonetheless protected by applicable data protection law (Y/N)? Not applicable.

COVID-19 Vaccination



Record-Keeping Requirement

19. Is an employer required to maintain a record of an employee's COVID-19 vaccination?

No.

20. If so, what are (if any) the specific record keeping requirements related to vaccinations?

To date, there are no regulations or guidance on this issue.

Reporting Requirements

21. If an employee is vaccinated at the employer's directive, is the employer required to notify the governmental health authorities of employee's vaccination?

To date, there are no regulations or guidance on this issue.

Teleworking Requirements

22. Can an employer unilaterally implement a teleworking (work from home) arrangement if an employee cannot or will not agree to be vaccinated?

An employer can require employees to work from home, even without their consent (except that consent is required for protected employees, such as elected members of a Works Council).

23. If telework is not an option, can an employer require employees who cannot or will not agree to vaccinate to not come into the workplace?

If telework is not an option, the employer can modify the dates of employees' paid leaves that already have been scheduled. If the employee does not have paid leave scheduled yet, the employer cannot force them to use the paid leaves, unless the collective bargaining agreement, the employment contract, or the company rules specifically authorize the employer to do so. If employees refuse to use their paid leaves, or do not have enough paid leaves left, the employer can exempt them from work activities, but will have to pay them a salary.



GERMANY

Current as of December 21, 2020

Access to Vaccine

1. Is there a priority list for the distribution of the COVID-19 vaccine? (include summary list)

The Standing Committee of Vaccination has most recently passed and published a resolution on a recommended prioritization of vaccination that is as follows:

1. people 80 years or older; residents of retirement homes and their care personnel; healthcare personnel with very high exposure risk and/or with close contact with vulnerable groups;
2. people 75-79 years; healthcare personnel with high exposure risk; people with dementia and intellectual disability and their care personnel; people with Down syndrome
3. people 70-74 years; people after organ transplantation; people with pre-existing disease with high risk; residents and workers in community accommodations; close contacts of pregnant women; close contacts or caregivers of persons with high risk; healthcare personnel with moderate exposure risk including those relevant for maintaining hospital infrastructure; sub-sectors of the public health service;
4. people 65-69 years; people with pre-existing disease with moderately elevated risk and their closest contacts; healthcare personnel with limited exposure risk; teachers; educators; people with precarious working and/or life conditions;
5. people 60-64 years; individuals in key positions in federal and state government; retail trade employees; employees for the maintenance of public safety with increased risk of exposure; critical infrastructure professional groups; and
6. people under 60.

Cost of Vaccine

2. Will the vaccine be paid for by the applicable jurisdiction?

Funding for the vaccines is provided by the federal government. The costs of operating the vaccination centers are shared by the federal states with the statutory and private health insurances.

Requirement of Vaccine

3. Is there a general requirement for individuals to be vaccinated after the COVID-19 vaccine is available?

No, there is no general obligation to vaccinate. Although Section 20 (6) and (7) of the Infection Protection Act provide the possibility of enacting mandatory vaccination, the German government has emphasized that it will not impose mandatory vaccination for COVID-19.

COVID-19 Vaccination



4. Is the vaccine mandated in certain industries after it becomes available?

No, the vaccine is not mandated in certain industries. However, a mandatory vaccination for soldiers in the German armed forces is currently being discussed.

Employer-Mandated Vaccinations

5. Can an employer require current employees to be vaccinated?

An employer cannot unilaterally order its employees to be vaccinated. The physical integrity of the employees is comprehensively protected by their fundamental rights and a vaccination against their will would thus be an unjustified breach of fundamental rights. The employer could require vaccination only if this has been imposed by law (Infection Protection Act).

6. If so, is there legal protection to be excused from being vaccinated (e.g., religious accommodation/disability accommodation)?

Not applicable. However, in any case, vaccination that is contrary to the employee's religious beliefs is likely to constitute a violation of religious freedom. In addition, vaccine manufacturers have already announced that people who are often allergic to vaccines should not get vaccinated yet. If there is a medical reason not to vaccinate, it should not be required under any circumstances.

Applicants for Employment (Pre-Hire Stage)

7. Can an employer require applicants to be vaccinated as a condition of hire?

No, employers cannot require applicants to be vaccinated (see Question 5).

8. Can employers ask applicants if they have been vaccinated?

Questions about the employee's state of health are permitted if they are related to the prospected employee's job. The employer is allowed to ask about contagious diseases if they could lead to contagion among colleagues or customers. Based on current knowledge of the vaccine, though, even vaccinated individuals remain infectious and can transmit COVID-19. Consequently, there is no right to ask about the applicant's vaccination status.

9. Can employers refuse to hire applicants that are unwilling to be vaccinated or have not yet been vaccinated?

Since there is no legal obligation to vaccinate, employers cannot refuse to hire applicants who have not been vaccinated without an objective reason. Because employers are not allowed to ask whether an applicant has already been vaccinated, the lack of vaccination cannot, by definition, justify a refusal to hire.

10. Is there legal protection for applicants to be excused from being vaccinated (e.g. religious accommodation/disability accommodation)?

Not applicable. However, applicants are protected by the same fundamental rights as employees (see Questions 5 and 6).

COVID-19 Vaccination



Wage and Hour

11. If vaccinations are required, are employees entitled to reimbursement for the cost of the vaccination?

Not applicable. However, the COVID-19 vaccine is provided free of charge. A visit to the doctor for the vaccination must take place outside working hours and is, therefore, generally not remunerated.

Other Legal Risks in Mandating

12. Are there any other legal risks to consider in requiring employee vaccinations? (Please list)

As long as vaccination against COVID-19 is not required by law, such vaccination cannot be imposed by the employer.

Employee Benefits

13. Can an employer provide inducements under its employee benefits plans (e.g., wellness programs) for those who are vaccinated?

The employer may provide such incentives as long as it respects the general principle of equal treatment. Different treatment would only be permissible, if there is an objective reason. Since employers cannot force their employees to be vaccinated, being vaccinated or not does not qualify as an objective reason in this respect. If a Works Council exists, the distribution of any additional benefits is subject to information/consultation.

14. Can an employer provide a bonus to employees who get vaccinated?

See Question 13.

Union and/or Works Council Obligations

15. For workplaces in which collective representation arrangements apply, is an employer obligated to bargain with the union, or meet with the Works Council, prior to mandating employee vaccinations?

Not applicable. However, if the employer could mandate the vaccination, the Works Council would likely have corresponding information/consultation rights.

Privacy

16. Is the fact that an employee has, or has not, been vaccinated "health information" or "sensitive personal data" under your country's data protection law (Y/N)?

Yes.

17. If so, is this health information subject to the restrictions on processing applicable to "special categories of personal data" or "sensitive personal data"?

Yes, according to Article 9 of the EU's General Data Protection Regulation (GDPR), it is subject to the restrictions on "special categories of personal data."

COVID-19 Vaccination



18. If no, is that information nonetheless protected by applicable data protection law (Y/N)?

Not applicable.

Record-Keeping Requirement

19. Is an employer required to maintain a record of an employee's COVID-19 vaccination?

So far, no such obligation of the employer exists. Nevertheless, the Standing Commission on Vaccination advises that all vaccinations shall be recorded in a central database to be able to determine the vaccination rate. Should the employer at some time arrange voluntary vaccinations by a work doctor, the work doctor could possibly be required to document the vaccination performed.

20. If so, what are (if any) the specific record keeping requirements related to vaccinations?

Not applicable. However, any health data placed in the personal file must be protected against unauthorized accidental access by limiting the number of persons authorized to receive the information and by means of security (e.g., sealed envelope).

Reporting Requirements

21. If an employee is vaccinated at the employer's directive, is the employer required to notify the governmental health authorities of employee's vaccination?

Not applicable.

Teleworking Requirements

22. Can an employer unilaterally implement a teleworking (work from home) arrangement if an employee cannot or will not agree to be vaccinated?

The employer may unilaterally order the employee to work from home only for a limited period of time and only if it is reasonable (e.g., due to an emergency situation, high risk of infection). Work from home strongly changes the agreed workplace and may violate the employee's fundamental rights (inviolability of the home). A long-term transfer to the home office requires an agreement between the employee and the employer. These requirements are not eased when employees do not agree to be vaccinated.

23. If telework is not an option, can an employer require employees who cannot or will not agree to vaccinate to not come into the workplace?

The employer cannot release an employee from work without substantial reason, even if it continues to pay the wage. The mere unwillingness to be vaccinated does not qualify as a substantial reason in this respect.

COVID-19 Vaccination



HONG KONG

Current as of December 21, 2020

Access to Vaccine

1. Is there a priority list for the distribution of the COVID-19 vaccine? (include summary list)

Though no official guidelines have been published, the government has indicated through press releases that medical staff, workers at care facilities for the elderly and disabled, and patients with chronic illnesses would be first to be vaccinated.

Cost of Vaccine

2. Will the vaccine be paid for by the applicable jurisdiction?

From information currently provided by the government, it has indicated that the vaccine will be a free, voluntary vaccination scheme for Hong Kong's residents.

Requirement of Vaccine

3. Is there a general requirement for individuals to be vaccinated after the COVID-19 vaccine is available?

It is completely voluntary.

4. Is the vaccine mandated in certain industries after it becomes available?

Currently, no information is available.

Employer-Mandated Vaccinations

5. Can an employer require current employees to be vaccinated?

An employer cannot compel employees to be vaccinated, unless it is legally mandated or it has been contractually agreed to in the employment contract. However, at the same time, employers have a duty to keep a safe workplace for all employees. Whether or not such duty extends to requiring employees to get vaccinated is debatable. At the moment, as the vaccine is relatively new and there may not be as strong or robust of scientific evidence proving its effectiveness, it is less likely to fall under the duty.

6. If so, is there legal protection to be excused from being vaccinated (e.g., religious accommodation/disability accommodation)?

As the vaccination in Hong Kong is voluntary, no one can be compelled to get it. That being said, in a working environment where everyone's safety is of concern, it may be possible for an employee to argue for disability reasons for not getting vaccinated. In relation to this, an employer cannot discriminate against someone with a disability that prevents them from getting vaccinated.

COVID-19 Vaccination



Applicants for Employment (Pre-Hire Stage)

7. Can an employer require applicants to be vaccinated as a condition of hire?	Employers are free to impose such conditions (except those situations as set out in Question 9).
8. Can employers ask applicants if they have been vaccinated?	Yes.
9. Can employers refuse to hire applicants that are unwilling to be vaccinated or have not yet been vaccinated?	This depends on the reason for refusal of hire. If, for reasons of disability, an applicant is unable to get vaccinated, then there may be a claim for discrimination. Separately, some religions may not allow vaccinations, and although religion in itself is not a ground for discrimination in Hong Kong, some requirements or conditions relating to religion may indirectly discriminate against certain racial groups, hence falling under race discrimination.
10. Is there legal protection for applicants to be excused from being vaccinated (e.g. religious accommodation/disability accommodation)?	As mentioned above, from the information available now, the vaccine is voluntary so one cannot compel an applicant to do so. Separately, employers need to ensure that in refusing to hire an unvaccinated applicant, it is not discriminating against a potential disability or race (though this is less likely to be established).

Wage and Hour

11. If vaccinations are required, are employees entitled to reimbursement for the cost of the vaccination?	There are no laws around this area for the COVID-19 vaccine, however, it is up to the employer. Some employers do reimburse or pay for the cost of things whereby the employer is requiring the employees to do something (e.g., some companies offer Wi-Fi services/provision of monitors/laptops if employees are required to work from home during a serious wave of COVID). However, based on the information currently given by the government, it seems like the vaccine is free and price should not be a problem.
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Other Legal Risks in Mandating

12. Are there any other legal risks to consider in requiring employee vaccinations? (Please list)	Yes. See Questions 13-14 (employee benefits), 16-18 (privacy), and 24-25 (teleworking).
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Employee Benefits

13. Can an employer provide inducements under its employee benefits plans (e.g., wellness programs) for those who are vaccinated?	Yes, but employers must take care to ensure that by providing such inducements, they are not discriminating against those who are unable to get vaccinated (either due to health/disability reasons).
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COVID-19 Vaccination



14. Can an employer provide a bonus to employees who get vaccinated?

This depends on how bonuses are determined in accordance with the relevant provisions under the employment contract. If, in the employment contract, bonuses are stated to be completely discretionary, then it is possible to take vaccinations into account when determining bonuses. If, however, bonuses are performance-dependent, then the employer should not take into account whether an employee has been vaccinated.

Union and/or Works Council Obligations

15. For workplaces in which collective representation arrangements apply, is an employer obligated to bargain with the union, or meet with the Works Council, prior to mandating employee vaccinations?

There are unions in Hong Kong, but collective bargaining is not yet protected as in Europe. Works Councils have not been institutionalized at this time. Therefore, this question is not applicable to this jurisdiction.

Privacy

16. Is the fact that an employee has, or has not, been vaccinated "health information" or "sensitive personal data" under your country's data protection law (Y/N)?

No. In Hong Kong, there are no sub categories under the general umbrella of "personal data." This would fall under "personal data," which is still subject to data protection laws.

17. If so, is this health information subject to the restrictions on processing applicable to "special categories of personal data" or "sensitive personal data"?

The usual rules applicable to processing personal data apply. If the employer hires an external party to process such personal data, then the employer needs to adopt contractual or other means to: (1) ensure data processors do not keep the data longer than is necessary for processing of the data; and (2) prevent unauthorized or accidental access, processing, erasure, loss, or use of the data transferred to the data processor for processing.

18. If no, is that information nonetheless protected by applicable data protection law (Y/N)?

As mentioned above, personal data is subject to data protection laws regardless.



Record-Keeping Requirement

19. Is an employer required to maintain a record of an employee's COVID-19 vaccination?

Currently, there is no information or guidance on whether it is a legal requirement for an employer to maintain a record of any employee's COVID-19 vaccination. However, if the employer itself chooses to maintain such a record, then the employer will have to comply with data protection rules, such as the six data protection principles, including but not limited to: explicitly or implicitly informing the employees whether it is obligatory or voluntary to supply such data and the consequences of failing to supply such data; the purpose for which the data is to be used; and whether an employee's data will be sent to a third party for processing, etc.

Employers also need to ensure that such data is not kept longer than is necessary for the fulfilment of the purpose. For example, the Office of the Privacy Commissioner for Personal Data recommends that recruitment-related data should not be held for more than two years from the date of rejection and employment-related data of an employee not be held for more than seven years from the date of the employee leaving.

20. If so, what are (if any) the specific record keeping requirements related to vaccinations?

See Question 19.

Reporting Requirements

21. If an employee is vaccinated at the employer's directive, is the employer required to notify the governmental health authorities of employee's vaccination?

Currently, no information is available on whether governmental health authorities require notification from employers and no guidance has been issued. However, as the government has indicated the vaccination scheme is government-driven instead of private, it seems like the government will have a record anyway.

Teleworking Requirements

22. Can an employer unilaterally implement a teleworking (work from home) arrangement if an employee cannot or will not agree to be vaccinated?

If the employee refuses to get vaccinated for reasons unrelated to health/disability reasons, then it is possible that the employer can implement remote working arrangements for that employee as it has to take into consideration the safety of its other employees (e.g., potentially vulnerable groups of people).

23. If telework is not an option, can an employer require employees who cannot or will not agree to vaccinate to not come into the workplace?

Unless the vaccination is legally mandated, the employer cannot require employees who cannot or will not agree to vaccinate to not come into the workplace, especially if remote options are unavailable. This would be akin to asking the employee to stop working for the employer (i.e., a dismissal).



HUNGARY

Current as of December 23, 2020

Access to Vaccine

1. Is there a priority list for the distribution of the COVID-19 vaccine? (include summary list)

There is currently no vaccine approved by the Hungarian authorities and mass vaccination is expected to begin in the first quarter of 2021. However, individuals can register for being vaccinated in order for the authorities to be able to estimate how many people would like to receive the vaccine.

Vaccination will not take place in the order of registration, but according to the vaccination plan. Priority will be given to those with increased degree of vulnerability to the virus (e.g., chronic patients), healthcare workers, and those involved in fighting against the pandemic.

Cost of Vaccine

2. Will the vaccine be paid for by the applicable jurisdiction?

There are no specific regulations at the moment, however, the Hungarian government is committed to providing free vaccination against the coronavirus.

Requirement of Vaccine

3. Is there a general requirement for individuals to be vaccinated after the COVID-19 vaccine is available?

No, there is no such requirement in place.

4. Is the vaccine mandated in certain industries after it becomes available?

Not applicable.

COVID-19 Vaccination



Employer-Mandated Vaccinations

5. Can an employer require current employees to be vaccinated?

Employers do not have the general authority to request their employees to undergo a medical intervention, such as vaccination. Based on the Hungarian Health Act, the individuals' personal freedom and right to self-determination may only be restricted in cases and in the manner specified by the Health Act. Such restriction includes that the Minister for Health may determine those infectious diseases in case of which mandatory vaccination may be ordered, as well as such job positions where mandatory vaccination can be required. However, the Minister has not yet qualified COVID-19 to be a disease for which mandatory vaccination could be applied, nor established any job positions where COVID-19 vaccination could be required. Accordingly, based on the currently applicable laws, employers cannot lawfully require its employees to get vaccinated.

6. If so, is there legal protection to be excused from being vaccinated (e.g., religious accommodation/disability accommodation)?

Not applicable. See Question 5.

Applicants for Employment (Pre-Hire Stage)

7. Can an employer require applicants to be vaccinated as a condition of hire?

No.

8. Can employers ask applicants if they have been vaccinated?

No.

9. Can employers refuse to hire applicants that are unwilling to be vaccinated or have not yet been vaccinated?

No.

10. Is there legal protection for applicants to be excused from being vaccinated (e.g. religious accommodation/disability accommodation)?

Not applicable. See Question 5.

Wage and Hour

11. If vaccinations are required, are employees entitled to reimbursement for the cost of the vaccination?

Not applicable. See Question 5.

However, should a change occur in the currently applicable laws as a result of which vaccination might be required by the employer, according to the Hungarian Labor Code, the employer would have to reimburse the employee for the cost of the vaccination and the time spent receiving the vaccination. The reimbursement would not be considered to be part of the employee's wages.

COVID-19 Vaccination



Other Legal Risks in Mandating

12. Are there any other legal risks to consider in requiring employee vaccinations? (Please list)

Yes. See Questions 16-18 related to privacy.

Also, please note that requiring vaccination by the employer as a condition for working would potentially restrict employees' right to self-determination in relation to their health, which is protected by the Fundamental Law of Hungary (the constitution) and the Act CLIV of 1997 on healthcare and which may be restricted only by law.

Employee Benefits

13. Can an employer provide inducements under its employee benefits plans (e.g., wellness programs) for those who are vaccinated?

This question cannot be categorically answered with "yes" or "no" since Hungarian non-discrimination laws might be interpreted in a way that such benefits can be considered discriminatory, and thus, unlawful, as those would be provided to employees who belong to a certain category of employees.

14. Can an employer provide a bonus to employees who get vaccinated?

See Question 13.

Union and/or Works Council Obligations

15. For workplaces in which collective representation arrangements apply, is an employer obligated to bargain with the union, or meet with the Works Council, prior to mandating employee vaccinations?

Provided that vaccination might be required based on applicable laws at some point, employers would be required to consult/bargain with collective representative bodies.

According to Section 264(1) of the Labor Code, employers must consult the works council prior to passing a decision in respect of any plans for actions and adopting regulations affecting a large number of employees.

Please note that the Labor Code also includes a non-exhaustive list of particular cases in which employers are required to consult with the collective representative body. The list specifically includes employers' measures regarding the prevention of accidents at work and occupational diseases. In practice, this could be interpreted in a broad sense (i.e., also covering vaccination).

COVID-19 Vaccination



Privacy

- | | |
|---|---|
| 16. Is the fact that an employee has, or has not, been vaccinated “health information” or “sensitive personal data” under your country’s data protection law (Y/N)? | Yes, as such data qualifies as information directly concerning the health of an individual. Please note the GDPR is applicable in Hungary. Also, Hungarian data protection laws already considered such data as “special data” before being amended due to the application of the GDPR. |
| 17. If so, is this health information subject to the restrictions on processing applicable to “special categories of personal data” or “sensitive personal data”? | Yes. Please note the GDPR is applicable in Hungary. Also, the provisions of Act XLVII of 1997 on Processing and Protection of Medical and Other Related Personal Data should be observed when processing medical/health data. |
| 18. If no, is that information nonetheless protected by applicable data protection law (Y/N)? | Not applicable. See Questions 16 and 17. |

Record-Keeping Requirement

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|--|-----------------|
| 19. Is an employer required to maintain a record of an employee’s COVID-19 vaccination? | Not applicable. |
| 20. If so, what are (if any) the specific record keeping requirements related to vaccinations? | Not applicable. |

Reporting Requirements

- | | |
|---|-----------------|
| 21. If an employee is vaccinated at the employer’s directive, is the employer required to notify the governmental health authorities of employee’s vaccination? | Not applicable. |
|---|-----------------|



Teleworking Requirements

22. Can an employer unilaterally implement a teleworking (work from home) arrangement if an employee cannot or will not agree to be vaccinated?

Based on the Labor Code, working from home on a regular basis can be qualified as so-called “teleworking” to which certain special provisions apply. In order to introduce teleworking (i.e., regular home office), an explicit agreement on the employment by means of teleworking is required. Accordingly, if the concerned employees’ current employment contracts do not contain a specific clause on teleworking, modifying the existing employment contracts is mandatory based on currently applicable law.

However, during the so-called “state of emergency” declared by the Hungarian Government on November 4, 2020, in order to mitigate the consequences of the coronavirus pandemic, the Government may deviate from the provisions of legislative acts and statutes by issuing a Government Decree. Based on such Government Decree, the employee and the employer may deviate from the rules of teleworking detailed in the Labor Code by way of an agreement. This makes it possible to amend the employment contract in such a manner that home office work is qualified as “teleworking” (as opposed to the earlier situation where it was only possible to expressly qualify the employee’s work as “teleworking” on a permanent basis). Such an agreement, in turn, makes it possible to address the issues most commonly arising in connection with home office and “teleworking,” i.e., the obligations of the employer to: (1) guarantee work safety even in the home of the employee working in home office or on a “teleworking” basis; and (2) reimburse the employee for the additional expenses arising in connection with such employee working in home office or on a “teleworking” basis.

In addition, during the state of emergency, the parties may deviate from otherwise statutory provisions in connection with, among others, mandatory notification requirements, or employee’s access to the employer’s facilities. However, in the absence of a specific teleworking agreement, employers may order their employees to work from home for a duration not exceeding 44 days or 352 hours per year.

23. If telework is not an option, can an employer require employees who cannot or will not agree to vaccinate to not come into the workplace?

Yes, the employer may unilaterally exempt the employee from the obligation to perform work, however in such case the employee would be entitled to his or her base wage.

Alternatively, the employer and the employee might mutually agree on the employee’s exemption from work, in which case the compensation to be paid might be lower than the employee’s base wage and is subject to the parties’ agreement.



IRELAND

Current as of December 18, 2020

Access to Vaccine

1. Is there a priority list for the distribution of the COVID-19 vaccine? (include summary list)

The Irish government is intending on distributing vaccines in a phased system. The provision order in which people in Ireland will be vaccinated is as follows:

1. people aged 65 years and older who are residents of long-term care facilities (likely to include all staff and residents on site);
2. frontline healthcare workers;
3. people aged 70 and older;
4. other healthcare workers not in direct patient contact;
5. people aged 65-69;
6. key workers;
7. people aged 18-64 with certain medical conditions;
8. residents of long-term care facilities aged 18-64;
9. people aged 18-64 living or working in crowded settings;
10. key workers in essential jobs who cannot avoid a high risk of exposure;
11. people working in the education sector;
12. people aged 55-64;
13. other workers in occupations important to the functioning of society;
14. other people aged 18-54; and
15. people aged under 18 and pregnant women.

Full details on the current priority list for vaccination is available [here](#).

Cost of Vaccine

2. Will the vaccine be paid for by the applicable jurisdiction?

Yes, vaccination will be funded by the government. Access to vaccines through private healthcare may become available in the coming months as vaccine stocks increase.

Requirement of Vaccine

3. Is there a general requirement for individuals to be vaccinated after the COVID-19 vaccine is available?

No, vaccination is not mandatory. Obtaining informed consent for immunization is both an ethical and legal requirement in any vaccination program in Ireland.

COVID-19 Vaccination



4. Is the vaccine mandated in certain industries after it becomes available?

No, vaccination is not mandatory. Obtaining informed consent for immunization is both an ethical and legal requirement in any vaccination program in Ireland.

Employer-Mandated Vaccinations

5. Can an employer require current employees to be vaccinated?

Realistically, no. There is no specific prohibition on employer-mandated vaccination in Ireland, but it will be extremely difficult for employers to justify making vaccination mandatory under existing Irish employment law principles. Employers can, however, encourage employees to get the vaccine.

Employer-mandated vaccination presents several significant risks to employers:

- breaching the implied term of trust and confidence in employment contracts, giving rise to constructive dismissal claims;
- legal arguments that the requirement is an unconstitutional encroachment upon an employee's private life;
- data protection issues; and
- discrimination risks (see Question 6).

6. If so, is there legal protection to be excused from being vaccinated (e.g., religious accommodation/disability accommodation)?

Mandating vaccinations for employees is likely an unlawful instruction (see Question 5).

In any event, protections against discrimination based on disability, religion/belief, or pregnancy may be relevant. If an employee is unable or unwilling to be vaccinated due to one of these protected characteristics and suffers any detriment because of this, the employer is at risk of discrimination claims.

Applicants for Employment (Pre-Hire Stage)

7. Can an employer require applicants to be vaccinated as a condition of hire?

No.

8. Can employers ask applicants if they have been vaccinated?

There is no prohibition on asking this question, but it is not recommended and employers should carefully consider whether it is actually necessary. Applicants do not have to answer, and employers should be cautious of the discrimination risk that arises from asking the question (see Questions 6 and 10).

9. Can employers refuse to hire applicants that are unwilling to be vaccinated or have not yet been vaccinated?

In theory, yes, provided that the reason the applicant is unwilling to be vaccinated is not a protected characteristic (disability, religion/belief, age, and pregnancy are likely to be the characteristics relevant here). Discriminatory decisions in hiring can be challenged by applicants in the Workplace Relations Commission.

COVID-19 Vaccination



10. Is there legal protection for applicants to be excused from being vaccinated (e.g. religious accommodation/disability accommodation)?

Yes, job applicants are protected from discrimination because of a protected characteristic (age, disability, religion/belief, and pregnancy are the characteristics likely relevant to vaccination).

Wage and Hour

11. If vaccinations are required, are employees entitled to reimbursement for the cost of the vaccination?

The vaccine is provided free of charge by the government.

There is no general statutory right to be paid for absence from work needed to get the vaccine. However, contracts may provide for paid or unpaid leave for medical appointments. Employers may also be required to offer paid time off for medical appointments for certain employees as a reasonable accommodation of disability. As some of the individuals falling within the earlier phases of vaccination priority (see Question 1) may have a disability, employers should be conscious of disability claims here.

Given the importance of vaccination, it may be beneficial to employers to allow paid time off for vaccination appointments in order to not discourage their employees from getting vaccinated.

Other Legal Risks in Mandating

12. Are there any other legal risks to consider in requiring employee vaccinations? (Please list)

See Question 5.

Employee Benefits

13. Can an employer provide inducements under its employee benefits plans (e.g., wellness programs) for those who are vaccinated?

This is not recommended. There are legitimate reasons why employees may be unwilling or unable to be vaccinated, such as disability or religion, and incentivizing employees who are vaccinated in this way creates risk of discrimination. Further, some employees may simply be unable to be vaccinated as they await their slot in the priority list.

14. Can an employer provide a bonus to employees who get vaccinated?

This is not recommended. There are legitimate reasons why employees may be unwilling or unable to be vaccinated, such as disability or religion, and incentivizing employees who are vaccinated in this way creates risk of discrimination.

Union and/or Works Council Obligations

15. For workplaces in which collective representation arrangements apply, is an employer obligated to bargain with the union, or meet with the Works Council, prior to mandating employee vaccinations?

Not applicable as mandated vaccination is not recommended.

COVID-19 Vaccination



Privacy

16. Is the fact that an employee has, or has not, been vaccinated “health information” or “sensitive personal data” under your country’s data protection law (Y/N)?

Yes.

17. If so, is this health information subject to the restrictions on processing applicable to “special categories of personal data” or “sensitive personal data”?

Yes, details of whether an employee has been vaccinated will be “special category personal data subject,” and as such, subject to the usual restrictions. In particular, employers will need to consider the legitimate legal basis for processing such data.

18. If no, is that information nonetheless protected by applicable data protection law (Y/N)?

Not applicable.

Record-Keeping Requirement

19. Is an employer required to maintain a record of an employee’s COVID-19 vaccination?

No, but employers may be able to voluntarily collect this data, subject to compliance with data protection laws.

Vaccination records will be “special category personal data” and therefore need to be collected and processed with care. The employer should only collect the data that it requires and should comply with all of the data protection principles (*i.e.*, that data collection is necessary and relevant for the employer’s purpose, the data is secure, and confidentiality owed to employees has been taken into account). The Irish data protection regulator has not updated guidance for employers to account for vaccination. Employers should check current guidance before implementing any policy of collecting vaccination records.

20. If so, what are (if any) the specific record keeping requirements related to vaccinations?

Before choosing to collect records of an employee’s COVID-19 vaccination, employers need to consider:

- whether it is necessary to collect this data and whether there is a less intrusive way of achieving the same goal (*i.e.*, the goal of ensuring a safe and COVID-free workplace); and
- the legal basis for processing this data.

Record keeping must comply with general data protection principles of transparency and proportionality. Employers should carry out a privacy impact assessment before collecting and processing data.

Once collected, the data should be kept secure and confidential and should be retained in line with the employer’s data protection policies (and, in any event, for no longer than is necessary).

COVID-19 Vaccination



Reporting Requirements

21. If an employee is vaccinated at the employer's directive, is the employer required to notify the governmental health authorities of employee's vaccination?

No.

Teleworking Requirements

22. Can an employer unilaterally implement a teleworking (work from home) arrangement if an employee cannot or will not agree to be vaccinated?

This will be very fact dependent and employers will need to consider several different factors. Ultimately whether an employer can impose telework ("homeworking") will depend on whether it can be justified as a reasonable instruction. If it is not a reasonable instruction, employees may be able to argue they have been constructively dismissed.

In the initial stages of vaccination where vaccines are in short supply, an instruction to work from home to those who are not vaccinated may be a reasonable way of ensuring health and safety in the workplace. The government has indicated they will continue to strongly recommend homeworking wherever possible for several months.

However, as time goes on and more employees are vaccinated and government guidance on homeworking changes, there becomes a risk of creating a two-tier workforce where only those who cannot be or refuse to be vaccinated are restricted from the workplace. In these circumstances, an instruction to work from home looks increasingly unreasonable and further creates a discrimination risk where the reason for not being vaccinated is linked to a protected characteristic.

23. If telework is not an option, can an employer require employees who cannot or will not agree to vaccinate to not come into the workplace?

In almost all cases, no. Vaccines are not mandatory in Ireland so it will be difficult for an employer to justify sending employees home because they refuse to get vaccinated, which is effectively employer-mandated vaccination by the back door.

Employers also need to be conscious of a discrimination risk if the refusal to get vaccinated is linked to a protected characteristic (see Question 6).

COVID-19 Vaccination



ITALY

Current as of December 21, 2020

Access to Vaccine

1. Is there a priority list for the distribution of the COVID-19 vaccine? (include summary list)

At this time, there is no official guidance on this, but the news outlets report that the priority scheme is as follows:

- Phase 1 will prioritize healthcare personnel; employees in public and private hospitals; and guests and personnel of residences for the elderly.
- Phase 2 will target people aged over 80 and then other groups of people.

Other priority groups will follow after these two initial phases. The plan for mass vaccination kicked off on December 27, 2020.

Cost of Vaccine

2. Will the vaccine be paid for by the applicable jurisdiction?

The government has expressed its intent to make the vaccine available for free.

Requirement of Vaccine

3. Is there a general requirement for individuals to be vaccinated after the COVID-19 vaccine is available?

We are unaware of any legal requirement at this time.

4. Is the vaccine mandated in certain industries after it becomes available?

At this time, there is no law that clearly makes the vaccine mandatory.

Employer-Mandated Vaccinations

5. Can an employer require current employees to be vaccinated?

No, in the absence of a specific law on this, employees may not be required to undergo this medical treatment. An employer may encourage employees to get vaccinated. However, it cannot go so far as to sanction those who refuse it.

6. If so, is there legal protection to be excused from being vaccinated (e.g., religious accommodation/disability accommodation)?

Not applicable.

COVID-19 Vaccination



Applicants for Employment (Pre-Hire Stage)

7. Can an employer require applicants to be vaccinated as a condition of hire?	At this time, given the lack of specific laws on this obligation, it does not appear that an employer can require vaccination as a condition of hire.
8. Can employers ask applicants if they have been vaccinated?	The general rule stands: It is still forbidden to process personal data or make inquiries about the employee's state of health during the recruitment process.
9. Can employers refuse to hire applicants that are unwilling to be vaccinated or have not yet been vaccinated?	At this time, given the lack of specific laws on this obligation, it would not appear that an employer can validly refuse applicants for lack of vaccination.
10. Is there legal protection for applicants to be excused from being vaccinated (e.g. religious accommodation/disability accommodation)?	Considering that there is no obligation at this time, not applicable.

Wage and Hour

11. If vaccinations are required, are employees entitled to reimbursement for the cost of the vaccination?	Not applicable.
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Other Legal Risks in Mandating

12. Are there any other legal risks to consider in requiring employee vaccinations? (Please list)	Yes. See Questions 13-14 (employee benefits), 16-18 (privacy), and 24-25 (teleworking).
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Employee Benefits

13. Can an employer provide inducements under its employee benefits plans (e.g., wellness programs) for those who are vaccinated?	Yes, but this practice would need to be carefully evaluated to avoid discrimination claims filed by unvaccinated employees.
14. Can an employer provide a bonus to employees who get vaccinated?	Yes, but this practice would need to be carefully evaluated to avoid discrimination claims filed by unvaccinated employees.

COVID-19 Vaccination



Union and/or Works Council Obligations

15. For workplaces in which collective representation arrangements apply, is an employer obligated to bargain with the union, or meet with the Works Council, prior to mandating employee vaccinations?

The issue of vaccination is not included among those matters that need to be discussed with unions. Nonetheless, if a company implements a voluntary vaccination plan, it would be advisable to consider discussing implementation with applicable unions.

Privacy

16. Is the fact that an employee has, or has not, been vaccinated "health information" or "sensitive personal data" under your country's data protection law (Y/N)?

Yes.

17. If so, is this health information subject to the restrictions on processing applicable to "special categories of personal data" or "sensitive personal data"?

Yes. Health information cannot be processed unless the data subject has expressly given the consent or other exceptions apply. Refer to Art. 9 of the EU's General Data Protection Regulation.

18. If no, is that information nonetheless protected by applicable data protection law (Y/N)?

Not applicable.

Record-Keeping Requirement

19. Is an employer required to maintain a record of an employee's COVID-19 vaccination?

No.

20. If so, what are (if any) the specific record keeping requirements related to vaccinations?

Not applicable.

Reporting Requirements

21. If an employee is vaccinated at the employer's directive, is the employer required to notify the governmental health authorities of employee's vaccination?

Employees cannot be vaccinated at an employer's directive. See Question 5.

COVID-19 Vaccination



Teleworking Requirements

22. Can an employer unilaterally implement a teleworking (work from home) arrangement if an employee cannot or will not agree to be vaccinated?

Following the declared state of emergency due to the pandemic, the government enacted regulations allowing employers to implement teleworking (in smart-working mode) unilaterally. This option will likely cease to exist on March 31, 2021. Outside of a state of emergency and under normal circumstances, both parties must agree to enter into a teleworking arrangement. The employer cannot implement it unilaterally.

23. If telework is not an option, can an employer require employees who cannot or will not agree to vaccinate to not come into the workplace?

There needs to be a motivated technical evaluation by the employer and the company's doctor that weighs on the general health and safety risk against the presence of unvaccinated individuals. It needs to be a technical proven decision and we cannot rule out—particularly where there is no legislation on the matter—possible legal challenges by employees affected by such employment action.

COVID-19 Vaccination



JAPAN

Current as of December 21, 2020

Access to Vaccine

1. Is there a priority list for the distribution of the COVID-19 vaccine? (include summary list)

While the government has discussed that healthcare personnel, aged people, and people at high risk due to underlying medical conditions will be prioritized, the priority list has not been finalized yet.

Cost of Vaccine

2. Will the vaccine be paid for by the applicable jurisdiction?

Yes.

Requirement of Vaccine

3. Is there a general requirement for individuals to be vaccinated after the COVID-19 vaccine is available?

It will be strongly recommended, however, consent by an individual to get a vaccine will be required.

4. Is the vaccine mandated in certain industries after it becomes available?

No such mandate is in place, yet.

Employer-Mandated Vaccinations

5. Can an employer require current employees to be vaccinated?

An employer can strongly recommend, however, it cannot require current employees to be vaccinated (e.g., no disciplinary action is allowed by not being vaccinated) as consent by an employee to get a vaccine will be required.

6. If so, is there legal protection to be excused from being vaccinated (e.g., religious accommodation/disability accommodation)?

An employee can refuse the vaccination based on any reason, such as a concern about side effects.

Applicants for Employment (Pre-Hire Stage)

7. Can an employer require applicants to be vaccinated as a condition of hire?

It should generally be allowed due to a broad discretion that an employer has at applicant screening.

8. Can employers ask applicants if they have been vaccinated?

Yes, although vaccination records can be sensitive personal data, so consent by an applicant is required to obtain such information.

COVID-19 Vaccination



9. Can employers refuse to hire applicants that are unwilling to be vaccinated or have not yet been vaccinated? Yes, employers should generally be allowed to refuse to hire an applicant based on the broad discretion that an employer has at applicant screening.

10. Is there legal protection for applicants to be excused from being vaccinated (e.g. religious accommodation/disability accommodation)? Not applicable.

Wage and Hour

11. If vaccinations are required, are employees entitled to reimbursement for the cost of the vaccination? The government will incur the cost of vaccination. It is not required to make the time the employee spends receiving the vaccination compensable.

Other Legal Risks in Mandating

12. Are there any other legal risks to consider in requiring employee vaccinations? (Please list) An employer might be liable for the damages an employee incurs from vaccination if an employer requires an employee to be vaccinated. In addition, see responses relating to privacy rights.

Employee Benefits

13. Can an employer provide inducements under its employee benefits plans (e.g., wellness programs) for those who are vaccinated? Yes. An employer can recommend an employee get vaccinated, including providing some inducements to get vaccinated.

14. Can an employer provide a bonus to employees who get vaccinated? Yes. It is totally under an employer's discretion to provide special bonus to incentivize employees to get vaccinated.

Union and/or Works Council Obligations

15. For workplaces in which collective representation arrangements apply, is an employer obligated to bargain with the union, or meet with the Works Council, prior to mandating employee vaccinations? It depends on what the applicable agreements state. This is not applicable for most of the workplace.

COVID-19 Vaccination



Privacy

- | | |
|---|-----------------|
| 16. Is the fact that an employee has, or has not, been vaccinated “health information” or “sensitive personal data” under your country’s data protection law (Y/N)? | Yes. |
| 17. If so, is this health information subject to the restrictions on processing applicable to “special categories of personal data” or “sensitive personal data”? | Yes. |
| 18. If no, is that information nonetheless protected by applicable data protection law (Y/N)? | Not applicable. |

Record-Keeping Requirement

- | | |
|--|-----------------|
| 19. Is an employer required to maintain a record of an employee’s COVID-19 vaccination? | No. |
| 20. If so, what are (if any) the specific record keeping requirements related to vaccinations? | Not applicable. |

Reporting Requirements

- | | |
|---|-----|
| 21. If an employee is vaccinated at the employer’s directive, is the employer required to notify the governmental health authorities of employee’s vaccination? | No. |
|---|-----|

Teleworking Requirements

- | | |
|---|--|
| 22. Can an employer unilaterally implement a teleworking (work from home) arrangement if an employee cannot or will not agree to be vaccinated? | Yes. The employer generally has discretion to designate where to work and also is required to keep the workplace safe. |
| 23. If telework is not an option, can an employer require employees who cannot or will not agree to vaccinate to not come into the workplace? | Yes, an employer can require employees who are not vaccinated to stay at home. However, further analysis may be required after more of the population is vaccinated. |



MEXICO

Current as of January 5, 2021

Access to Vaccine

1. Is there a priority list for the distribution of the COVID-19 vaccine? (include summary list)

The government has announced that its goal is to vaccinate at least 75% of Mexico's population between the ages of 16 and older. The priority for vaccination will be as follows:

1. health workers;
2. individuals over 80 years old;
3. individuals aged 70-79;
4. individuals aged 60-69;
5. individuals aged 50-59;
6. individuals aged 40-49; and
7. individuals under 40 years old.

No mention has been made concerning prioritizing individuals with comorbidities.

The Undersecretary of Health in charge of the strategy has announced that the phased distribution will be as follows:

- First phase: Mexico City and Coahuila
- Second phase: health personnel and individuals over 60 years old (priorities 1-4) to start in February 2021
- Third phase: individuals aged 50-59 from April to May 2021
- Fourth phase: individuals over 40 years old from May to June 2021
- Fifth phase: remaining population from June 2021 to March 2022

Cost of Vaccine

2. Will the vaccine be paid for by the applicable jurisdiction?

The government will provide the vaccine, free of charge to the population. Private parties are not entitled to acquire vaccines.

COVID-19 Vaccination



Requirement of Vaccine

3. Is there a general requirement for individuals to be vaccinated after the COVID-19 vaccine is available? Currently, no information is available.

4. Is the vaccine mandated in certain industries after it becomes available? Currently, no information is available.

Employer-Mandated Vaccinations

5. Can an employer require current employees to be vaccinated? An employer absolutely cannot require employees to be vaccinated, unless the industry is specifically subject to a government mandate or the employer receives express authorization from the government. At the moment, there is no pending legislation under which an employer may mandate vaccination.

6. If so, is there legal protection to be excused from being vaccinated (e.g., religious accommodation/disability accommodation)? Currently, there is no rule or official guidance addressing this specific issue.

Applicants for Employment (Pre-Hire Stage)

7. Can an employer require applicants to be vaccinated as a condition of hire? No.

8. Can employers ask applicants if they have been vaccinated? Yes, the employer may ask job applicants if they have been vaccinated. However, prior to requesting such information, the applicant must receive a copy of the company's privacy notice and provide voluntary consent for the company to obtain such data.

9. Can employers refuse to hire applicants that are unwilling to be vaccinated or have not yet been vaccinated? No.

10. Is there legal protection for applicants to be excused from being vaccinated (e.g. religious accommodation/disability accommodation)? Currently, there is no rule or official guidance addressing this specific issue.

COVID-19 Vaccination



Wage and Hour

11. If vaccinations are required, are employees entitled to reimbursement for the cost of the vaccination? Not applicable.

Other Legal Risks in Mandating

12. Are there any other legal risks to consider in requiring employee vaccinations? (Please list) Yes. See Questions 16 and 17.

Employee Benefits

13. Can an employer provide inducements under its employee benefits plans (e.g., wellness programs) for those who are vaccinated? Yes, there is no risk or limitation to encourage vaccination.

14. Can an employer provide a bonus to employees who get vaccinated? Yes.

Union and/or Works Council Obligations

15. For workplaces in which collective representation arrangements apply, is an employer obligated to bargain with the union, or meet with the Works Council, prior to mandating employee vaccinations? Not applicable because vaccination cannot be mandated.

Privacy

16. Is the fact that an employee has, or has not, been vaccinated "health information" or "sensitive personal data" under your country's data protection law (Y/N)? Yes.

17. If so, is this health information subject to the restrictions on processing applicable to "special categories of personal data" or "sensitive personal data"? Yes, this information needs to be included in the company's privacy notice as "sensitive information."

18. If no, is that information nonetheless protected by applicable data protection law (Y/N)? Not applicable.

COVID-19 Vaccination



Record-Keeping Requirement

19. Is an employer required to maintain a record of an employee's COVID-19 vaccination?

Currently, no information is available. Under current legislation, proof of vaccination is not among the information an employer is required to maintain.

20. If so, what are (if any) the specific record keeping requirements related to vaccinations?

Records and documents related to an employee's medical history must be maintained as confidential medical records in separate files/records from the usual personnel files and in conformance with the company's privacy notice and policies. However, there are no requirements specifically addressing vaccination records.

Reporting Requirements

21. If an employee is vaccinated at the employer's directive, is the employer required to notify the governmental health authorities of employee's vaccination?

Currently, no information is available.

Teleworking Requirements

22. Can an employer unilaterally implement a teleworking (work from home) arrangement if an employee cannot or will not agree to be vaccinated?

No. The employee needs to consent to work remotely.

23. If telework is not an option, can an employer require employees who cannot or will not agree to vaccinate to not come into the workplace?

No. The employee can file a complaint for constructive dismissal if he or she is prevented from coming into the workplace. However, the employee and the employer can agree on this limitation.



NETHERLANDS

Current as of December 21, 2020

Access to Vaccine

1. Is there a priority list for the distribution of the COVID-19 vaccine? (include summary list)

Vaccinations will be administered by priority groups. Although no official pronouncement has been made with specific details about all of the priority groups, the first priority group will be as follows and in this order: Workers at nursing homes; care workers in the disabled care sector and in home care; and residents of nursing homes and homes for people with intellectual disabilities.

Cost of Vaccine

2. Will the vaccine be paid for by the applicable jurisdiction?

The vaccine will be paid for by the Dutch government.

Requirement of Vaccine

3. Is there a general requirement for individuals to be vaccinated after the COVID-19 vaccine is available?

According to the latest announcements, getting vaccinated will be done on a voluntary basis. However, it is being discussed that some activities or places may become accessible only for those who are vaccinated. As of March 2021, it will be possible to download a certificate of vaccination, but the government is still undecided about providing certain advantages to those who can show such a certificate.

4. Is the vaccine mandated in certain industries after it becomes available?

As it seems now, no. However, in industries where being vaccinated could be considered necessary to meet the standards of being a good employee and for the safety of others (e.g., like patients), it might be possible that employers can lawfully impose disciplinary measures on employees who refuse to get the vaccine. Case law or official guidance will be for clarification.

Employer-Mandated Vaccinations

5. Can an employer require current employees to be vaccinated?

No, this is not possible. There is no statutory ground to do so (yet). However, disciplinary measures for those who refuse to get the vaccine are not unlikely when the vaccine will be considered necessary for doing the job (see Question 4). For example, employees whose work requires having contact with blood, already have to be offered a Hepatitis-B vaccine by their employer. When they refuse the vaccine, the regulation states that disciplinary measures can follow. The employer must search for other suitable tasks and if they cannot be found, dismissal can follow.

COVID-19 Vaccination



6. If so, is there legal protection to be excused from being vaccinated (e.g., religious accommodation/disability accommodation)?

In the Netherlands, people are not obligated to follow the vaccination program of the government, it is just highly recommended by the government. Religious considerations are one of the reasons people decide to not get vaccinations and/or to not get their children vaccinated. Still some tasks in some jobs can, mostly for safety purposes, not be performed by persons who do not have certain vaccines. Religious or disability considerations will not change that.

Applicants for Employment (Pre-Hire Stage)

7. Can an employer require applicants to be vaccinated as a condition of hire?

Employers and potential future employers are not allowed to ask for medical information of their employees or candidates, since medical information is considered a special category of personal data pursuant to the EU's General Data Protection Regulation (GDPR). Because of the sensitive nature of this kind of data, the processing thereof is prohibited. This is only different when one of the exceptions of Art. 9 of the GDPR applies (e.g., when the processing of the information is necessary for delivering healthcare). It is, therefore, imaginable that employers in healthcare will be allowed to implement this hire condition. However, questions regarding this information should then be asked by a company doctor, who is then only allowed to inform the employer whether the candidate is (medically) suitable for the job or not without giving specific medical information to the employer.

8. Can employers ask applicants if they have been vaccinated?

See Question 7.

9. Can employers refuse to hire applicants that are unwilling to be vaccinated or have not yet been vaccinated?

See Questions 4 and 7.

10. Is there legal protection for applicants to be excused from being vaccinated (e.g. religious accommodation/disability accommodation)?

Being vaccinated is not obligatory in the Netherlands, so being excused is not necessary. People can refuse to get the vaccine based on, for example, religious considerations. However, as noted above, that could have implications when tasks in certain jobs require vaccination for safety purposes (see Question 6).

Wage and Hour

11. If vaccinations are required, are employees entitled to reimbursement for the cost of the vaccination?

The vaccination itself will be free and paid for by the government. With regard to other costs that come with getting the vaccination, based on the statutory obligation to behave as good employer and good employee, it is likely that the employer will allow the employee to get vaccinated during work time. Once the employee does not feel well after being vaccinated, he or she can call in sick and will be paid according to the statutory obligation to continue salary payment during (the first two years of) sickness.

COVID-19 Vaccination



Other Legal Risks in Mandating

12. Are there any other legal risks to consider in requiring employee vaccinations? (Please list)

For now, requiring COVID-19 vaccinations of employees is a risk in itself. See prior responses, in addition to those referring to employee benefits, privacy rights, etc., below.

Employee Benefits

13. Can an employer provide inducements under its employee benefits plans (e.g., wellness programs) for those who are vaccinated?

This is very unlikely and will probably conflict with the principle of equal treatment of employees on several grounds.

14. Can an employer provide a bonus to employees who get vaccinated?

See Question 13.

Union and/or Works Council Obligations

15. For workplaces in which collective representation arrangements apply, is an employer obligated to bargain with the union, or meet with the Works Council, prior to mandating employee vaccinations?

For now, mandating vaccinations is unlawful. When more legal possibilities arise for employers to do so, it most certainly is a subject that the Works Council should be informed about and offer consent. It then depends on the text of collective labor agreements and the consultation-agreements, whether trade unions should be consulted regarding this subject. It is likely trade unions will reach out when they are (largely) represented in the concerning company or sector.

Privacy

16. Is the fact that an employee has, or has not, been vaccinated "health information" or "sensitive personal data" under your country's data protection law (Y/N)?

Yes.

17. If so, is this health information subject to the restrictions on processing applicable to "special categories of personal data" or "sensitive personal data"?

Yes. See Question 7 with regard to processing of such information by employers.

18. If no, is that information nonetheless protected by applicable data protection law (Y/N)?

Not applicable.

COVID-19 Vaccination



Record-Keeping Requirement

19. Is an employer required to maintain a record of an employee's COVID-19 vaccination?

No, moreover, the employer is prohibited from maintaining such a record and processing this information, since it is a "special category of personal data" under the GDPR. When vaccination becomes a necessary requirement for the job, only company doctors will be allowed to ask for and process this information.

20. If so, what are (if any) the specific record keeping requirements related to vaccinations?

Not applicable.

Reporting Requirements

21. If an employee is vaccinated at the employer's directive, is the employer required to notify the governmental health authorities of employee's vaccination?

Employers are not allowed to require that their employees get the vaccine. For the people who want to be vaccinated, the COVID-19 vaccine seems to only become available through the Municipal Health Service (in Dutch, GGD) for now. When vaccinations can be done without intervention of the GGD, e.g., at the general practitioner, it is wise to be sure the GGD knows, so they can register the employee's vaccination.

Teleworking Requirements

22. Can an employer unilaterally implement a teleworking (work from home) arrangement if an employee cannot or will not agree to be vaccinated?

As noted above, an employer is not allowed to ask employees whether they are vaccinated. On the other hand, pursuant to Dutch law the employer is obligated to create a safe working environment for its employees. The employer may want to refuse those without vaccination from entering the workplace for the safety of the employee, colleagues, and/or clients. Even when the employee informs the employer on his or her own initiative about (not) having been vaccinated, the employer is not automatically allowed to act on that information, since that would in most cases imply that the employer processes this sensitive information (consent of employees for processing their data is considered an insufficient ground because of the power imbalance between the employer as the stronger party on the one hand, and the employee as the underlying party on the other hand).

For now, working from home is still the urgent advice of the government in the current lockdown in the Netherlands, and is a way to provide safe working conditions for all. Insofar as teleworking is possible, this will continue to be a way to do so. How the employer's duty of care for a safe working environment will weigh up to the right of the employee to privacy and physical integrity has to be further evaluated in case law and regulation.

23. If telework is not an option, can an employer require employees who cannot or will not agree to vaccinate to not come into the workplace?

See Question 22.

COVID-19 Vaccination



NICARAGUA

Current as of January 4, 2021

Access to Vaccine

1. Is there a priority list for the distribution of the COVID-19 vaccine? (include summary list)

The government has not issued any official statement on this.

Cost of Vaccine

2. Will the vaccine be paid for by the applicable jurisdiction?

The vaccine will be available free of charge, for those covered under the country's Constitution.

Requirement of Vaccine

3. Is there a general requirement for individuals to be vaccinated after the COVID-19 vaccine is available?

Currently, no information is available.

4. Is the vaccine mandated in certain industries after it becomes available?

Currently, the government has not issued a mandate or pronouncement on this issue. For the vaccine to be mandatory, the government must enact such mandate via a decree or official act. The vaccine, as a sanitary measure, likely will not be made mandatory.

Employer-Mandated Vaccinations

5. Can an employer require current employees to be vaccinated?

No, an employer cannot implement such requirement without a governmental decree or official act.

6. If so, is there legal protection to be excused from being vaccinated (e.g., religious accommodation/disability accommodation)?

The vaccine, as a sanitary measure, likely will not be made mandatory.

Applicants for Employment (Pre-Hire Stage)

7. Can an employer require applicants to be vaccinated as a condition of hire?

No, unless the government mandates vaccination.

8. Can employers ask applicants if they have been vaccinated?

No, unless the government mandates vaccination. An official health order would be required to authorize employers to do so.

COVID-19 Vaccination



9. Can employers refuse to hire applicants that are unwilling to be vaccinated or have not yet been vaccinated?

No, unless the government mandates vaccination. An official health order would be required to authorize employers to do so.

10. Is there legal protection for applicants to be excused from being vaccinated (e.g. religious accommodation/disability accommodation)?

Currently, there is no official guidance on this issue.

Wage and Hour

11. If vaccinations are required, are employees entitled to reimbursement for the cost of the vaccination?

The vaccine will be available free of charge. There is no official guidance addressing this situation.

Other Legal Risks in Mandating

12. Are there any other legal risks to consider in requiring employee vaccinations? (Please list)

See Question 16.

Employee Benefits

13. Can an employer provide inducements under its employee benefits plans (e.g., wellness programs) for those who are vaccinated?

Yes.

14. Can an employer provide a bonus to employees who get vaccinated?

Yes.

Union and/or Works Council Obligations

15. For workplaces in which collective representation arrangements apply, is an employer obligated to bargain with the union, or meet with the Works Council, prior to mandating employee vaccinations?

Assuming an official health order or governmental decree mandates vaccination, an employer and the labor union must negotiate the implementation of such a rule.

COVID-19 Vaccination



Privacy

- | | |
|---|--|
| 16. Is the fact that an employee has, or has not, been vaccinated “health information” or “sensitive personal data” under your country’s data protection law (Y/N)? | Yes, under Art. 3(g) of the Data Protection Law (Law No. 787). |
| 17. If so, is this health information subject to the restrictions on processing applicable to “special categories of personal data” or “sensitive personal data”? | Yes, health information is considered sensitive data. Consent from the data owner will be required for any treatment of such data. |
| 18. If no, is that information nonetheless protected by applicable data protection law (Y/N)? | Not applicable. |

Record-Keeping Requirement

- | | |
|--|---|
| 19. Is an employer required to maintain a record of an employee’s COVID-19 vaccination? | Art. 26 of the General Occupational Health and Safety Law requires such records to be maintained in the personnel file, as long as the employee voluntarily consents to providing the data. |
| 20. If so, what are (if any) the specific record keeping requirements related to vaccinations? | See Question 19. |

Reporting Requirements

- | | |
|---|---|
| 21. If an employee is vaccinated at the employer’s directive, is the employer required to notify the governmental health authorities of employee’s vaccination? | Currently, such requirement does not exist. |
|---|---|

Teleworking Requirements

- | | |
|---|---|
| 22. Can an employer unilaterally implement a teleworking (work from home) arrangement if an employee cannot or will not agree to be vaccinated? | Although teleworking has been widely accepted as an option during the pandemic, the consent of both parties is required to implement it. |
| 23. If telework is not an option, can an employer require employees who cannot or will not agree to vaccinate to not come into the workplace? | Unless an official decree or mandate make this possible, an employer taking this action will risk claims of discrimination and constructive dismissal (and accompanying damages, where applicable). |

COVID-19 Vaccination



NIGERIA

Current as of December 21, 2020

Access to Vaccine

1. Is there a priority list for the distribution of the COVID-19 vaccine? (include summary list)

Currently, no official guidance has been issued. However, on December 11, 2020, at a press conference, the Nigerian Minister of Health stated that priority will be given to health workers, vulnerable citizens, and persons with chronic illnesses.

Cost of Vaccine

2. Will the vaccine be paid for by the applicable jurisdiction?

Currently, no information is available.

Requirement of Vaccine

3. Is there a general requirement for individuals to be vaccinated after the COVID-19 vaccine is available?

Currently, no information is available.

4. Is the vaccine mandated in certain industries after it becomes available?

Currently, no information is available.

Employer-Mandated Vaccinations

5. Can an employer require current employees to be vaccinated?

There is no statutory provision covering this. If the government makes vaccination mandatory, the employer would have a duty to comply and require its employees to be vaccinated. However, there is no such directive in place at the moment. Contractually, employers, in exercise of their common law duty to keep the workplace safe, can require their employees to be vaccinated, but such request would be subject to each employee's consent.

6. If so, is there legal protection to be excused from being vaccinated (e.g., religious accommodation/disability accommodation)?

Currently, no information is available.

COVID-19 Vaccination



Applicants for Employment (Pre-Hire Stage)

7. Can an employer require applicants to be vaccinated as a condition of hire?

As a precautionary measure, where a vaccine is available, employers in exercise of their common law duty to keep the workplace safe can require applicants to be vaccinated as a pre-condition for hire, but such request would be subject to each applicant's consent.

8. Can employers ask applicants if they have been vaccinated?

As a precautionary measure, where a vaccine is available, employers in exercise of their common law duty to keep the workplace safe can ask applicants if they have been vaccinated.

9. Can employers refuse to hire applicants that are unwilling to be vaccinated or have not yet been vaccinated?

As a precautionary measure, where a vaccine is available, and the government makes vaccination mandatory or the company policy makes vaccination mandatory, the employer in exercise of its common law duty to keep the workplace safe can refuse to hire any applicants who refuse to be vaccinated. However, if the applicant's unwillingness stems from religious or disability considerations, the refusal to hire could be seen as discriminatory against the applicant. Considering that an employer has duties under both common law and statute to provide a safe working environment for its employees, however, it remains possible that this could be a valid basis for refusal to hire.

10. Is there legal protection for applicants to be excused from being vaccinated (e.g. religious accommodation/disability accommodation)?

Currently, no information is available. See Question 9.

Wage and Hour

11. If vaccinations are required, are employees entitled to reimbursement for the cost of the vaccination?

Currently, no information is available.

Other Legal Risks in Mandating

12. Are there any other legal risks to consider in requiring employee vaccinations? (Please list)

Yes, to the extent that the vaccines may cause side effects for individuals, an employee may be able to claim compensation under the Employee Compensation Act, 2010 or sue the employer for damages and the cost of treating the underlining symptoms on the basis that he or she was mandated to take the vaccine by the employer.

Employee Benefits

13. Can an employer provide inducements under its employee benefits plans (e.g., wellness programs) for those who are vaccinated?

Currently, no information is available.

COVID-19 Vaccination



14. Can an employer provide a bonus to employees who get vaccinated? Currently, no information is available.

Union and/or Works Council Obligations

15. For workplaces in which collective representation arrangements apply, is an employer obligated to bargain with the union, or meet with the Works Council, prior to mandating employee vaccinations? The law does not have an express provision covering this situation. However, where the collective bargaining agreement or individual contracts of the employees expressly provide for this requirement, then the employer is bound to comply.

Privacy

16. Is the fact that an employee has, or has not, been vaccinated "health information" or "sensitive personal data" under your country's data protection law (Y/N)? Yes. All health-related information is classified as sensitive personal data, which is protected under the Nigeria Data Protection Regulation 2019 (NDPR). In such instances, the employer would require the applicant's explicit consent prior to such a disclosure.

17. If so, is this health information subject to the restrictions on processing applicable to "special categories of personal data" or "sensitive personal data"? Other than classifying medical information as sensitive information, the NDPR does not specify any special procedures for processing other than processing subject to consent of the data subject. It is important to mention that such consent is not mandatory in some delineated circumstances (e.g. where processing is necessary for the performance of a task carried out in the public interest or in the exercise of official public mandate vested in the controller).
Regulation 2.1 of the NDPR further provides that personal data is only to be collected and processed for the specific, legitimate, and lawful purpose consented to by the data subject. As such, an explicit level of consent is required and must be obtained freely without fraud, coercion, or undue influence (see Regulation 2.3 of the NDPR).

18. If no, is that information nonetheless protected by applicable data protection law (Y/N)? Not applicable.

Record-Keeping Requirement

19. Is an employer required to maintain a record of an employee's COVID-19 vaccination? The law does not have an express provision covering this situation. However, according to Section 75 of the Labor Act, employers are required to keep records of wages and conditions of employment as are necessary for a period of three years after the time to which they refer.

20. If so, what are (if any) the specific record keeping requirements related to vaccinations? Not applicable.

COVID-19 Vaccination



Reporting Requirements

21. If an employee is vaccinated at the employer's directive, is the employer required to notify the governmental health authorities of employee's vaccination?

The law does not have an express provision covering this situation.

Teleworking Requirements

22. Can an employer unilaterally implement a teleworking (work from home) arrangement if an employee cannot or will not agree to be vaccinated?

Yes, although the ability of an employer to unilaterally implement a teleworking arrangement is dependent on the provisions of the contract of employment. Where the contract of employment provides that the employer can unilaterally post the employee or determine the employee's work location, the employer can do this. Otherwise, the consent of the employee would be required for any variation or the implementation of terms that did not form part of the contract upon execution.

23. If telework is not an option, can an employer require employees who cannot or will not agree to vaccinate to not come into the workplace?

Yes, this is achievable. In such instance, the employer should be able to rely on its duty to provide a safe work environment for all employees.



NORWAY

Current as of December 21, 2020

Access to Vaccine

1. Is there a priority list for the distribution of the COVID-19 vaccine? (include summary list)

The priority list is not ready yet, but the temporary conclusion of the Norwegian Institute of Public Health is to prioritize as follows:

- residents of nursing and care homes;
- elderly aged 85 years or older;
- elderly aged 75 years or older;
- persons aged 65 years or older;
- persons between 18-65 in a risk group;
- health care personnel; and
- the rest of the population.

Cost of Vaccine

2. Will the vaccine be paid for by the applicable jurisdiction?

Yes, vaccination against COVID-19 is free of charge.

Requirement of Vaccine

3. Is there a general requirement for individuals to be vaccinated after the COVID-19 vaccine is available?

There is no requirement for individuals to be vaccinated. Vaccination is voluntary.

4. Is the vaccine mandated in certain industries after it becomes available?

The vaccine is not mandated in any industries.

Employer-Mandated Vaccinations

5. Can an employer require current employees to be vaccinated?

No, an employer cannot require current employees to be vaccinated. This must be subject to consent or agreement (either regulated in the employment contract or a separate agreement). If an employee does not wish to be vaccinated, the employer may according to its right to manage, and based on an individual risk assessment, remove the employee from certain work tasks (e.g., work involving close contact with persons in the risk group).

COVID-19 Vaccination



6. If so, is there legal protection to be excused from being vaccinated (e.g., religious accommodation/disability accommodation)?

Not applicable. See Question 5.

Applicants for Employment (Pre-Hire Stage)

7. Can an employer require applicants to be vaccinated as a condition of hire?

As long as it is deemed necessary for the work tasks. In other words, the employer must show a strong justified need for vaccination to be a condition of hire. If the employee accepts such an agreement, the person undertakes to be vaccinated. Consequently, it will constitute a breach of contract if the employee later resists vaccination.

8. Can employers ask applicants if they have been vaccinated?

According to the Working Environment Act Section 9-3, the employer must not, when advertising for new employees or in any other manner, request applicants to provide other health information than is necessary in relation to performance of the duties associated with the post. The employer may ask if the applicants have been vaccinated if this information is deemed necessary for the work to be performed (e.g., if the employer has a justifiable need for this information in order to comply with the requirement of a fully satisfactory working environment). Also, employers will typically be allowed to ask about this if the work involves contact with risk groups.

9. Can employers refuse to hire applicants that are unwilling to be vaccinated or have not yet been vaccinated?

The employer is initially free not to hire applicants who do not want to sign a contract of employment with such an injunction. However, the employer should be able to document why it deems vaccination as necessary. See Questions 7 and 8.

10. Is there legal protection for applicants to be excused from being vaccinated (e.g. religious accommodation/disability accommodation)?

Not applicable.

Wage and Hour

11. If vaccinations are required, are employees entitled to reimbursement for the cost of the vaccination?

The law does not have an express provision covering this situation. The vaccine itself is free of charge. Whether the employer shall pay for other expenses related to vaccination will be subject to agreement. The customary practice is for employers to reimburse employees for related expenses, and the time spent, when the employer is requiring the employee to engage in a specific activity (e.g., travel, educational course, etc.). The reimbursement of expenses is not considered part of the employee's wage. The time spent receiving the vaccination will typically be part of the employee's wage (ordinary pay or overtime compensation).

COVID-19 Vaccination



Other Legal Risks in Mandating

12. Are there any other legal risks to consider in requiring employee vaccinations? (Please list)

The employer must ensure to comply with the Norwegian Personal Data Act, incorporating the EU General Data Protection Regulation (GDPR).

Employee Benefits

13. Can an employer provide inducements under its employee benefits plans (e.g., wellness programs) for those who are vaccinated?

Yes, the employee may according to its right to manage choose to reward vaccinated employees, provided that the employer can show justifiable reasons, including the need for vaccination connected to the work tasks in question.

14. Can an employer provide a bonus to employees who get vaccinated?

See Question 13.

Union and/or Works Council Obligations

15. For workplaces in which collective representation arrangements apply, is an employer obligated to bargain with the union, or meet with the Works Council, prior to mandating employee vaccinations?

The issue of vaccination can only be agreed upon with the individual employee.
If the employer is to recommend that workers get vaccinated, the need should be discussed with Works Council before such a recommendation is given.

Privacy

16. Is the fact that an employee has, or has not, been vaccinated "health information" or "sensitive personal data" under your country's data protection law (Y/N)?

Yes.

17. If so, is this health information subject to the restrictions on processing applicable to "special categories of personal data" or "sensitive personal data"?

Yes, according to Article 9 of EU's General Data Protection Regulation. In addition to the specific processing GDPR rules, the Norwegian Personal Data Act section 6 states that information concerning employees' health (which would include vaccination) may be processed if necessary, in order to carry out rights and obligations in the employment relationship.

18. If no, is that information nonetheless protected by applicable data protection law (Y/N)?

Not applicable. See Question 17.

COVID-19 Vaccination



Record-Keeping Requirement

19. Is an employer required to maintain a record of an employee's COVID-19 vaccination? No, an employer is not required to maintain a record of an employee's COVID-19 vaccination.

20. If so, what are (if any) the specific record keeping requirements related to vaccinations? Not applicable.

Reporting Requirements

21. If an employee is vaccinated at the employer's directive, is the employer required to notify the governmental health authorities of employee's vaccination? Not applicable.

Teleworking Requirements

22. Can an employer unilaterally implement a teleworking (work from home) arrangement if an employee cannot or will not agree to be vaccinated?

There is no law governing this issue, and one must consider whether the employer's right to manage allows an opportunity to order an employee to work at home on the grounds that he or she has not taken a vaccine. The answer will rely on an individual risk assessment if the employer can impose home office work. In the coming period until the vaccine is well-distributed, the current assessment that mandatory remote work due to COVID-19 to a large extent is acceptable, will still apply. However, once more and more people are vaccinated, the assessment may be different.

If there is a valid reason for imposing home office work, consent will not be required for any of the employees.

23. If telework is not an option, can an employer require employees who cannot or will not agree to vaccinate to not come into the workplace?

There must be strong reasons for an employer to refuse to allow an employee to work. If it is only a few days (e.g., the risk of infection is high and there are other workers who are vulnerable to the disease), this can probably be allowed. Over a long period of time, however, this will not be a durable reason.

The employer must pay the employee during his or her absence.

COVID-19 Vaccination



PANAMA

Current as of December 21, 2020

Access to Vaccine

1. Is there a priority list for the distribution of the COVID-19 vaccine? (include summary list)

In Panama, the first shipment of vaccines is expected to arrive during the first quarter of 2021. To date, there has not been an official announcement regarding the logistics of the vaccination program that the health authorities will be implementing. News outlets report that the allocation will be based on priority groups, consisting of health care workers, firefighters, police, national civil protection system, national migration system, customs personnel, and adults with chronic diseases, among others.

Cost of Vaccine

2. Will the vaccine be paid for by the applicable jurisdiction?

Currently, no information is available.

Requirement of Vaccine

3. Is there a general requirement for individuals to be vaccinated after the COVID-19 vaccine is available?

Currently, no information is available.

4. Is the vaccine mandated in certain industries after it becomes available?

Currently, no information is available.

Employer-Mandated Vaccinations

5. Can an employer require current employees to be vaccinated?

Currently, no information is available.

6. If so, is there legal protection to be excused from being vaccinated (e.g., religious accommodation/disability accommodation)?

Currently, no information is available.

COVID-19 Vaccination



Applicants for Employment (Pre-Hire Stage)

7. Can an employer require applicants to be vaccinated as a condition of hire? Currently, no information is available.

8. Can employers ask applicants if they have been vaccinated? Currently, no information is available.

9. Can employers refuse to hire applicants that are unwilling to be vaccinated or have not yet been vaccinated? Currently, no information is available.

10. Is there legal protection for applicants to be excused from being vaccinated (e.g. religious accommodation/disability accommodation)? Currently, no information is available.

Wage and Hour

11. If vaccinations are required, are employees entitled to reimbursement for the cost of the vaccination? Currently, no information is available. However, the customary practice is for employers to reimburse employees for related expenses when the employer is requiring the employee to engage in a specific activity (e.g., travel, educational course, etc.). Therefore, an employer requiring an employee's vaccination would be expected to reimburse for the related expenses.

Other Legal Risks in Mandating

12. Are there any other legal risks to consider in requiring employee vaccinations? (Please list) Currently, no information is available. Assuming the government issues a mandate for vaccination, then the employer may rely on such a mandate. If vaccination is made optional, an employer mandate may be considered an infringement on individual rights.

COVID-19 Vaccination



Employee Benefits

13. Can an employer provide inducements under its employee benefits plans (e.g., wellness programs) for those who are vaccinated?

The laws do not prohibit the granting of these benefits. However, if the vaccination program is not made mandatory, employees who are unwilling or unable to get vaccinated may claim discrimination.

14. Can an employer provide a bonus to employees who get vaccinated?

The laws do not prohibit the granting of these benefits. However, if the vaccination program is not made mandatory, employees who are unwilling or unable to get vaccinated may claim discrimination.

Union and/or Works Council Obligations

15. For workplaces in which collective representation arrangements apply, is an employer obligated to bargain with the union, or meet with the Works Council, prior to mandating employee vaccinations?

Currently, no information is available. Assuming vaccination is optional, based on customary practice, employers will be expected to negotiate such terms and conditions of employment with the labor union.

Privacy

16. Is the fact that an employee has, or has not, been vaccinated "health information" or "sensitive personal data" under your country's data protection law (Y/N)?

Currently, no information is available. However, employers should keep in mind that a person's health information is considered sensitive information, which should be protected.

17. If so, is this health information subject to the restrictions on processing applicable to "special categories of personal data" or "sensitive personal data"?

Panama's personal data protection law is very recent and does not clearly define what information is considered personal data. However, the general rule is to obtain an employee's consent prior to the employer processing or using such information. Unlawful infringement of the right to privacy of a person's health data constitutes a tortious act, which can form the basis for damages.

18. If no, is that information nonetheless protected by applicable data protection law (Y/N)?

Not applicable.

Record-Keeping Requirement

19. Is an employer required to maintain a record of an employee's COVID-19 vaccination?

Assuming vaccination is made mandatory, an employer would be required to maintain such record. (Refer to Resolution 137 of the Ministry of Labor).

20. If so, what are (if any) the specific record keeping requirements related to vaccinations?

Currently, no information is available. See Question 19.

COVID-19 Vaccination



Reporting Requirements

21. If an employee is vaccinated at the employer's directive, is the employer required to notify the governmental health authorities of employee's vaccination?	Currently, no information is available.
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Teleworking Requirements

22. Can an employer unilaterally implement a teleworking (work from home) arrangement if an employee cannot or will not agree to be vaccinated?	Currently, no information is available.
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23. If telework is not an option, can an employer require employees who cannot or will not agree to vaccinate to not come into the workplace?	Currently, no information is available.
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PARAGUAY

Current as of December 22, 2020

Access to Vaccine

1. Is there a priority list for the distribution of the COVID-19 vaccine? (include summary list)

The Ministry of Health and Safety has prioritized the distribution as follows:

1. healthcare personnel;
2. workers in essential and critical industries;
3. people at high risk for severe COVID-19 illness due to underlying medical conditions; and
4. people 60 years and older.

After these groups have been vaccinated, the vaccine will be allocated to the general population by a different set of priorities.

Cost of Vaccine

2. Will the vaccine be paid for by the applicable jurisdiction?

Yes.

Requirement of Vaccine

3. Is there a general requirement for individuals to be vaccinated after the COVID-19 vaccine is available?

No, but vaccination will be mandatory for some industries (see Question 4).

4. Is the vaccine mandated in certain industries after it becomes available?

Vaccination will be required for various sectors and industries, as follows: hospitals, restaurants, hotels, and public service functions.

Employer-Mandated Vaccinations

5. Can an employer require current employees to be vaccinated?

No. An employer may not unilaterally require all of its employees to be vaccinated. Employees who are not otherwise subject to a vaccination mandate must consent to get vaccinated. Further, employees may be exempted from a vaccination mandate based on a medical condition, disability, or religious belief.

6. If so, is there legal protection to be excused from being vaccinated (e.g., religious accommodation/disability accommodation)?

Yes, employees may be legally protected from having to get vaccinated based on a medical condition, disability, or religious belief.

COVID-19 Vaccination



Applicants for Employment (Pre-Hire Stage)

7. Can an employer require applicants to be vaccinated as a condition of hire?	No, except as it pertains to applicants who would be working in an industry or sector subject to a vaccination mandate. (See Question 4).
8. Can employers ask applicants if they have been vaccinated?	No, except as it pertains to applicants who would be working in an industry or sector subject to a vaccination mandate. (See Question 4).
9. Can employers refuse to hire applicants that are unwilling to be vaccinated or have not yet been vaccinated?	Yes, especially in industries or sectors listed in response to Question 4 or if the work activities require people to be vaccinated.
10. Is there legal protection for applicants to be excused from being vaccinated (e.g. religious accommodation/disability accommodation)?	Yes, applicants may be legally protected from having to get vaccinated based on a medical condition, disability, or religious belief.

Wage and Hour

11. If vaccinations are required, are employees entitled to reimbursement for the cost of the vaccination?	The cost of the vaccine will be covered by the jurisdiction. (See Question 2). However, if the employee is required to receive the vaccination during working hours, it is recommended for the employer to reimburse such time as compensable time.
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Other Legal Risks in Mandating

12. Are there any other legal risks to consider in requiring employee vaccinations? (Please list)	None to date.
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Employee Benefits

13. Can an employer provide inducements under its employee benefits plans (e.g., wellness programs) for those who are vaccinated?	Yes.
14. Can an employer provide a bonus to employees who get vaccinated?	Yes.

COVID-19 Vaccination



Union and/or Works Council Obligations

15. For workplaces in which collective representation arrangements apply, is an employer obligated to bargain with the union, or meet with the Works Council, prior to mandating employee vaccinations?

Yes, the employer is required to negotiate with the union.

Privacy

16. Is the fact that an employee has, or has not, been vaccinated "health information" or "sensitive personal data" under your country's data protection law (Y/N)?

Yes. Law No. 1682/2001 as amended by laws No. 1969/2002 and 5543/2015 ("Private Information Law") regulates the use of private information.

17. If so, is this health information subject to the restrictions on processing applicable to "special categories of personal data" or "sensitive personal data"?

Yes, under Law No. 1682/2001 (see Question 16).

18. If no, is that information nonetheless protected by applicable data protection law (Y/N)?

See Questions 16 and 17.

Record-Keeping Requirement

19. Is an employer required to maintain a record of an employee's COVID-19 vaccination?

Yes. Generally, employers are required to maintain occupational health and safety records on employees. If the employee is required to be vaccinated (e.g., due to working in one of the industries or sectors subject to the vaccination mandate, see Question 4), the employer would be required to maintain such record of vaccination.

20. If so, what are (if any) the specific record keeping requirements related to vaccinations?

The government has not issued specific guidance or regulations specifically related to vaccinations.

Reporting Requirements

21. If an employee is vaccinated at the employer's directive, is the employer required to notify the governmental health authorities of employee's vaccination?

Yes.

COVID-19 Vaccination



Teleworking Requirements

22. Can an employer unilaterally implement a teleworking (work from home) arrangement if an employee cannot or will not agree to be vaccinated?

Yes.

23. If telework is not an option, can an employer require employees who cannot or will not agree to vaccinate to not come into the workplace?

Yes. An employer cannot dismiss employees for this cause. It has to provide accommodation to employees.

COVID-19 Vaccination



PERU

Current as of December 23, 2020

Access to Vaccine

1. Is there a priority list for the distribution of the COVID-19 vaccine? (include summary list)

The Department of Health and Safety's priority to administer the vaccine is as follows:

1. healthcare personnel;
2. workers in essential and critical industries;
3. people at high risk for severe COVID-19 illness due to underlying medical conditions; and
4. people 60 years and older.

After these groups have been vaccinated, the vaccine will be allocated to the general population by a different set of priorities.

Cost of Vaccine

2. Will the vaccine be paid for by the applicable jurisdiction?

Yes, the public sector will pay for the vaccines.

Requirement of Vaccine

3. Is there a general requirement for individuals to be vaccinated after the COVID-19 vaccine is available?

No, but vaccination will be mandatory for some industries (see Question 4).

4. Is the vaccine mandated in certain industries after it becomes available?

Vaccination will be required for various sectors and industries, as follows: hospitals, restaurants, hotels, public service functions, and mining.

Employer-Mandated Vaccinations

5. Can an employer require current employees to be vaccinated?

Yes, but only as it applies to the following sectors or industries: hospitals, restaurants, hotels, public service functions, and mining.

6. If so, is there legal protection to be excused from being vaccinated (e.g., religious accommodation/disability accommodation)?

Yes, employees may be legally protected from having to get vaccinated based on a medical condition or disability.

COVID-19 Vaccination



Applicants for Employment (Pre-Hire Stage)

7. Can an employer require applicants to be vaccinated as a condition of hire?	Yes, except that applicants may be legally protected due to a medical condition or disability.
8. Can employers ask applicants if they have been vaccinated?	Yes, except that applicants may be legally protected due to a medical condition or disability.
9. Can employers refuse to hire applicants that are unwilling to be vaccinated or have not yet been vaccinated?	Yes if the applicant will be working in an industry or sector listed in response to Question 4 or if the work activities of the job will require him or her to be vaccinated.
10. Is there legal protection for applicants to be excused from being vaccinated (e.g. religious accommodation/disability accommodation)?	Yes, applicants may be legally protected from having to get vaccinated based on a medical condition, disability, or religious belief.

Wage and Hour

11. If vaccinations are required, are employees entitled to reimbursement for the cost of the vaccination?	The cost of the vaccine will be covered by the public sector. (See Question 2). However, if the employee is required to receive the vaccination during working hours, it is recommended for the employer to reimburse such time as compensable time.
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Other Legal Risks in Mandating

12. Are there any other legal risks to consider in requiring employee vaccinations? (Please list)	None to date.
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Employee Benefits

13. Can an employer provide inducements under its employee benefits plans (e.g., wellness programs) for those who are vaccinated?	Yes.
14. Can an employer provide a bonus to employees who get vaccinated?	Yes.

COVID-19 Vaccination



Union and/or Works Council Obligations

15. For workplaces in which collective representation arrangements apply, is an employer obligated to bargain with the union, or meet with the Works Council, prior to mandating employee vaccinations?

Yes, the employer is required to negotiate with the union.

Privacy

16. Is the fact that an employee has, or has not, been vaccinated "health information" or "sensitive personal data" under your country's data protection law (Y/N)?

Yes. The applicable laws here are: Personal Data Protection Law No. 29733, enacted in June 2011; Supreme Decree No. 003-2013-JUS-Regulation of the Law; and the Law regulating Private Risk Centers and the Protection of the owner of the information, Law No. 27489

17. If so, is this health information subject to the restrictions on processing applicable to "special categories of personal data" or "sensitive personal data"?

Yes, under the laws identified in response to Question 16.

18. If no, is that information nonetheless protected by applicable data protection law (Y/N)?

See Questions 16 and 17.

Record-Keeping Requirement

19. Is an employer required to maintain a record of an employee's COVID-19 vaccination?

Yes. Generally, employers are required to maintain occupational health and safety records on employees. If the employee is required to be vaccinated (e.g., due to working in one of the industries or sectors subject to the vaccination mandate, see Question 4), the employer would be required to maintain such record of vaccination.

20. If so, what are (if any) the specific record keeping requirements related to vaccinations?

The government has not issued specific guidance or regulations specifically related to vaccinations.

Reporting Requirements

21. If an employee is vaccinated at the employer's directive, is the employer required to notify the governmental health authorities of employee's vaccination?

Yes.

COVID-19 Vaccination



Teleworking Requirements

22. Can an employer unilaterally implement a teleworking (work from home) arrangement if an employee cannot or will not agree to be vaccinated?

Yes.

23. If telework is not an option, can an employer require employees who cannot or will not agree to vaccinate to not come into the workplace?

Yes, except that employers cannot dismiss employees under these circumstances and must provide reasonable accommodations.



PHILIPPINES

Current as of December 21, 2020

Access to Vaccine

1. Is there a priority list for the distribution of the COVID-19 vaccine? (include summary list)

There is no official priority list. However, based on a webinar given by National Task Force Chief Implementer Carlito Galvez, Jr., the recommended priority list is based on areas that are epicenters of the pandemic followed by priority groups of the population in that area. In the Philippines, Metro Manila and Calabarzon have been identified as “high burden areas” where vaccines will need to be deployed in first. The priority groups in these areas are as follows:

1. frontline healthcare workers, field workers, contact tracers, workers in barangay health stations, and frontline workers in government agencies;
2. indigent senior citizens;
3. remaining senior citizens;
4. remaining indigent population; and
5. uniformed personnel.

Cost of Vaccine

2. Will the vaccine be paid for by the applicable jurisdiction?

Appropriations have yet to be made for the procurement of COVID-19 vaccines in the Philippines. However, the government intends to distribute free doses of vaccines to those identified in the priority groups (see Question 1).

Requirement of Vaccine

3. Is there a general requirement for individuals to be vaccinated after the COVID-19 vaccine is available?

No.

4. Is the vaccine mandated in certain industries after it becomes available?

No.

COVID-19 Vaccination



Employer-Mandated Vaccinations

5. Can an employer require current employees to be vaccinated?

No, except when such requirement emanates from a law or regulation issued by the proper government authority. By way of example, Republic Act No. 10152 mandates the immunization of certain vaccine-preventable diseases for all infants and children, while Department of Labor and Employment (DOLE) Department Advisory (DA) No. 05-10 requires Hepatitis B vaccinations for those occupations with a conceivable risk of transmission in the workplace, such as health care workers and other workers whose occupation involves the potential for exchange of bodily fluids.

6. If so, is there legal protection to be excused from being vaccinated (e.g., religious accommodation/disability accommodation)?

An employee may exercise personal choice on whether or not to get vaccinated, since any management decision to require vaccinations for employees is not mandated by law or the government, and the same is strictly unrelated to the performance of employee duties.

Applicants for Employment (Pre-Hire Stage)

7. Can an employer require applicants to be vaccinated as a condition of hire?

No, unless COVID-19 vaccination is proven to be a bona fide occupational qualification (BFOQ) necessary to the normal operation of an employer's enterprise.

To justify a BFOQ, the employer must prove that: (1) the employment qualification is reasonably related to the essential operation of the job involved; and (2) there is factual basis for believing that all or substantially all persons failing to meet the qualification would be unable to properly perform the duties of the job. The test of reasonableness of the company policy is used because it is parallel to a BFOQ. A BFOQ is valid "provided it reflects an inherent quality reasonably necessary for satisfactory job performance."

In the case of COVID-19 vaccinations, the employer must prove that, first, an employee's vaccinated/non-vaccinated status is reasonably related to the performance of his or her job. (See Question 5). The employers of those working in such occupations with a conceivable risk of transmitting COVID-19 may validly require vaccination. Second, regardless of the conceivable risk, the employer must also prove that the employees who would be hired would otherwise be unable to perform the duties of their position if they were not vaccinated.

8. Can employers ask applicants if they have been vaccinated?

Yes, but only with the applicant's consent, because it involves the sensitive personal information of the applicant. The provisions of the Data Privacy Act of 2012 will apply.

9. Can employers refuse to hire applicants that are unwilling to be vaccinated or have not yet been vaccinated?

No, unless COVID-19 vaccination is proven to be a BFOQ necessary to the normal operation of an employer's enterprise. See response to Question 7.

COVID-19 Vaccination



10. Is there legal protection for applicants to be excused from being vaccinated (e.g. religious accommodation/disability accommodation)?

See Question 6.

Wage and Hour

11. If vaccinations are required, are employees entitled to reimbursement for the cost of the vaccination?

Yes. Under DOLE DTI Joint Memorandum Circular No. 20-04-A, employers that implement necessary workplace safety and health programs, including COVID-related programs, must do so at no cost to the employees.

Other Legal Risks in Mandating

12. Are there any other legal risks to consider in requiring employee vaccinations? (Please list)

Ordinarily, an individual's Constitutional rights, such as those enumerated in the Bill of Rights, cannot be invoked against private employers. However, the values expressed in the Constitution cannot be completely ignored in the just adjudication of labor cases. Such constitutional rights may nonetheless be invoked by individuals and may well be adopted by the Supreme Court in private affairs, as in matters relating to one's continued employment or to the imposition of conditions for being employed/hired.

Thus, depending on how the State balances its interest of mandating COVID-19 vaccinations versus the personal freedoms of individuals, employers may expect that a similar rationale will be applied in the case of the private sector. In case of litigation, Philippine courts will eventually have to weigh the value of management's prerogative as opposed to the employee's right to receive/refuse to receive COVID-19 vaccinations.

Assuming employers require such vaccinations, complaints may possibly arise due to any side effects that employees may experience from the vaccination itself, after being required to take the same. As a defense, employers must ensure that its employees are fully informed of whatever risks of injury might be incurred from the proposed course of treatment, so that the employee may be said to have intelligently exercised his or her judgment by reasonably balancing the probable risks against the probable benefits.

Employee Benefits

13. Can an employer provide inducements under its employee benefits plans (e.g., wellness programs) for those who are vaccinated?

Yes, employers may introduce incentives for employees who get vaccinated. However, employers should be careful so as not to offend the principle of "equal pay for equal work," where "persons who work with substantially equal qualification, skill, effort and responsibility, under similar conditions, should be paid similar salaries." Otherwise, the employer has discriminated against those employees, and it is for the former to explain why the latter is being treated unfairly.

COVID-19 Vaccination



14. Can an employer provide a bonus to employees who get vaccinated? See Question 13.

Union and/or Works Council Obligations

15. For workplaces in which collective representation arrangements apply, is an employer obligated to bargain with the union, or meet with the Works Council, prior to mandating employee vaccinations? The answer would depend on whether the company and the union have agreed to an arrangement where prior consultation with or consent by the union is necessary before the company may mandate policies or regulations (such as mandating employee vaccinations).

Privacy

16. Is the fact that an employee has, or has not, been vaccinated "health information" or "sensitive personal data" under your country's data protection law (Y/N)? Yes.

17. If so, is this health information subject to the restrictions on processing applicable to "special categories of personal data" or "sensitive personal data"? Yes. Sensitive personal data includes personal information on an individual's health, and is thus covered by the provisions of the Data Privacy Act of 2012.

18. If no, is that information nonetheless protected by applicable data protection law (Y/N)? Not applicable.

Record-Keeping Requirement

19. Is an employer required to maintain a record of an employee's COVID-19 vaccination? No, unless a law or government regulation is subsequently passed requiring the maintenance of such records. However, note that employers are mandated to keep an accident or illness record; thus, insofar as the vaccination relates to a prior or existing illness (i.e., COVID-19) of the employee, the employer must retain records of the same.

20. If so, what are (if any) the specific record keeping requirements related to vaccinations? There are no specific record-keeping requirements related to vaccinations; however, in general, sensitive personal information relating to an employee's health must be kept strictly confidential.

COVID-19 Vaccination



Reporting Requirements

21. If an employee is vaccinated at the employer's directive, is the employer required to notify the governmental health authorities of employee's vaccination?

No, unless a law or government regulation is subsequently passed requiring such notice.

Teleworking Requirements

22. Can an employer unilaterally implement a teleworking (work from home) arrangement if an employee cannot or will not agree to be vaccinated?

Yes. Employers may consider implementing work-from-home arrangements as a temporary measure that will only be valid so long as the public health crisis exists. Unlike telecommuting programs under Republic Act No. 11165 or the Telecommuting Act (which require an agreement with the employee), these arrangements may be imposed by the employer upon prior consultation with or information to the employees.

23. If telework is not an option, can an employer require employees who cannot or will not agree to vaccinate to not come into the workplace?

No. By extension, this would force employees to be vaccinated. See Question 5.



PUERTO RICO

Current as of December 23, 2020

Access to Vaccine

1. Is there a priority list for the distribution of the COVID-19 vaccine? (include summary list)

As of December 21, 2020, the Puerto Rico Department of Health has the following phased distribution:

- Phase 1A: Healthcare workers, employees, and residents at long-term care facilities and employees and participants of intellectual disability programs.
- Phase 1B: People 65 years of age and older that do not reside in congregate housing and “first line” workers (which includes first responders, manufacturing employees and employees of the education system).
- Phase 1C: Persons 16 years of age and older with chronic conditions, people who are incarcerated, people with disabilities, people living in shelters, people of spiritual guidance, students attending college or school, people who work at restaurants, and workers of other essential services.
- Phase 2: People 16 years of age and older who do not have a history of chronic conditions.

Cost of Vaccine

2. Will the vaccine be paid for by the applicable jurisdiction?

The Centers for Disease Control and Prevention (CDC), the nation’s health protection agency, has stated that the vaccine will be given at no cost. Vaccination providers may charge a fee for administering the vaccine, however. These fees will be covered by insurance or the federal government. For more information, view the [CDC’s website](#).

Requirement of Vaccine

3. Is there a general requirement for individuals to be vaccinated after the COVID-19 vaccine is available?

No. Neither federal nor Puerto Rico law has mandated the vaccine.

4. Is the vaccine mandated in certain industries after it becomes available?

Puerto Rico has flu vaccination requirements for hospital healthcare workers. It remains to be seen whether, in light of the current COVID-19 pandemic, mandates will be expanded to include additional categories of workers, employment sectors, or at-risk individuals, or if mandates will be made stricter.

For more information, see [Do Not Take a Shot in the Dark: Important Considerations for Puerto Rico Employers Eyeing Mandatory COVID-19 Vaccination Programs](#), Littler Insight (Dec. 22, 2020); see [The Race for a COVID-19 Vaccine](#), Littler Report (Sept. 2020); and [EEOC Issues Guidance on COVID-19 Vaccination Policies](#), Littler Insight (Dec. 17, 2020).



Employer-Mandated Vaccinations

5. Can an employer require current employees to be vaccinated?

Likely, yes. While the federal Equal Employment Opportunity Commission's (EEOC) updated Technical Assistance Questions and Answers do not unequivocally state that employers can require employees to get a COVID-19 vaccine, it recognizes an employer's right to request the same and discusses two circumstances where medical inquiries prior to vaccination need not satisfy the "job related" exemption. To wit: (1) if employer vaccinations are voluntary, then "the ADA [Americans with Disabilities Act] requires that the employee's decision to answer pre-screening, disability-related questions also must be voluntary;" and (2) if the employer vaccinations are compulsory and administered by "a third party that does not have a contract with the employer" (*i.e.*, a local pharmacy), then ADA restrictions on "disability-related inquiries" would not apply to the pre-vaccination questions—which, presumably, will be conducted by the third-party.

Accordingly, employers may legally adopt mandatory vaccination programs, but it will depend on the particular workplace context, especially if the program will condition employment on vaccination. This will require an individualized, case-by-case assessment of the specific circumstances of the workplace, employee functions, and the availability and efficacy of less intrusive measures considering the same. Moreover, at least for now, and in the absence of a contrary statutory or regulatory mandate, there must be room for reasonable accommodation of religious and health reasons that impede vaccination. As in the case of current state mandates requiring the regular flu vaccine, this possibility seems rather clear-cut in the case of hospital and long-term care healthcare workers.

For more information, see [*Do Not Take a Shot in the Dark: Important Considerations for Puerto Rico Employers Eyeing Mandatory COVID-19 Vaccination Programs*](#), Littler Insight (Dec. 22, 2020).

6. If so, is there legal protection to be excused from being vaccinated (*e.g.*, religious accommodation/disability accommodation)?

Regardless of the pandemic, employees are protected from discrimination under Title VII of the 1964 Civil Rights Act (Title VII) and the ADA. Accordingly, if an employee claims to be entitled to an exemption based on medical reasons or a sincerely held religious belief, practice, or observance religious, an employer must provide a reasonable accommodation unless it would pose an undue hardship to the operation of the employer's business. Providing a reasonable accommodation includes considering options like leaves of absence, shift-changes, and teleworking, among many others. Regarding the issue of undue hardship, the EEOC expressly stated that "the prevalence in the workplace of employees who already have received a COVID-19 vaccination and the amount of contact with others, whose vaccination status could be unknown, may impact [this] consideration."

For more information, see [*Do Not Take a Shot in the Dark: Important Considerations for Puerto Rico Employers Eyeing Mandatory COVID-19 Vaccination Programs*](#), Littler Insight (Dec. 22, 2020).



Applicants for Employment (Pre-Hire Stage)

7. Can an employer require applicants to be vaccinated as a condition of hire?

Likely, yes. In the past, courts in the United States have treated vaccinations as a “medical examination” under the ADA and deemed them permissible. While the EEOC has not expressly discussed the standards for vaccinations, “medical examinations” are permissible after a conditional offer of employment has been made if all employees entering in the same job category are subject to the same examination.

Further, the EEOC has indicated that neither a vaccine’s administration nor requiring an employee to show proof of vaccination are considered a “medical examination” nor a “disability-related inquiry,” and therefore do not implicate the ADA. The EEOC cautions, however, about subsequent employer inquiries such as why the individual has not received a vaccination, as those may elicit information about a disability.

For more information, see [The Race for a COVID-19 Vaccine](#), Littler Report (Sept. 2020); and [EEOC Issues Guidance on COVID-19 Vaccination Policies](#), Littler Insight (Dec. 17, 2020). In addition, see Section K of the EEOC’s December 16, 2020 publication, [What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws](#).

8. Can employers ask applicants if they have been vaccinated?

Likely, yes, for the same reasons stated in Question 7.

9. Can employers refuse to hire applicants that are unwilling to be vaccinated or have not yet been vaccinated?

Likely, yes. In one federal appellate court decision, the court sided with the employer requiring a measles, mumps, rubella vaccine before an applicant was hired. The court discussed the requirement of vaccinations, and treated them as a “medical examination,” treating the entire procedure as an “entrance examination” that was applied after the offer of employment. *Hustvet v. Allina Health Sys.*, 910 F.3d 399 (8th Cir. 2018). The EEOC has not issued guidance regarding applicants who are unwilling to be vaccinated or have not yet been vaccinated.

For more information, see [The Race for a COVID-19 Vaccine](#), Littler Report (Sept. 2020).



10. Is there legal protection for applicants to be excused from being vaccinated (e.g. religious accommodation/disability accommodation)?

Regardless of the pandemic, employees are protected from discrimination under Title VII and the ADA. Accordingly, if an employee claims to be entitled to an exemption based on medical reasons or a sincerely held religious belief, practice, or religious observance, an employer must provide a reasonable accommodation unless it would pose an undue hardship to the operation of the employer's business. Providing a reasonable accommodation includes considering options like leaves of absence, shift-changes, and teleworking, among many others. Regarding the issue of undue hardship, the EEOC expressly stated that "the prevalence in the workplace of employees who already have received a COVID-19 vaccination and the amount of contact with others, whose vaccination status could be unknown, may impact [this] consideration."

For more information, see [Do Not Take a Shot in the Dark: Important Considerations for Puerto Rico Employers Eyeing Mandatory COVID-19 Vaccination Programs](#), Littler Insight (Dec. 22, 2020); and [The Race for a COVID-19 Vaccine](#), Littler Report (Sept. 2020).

Wage and Hour

11. If vaccinations are required, are employees entitled to reimbursement for the cost of the vaccination?

The CDC has stated that the vaccine will be given at no cost. Vaccination providers may charge a fee for administering the vaccine, however. These fees will be covered by insurance or the federal government. For more information, view the [CDC's website](#).

Generally, under the Fair Labor Standards Act (FLSA), employers must reimburse expenses an employee incurs on its behalf or that an employee is required to expend primarily for the convenience of its employer. This will likely apply for employers requiring employees to get vaccinated. Moreover, it could be argued that time spent by an employee getting vaccinated as a result of his or her employer's mandatory vaccination policy constitutes time worked under the FLSA. To that end, pursuant to the DOL elaws Hours Worked Advisor, whenever an employer imposes "special tests, requirements or conditions" that the employee must meet, the time spent by the employee "traveling to and from the tests, waiting for and undergoing these tests, or meeting the requirements is probably hours worked."

Thus, whether employers will be required to pay for the time spent by an employee getting the COVID-19 vaccine is uncertain but we would err on the side of caution. Conversely, if the employer has a voluntary vaccination policy, then we would argue that the time spent getting vaccinated does not constitute hours work under the FLSA unless, of course, the vaccination occurs during working hours.



Other Legal Risks in Mandating

12. Are there any other legal risks to consider in requiring employee vaccinations? (Please list)

Employers should be aware of their obligations and potential ramifications under the federal Pregnancy Discrimination Act, Workers' Compensation laws, and the Occupational Safety and Health Act, as well as state equivalents.

Further, employers should be mindful of Puerto Rico Constitutional considerations. To that end, Sections 1, 8, and 16 of Article II of the Bill of Rights of the Constitution of the Commonwealth of Puerto Rico consecrates the right to privacy, the inviolability of the human dignity, and the right to be protected against risks to the integrity of the person in his or her work. The Supreme Court of Puerto Rico has recognized that, inherent in these protections, is the right of the individual to make decisions about their own medical treatment, including the right to consent or refuse medical treatment. Importantly, and particularly relevant to the employment context and the issue of vaccines, is the individual's right to protection against risks to his or her health or person in his or her work or employment, also included in Article II, section 16.8.

The right to privacy has been held enforceable between private parties *ex proprio vigore*; that is, without the need for enabling legislation. In the employment context, this means that an employee candidate or active employee may sue a private employer for damages violating their right to privacy.

For more information, see [Do Not Take a Shot in the Dark: Important Considerations for Puerto Rico Employers Eyeing Mandatory COVID-19 Vaccination Programs](#), Littler Insight (Dec. 22, 2020); [EEOC Issues Guidance on COVID-19 Vaccination Policies](#), Littler Insight (Dec. 17, 2020); and [The Race for a COVID-19 Vaccine](#), Littler Report (Sept. 2020).

Employee Benefits

13. Can an employer provide inducements under its employee benefits plans (e.g., wellness programs) for those who are vaccinated?

While it has not addressed the issue of the COVID-19 vaccine, the CDC encourages employers to make influenza vaccinations a part of workplace wellness programs, and contemplates using minimal incentives to increase participation. Financial incentives should be avoided because they may serve to identify or stigmatize employees who, based on disability or religion, request an accommodation.

For more information on the CDC's recommendations regarding influenza vaccinations, see [Promoting Vaccination in the Workplace](#).



14. Can an employer provide a bonus to employees who get vaccinated?

While it has not addressed the issue of the COVID-19 vaccine, the CDC encourages employers to make influenza vaccinations a part of workplace wellness programs, and contemplates using minimal incentives to increase participation. Financial incentives should be avoided because they may serve to identify or stigmatize employees who, based on disability or religion, request an accommodation.

For more information on the CDC's recommendations regarding influenza vaccinations, see [Promoting Vaccination in the Workplace](#).

Union and/or Works Council Obligations

15. For workplaces in which collective representation arrangements apply, is an employer obligated to bargain with the union, or meet with the Works Council, prior to mandating employee vaccinations?

Employers with union-represented employees should carefully review existing collective bargaining agreements to determine whether there is sufficient management rights language that would permit an employer to mandate vaccinations as a condition of employment. To the extent an employer seeks to avoid a bargaining obligation by claiming that a mandatory vaccination is consistent with a local, state, or federal law/regulation, it will need to show that it is actually mandated by the government to require such vaccination.

For example, even if a government order requires employees to be vaccinated, employers with union-represented employees may have to consider, and even negotiate, some of the following "effects" of the order before implementation:

- classes of employees subject to vaccination (unless specified by the order);
- frequency and timing of the vaccination;
- consequences of an employee's refusal to submit to vaccination;
- staff/contractors who will perform the vaccination;
- where the vaccination will be performed; and
- compensation for time spent in vaccination procedure.

For more information, see [The Race for a COVID-19 Vaccine](#), Littler Report (Sept. 2020).

COVID-19 Vaccination



Privacy

16. Is the fact that an employee has, or has not, been vaccinated “health information” or “sensitive personal data” under your country’s data protection law (Y/N)?

It depends. If an employer receives information about whether an employee has been vaccinated in its capacity as administrator of a health plan, the information is protected under the federal Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule. If, however, the employer receives the information in a different context, it would not be subject to the HIPAA Privacy Rule. The EEOC has indicated that neither a vaccine’s administration nor requiring an employee to show proof of vaccination are considered a “medical examination” nor a “disability-related inquiry,” and therefore do not implicate the ADA.

The EEOC cautions, however, about subsequent employer inquiries such as why the individual has not received a vaccination, as those may elicit information about a disability or constitute health information.

For more information, see [EEOC Issues Guidance on COVID-19 Vaccination Policies](#), Littler Insight (Dec. 17, 2020).

17. If so, is this health information subject to the restrictions on processing applicable to “special categories of personal data” or “sensitive personal data”?

Yes. HIPAA generally prohibits a covered entity from disclosing protected health information without authorization.

For more information on employee rights under HIPAA in the COVID-19 context, see [With COVID-19 Resurgent, Employers Confront Privacy and Information Security Issues When Testing Employees for COVID-19](#), Littler Insight (Aug. 3, 2020).

18. If no, is that information nonetheless protected by applicable data protection law (Y/N)?

Not applicable.

Record-Keeping Requirement

19. Is an employer required to maintain a record of an employee’s COVID-19 vaccination?

Currently, no information is available.

20. If so, what are (if any) the specific record keeping requirements related to vaccinations?

Records and documents related to an employee’s medical history or vaccination must be maintained as confidential medical records in separate files/records from the usual personnel files and in conformance with confidentiality requirements under the federal American with Disabilities Act, Genetic Information Nondiscrimination Act of 2008 (GINA), and HIPPA privacy requirements.

COVID-19 Vaccination



Reporting Requirements

21. If an employee is vaccinated at the employer's directive, is the employer required to notify the governmental health authorities of employee's vaccination?

Currently, no information is available.

Teleworking Requirements

22. Can an employer unilaterally implement a teleworking (work from home) arrangement if an employee cannot or will not agree to be vaccinated?

The EEOC's guidance permits an employer to exclude an unvaccinated employee from the workplace. It also suggests that an employer consider allowing the unvaccinated worker to work with existing COVID-19 safety protocols in place, such as masks and social distancing.

For more information, see [EEOC Issues Guidance on COVID-19 Vaccination Policies](#), Littler Insight (Dec. 17, 2020).

23. If telework is not an option, can an employer require employees who cannot or will not agree to vaccinate to not come into the workplace?

While the EEOC's guidance permits an employer to exclude an unvaccinated employee from the workplace, it warns against automatic termination decisions. This is really important in Puerto Rico, as it is not an at-will jurisdiction and employers must establish "just cause" for any termination. As always, the facts about job duties and workplaces are relevant. Employers are counseled to tread carefully when considering this possibility as its legality will largely depend on the particular context and circumstances of the workplace and the employee's role within the same. Further, the EEOC suggests that an employer consider allowing the unvaccinated worker to work with existing COVID-19 safety protocols in place, such as masks and social distancing.

For more information, see [EEOC Issues Guidance on COVID-19 Vaccination Policies](#), Littler Insight (Dec. 17, 2020).



ROMANIA

Current as of December 23, 2020

Access to Vaccine

1. Is there a priority list for the distribution of the COVID-19 vaccine? (include summary list)

Romanian public authorities recommend phased distribution, based on prioritization of groups of the population, with the first priority being:

1. healthcare professionals;
2. people at risk (i.e., people over 65 years and people with chronic diseases); and
3. people working in key, essential areas (e.g., parliament, government, law enforcement agencies).

Cost of Vaccine

2. Will the vaccine be paid for by the applicable jurisdiction?

The Romanian Government will allocate financial resources from the state budget within the limits of the budgetary provisions for this purpose.

Requirement of Vaccine

3. Is there a general requirement for individuals to be vaccinated after the COVID-19 vaccine is available?

No. According to the COVID-19 Vaccination Strategy, COVID-19 vaccination will be voluntary, based on informed consent.

4. Is the vaccine mandated in certain industries after it becomes available?

Currently, no information is available.

Employer-Mandated Vaccinations

5. Can an employer require current employees to be vaccinated?

No, an employer cannot require employees to be vaccinated.

As a general note, at this stage, vaccination of employees represents a complex debate in Romania and no specific clarifications exist in this sense. Romanian public officials have not offered a straight answer in relation to the possibility of employers to require mandatory vaccination of employees, but various other related aspects would need to be considered, such as the number of employees that will be vaccinated, the nature of the activity carried out, etc.

Further guidance is expected from authorities in the following months.

6. If so, is there legal protection to be excused from being vaccinated (e.g., religious accommodation/disability accommodation)?

Not applicable.

COVID-19 Vaccination



Applicants for Employment (Pre-Hire Stage)

7. Can an employer require applicants to be vaccinated as a condition of hire?

Romanian legal framework does not provide vaccination as a condition of hire. Imposing such requirement is not recommended as such could raise discrimination claims from the applicants.

8. Can employers ask applicants if they have been vaccinated?

Even if not expressly forbidden by Romanian legal framework at this stage, asking applicants if they have been vaccinated is not recommended.

The Romanian Labor Code provides that the information required by the employer on the occasion of the prior verification of employees' skills should only have the purpose of assessing the ability of that employee to occupy the position in question, as well as the professional skills.

9. Can employers refuse to hire applicants that are unwilling to be vaccinated or have not yet been vaccinated?

Even if not expressly forbidden by Romanian legal framework at this stage, the refusal to hire applicants on these criteria is not recommended.

Given that the vaccination in Romania is voluntary, the refusal of hiring applicants who are unwilling to be vaccinated or have not yet been vaccinated could trigger discrimination claims from these applicants.

10. Is there legal protection for applicants to be excused from being vaccinated (e.g. religious accommodation/disability accommodation)?

Currently, no information is available.

Wage and Hour

11. If vaccinations are required, are employees entitled to reimbursement for the cost of the vaccination?

Not applicable as vaccinations are not required by law.

Other Legal Risks in Mandating

12. Are there any other legal risks to consider in requiring employee vaccinations? (Please list)

Yes. Requiring employee vaccinations (although not mandatory under Romanian law) may trigger various claims (e.g., on discrimination) from the employees who are not willing to be vaccinated.

COVID-19 Vaccination



Employee Benefits

13. Can an employer provide inducements under its employee benefits plans (e.g., wellness programs) for those who are vaccinated?

At this point, there are no specific provisions regulating the possibility of employers to offer inducements to employees who will be vaccinated. At first sight, the employer can provide such benefits (e.g., wellness programs) as an incentive for ensuring a safe work environment.

14. Can an employer provide a bonus to employees who get vaccinated?

At this point, there are no specific provisions regulating the possibility of employers to offer a bonus to employees who will be vaccinated. However, from a practical perspective, it is unusual for employers to grant bonuses to employees considering other criteria than the professional ones. The risk of triggering related discrimination claims from the employees may be considered as well.

Union and/or Works Council Obligations

15. For workplaces in which collective representation arrangements apply, is an employer obligated to bargain with the union, or meet with the Works Council, prior to mandating employee vaccinations?

Not applicable as the employer cannot order employee vaccinations.

Privacy

16. Is the fact that an employee has, or has not, been vaccinated "health information" or "sensitive personal data" under your country's data protection law (Y/N)?

Although not expressly provided under relevant Romanian legal provisions, information about an employee being or not vaccinated is considered "health information," hence this would be deemed as "sensitive personal data."

17. If so, is this health information subject to the restrictions on processing applicable to "special categories of personal data" or "sensitive personal data"?

Yes.

18. If no, is that information nonetheless protected by applicable data protection law (Y/N)?

Not applicable.

COVID-19 Vaccination



Record-Keeping Requirement

19. Is an employer required to maintain a record of an employee's COVID-19 vaccination? Currently, no information is available.

20. If so, what are (if any) the specific record keeping requirements related to vaccinations? Currently, no information is available.

Reporting Requirements

21. If an employee is vaccinated at the employer's directive, is the employer required to notify the governmental health authorities of employee's vaccination? Not applicable.

Teleworking Requirements

22. Can an employer unilaterally implement a teleworking (work from home) arrangement if an employee cannot or will not agree to be vaccinated? No specific provisions on this topic have been adopted so far. As a rule, telework is implemented with the consent of both parties (i.e., employer and employee). However, during the state of alert (i.e., currently prolonged in Romania until January 12, 2021, inclusive), employers shall unilaterally implement work from home or telework when the type of the activity performed allows it.

23. If telework is not an option, can an employer require employees who cannot or will not agree to vaccinate to not come into the workplace? No specific provisions regulating such right have been adopted yet. This is a debatable topic legally that involves health and safety, discrimination, and restriction at work angles.

COVID-19 Vaccination



RUSSIA

Current as of December 31, 2020

Access to Vaccine

1. Is there a priority list for the distribution of the COVID-19 vaccine? (include summary list)

According to the Ministry of Health's Order No. 1307n (dated December 9, 2020), the following priorities are established:

- First level priority consists of healthcare, education, and social services workers; persons in nursing homes and assisted living facilities; and persons with chronic diseases, including diseases of the bronchopulmonary system, cardiovascular diseases, diabetes, and obesity.
- Second level priority includes transportation, energy, law enforcement, border patrol personnel; persons working on a rotational basis; volunteers; military; and service industry employees.
- Third level priority includes state employees; students over 18 years old; and persons subject to mandatory military service.

Cost of Vaccine

2. Will the vaccine be paid for by the applicable jurisdiction?

Yes.

Requirement of Vaccine

3. Is there a general requirement for individuals to be vaccinated after the COVID-19 vaccine is available?

No.

4. Is the vaccine mandated in certain industries after it becomes available?

Russian legislation contains a list of jobs, the performance of which is connected with the risk of infectious diseases and requires obligatory preventive vaccinations (Government Resolution No. 825 of July 15, 1999, with amendments and additions). Due to the inclusion of the COVID-19 vaccine in the national vaccination calendar, failure to vaccinate may result in refusal of employment or dismissal from work (the list of jobs is defined by the Russian Government).

Employer-Mandated Vaccinations

5. Can an employer require current employees to be vaccinated?

No.

COVID-19 Vaccination



6. If so, is there legal protection to be excused from being vaccinated (e.g., religious accommodation/disability accommodation)?

Not applicable.

Applicants for Employment (Pre-Hire Stage)

7. Can an employer require applicants to be vaccinated as a condition of hire?

Yes, but only in cases of work connected with the risk of infectious diseases and requiring mandatory prophylactic vaccinations (the list of jobs is defined by the Government of the Russian Federation).

8. Can employers ask applicants if they have been vaccinated?

Yes, but only in cases of work connected with the risk of infectious diseases and requiring mandatory prophylactic vaccinations (the list of jobs is defined by the Government of the Russian Federation).

9. Can employers refuse to hire applicants that are unwilling to be vaccinated or have not yet been vaccinated?

Yes, but only in cases of work connected with the risk of infectious diseases and requiring mandatory prophylactic vaccinations (the list of jobs is defined by the Government of the Russian Federation).

10. Is there legal protection for applicants to be excused from being vaccinated (e.g. religious accommodation/disability accommodation)?

Any person can refuse to be vaccinated without providing a reason. But this does not cancel the requirement to be vaccinated when performing work associated with the risk of infectious diseases that requires mandatory vaccinations.

Wage and Hour

11. If vaccinations are required, are employees entitled to reimbursement for the cost of the vaccination?

There is no direct guidance on this issue. As a general rule, vaccinations are provided at the expense of the state (the list is specified in the national calendar of preventive vaccinations). The standard practice is for the employer not to reimburse the employee for related expenses when the employer requires the employee to engage in a certain type of activity (e.g., travel, training, etc.). Such compensation is usually not included in the employee's regular rate. In addition, the employee is usually not compensated for time spent obtaining vaccinations.

A collective agreement or other regulatory document of the employer may contain a condition on compensation.

Other Legal Risks in Mandating

12. Are there any other legal risks to consider in requiring employee vaccinations? (Please list)

In addition to the issues identified above, see responses relating to employee benefits, privacy rights, and teleworking arrangements.

COVID-19 Vaccination



Employee Benefits

13. Can an employer provide inducements under its employee benefits plans (e.g., wellness programs) for those who are vaccinated?

Yes, however, care should be taken to avoid discrimination claims based on allegations of being treated because of vaccination status. Discrimination is prohibited (Article 3 of the Labor Code).

14. Can an employer provide a bonus to employees who get vaccinated?

Yes, however, see Question 13.

Union and/or Works Council Obligations

15. For workplaces in which collective representation arrangements apply, is an employer obligated to bargain with the union, or meet with the Works Council, prior to mandating employee vaccinations?

It cannot be mandated that an employee be vaccinated.

Privacy

16. Is the fact that an employee has, or has not, been vaccinated "health information" or "sensitive personal data" under your country's data protection law (Y/N)?

Yes.

17. If so, is this health information subject to the restrictions on processing applicable to "special categories of personal data" or "sensitive personal data"?

No.

18. If no, is that information nonetheless protected by applicable data protection law (Y/N)?

Yes.

Record-Keeping Requirement

19. Is an employer required to maintain a record of an employee's COVID-19 vaccination?

Yes, if the employee performs work connected with the risk of infectious diseases and requires compulsory preventive vaccinations (the list of work is defined by the Government of the Russian Federation).

20. If so, what are (if any) the specific record keeping requirements related to vaccinations?

Currently, there are no specific requirements.

COVID-19 Vaccination



Reporting Requirements

21. If an employee is vaccinated at the employer's directive, is the employer required to notify the governmental health authorities of employee's vaccination?

At the request of the governmental authorities.

Teleworking Requirements

22. Can an employer unilaterally implement a teleworking (work from home) arrangement if an employee cannot or will not agree to be vaccinated?

In certain situations, yes. In those cases, no consent is required.

23. If telework is not an option, can an employer require employees who cannot or will not agree to vaccinate to not come into the workplace?

Yes. Whether an employer would be required to provide any pay or benefits would depend on the circumstances.

COVID-19 Vaccination



SINGAPORE

Current as of December 23, 2020

Access to Vaccine

1. Is there a priority list for the distribution of the COVID-19 vaccine? (include summary list)

The Multi-Ministry Taskforce on COVID-19 in Singapore says that the priority for the vaccines will be given to groups such as healthcare and frontline workers as well as the elderly and the vulnerable. More details of the different phases of the vaccination program and the priority for distribution, will hopefully be released in January 2021.

Cost of Vaccine

2. Will the vaccine be paid for by the applicable jurisdiction?

COVID-19 vaccines will be free for all Singaporeans and long-term residents who are currently residing in Singapore.

Requirement of Vaccine

3. Is there a general requirement for individuals to be vaccinated after the COVID-19 vaccine is available?

No, there is no mandatory requirement for individuals to be vaccinated.

4. Is the vaccine mandated in certain industries after it becomes available?

Currently, no information is available.

Employer-Mandated Vaccinations

5. Can an employer require current employees to be vaccinated?

The vaccine must be subject to the consent of employees voluntarily. An employer has no statutory right to require employees to do so, unless the vaccination becomes mandatory pursuant to directions from the Singapore government.

6. If so, is there legal protection to be excused from being vaccinated (e.g., religious accommodation/disability accommodation)?

Not applicable.

Applicants for Employment (Pre-Hire Stage)

7. Can an employer require applicants to be vaccinated as a condition of hire?

Possibly, yes, as long as the employers can prove that being vaccinated is what the position requires.

COVID-19 Vaccination



8. Can employers ask applicants if they have been vaccinated?	Such information will constitute personal data that is protected under the Personal Data Protection Act 2012. Employers have to follow the Act and obtain the specific consent to collect such information.
9. Can employers refuse to hire applicants that are unwilling to be vaccinated or have not yet been vaccinated?	Possibly, yes, as long as the employers can prove that being vaccinated is what the position requires.
10. Is there legal protection for applicants to be excused from being vaccinated (e.g. religious accommodation/disability accommodation)?	For employees who are pregnant or have other physical concerns, they might be excused from being vaccinated subject to the government's guidelines.

Wage and Hour

11. If vaccinations are required, are employees entitled to reimbursement for the cost of the vaccination?	The law does not have an express provision covering this situation. The customary practice is for employers to reimburse employees for related expenses when the employer requires the employee to engage in a specific activity (e.g., travel, educational course, etc.). Therefore, an employer requiring an employee's vaccination would be expected to reimburse for the related expenses. Such reimbursement is not included in an employee's regular rate. In addition, the employee would be paid as normal working hours for the time spent receiving the vaccination.
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Other Legal Risks in Mandating

12. Are there any other legal risks to consider in requiring employee vaccinations? (Please list)	Unless the industry is specifically subject to a government mandate or the employer receives express authorization from the government, an employee's refusal to have the vaccine cannot constitute a failure to comply with a reasonable management request. See also responses relating to employee benefits, privacy considerations, and teleworking arrangements.
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Employee Benefits

13. Can an employer provide inducements under its employee benefits plans (e.g., wellness programs) for those who are vaccinated?	Yes.
14. Can an employer provide a bonus to employees who get vaccinated?	Yes.

COVID-19 Vaccination



Union and/or Works Council Obligations

15. For workplaces in which collective representation arrangements apply, is an employer obligated to bargain with the union, or meet with the Works Council, prior to mandating employee vaccinations?

Yes. Currently, however, employers cannot mandate employee vaccinations unless the employer is in a company or in an industry subject to a mandatory vaccination requirement.

Privacy

16. Is the fact that an employee has, or has not, been vaccinated "health information" or "sensitive personal data" under your country's data protection law (Y/N)?

It is likely to be considered "health information" and "sensitive personal data" under the Personal Data Protection Act 2012.

17. If so, is this health information subject to the restrictions on processing applicable to "special categories of personal data" or "sensitive personal data"?

Yes, it is likely subject to restrictions.

18. If no, is that information nonetheless protected by applicable data protection law (Y/N)?

Not applicable.

Record-Keeping Requirement

19. Is an employer required to maintain a record of an employee's COVID-19 vaccination?

Yes, records relating to employees' sick leave and occupational health records should be kept while employment continues and for seven years after employment ceases.

20. If so, what are (if any) the specific record keeping requirements related to vaccinations?

Not applicable.

Reporting Requirements

21. If an employee is vaccinated at the employer's directive, is the employer required to notify the governmental health authorities of employee's vaccination?

Currently, no information is available.

COVID-19 Vaccination



Teleworking Requirements

22. Can an employer unilaterally implement a teleworking (work from home) arrangement if an employee cannot or will not agree to be vaccinated?

Yes. It is at the discretion of the employer to implement a teleworking arrangement, as long as other terms and conditions of employment (especially the salary and benefits) remain the same.

23. If telework is not an option, can an employer require employees who cannot or will not agree to vaccinate to not come into the workplace?

Yes. It is at the employer's discretion to ask an employee not to come to the workplace, as long as other terms and conditions of employment (especially the salary and benefits) remain the same.

COVID-19 Vaccination



SPAIN

Current as of December 21, 2020

Access to Vaccine

1. Is there a priority list for the distribution of the COVID-19 vaccine? (include summary list)

Yes. The COVID-19 vaccine will be available in limited quantities and will be progressively increased. Three stages have been identified according to availability at any given time:

- First stage: initial and very limited supply of vaccine (from January to March 2021);
- Second stage: a progressive increase in the number of vaccines that will make it possible to increase the number of people to be vaccinated (until approximately June 2021); and
- Third stage: an increase in the number of doses and vaccines available to cover all priority groups (starting in the summer).

To prioritize the groups to be vaccinated at each stage, an assessment has been made based on the following criteria: risk of serious morbidity and mortality, risk exposure, risk of socio-economic impact, and risk of transmission, in addition to feasibility and acceptance criteria.

Based on this assessment, the following priority list has been set for the first stage:

1. residents of elderly homes and health and socio-health workers in elderly and disabled residencies;
2. first class health care workers;
3. other health and social-health workers; and
4. people with disabilities who require intensive support measures for their appropriate development (large non-institutionalized dependents).

Cost of Vaccine

2. Will the vaccine be paid for by the applicable jurisdiction?

Yes, the vaccine will be administered free of charge through the National Health System.

Requirement of Vaccine

3. Is there a general requirement for individuals to be vaccinated after the COVID-19 vaccine is available?

Not at this time.

4. Is the vaccine mandated in certain industries after it becomes available?

No, the vaccination is voluntary for the time being as the current state of the law gives priority to individual freedom of choice.



Employer-Mandated Vaccinations

5. Can an employer require current employees to be vaccinated?

No, vaccination is voluntary as provided in the General Law on Public Health, as well as the basic law regulating patient autonomy and the legislation on the Prevention of Occupational Risks. Vaccinations can be only mandatory for public health reasons. However, despite the fact that COVID-19 may fit this scenario as it is a pandemic and health crisis, the Spanish Government has decided that for the time being the vaccination against COVID-19 would be voluntary.

When there is a risk of exposure to biological agents for which there are effective vaccines, these should be made available to workers by the employer, informing them of the advantages and disadvantages of vaccination, whether or not the employee chooses to receive it (Article 8.3 of RD 664/1997 of May 12). However, this is an old royal decree, which was intended to apply to specific groups in the health sector (doctors, nurses, and laboratory technicians). It is to be seen whether this rule will also apply in the case of COVID-19 for all sectors.

Furthermore, in relation to the Organic Law 3/1986, of April 14, on Special Measures in the Field of Public Health and the Law 29/1998, of July 13, regulating the Contentious-Administrative Jurisdiction, a judge can consider the vaccination mandatory in very exceptional cases.

6. If so, is there legal protection to be excused from being vaccinated (e.g., religious accommodation/disability accommodation)?

Yes, as vaccination is voluntary. Law 41/2002 (the law regulating patient autonomy) guarantees the right to accept or reject therapies or medical procedures (see Art. 2, on principle of autonomy). This guarantee is also recognized under Law 33/2011 (general law on public health). Also, under the Spanish Constitution, which protects the right of freedom and privacy, individuals have the right not to be vaccinated.

Applicants for Employment (Pre-Hire Stage)

7. Can an employer require applicants to be vaccinated as a condition of hire?

Currently, no information is available. However, it seems that to require applicants to be vaccinated when the vaccination is not mandatory may breach their right to privacy and freedom of choice. Further, it may subject employers to claims of discrimination.

However, note that in December 2020 the president of the European Economic and Social Committee (EESC), Christa Schweng, considered that "it is obviously possible" for companies to avoid hiring a worker if he or she does not want to be vaccinated against COVID-19. "As an employer, I can decide who I sign a contract with," she explained, noting that "the worker can decide whether he or she wants to work (for the company) or not" if the vaccination is required to sign a contract. In other words, being vaccinated could become an additional requirement when looking for a new job. The authorities have not yet made any pronouncements on this issue.



8. Can employers ask applicants if they have been vaccinated?

No. The Spanish Data Protection Agency recently stated that an employer cannot request or process data concerning immunity against COVID-19, even if an applicant has included this information in his or her CVs during the recruitment process. First, information about immunity against COVID-19 is sensitive data related to health. Second, there is no legal basis to justify this processing, under Art. 6.1 of the EU's General Data Protection Regulation (GDPR). Third, none of the exceptions provided in Art. 9.2 of the GDPR apply.

Furthermore, the Agency has also concluded that if an applicant voluntarily provides this information on his or her CV, the employer may not consider it when making the hiring decision. Further, the employer has the obligation to delete this information and, if not possible, the employer should remove this applicant from the recruitment process.

Therefore, the same arguments can be applied about requiring applicants to provide information on whether they have been vaccinated.

Note that under Art. 16.1.c of the Law on Social Order Infringements and Sanctions ("*Ley de Infracciones y Sanciones en el Orden Social*"), requesting personal data during the recruitment process that may lead to a claim of discrimination in access to employment is a serious infringement of the law, subject to sanctions. This law would apply to this situation, as well.

9. Can employers refuse to hire applicants that are unwilling to be vaccinated or have not yet been vaccinated?

See Question 7.

10. Is there legal protection for applicants to be excused from being vaccinated (e.g. religious accommodation/disability accommodation)?

See Question 6.

Wage and Hour

11. If vaccinations are required, are employees entitled to reimbursement for the cost of the vaccination?

Currently, no information is available. However, if vaccination were necessary due to the specific type of work (i.e., workers of the health sector), it would be done during working hours, the same as with medical examinations. In this case, the cost will be at the employer's expense. However, note that workers in the health sectors are on the priority list so they can get the vaccination free paid by the Government.

Also, if vaccines are provided to employees as a health and safety measure based on occupational risk prevention protocols, then the cost will be at the company's expense. Otherwise, the cost will be borne by the employee. However, again please note that for now the vaccine would be free.

COVID-19 Vaccination



Other Legal Risks in Mandating

12. Are there any other legal risks to consider in requiring employee vaccinations? (Please list)

If there is a conflict over an employee's refusal to be vaccinated and it leads to a dismissal, the dismissal will probably be deemed unfair for lacking a legal basis to justify the termination of the employment contract. It would also be considered a breach of the employee's fundamental rights.

Employee Benefits

13. Can an employer provide inducements under its employee benefits plans (e.g., wellness programs) for those who are vaccinated?

Currently, there is no official guidance on this. However, giving incentives only to workers who are vaccinated may lead to legal claims of inequality, discrimination, and violation of fundamental rights under Art. 14 of the Spanish Constitution, which guarantees that all Spanish citizens are equal under the law and prohibits discrimination based on birth, race, sex, religion, opinion or any other personal or social condition or circumstance.

14. Can an employer provide a bonus to employees who get vaccinated?

See Question 13.

Union and/or Works Council Obligations

15. For workplaces in which collective representation arrangements apply, is an employer obligated to bargain with the union, or meet with the Works Council, prior to mandating employee vaccinations?

Currently, no information is available as vaccination is not mandatory. However, under Art. 64 of the Workers' Statute, the Works Council shall have the right to be informed and consulted by the employer on matters likely to affect workers. Therefore, the employer will not be obligated to enter into an agreement with the Works Council, but must inform them in advance.

Privacy

16. Is the fact that an employee has, or has not, been vaccinated "health information" or "sensitive personal data" under your country's data protection law (Y/N)?

Yes.

17. If so, is this health information subject to the restrictions on processing applicable to "special categories of personal data" or "sensitive personal data"?

Yes, health information is a protected "sensitive data category" under Art. 9 of the GDPR and Art. 9 of the Spanish Data Protection Act.

18. If no, is that information nonetheless protected by applicable data protection law (Y/N)?

Not applicable.

COVID-19 Vaccination



Record-Keeping Requirement

19. Is an employer required to maintain a record of an employee's COVID-19 vaccination?

Currently, there is no official guidance on this. However, Spanish law does not allow employers to store employees' sensitive data, unless expressly authorized by law. While companies may maintain records of an employee's fitness to work, they cannot do so relating to the employee's medical and health records. Even when an employee is vaccinated, an employer cannot keep such record.

20. If so, what are (if any) the specific record keeping requirements related to vaccinations?

Not applicable. However, Art. 5.1(e) of the GDPR places a limitation on the retention period: personal data can be kept only for the necessary time and purpose for which it is being processed.

Reporting Requirements

21. If an employee is vaccinated at the employer's directive, is the employer required to notify the governmental health authorities of employee's vaccination?

Not applicable.

Teleworking Requirements

22. Can an employer unilaterally implement a teleworking (work from home) arrangement if an employee cannot or will not agree to be vaccinated?

No, remote working is voluntary and requires the agreement of both parties, through an explicit remote work agreement. Such arrangement cannot be implemented by the employer unilaterally or through an agreement with employees' representatives.

23. If telework is not an option, can an employer require employees who cannot or will not agree to vaccinate to not come into the workplace?

No.

COVID-19 Vaccination



THAILAND

Current as of January 4, 2021

Access to Vaccine

1. Is there a priority list for the distribution of the COVID-19 vaccine? (include summary list)

To date, no formal written announcement has been made by the government. However, Thai news outlets report that Dr. Opas Karnkawinpong, the Director-General of the Department of Disease Control, has stated that COVID-19 vaccines will be administered by priority, as follows:

1. people in high risk groups;
2. people with high risk of transmission; and
3. healthcare workers.

Cost of Vaccine

2. Will the vaccine be paid for by the applicable jurisdiction?

According to the Director-General of the Department of Disease Control, the government should pay for the vaccine costs when administrated at public hospitals or government facilities.

Requirement of Vaccine

3. Is there a general requirement for individuals to be vaccinated after the COVID-19 vaccine is available?

Currently, no requirement is imposed by the government in this respect.

4. Is the vaccine mandated in certain industries after it becomes available?

Currently, no requirement is imposed by the government in this respect.

Employer-Mandated Vaccinations

5. Can an employer require current employees to be vaccinated?

As vaccination against COVID-19 is not mandatory at this stage, an employer has no right to demand an employee be vaccinated, and any program of vaccination (if available) should be based on mutual consent.

6. If so, is there legal protection to be excused from being vaccinated (e.g., religious accommodation/disability accommodation)?

As noted in Question 5, an employer cannot unilaterally require an employee to be vaccinated at this stage. Any act infringing a person's health or body is prohibited under Section 28 of the Thai Constitution, unless otherwise stated in laws and regulations.

COVID-19 Vaccination



Applicants for Employment (Pre-Hire Stage)

7. Can an employer require applicants to be vaccinated as a condition of hire?

The Labor Protection Act B.E. 2541 (1998) (LPA) provides the rights and obligations of a person who is already employed by an employer. Further, no specific law or regulation has been issued regarding the possibility of imposing vaccination as a condition of hire.

In any case, the employer should proceed with caution before implementing such a requirement as it may raise issues for employees (notably in terms of availability of vaccines in the market) and the company (reputational risk if such a requirement were to be publicly announced).

8. Can employers ask applicants if they have been vaccinated?

Yes, an employer can ask applicants if they have been vaccinated, provided that the employer complies with the provisions of the Personal Data Protection Act (PDPA). The provisions of the PDPA regarding the collection, use, and disclosure of personal data will be effective on June 1, 2021.

When asking applicants if they have been vaccinated, the employer must obtain explicit consent from the applicants to request information on their vaccination status. Indeed, employees' health records are considered to be protected personal data under the PDPA.

The PDPA specifically requires that an employer must obtain explicit consent from candidates prior or at the time of the collection, use, or disclosure of the health record.

9. Can employers refuse to hire applicants that are unwilling to be vaccinated or have not yet been vaccinated?

See Question 7.

10. Is there legal protection for applicants to be excused from being vaccinated (e.g. religious accommodation/disability accommodation)?

See Question 6.

Wage and Hour

11. If vaccinations are required, are employees entitled to reimbursement for the cost of the vaccination?

As there is no specific regulation as to this issue, it is unclear whether employees will be entitled to reimbursement for the cost of vaccination and leave. If the government were to impose vaccination, it would likely either provide vaccination free of charge or require that the employer be responsible for the cost of vaccination. Further, the time spent to receive the vaccine should logically be considered as paid leave. This is, however, subject to future announcement by the government.

COVID-19 Vaccination



Other Legal Risks in Mandating

12. Are there any other legal risks to consider in requiring employee vaccinations? (Please list)

Considering the absence of specific regulation as to mandatory vaccinations, employee vaccinations should be subject to employees' consent. Any deduction of salary of employees for vaccination expenses would be restricted.

It is interesting to note that the Thai authorities have considered as a lawful action the decision of an employer to require an employee to undertake a self-quarantine where such a person had a high-risk profile. The authorities considered that such a requirement constituted a lawful action to ensure workplace safety, in accordance with safety measures announced by the Ministry of Public Health.

Employee Benefits

13. Can an employer provide inducements under its employee benefits plans (e.g., wellness programs) for those who are vaccinated?

This would be subject to the employee's consent. In practice, an employer may provide a one-time inducement to encourage employees to receive the vaccine, provided that the employer does not deduct any existing benefits or welfare, in accordance with the Labor Relation Act B.E. 2518 (1975) (LRA).

14. Can an employer provide a bonus to employees who get vaccinated?

See Question 13.

Union and/or Works Council Obligations

15. For workplaces in which collective representation arrangements apply, is an employer obligated to bargain with the union, or meet with the Works Council, prior to mandating employee vaccinations?

To date, no regulation requires that an employer obtain prior consent from the labor union prior to mandating employee vaccination.

Privacy

16. Is the fact that an employee has, or has not, been vaccinated "health information" or "sensitive personal data" under your country's data protection law (Y/N)?

See Question 8.

17. If so, is this health information subject to the restrictions on processing applicable to "special categories of personal data" or "sensitive personal data"?

Yes, the information of any employee who has or has not been vaccinated would be considered "sensitive personal data." See Question 8. The use or treatment of the sensitive data must be strictly limited to the purpose that was communicated to the employees at the time of request for collection of such data.

COVID-19 Vaccination



18. If no, is that information nonetheless protected by applicable data protection law (Y/N)?

The data is protected under the PDPA. See Questions 8 and 17.

Record-Keeping Requirement

19. Is an employer required to maintain a record of an employee's COVID-19 vaccination?

There exists no legal requirement for an employer to maintain a record of the employee's COVID-19 vaccination status to date. The current regulations, however, require that an employer notify the Ministry of Public Health of any COVID-19 infection at the workplace.

20. If so, what are (if any) the specific record keeping requirements related to vaccinations?

If an employer wishes to keep a record of the employee's COVID-19 vaccination status, the employer (as the data controller under the PDPA) must provide appropriate security measures for preventing loss, unauthorized, or illegal access, use, alteration, amendment, or disclosure of the personal data. Such measures must be reviewed when necessary or upon any change of technology in order to ensure and maintain appropriate security and safety pursuant to the minimum standards which will be further prescribed by the Personal Data Protection Committee (PDPC), appointed by the Ministry of Digital Economy and Society.

Reporting Requirements

21. If an employee is vaccinated at the employer's directive, is the employer required to notify the governmental health authorities of employee's vaccination?

There is no legal obligation at this stage by which an employer must notify any authority of an employee's vaccination.



Teleworking Requirements

22. Can an employer unilaterally implement a teleworking (work from home) arrangement if an employee cannot or will not agree to be vaccinated?

An employer may request its employees to work from home without obtaining the employees' consent to prevent COVID-19.

In response to the recent new wave of COVID-19 infections, the Center for COVID-19 Situation Administration (CCSA) issued the Regulation Issued under Section 9 of the Emergency Decree on Public Administration in Emergency Situations B.E. 2548 (2005) No. 16 on January 3, 2021 (the "Regulation"). In accordance with this Regulation, private sector companies must cooperate by implementing work-from-home or rotation arrangements to reduce the number of operators present at any one time and avoid unnecessary commuting.

23. If telework is not an option, can an employer require employees who cannot or will not agree to vaccinate to not come into the workplace?

Yes, an employer may require its employees not to attend the workplace and may stop them from working, provided that the employer pays the employees' full salary or wages during such a period.

In the event that the employer requires its employees not to come to the workplace and does not pay the employees during the period of absence, the employer may be considered to have an intention to terminate the employment agreement according to the Supreme Court Ruling No. 7393/2562 and this may trigger severance entitlements for the benefit of the employee.



UKRAINE

Current as of December 23, 2020

Access to Vaccine

1. Is there a priority list for the distribution of the COVID-19 vaccine? (include summary list)

The Government of Ukraine will elaborate and adopt the National Vaccination Plan against COVID-19 that, among other things, will identify regional priority lists based on guidelines of international organizations and consider:

1. the number of available and/or expected doses of vaccines; and
2. the needs of society.

To date, there are no set deadlines for adoption of this plan.

Nevertheless, the Prime Minister of Ukraine has recently announced a phased distribution of vaccines against COVID-19 with the first priority being: healthcare personnel, soldiers of armed forces in military service in eastern Ukraine, social workers, people in residential institutions for the elderly, for people with disabilities, boarding schools, etc. The second group priority will cover people 60+ years, in particular those who are at high risk for severe COVID-19 illness due to underlying medical conditions, as well as workers of education institutions and workers of institutions ensuring the protection of the State. The third group will cover people from 17 to 59 years, in particular those who are at high risk for severe COVID-19 illness due to underlying medical conditions.

Cost of Vaccine

2. Will the vaccine be paid for by the applicable jurisdiction?

It is expected that the vaccine will be provided free of charge and will be paid for by local authorities' budgets and other legitimate sources.

Requirement of Vaccine

3. Is there a general requirement for individuals to be vaccinated after the COVID-19 vaccine is available?

No, the vaccination will be optional and subject to the informed consent of an individual.

4. Is the vaccine mandated in certain industries after it becomes available?

Although this is not yet determined, it is expected that the vaccination could be mandated for healthcare, military and other critical industries.

COVID-19 Vaccination



Employer-Mandated Vaccinations

5. Can an employer require current employees to be vaccinated?	Currently, no. Under the general rule, an employer absolutely cannot require employees to be vaccinated, unless the industry/position is specifically subject to compulsory vaccination (e.g., healthcare and education professionals).
6. If so, is there legal protection to be excused from being vaccinated (e.g., religious accommodation/disability accommodation)?	Yes, people with certain medical conditions can be exempted from compulsory vaccination. Exemptions due to religious accommodation is not specifically provided by law. However, please note that since vaccination is considered a medical treatment, it requires prior informed consent of a person being vaccinated.

Applicants for Employment (Pre-Hire Stage)

7. Can an employer require applicants to be vaccinated as a condition of hire?	Generally, no. This, however, is subject to exceptions for certain professions, facilities and organizations (e.g., healthcare and education professionals) where a refusal to be vaccinated would lead to non-admission to work.
8. Can employers ask applicants if they have been vaccinated?	Generally, no. This is also subject to exemptions mentioned in Question 7.
9. Can employers refuse to hire applicants that are unwilling to be vaccinated or have not yet been vaccinated?	Generally, no. This is also subject to exemptions mentioned in Question 7.
10. Is there legal protection for applicants to be excused from being vaccinated (e.g. religious accommodation/disability accommodation)?	No.

Wage and Hour

11. If vaccinations are required, are employees entitled to reimbursement for the cost of the vaccination?	Ukrainian law does not have an express provision covering this situation. The customary practice is for employers to reimburse employees for related expenses when the employer is requiring the employee to engage in a specific activity (e.g., travel, educational course, etc.). Therefore, an employer requiring an employee's vaccination for the purpose of enabling business travel would be expected to reimburse the employee for the related expenses. Such reimbursement is not included in an employee's regular wages. In addition, certain categories of employees would be reimbursed for the time spent receiving the vaccination.
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COVID-19 Vaccination



Other Legal Risks in Mandating

12. Are there any other legal risks to consider in requiring employee vaccinations? (Please list)

Not applicable.

Employee Benefits

13. Can an employer provide inducements under its employee benefits plans (e.g., wellness programs) for those who are vaccinated?

No, as this would be considered discriminatory.

14. Can an employer provide a bonus to employees who get vaccinated?

No, as this would be considered discriminatory.

Union and/or Works Council Obligations

15. For workplaces in which collective representation arrangements apply, is an employer obligated to bargain with the union, or meet with the Works Council, prior to mandating employee vaccinations?

Not applicable.

Privacy

16. Is the fact that an employee has, or has not, been vaccinated "health information" or "sensitive personal data" under your country's data protection law (Y/N)?

Yes.

17. If so, is this health information subject to the restrictions on processing applicable to "special categories of personal data" or "sensitive personal data"?

Generally, yes. Processing information about vaccination should be made in compliance with data privacy laws. In this respect, please note that the government of Ukraine simplified the requirements for processing personal data during the pandemic. In particular, it was expressly permitted that one may process personal data without consent of the data subject provided that such data will be processed exclusively for the purpose of implementing anti-pandemic measures. These provisions will be effective for the whole period of the current lockdown imposed by the Ukrainian government (i.e., until February 28, 2021) and also within 30 days from the lockdown end date. By the end of the said 30-days' period, personal data that have been processed without the consent of the data subjects shall be depersonalized or erased.

18. If no, is that information nonetheless protected by applicable data protection law (Y/N)?

Yes. See Question 17.

COVID-19 Vaccination



Record-Keeping Requirement

19. Is an employer required to maintain a record of an employee's COVID-19 vaccination?

Currently, no. An employer must maintain a record of an employee's routine medical examinations and medical cards in those cases where the job position qualifies for compulsory vaccination referred to in Question 5.

20. If so, what are (if any) the specific record keeping requirements related to vaccinations?

Records and documents related to an employee's medical history or vaccination must be maintained as confidential medical records in separate files/records from the usual personnel files.

Reporting Requirements

21. If an employee is vaccinated at the employer's directive, is the employer required to notify the governmental health authorities of employee's vaccination?

Not applicable.

Teleworking Requirements

22. Can an employer unilaterally implement a teleworking (work from home) arrangement if an employee cannot or will not agree to be vaccinated?

Work from home must be agreed between the employer and the employee. If it is introduced unilaterally by the employer, then the general rules provided by the Labor Code of Ukraine in this respect of change of working conditions should apply (i.e., employees should be notified two months prior to introduction of such remote working regime).

23. If telework is not an option, can an employer require employees who cannot or will not agree to vaccinate to not come into the workplace?

Generally, no. However, this is subject to exceptions mentioned in Question 7.



UNITED KINGDOM

Current as of December 18, 2020

Access to Vaccine

1. Is there a priority list for the distribution of the COVID-19 vaccine? (include summary list)

The UK government is distributing vaccines in a phased system. The first phase, which began in early December 2020, focuses on those most at risk from severe COVID-19 illness. This first phase is prioritized as follows:

1. residents in a care home for older adults and their caregivers;
2. all those 80 years of age and over and frontline health and social care workers;
3. all those 75 years of age and over;
4. all those 70 years of age and over and clinically extremely vulnerable individuals;
5. all those 65 years of age and over;
6. all individuals aged 16 years to 64 years with underlying health conditions which put them at higher risk of serious disease and mortality;
7. all those 60 years of age and over;
8. all those 55 years of age and over; and
9. all those 50 years of age and over.

Prioritization beyond this first phase and more general availability of vaccines has not been decided. It is expected that the primary focus of the second phase will be those whose occupations put them at increased risk of exposure, such as teachers, first responders, and transport workers.

Cost of Vaccine

2. Will the vaccine be paid for by the applicable jurisdiction?

Yes, vaccination will be funded by the National Health Service (NHS). Access to vaccines through private healthcare may become available in the coming months as vaccine stocks increase.

Requirement of Vaccine

3. Is there a general requirement for individuals to be vaccinated after the COVID-19 vaccine is available?

No, vaccination is not mandatory.

4. Is the vaccine mandated in certain industries after it becomes available?

No, vaccination is not mandatory.

COVID-19 Vaccination



Employer-Mandated Vaccinations

5. Can an employer require current employees to be vaccinated?

Realistically, no. There is no specific prohibition on employer-mandated vaccination in the UK, but it will be extremely difficult for employers to justify making vaccination mandatory under existing UK employment law principles. Employers can, however, encourage employees to take the vaccine.

Employer-mandated vaccination presents several significant risks to employers:

- breaching the implied term of trust and confidence in employment contracts, giving rise to constructive dismissal claims;
- legal arguments that the requirement is an unconstitutional encroachment upon an employee's private life;
- data protection issues; and
- discrimination risks (see Question 6).

6. If so, is there legal protection to be excused from being vaccinated (e.g., religious accommodation/disability accommodation)?

Yes, protections against discrimination based on disability, religion/belief, or pregnancy may be relevant. If an employee is unable or unwilling to be vaccinated due to one of these protected characteristics and suffers any detriment because of this, the employer is at risk of discrimination claims.

Applicants for Employment (Pre-Hire Stage)

7. Can an employer require applicants to be vaccinated as a condition of hire?

No.

8. Can employers ask applicants if they have been vaccinated?

There is no prohibition on asking this question, but it is not recommended and employers should carefully consider whether it is actually necessary. Applicants do not have to answer, and employers should be cautious of the discrimination risk that arises from asking the question (see Questions 6 and 10).

9. Can employers refuse to hire applicants that are unwilling to be vaccinated or have not yet been vaccinated?

In theory yes, provided that the reason the applicant is unwilling to be vaccinated is not a protected characteristic (disability, religion/belief, age, and pregnancy are likely to be the characteristics relevant here). Discriminatory decisions in hiring can be challenged by applicants in the Employment Tribunal.

10. Is there legal protection for applicants to be excused from being vaccinated (e.g. religious accommodation/disability accommodation)?

Yes, job applicants are protected from discrimination because of a protected characteristic (age, disability, religion/belief, and pregnancy are the characteristics likely relevant to vaccination).

COVID-19 Vaccination



Wage and Hour

11. If vaccinations are required, are employees entitled to reimbursement for the cost of the vaccination?

The vaccine is provided free of charge by the NHS.

There is no general statutory right to be paid for absence from work needed to get the vaccine. However, contracts may provide for paid or unpaid leave for medical appointments. Employers may also be required to offer paid time off for medical appointments for certain employees as a reasonable accommodation of disability. As some of the individuals falling within phase 1 of vaccination priority (see Question 1) may have a disability, employers should be conscious of disability claims here.

Given the importance of vaccination, it may be beneficial to employers to allow paid time off for vaccination appointments in order to not discourage their employees from getting vaccinated.

Other Legal Risks in Mandating

12. Are there any other legal risks to consider in requiring employee vaccinations? (Please list)

See Question 5.

Employee Benefits

13. Can an employer provide inducements under its employee benefits plans (e.g., wellness programs) for those who are vaccinated?

This is not recommended. There are legitimate reasons why employees may be unwilling or unable to be vaccinated, such as disability or religion, and incentivizing employees who are vaccinated in this way creates risk of discrimination.

14. Can an employer provide a bonus to employees who get vaccinated?

This is not recommended. There are legitimate reasons why employees may be unwilling or unable to be vaccinated, such as disability or religion, and incentivizing employees who are vaccinated in this way creates risk of discrimination.

Union and/or Works Council Obligations

15. For workplaces in which collective representation arrangements apply, is an employer obligated to bargain with the union, or meet with the Works Council, prior to mandating employee vaccinations?

No.

Privacy

16. Is the fact that an employee has, or has not, been vaccinated "health information" or "sensitive personal data" under your country's data protection law (Y/N)?

Yes.

COVID-19 Vaccination



17. If so, is this health information subject to the restrictions on processing applicable to “special categories of personal data” or “sensitive personal data”?

Yes, details of whether an employee has been vaccinated will be “special category personal data subject,” and as such, subject to the usual restrictions. In particular, employers will need to consider the legitimate legal basis for processing such data.

18. If no, is that information nonetheless protected by applicable data protection law (Y/N)?

Not applicable.

Record-Keeping Requirement

19. Is an employer required to maintain a record of an employee’s COVID-19 vaccination?

No, but employers may be able to voluntarily collect this data, subject to compliance with data protection laws.

Vaccination records will be “special category personal data” and therefore need to be collected and processed with care. The employer should only collect the data that it requires and should comply with all of the data protection principles (i.e., that data collection is necessary and relevant for the employer’s purpose, the data is secure, and confidentiality owed to employees has been taken into account). The UK data protection regulator, the ICO, has not updated its coronavirus guidance for employers to account for vaccination. Employers should check current ICO guidance before implementing any policy of collecting vaccination records.

20. If so, what are (if any) the specific record keeping requirements related to vaccinations?

Before choosing to collect records of an employee’s COVID-19 vaccination, employers need to consider:

- whether it is necessary to collect this data and whether there is a less intrusive way of achieving the same goal (i.e., the goal of ensuring a safe and COVID-free workplace); and
- the legal basis for processing this data.

Record keeping must comply with general data protection principles of transparency and proportionality. Employers should carry out a privacy impact assessment before collecting and processing data.

Once collected, the data should be kept secure and confidential and should be retained in line with the employer’s data protection policies (and, in any event, for no longer than is necessary).

Reporting Requirements

21. If an employee is vaccinated at the employer’s directive, is the employer required to notify the governmental health authorities of employee’s vaccination?

No.



Teleworking Requirements

22. Can an employer unilaterally implement a teleworking (work from home) arrangement if an employee cannot or will not agree to be vaccinated?

This will be very fact dependent and employers will need to consider several different factors. Ultimately whether an employer can impose telework (“homeworking”) will depend on whether it can be justified as a reasonable instruction. If it is not a reasonable instruction, employees may be able to argue they have been constructively dismissed.

In the initial stages of vaccination where vaccines are in short supply, an instruction to work from home to those who are not vaccinated may be a reasonable way of ensuring health and safety in the workplace. It is likely that government guidance will continue to strongly recommend home-working wherever possible for several months.

However, as time goes on and more employees are vaccinated and government guidance on homeworking changes, there becomes a risk of creating a two-tier workforce where only those who cannot be or refuse to be vaccinated are restricted from the workplace. In these circumstances, an instruction to work from home looks increasingly unreasonable and further creates a discrimination risk where the reason for not being vaccinated is linked to a protected characteristic.

23. If telework is not an option, can an employer require employees who cannot or will not agree to vaccinate to not come into the workplace?

In almost all cases, no. Vaccines are not mandatory in the UK so it will be difficult for an employer to justify sending employees home because they refuse to get vaccinated, which is effectively employer-mandated vaccination by the back door.

Employers also need to be conscious of a discrimination risk if the refusal to get vaccinated is linked to a protected characteristic (see Question 6).



UNITED STATES

Current as of January 8, 2021

Access to Vaccine

1. Is there a priority list for the distribution of the COVID-19 vaccine? (include summary list)

On December 22, 2020, the Centers for Disease Control and Prevention (CDC) issued a [Report](#) highlighting the current recommended priority list for access to the COVID-19 vaccine. During Phase 1a, the CDC has recommended that the vaccine first be distributed to: (1) healthcare personnel; and (2) residents of long term care facilities. The next group in Phase 1b is intended to cover frontline essential workers (non-healthcare) (e.g., workers in education, food and agriculture, corrections, the U.S. Postal Service, public transit, and grocery stores). Phase 1c would focus on: (1) people aged 65-74 years; (2) people between the ages of 16 and 64 who have high-risk medical conditions; and (3) other essential workers (i.e., workers engaged in transportation and logistics, food service, shelter and housing [construction], finance, IT and communications, energy, media, legal work, public safety [engineers], and water and wastewater). Phase 2 includes all other persons aged ≥ 16 years not already recommended for vaccination in Phases 1a, 1b, or 1c.

Note that while the above summary and [CDC website](#) provide a complete list of recommended priorities, each state will determine the order of priority for its own residents. For more information about state plans, see Littler's [Giving it Our Best Shot – Statewide Vaccination Plans](#) (updated regularly).

For more information on employer obligations tied to U.S. vaccination practices, Littler has prepared a "COVID-19 Vaccination Toolkit for Employers," which is available for purchase [here](#).

Cost of Vaccine

2. Will the vaccine be paid for by the applicable jurisdiction?

The CDC has stated that the vaccine will be given at no cost. However, the CDC's FAQ states that vaccination providers may charge a fee for administering the vaccine. These fees will be covered by the patient's public or private insurance company or, for uninsured patients, by the federal government.

Requirement of Vaccine

3. Is there a general requirement for individuals to be vaccinated after the COVID-19 vaccine is available?

No. Neither federal nor state law has mandated the vaccine. The COVID-19 vaccine also was issued under the Emergency Use Authorization (EUA), and fact sheets issued for those giving or taking the vaccine indicate that individuals have the right to take or decline the vaccine and note that individuals with potential allergic reactions should consult with a physician. Similarly, because pregnant individuals and those lactating were not included in the clinical trials, such individuals also should consult with a physician prior to taking the vaccine.



4. Is the vaccine mandated in certain industries after it becomes available?

While employers in certain industries, particularly health care, may conclude that immediate adoption of mandatory vaccinations, or adoption following formal FDA (*i.e.*, Food and Drug Administration) approval of the vaccine, are in the best interests of both employees and patients, accommodations may be required for certain workers based on various factors, including the individual's disability or a sincerely held religious practice or belief.

The Fact Sheet for each vaccine, which must be provided to those giving and receiving the vaccine, should be closely reviewed. As an example, the Pfizer vaccine Fact Sheet states, "The recipient ...has the option to accept or refuse the ...Vaccine." Certain individuals should seek medical guidance before taking the vaccine for those who may have allergic reactions to the vaccine. Pregnant individuals and those lactating were not included in the clinic trials and data is incomplete to determine the risks to pregnant workers and those who are lactating. Thus, various individuals may need to be excused from any mandate based on medical considerations.

For more information, see [The Race for a COVID-19 Vaccine](#), Littler Report (Sept. 2020); and [EEOC Issues Guidance on COVID-19 Vaccination Policies](#), Littler Insight (Dec. 17, 2020). Also, see "COVID-19 Vaccination Toolkit for Employers," as referenced in response to Question 1.

Employer-Mandated Vaccinations

5. Can an employer require current employees to be vaccinated?

Employers may conclude that immediate adoption of mandatory vaccinations, or adoption following formal FDA approval, are in the best interests of both employees and patients. However, accommodations may be required for certain workers based on various factors, including the individual's disability or a sincerely held religious practice or belief.

For more information, see [The Race for a COVID-19 Vaccine](#), Littler Report (Sept. 2020); and [EEOC Issues Guidance on COVID-19 Vaccination Policies](#), Littler Insight (Dec. 17, 2020).



6. If so, is there legal protection to be excused from being vaccinated (e.g., religious accommodation/disability accommodation)?

According to December 16, 2020 guidance issued by the federal Equal Employment Opportunity Commission (EEOC), an employer is not prohibited from mandatory vaccinations or requesting “proof of vaccination,” but care must be taken based on excluding an employee from the workforce who indicates that he or she cannot take the vaccination due to a disability or because of a sincerely held religious belief or practice based on the requirements of the Americans with Disabilities Act (ADA) and Title VII of the 1964 Civil Rights Act (Title VII), respectively.

Based on the ADA, in the view of the EEOC, the employer first needs to show that “an unvaccinated employee would pose a direct threat due to a ‘significant risk of substantial harm to the health or safety of the individual or others that could not be eliminated or reduced by reasonable accommodation.’” Even then, the employer cannot exclude the employee unless there is no way to provide a reasonable accommodation, absent undue hardship. If an employer excludes the employee from the workforce, the employee may be entitled to accommodations, such as performing the work remotely or the employee may be eligible for a leave of absence. If no reasonable accommodation is available, absent undue hardship, then it would be lawful to exclude the employee from the workforce, but “this does not mean the employer may automatically terminate the worker. Employers need to determine if other rights apply under equal employment opportunity laws or other federal, state or local laws.”

In dealing with religious accommodations under Title VII, reasonable accommodation also is required although there is a lower burden to establish an “undue hardship.” In the view of the EEOC, if an employee requests to be excused on religious grounds, “the employer should ordinarily assume that an employee’s request for religious accommodation is based on a sincerely held religious belief.” However, if the employer has an “objective basis for questioning either the religious nature or sincerity of a particular belief, practice or observance, the employer would be justified in requesting additional supporting information.” Here, too, an employer should engage in the interactive process in attempting to make reasonable accommodation, and the EEOC takes the same view that even if the employee is excluded based on the inability to accommodate, “this does not mean that an employer may automatically terminate the worker.”

For more information, see [The Race for a COVID-19 Vaccine](#), Littler Report (Sept. 2020); and [EEOC Issues Guidance on COVID-19 Vaccination Policies](#), Littler Insight (Dec. 17, 2020). In addition, see Section K of the EEOC’s December 16, 2020 publication, [What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws](#).



Applicants for Employment (Pre-Hire Stage)

7. Can an employer require applicants to be vaccinated as a condition of hire?

Likely, yes. Under the ADA, employers have greater leeway dealing with applicants. Even medical examinations are permitted so long as the same approach is followed for all entering employees in the same type of job. Similarly, EEOC guidance has provided that based on the current pandemic, employers may screen applicants for symptoms of COVID-19. In its December 16, 2020 guidance, the EEOC has indicated that neither a vaccine's administration nor requiring an employee to show proof of vaccination are considered a "medical examination" nor a "disability-related inquiry," and therefore do not implicate the ADA (subject to important caveats).

The EEOC did not address applicants in its recent December 16, 2020 guidance, but it cautions employers about subsequent inquiries, such as why an individual has not received a vaccination, as those inquiries may elicit information about a disability. There also may be implications under the ADA and Title VII in the event that an applicant requests to be excused from a vaccination requirement based on a disability or based on religious grounds.

For more information, see [EEOC Issues Guidance on COVID-19 Vaccination Policies](#), Littler Insight (Dec. 17, 2020). In addition, see Section K of the EEOC's December 16, 2020 publication, [What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws](#).

8. Can employers ask applicants if they have been vaccinated?

Likely, yes. In its December 16, 2020 guidance, the EEOC has indicated that neither a vaccine's administration nor requiring an employee to show proof of vaccination are considered a "medical examination" nor a "disability-related inquiry," and therefore do not implicate the ADA (subject to important caveats).

The EEOC did not address applicants in its recent December 16, 2020 guidance, but it cautions employers about subsequent inquiries such as why the individual has not received a vaccination, as those inquiries may elicit information about a disability. There also may be implications under the ADA and Title VII in the event that an applicant requests to be excused from a vaccination requirement based on a disability or based on religious grounds.

For more information, see [EEOC Issues Guidance on COVID-19 Vaccination Policies](#), Littler Insight (Dec. 17, 2020). In addition, see Section K of the EEOC's December 16, 2020 publication, [What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws](#).

COVID-19 Vaccination



9. Can employers refuse to hire applicants that are unwilling to be vaccinated or have not yet been vaccinated?

Likely, yes, but an employer should be cautioned not to ask an applicant why the applicant refuses to be vaccinated. There may be various reasons why an employee refuses to be vaccinated. The concern is that if an employer becomes aware that the reason the applicant is refusing the vaccination stems from a disability or religious grounds, this may create a risk that the applicant will claim the he or she is being denied employment based on their protected status. The EEOC has not issued guidance regarding applicants who are unwilling to be vaccinated or have not yet been vaccinated.

For more information, see [The Race for a COVID-19 Vaccine](#), Littler Report (Sept. 2020).

10. Is there legal protection for applicants to be excused from being vaccinated (e.g. religious accommodation/disability accommodation)?

It may depend on the nature of the job and whether the individual can be reasonably accommodated, absent undue hardship. Under the ADA, employers have greater leeway dealing with applicants, and even medical examination are permitted so long as the same approach is followed for all entering employees in the same type of job. Similarly, EEOC guidance has provided that based on the current pandemic, employers may screen applicants for symptoms of COVID-19. The concern, however, is that if an employer becomes aware that the reason the applicant is refusing the vaccination stems from a disability or religious grounds, this may create a risk that the applicant will claim that he or she is being denied employment based on their protected status.

For more information, see [The Race for a COVID-19 Vaccine](#), Littler Report (Sept. 2020).

Wage and Hour

11. If vaccinations are required, are employees entitled to reimbursement for the cost of the vaccination?

The CDC has stated that the vaccine will be given at no cost. Vaccination providers may charge a fee for administering the vaccine, however. These fees will be covered by insurance or the federal government. For more information, view the [CDC's website](#).

States have differing laws on the subject of what is considered "compensable time" in each jurisdiction. Employers should consult state law to determine whether time an employee spends receiving the vaccination is compensable for which the employee must be paid.

COVID-19 Vaccination



Other Legal Risks in Mandating

12. Are there any other legal risks to consider in requiring employee vaccinations? (Please list)

Employers should be aware of their obligations and potential ramifications under the federal Pregnancy Discrimination Act, Workers' Compensation laws, and the Occupational Safety and Health Act, as well as state equivalents, aside from legal obligations requiring reasonable accommodation that may arise involving employees who claim that they cannot take the vaccine due to a disability or based on religious grounds.

For more information, see [The Race for a COVID-19 Vaccine](#), Littler Report (Sept. 2020); [EEOC Issues Guidance on COVID-19 Vaccination Policies](#), Littler Insight (Dec. 17, 2020); and Section K of the EEOC's December 16, 2020 publication, [What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws](#).

Employee Benefits

13. Can an employer provide inducements under its employee benefits plans (e.g., wellness programs) for those who are vaccinated?

If an employer provides financial incentives to take the vaccine, it would be viewed as a "wellness program," and in such circumstances, the EEOC has provided in its regulations that if an award is to be provided for participation in an activity, there must be some accommodation available to assure that disabled employees can participate. Where accommodation is not available, the EEOC regulations provide that a reasonable alternative to the activity must be available so that the employee could still earn the award without engaging in the activity.

14. Can an employer provide a bonus to employees who get vaccinated?

If an employer provides financial incentives to take the vaccine, it would be viewed as a "wellness program," and in such circumstances, the EEOC has provided in its regulations that if an award is to be provided for participation in an activity, there must be some accommodation available to assure that disabled employees can participate. Where accommodation is not available, the EEOC regulations provide that a reasonable alternative to the activity must be available so that the employee could still earn the award without engaging in the activity.



Union and/or Works Council Obligations

15. For workplaces in which collective representation arrangements apply, is an employer obligated to bargain with the union, or meet with the Works Council, prior to mandating employee vaccinations?

Employers with union-represented employees should carefully review existing collective bargaining agreements to determine whether there is sufficient management rights language that would permit an employer to mandate vaccinations as a condition of employment. To the extent an employer seeks to avoid a bargaining obligation by claiming that a mandatory vaccination is consistent with a local, state, or federal law/regulation, it will need to demonstrate that the employer is actually mandated by the government to require such vaccination.

For example, even if a government order requires employees to be vaccinated, employers with union-represented employees may have to consider, and even negotiate, some of the following “effects” of the order before implementation:

- classes of employees subject to vaccination (unless specified by the order);
- frequency and timing of the vaccination;
- consequences of an employee’s refusal to submit to vaccination;
- staff/contractors who will perform the vaccination;
- where the vaccination will be performed; and
- compensation for time spent in vaccination procedure.

Privacy

16. Is the fact that an employee has, or has not, been vaccinated “health information” or “sensitive personal data” under your country’s data protection law (Y/N)?

It depends. If an employer receives information about whether an employee has been vaccinated in its capacity as administrator of a health plan, the information is protected under the federal Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule. If, however, the employer receives the information in a different context, it would not be subject to the HIPAA Privacy Rule. The EEOC has indicated that neither a vaccine’s administration nor requiring an employee to show proof of vaccination are considered a “medical examination” nor a “disability-related inquiry,” and therefore do not implicate the ADA (with some important caveats).

The EEOC cautions, however, about subsequent employer inquiries such as why the individual has not received a vaccination, as those may elicit information about a disability. Further, although the EEOC’s guidance indicates that it does not consider the record of COVID-19 vaccination itself to be a confidential medical record, vaccination status potentially could constitute health information under some states’ laws. Therefore, the employer should provide reasonable safeguards for vaccination records. Certain state laws, such as California, also prohibit a company from disclosing medical information of employee without authorization, except in limited circumstances, and state law definitions of “medical information” may be broader than the EEOC.

COVID-19 Vaccination



17. If so, is this health information subject to the restrictions on processing applicable to “special categories of personal data” or “sensitive personal data”?

Yes. HIPAA generally prohibits a covered entity from disclosing protected health information without authorization.

For more information on employee rights under HIPAA in the COVID-19 context, see [With COVID-19 Resurgent, Employers Confront Privacy and Information Security Issues When Testing Employees for COVID-19](#), Littler Insight (Aug. 3, 2020).

18. If no, is that information nonetheless protected by applicable data protection law (Y/N)?

Not applicable. See Question 17.

Record-Keeping Requirement

19. Is an employer required to maintain a record of an employee’s COVID-19 vaccination?

Currently, there is no directive or requirement. Employers should closely monitor developments, including those at the federal, state, and local level.

20. If so, what are (if any) the specific record keeping requirements related to vaccinations?

Records and documents related to an employee’s medical history or vaccination must be maintained as confidential medical records in separate files/records from the usual personnel files and in conformance with confidentiality requirements under the federal ADA, Genetic Information Nondiscrimination Act of 2008 (GINA), and HIPPA privacy requirements.

Reporting Requirements

21. If an employee is vaccinated at the employer’s directive, is the employer required to notify the governmental health authorities of employee’s vaccination?

Currently, there is no directive or requirement. Employers should closely monitor developments, including those at the federal, state, and local level.



Teleworking Requirements

22. Can an employer unilaterally implement a teleworking (work from home) arrangement if an employee cannot or will not agree to be vaccinated?

In some circumstances, in the event that reasonable accommodations cannot be made for an unvaccinated employee to remain in the workplace, EEOC guidance may permit an employer to exclude an unvaccinated employee from the workplace. If an employee claims to be entitled to an exemption based on medical reasons or a religious grounds, an employer must provide a reasonable accommodation unless it would pose an undue hardship to the operation of the employer's business. Under some circumstances, a reasonable accommodation may be to allow the unvaccinated employee to work remotely.

For more information, see [EEOC Issues Guidance on COVID-19 Vaccination Policies](#), Littler Insight (Dec. 17, 2020). In addition, see Section K of the EEOC's December 16, 2020 publication, [What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws](#).

23. If telework is not an option, can an employer require employees who cannot or will not agree to vaccinate to not come into the workplace?

The EEOC's guidance states that if an employee is unwilling or unable to get vaccinated for COVID-19 and there is no reasonable accommodation possible, then an employer may exclude the employee from the workplace, but accommodations may include a potential telework arrangement and/or leave of absence if teleworking is not feasible based on the nature of the position. While there generally is no requirement to pay an employee who is not performing work, employer policies and/or applicable state law should be carefully reviewed to determine whether the employee may be eligible for pay for all or a portion of such leave.

For more information, see [EEOC Issues Guidance on COVID-19 Vaccination Policies](#), Littler Insight (Dec. 17, 2020). In addition, see Section K of the EEOC's December 16, 2020 publication, [What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws](#).



URUGUAY

Current as of December 22, 2020

Access to Vaccine

1. Is there a priority list for the distribution of the COVID-19 vaccine? (include summary list)

The Ministry of Health and Safety has prioritized the distribution as follows:

1. healthcare personnel;
2. workers in essential and critical industries;
3. people at high risk for severe COVID-19 illness due to underlying medical conditions; and
4. people 60 years and older.

After these groups have been vaccinated, the vaccine will be allocated to the general population by a different set of priorities.

Cost of Vaccine

2. Will the vaccine be paid for by the applicable jurisdiction?

Yes.

Requirement of Vaccine

3. Is there a general requirement for individuals to be vaccinated after the COVID-19 vaccine is available?

No, but vaccination will be mandatory for some industries (see Question 4).

4. Is the vaccine mandated in certain industries after it becomes available?

Vaccination will be required for various sectors and industries, as follows: hospitals, restaurants, hotels, and public service functions.

Employer-Mandated Vaccinations

5. Can an employer require current employees to be vaccinated?

No. An employer may not unilaterally require all of its employees to be vaccinated. Unless an employee is otherwise required to be vaccinated (for working in the sectors and industries listed above), the employee must consent to get vaccinated. Employees may be exempted from the requirement to vaccinate based on a medical condition, disability, or religious exemption.

COVID-19 Vaccination



6. If so, is there legal protection to be excused from being vaccinated (e.g., religious accommodation/disability accommodation)?

Yes, employees may be legally protected from having to get vaccinated based on a medical condition, disability, or religious belief.

Applicants for Employment (Pre-Hire Stage)

7. Can an employer require applicants to be vaccinated as a condition of hire?

No, except if the applicant will be working in an industry or sector listed in response to Question 4 or if the work activities of the job will require him or her to be vaccinated.

8. Can employers ask applicants if they have been vaccinated?

See Question 7.

9. Can employers refuse to hire applicants that are unwilling to be vaccinated or have not yet been vaccinated?

Yes, if the applicant will be working in an industry or sector listed in response to Question 4 or if the work activities of the job will require him or her to be vaccinated.

10. Is there legal protection for applicants to be excused from being vaccinated (e.g. religious accommodation/disability accommodation)?

Yes, applicants may be legally protected from having to get vaccinated based on a medical condition, disability, or religious belief.

Wage and Hour

11. If vaccinations are required, are employees entitled to reimbursement for the cost of the vaccination?

The cost of the vaccine will be covered by the jurisdiction. (See Question 2). However, if the employee is required to receive the vaccination during working hours, it is recommended for the employer to reimburse such time as compensable time.

Other Legal Risks in Mandating

12. Are there any other legal risks to consider in requiring employee vaccinations? (Please list)

None to date.

Employee Benefits

13. Can an employer provide inducements under its employee benefits plans (e.g., wellness programs) for those who are vaccinated?

Yes.

COVID-19 Vaccination



14. Can an employer provide a bonus to employees who get vaccinated?

Yes.

Union and/or Works Council Obligations

15. For workplaces in which collective representation arrangements apply, is an employer obligated to bargain with the union, or meet with the Works Council, prior to mandating employee vaccinations?

Yes, an employer must negotiate this with the union.

Privacy

16. Is the fact that an employee has, or has not, been vaccinated "health information" or "sensitive personal data" under your country's data protection law (Y/N)?

Yes, under the Data Protection Act Law No. 18.331 (August 11, 2008) and Decree No. 414/009 (August 31, 2009).

17. If so, is this health information subject to the restrictions on processing applicable to "special categories of personal data" or "sensitive personal data"?

Yes, under the laws identified in Question 16.

18. If no, is that information nonetheless protected by applicable data protection law (Y/N)?

See Questions 16 and 17.

Record-Keeping Requirement

19. Is an employer required to maintain a record of an employee's COVID-19 vaccination?

Yes. Generally, employers are required to maintain occupational health and safety records on employees. If the employee is required to be vaccinated (e.g., due to working in one of the industries or sectors subject to the vaccination mandate, see Question 4), the employer would be required to maintain such record of vaccination.

20. If so, what are (if any) the specific record keeping requirements related to vaccinations?

The government has not issued specific guidance or regulations specifically related to vaccinations.

COVID-19 Vaccination



Reporting Requirements

21. If an employee is vaccinated at the employer's directive, is the employer required to notify the governmental health authorities of employee's vaccination?

Yes.

Teleworking Requirements

22. Can an employer unilaterally implement a teleworking (work from home) arrangement if an employee cannot or will not agree to be vaccinated?

Yes.

23. If telework is not an option, can an employer require employees who cannot or will not agree to vaccinate to not come into the workplace?

Yes, except that employers cannot dismiss employees under these circumstances and must provide reasonable accommodations.



VENEZUELA

Current as of December 22, 2020

Access to Vaccine

1. Is there a priority list for the distribution of the COVID-19 vaccine? (include summary list)

The Secretary of Health has prioritized the distribution as follows:

1. healthcare personnel;
2. workers in essential and critical industries;
3. people at high risk for severe COVID-19 illness due to underlying medical conditions; and
4. people 60 years and older.

After these groups have been vaccinated, the vaccine will be allocated to the general population by a different set of priorities, which has not yet been announced.

Cost of Vaccine

2. Will the vaccine be paid for by the applicable jurisdiction?

Yes.

Requirement of Vaccine

3. Is there a general requirement for individuals to be vaccinated after the COVID-19 vaccine is available?

Yes, vaccination will be mandatory.

4. Is the vaccine mandated in certain industries after it becomes available?

The government will be implementing a general mandatory vaccination of the population.

Employer-Mandated Vaccinations

5. Can an employer require current employees to be vaccinated?

Yes. An employer may unilaterally require all of its employees to be vaccinated. Only applicable and properly demonstrated medical exemptions apply. No religious exceptions are recognized.

6. If so, is there legal protection to be excused from being vaccinated (e.g., religious accommodation/disability accommodation)?

No.

COVID-19 Vaccination



Applicants for Employment (Pre-Hire Stage)

- | | |
|---|--|
| 7. Can an employer require applicants to be vaccinated as a condition of hire? | Yes. |
| 8. Can employers ask applicants if they have been vaccinated? | Yes. |
| 9. Can employers refuse to hire applicants that are unwilling to be vaccinated or have not yet been vaccinated? | Yes. |
| 10. Is there legal protection for applicants to be excused from being vaccinated (e.g. religious accommodation/disability accommodation)? | Yes, but only in case of proven medical condition. |

Wage and Hour

- | | |
|--|--|
| 11. If vaccinations are required, are employees entitled to reimbursement for the cost of the vaccination? | Yes, except that such reimbursement would not apply to employees in the public sector. |
|--|--|

Other Legal Risks in Mandating

- | | |
|---|-----|
| 12. Are there any other legal risks to consider in requiring employee vaccinations? (Please list) | No. |
|---|-----|

Employee Benefits

- | | |
|---|------|
| 13. Can an employer provide inducements under its employee benefits plans (e.g., wellness programs) for those who are vaccinated? | Yes. |
| 14. Can an employer provide a bonus to employees who get vaccinated? | Yes. |

COVID-19 Vaccination



Union and/or Works Council Obligations

15. For workplaces in which collective representation arrangements apply, is an employer obligated to bargain with the union, or meet with the Works Council, prior to mandating employee vaccinations?

No.

Privacy

16. Is the fact that an employee has, or has not, been vaccinated "health information" or "sensitive personal data" under your country's data protection law (Y/N)?

Venezuela does not have a data protection law. However, information about an individual's vaccination is considered health information and, as such, it is private and confidential.

17. If so, is this health information subject to the restrictions on processing applicable to "special categories of personal data" or "sensitive personal data"?

Yes.

18. If no, is that information nonetheless protected by applicable data protection law (Y/N)?

Not applicable.

Record-Keeping Requirement

19. Is an employer required to maintain a record of an employee's COVID-19 vaccination?

Currently, there is no guidance concerning employers' obligations to maintain a record specifically about an employee's COVID-19 vaccination. Generally, employers may maintain occupational health and safety records on employees, but are not required.

20. If so, what are (if any) the specific record keeping requirements related to vaccinations?

See Question 19.

Reporting Requirements

21. If an employee is vaccinated at the employer's directive, is the employer required to notify the governmental health authorities of employee's vaccination?

Yes.

COVID-19 Vaccination



Teleworking Requirements

22. Can an employer unilaterally implement a teleworking (work from home) arrangement if an employee cannot or will not agree to be vaccinated?

Yes.

23. If telework is not an option, can an employer require employees who cannot or will not agree to vaccinate to not come into the workplace?

Venezuela does not recognize employment at will. A dismissal is justified only in very limited circumstances. In this scenario, employers generally must maintain employment and cannot dismiss employees. Accordingly, employers should seek legal counsel for other options.

COVID-19 Vaccination



VIETNAM

Current as of January 4, 2021

Access to Vaccine

1. Is there a priority list for the distribution of the COVID-19 vaccine? (include summary list)

Not applicable.

Cost of Vaccine

2. Will the vaccine be paid for by the applicable jurisdiction?

Currently, no information is available.

Requirement of Vaccine

3. Is there a general requirement for individuals to be vaccinated after the COVID-19 vaccine is available?

No information available to date. Currently, only a few individuals are registered as volunteers to receive the vaccine during the first phase of the vaccination trial.

4. Is the vaccine mandated in certain industries after it becomes available?

Currently, no information is available.

Employer-Mandated Vaccinations

5. Can an employer require current employees to be vaccinated?

Under the current regulations, an employer cannot require its employees to be vaccinated unless the industry is specifically subject to a government mandate. However, so far we are not aware of any regulations issued by the Government on vaccination as a result of COVID-19.

6. If so, is there legal protection to be excused from being vaccinated (e.g., religious accommodation/disability accommodation)?

Not applicable.

Applicants for Employment (Pre-Hire Stage)

7. Can an employer require applicants to be vaccinated as a condition of hire?

Currently, no information is available and the current regulations are silent as to the possibility of asking a candidate to get a vaccine as a condition of hire.

Since no type of COVID-19 vaccine has been permitted in Vietnam to date, this prerequisite is not applicable at this stage.

COVID-19 Vaccination



8. Can employers ask applicants if they have been vaccinated?

Not applicable.

The former Article 7.2 c) of Decree No. 03/2014/ND-CP (“Decree No. 3”) and Article 5.3 of Decree No. 75/2014/ND-CP (“Decree No. 75”) provide that the dossier of application for the recruitment of Vietnamese employees comprises a health certificate (which normally contains information regarding the vaccination status of the employee). Both Decree No. 3 and Decree No. 75 were left out of the Labor Code No. 10/2012/QH13 (the “Labor Code 2012”) and are no longer applicable. However, similar requirements can apply under the new Labor Code 2019.

9. Can employers refuse to hire applicants that are unwilling to be vaccinated or have not yet been vaccinated?

The applicable regulations are silent on whether the absence of vaccination may be a valid grounds for refusal to hire. However, Article 8 of the Labor Code No. 45/2019/QH14 (the “Labor Code 2019”) prohibits any form of discrimination based on the employee’s health and disability. It remains to be seen whether the Vietnamese Government will issue specific guidelines on this upon the launch of the vaccination campaign (which is not clearly scheduled at the date of this survey).

10. Is there legal protection for applicants to be excused from being vaccinated (e.g. religious accommodation/disability accommodation)?

Not applicable.

Wage and Hour

11. If vaccinations are required, are employees entitled to reimbursement for the cost of the vaccination?

Currently, no information is available.

Other Legal Risks in Mandating

12. Are there any other legal risks to consider in requiring employee vaccinations? (Please list)

Currently, no information is available.

Employee Benefits

13. Can an employer provide inducements under its employee benefits plans (e.g., wellness programs) for those who are vaccinated?

Not applicable.

14. Can an employer provide a bonus to employees who get vaccinated?

No statutory provisions. In general, however, bonuses are based on the employee’s performance in Vietnam.

COVID-19 Vaccination



Union and/or Works Council Obligations

15. For workplaces in which collective representation arrangements apply, is an employer obligated to bargain with the union, or meet with the Works Council, prior to mandating employee vaccinations?

Not applicable.

Privacy

16. Is the fact that an employee has, or has not, been vaccinated “health information” or “sensitive personal data” under your country’s data protection law (Y/N)?

Yes, pursuant to Article 3.3 of Decree No. 25/2010/TT-BTTTT on collection, use, sharing, security assurance, and protection of personal information on websites or portals of state agencies.

17. If so, is this health information subject to the restrictions on processing applicable to “special categories of personal data” or “sensitive personal data”?

Currently, Vietnamese laws do not distinguish between “personal data” and “sensitive personal data.”
In April 2019, the Ministry of Public Security started developing a Draft Decree on Personal Data Protection (“Draft Decree”). However, the timing of adoption of the Draft Decree is not clearly scheduled and, therefore, difficult to anticipate. The Draft Decree defines for the first time in Vietnam the term “sensitive personal data,” which includes, among others, political and religious beliefs, ethnicity or race, healthcare status, genetic information, biometric data, gender and/or sex life, and criminal records.

18. If no, is that information nonetheless protected by applicable data protection law (Y/N)?

Yes. The processing and use of personal data of employees must comply with the provisions of Article 22 of the Law on Information Technology No. 67/2006/QH11 of the National Assembly of Vietnam, dated June 29, 2006. In particular:

- The collection, processing, and using of personal data is subject to the consent of the owner of such personal data.
- Personal data must be kept confidential and must not be shared with third parties, unless agreed by the owner of such personal data.

Record-Keeping Requirement

19. Is an employer required to maintain a record of an employee’s COVID-19 vaccination?

Not applicable at this stage.

20. If so, what are (if any) the specific record keeping requirements related to vaccinations?

Not applicable.

COVID-19 Vaccination



Reporting Requirements

21. If an employee is vaccinated at the employer's directive, is the employer required to notify the governmental health authorities of employee's vaccination?

Not applicable at this stage.

Teleworking Requirements

22. Can an employer unilaterally implement a teleworking (work from home) arrangement if an employee cannot or will not agree to be vaccinated?

Not applicable, since the vaccination campaign in Vietnam has not started yet. However, as a general principle, the work location can be agreed upon by the parties.

23. If telework is not an option, can an employer require employees who cannot or will not agree to vaccinate to not come into the workplace?

Not applicable, since the vaccination campaign in Vietnam has not started yet.

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