

FAQs · Vaccination

November 2021



INTRODUCTION

Andersen, through the member and collaborating firms of Andersen Global and its European Employment Practice, has prepared this edition of the Newsletter with relevant information for employers regarding the vaccination certificate. The Newsletter provides an overview of 22 countries covering the most common questions regarding vaccination:

Can employers require employees to test themselves for Covid-19? If yes, how often and are employees obliged to disclose the result of the test?

Can employers oblige employees to get a Covid-19 vaccination? If yes, under which conditions?

Are employers allowed to ask about the Covid-19 vaccination status of its employees?

Can employers stipulate that only Covid-19 vaccinated or recovered employees may enter the office?

Do certain groups of employees require a Covid-19 vaccination to perform the job?

We are confident that this overview will help employers in Europe to solve the most common questions in this regard. In case you are interested in receiving more detailed information, please contact one of the members of the Andersen Employment Practice who will be glad to give further advice.

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ALBANIA

Can employers require employees to test themselves for Covid-19? If yes, how often and are employees obliged to disclose the result of the test?

No, except for the employees working in educational institutions, such as schools, colleges, universities etc., who are required to test themselves once every week and provide the result of the test to the employer (this obligation does not apply to vaccinated employees or to employees who have a medical condition which does not allow vaccination).

In respect of other categories of employees, the employer has the legal obligation to monitor the health of the employees at the beginning of each working day. If an employee is found or reports to have symptoms of acute respiratory infection (i.e., Covid-19 related symptoms), the employer shall not allow the employee to attend the workplace, and the latter has the obligation to isolate him/herself and inform the medical doctor who will prescribe him/her a test for Covid-19. The employee is entitled to refuse the test or, if he accepts, not to disclose the result of the test, but he/she will not be allowed to the workplace if the employer has reasonable doubts that the result of the test would be or is positive and, therefore, there is a risk for the health and safety of the other employees.

Can employers oblige employees to get a Covid-19 vaccination? If yes, under which conditions?

No. Covid-19 vaccination is entirely voluntary in Albania, consequently, there is no legal basis for the employers to impose such obligation to the employees.

Are employers allowed to ask about the Covid-19 vaccination status of its employees?

There are no specific legal provisions or guidelines from the Albanian DPC regarding this topic. Although Albanian employers have a duty to protect the health and safety of their workforce, in the absence of an expressed legal duty to be vaccinated against Covid-19 and to provide proof of vaccination it is unclear whether employers can require employees to inform on the vaccination status in certain circumstances.

An employee's vaccination status is health data and is considered to be sensitive category data, therefore, it can only be processed to a very limited extent, provided it is necessary and proportionate to do so (e.g. can be proportionate for employees in open offices or workspaces, dealing with customers/public etc., while not reasonable in case of teleworkers.). Moreover, the data needs to be deleted if no longer needed. Employees have the right to refuse to provide information on their vaccination status and they may not be penalized/discriminated for this.

Exceptions are made in the education sector, where employers can request information on the vaccination status and the PCR test results.



Can employers stipulate that only Covid-19 vaccinated or recovered employees may enter the office?

Only employers in the educational sector can deny access to employees if they do not have Covid-19 vaccination certificate/card or do not submit a negative PCR test every week, unless they prove that they have a medical condition which does not allow vaccination. Other employers cannot adopt such measures.

As for the recovered employees, employers may request the medical report which shows the period that employee should stay isolated to recover.

Do certain groups of employees require a Covid-19 vaccination to perform the job?

No, except for the employees working in educational institutions, such as schools, colleges, universities etc. who are required to either get vaccinated or test themselves once every week and provide the negative result of the test to the employer to perform their job, unless they have a medical condition which does not allow for their vaccination.

Shirli Gorenca
Kalo & Associates
Collaborating Firm of Andersen Global

BOSNIA AND HERZEGOVINA

Can employers require employees to test themselves for Covid-19? If yes, how often and are employees obliged to disclose the result of the test?

At this time, employers cannot require employees to test themselves for Covid-19, nor can employers ask from employees to disclose the result of the test. In this regard, the competent authorities have issued conclusions and recommendations for organizing work in certain areas, in order to prevent the spread of Covid-19. However, the obligation of employees to test themselves and disclose test results to employers is not yet prescribed in Bosnia and Herzegovina. In addition, until such obligation is prescribed by acts of the competent authorities, requiring the disclosure of test results would be contrary to the provisions of the Law on personal data protection, as health data represent a special category of personal data.

Can employers oblige employees to get a Covid-19 vaccination? If yes, under which conditions?

In Bosnia and Herzegovina, employers cannot oblige employees to be vaccinated against Covid-19. This is due to the nature of the vaccination process in Bosnia and Herzegovina, which is still based on a completely voluntary basis, and each person is free to decide whether to be vaccinated or not. Until the competent authorities in Bosnia and Herzegovina decide that vaccination is mandatory, employers may not condition the exercise of the rights and obligations from employment relationship with the fact whether the employee has been vaccinated or not. In conclusion, the employee is free to decide whether to be vaccinated or not, and the fact of vaccination in no way affects his rights.



Are employers allowed to ask about the Covid-19 vaccination status of its employees?

Bearing in mind that the issue of vaccination in Bosnia and Herzegovina is regulated on a voluntary basis, and each person is free to decide whether to be vaccinated or not, as well as the fact that the Law on personal data protection prescribes that health data represents a special category of personal data, which processing is allowed only exceptionally, the employer may not require the employee to present him with a vaccination certificate, nor may request any other document on the status of the employee in connection with the vaccination. In case the employer requests a vaccination certificate and ties the employee's rights to the presentation of a vaccination certificate, the employer would expose himself to the risk of violating the provisions of the Labor Law and the Law on Personal Data Protection.

Can employers stipulate that only Covid-19 vaccinated or recovered employees may enter the office?

In order to protect the health of employees, the employer may prescribe measures such as wearing a mask, protective gloves, etc., however, there is no possibility to request information on the status of vaccination from employees. That information also constitutes special category of personal data, so until the competent authorities decide on the mandatory vaccination of the population in Bosnia and Herzegovina, the employer has no right to request a vaccination certificate from the employee. The same is the case with the certificate of recovery from Covid-19, since it is obviously information related to the health condition of the employees. Thus, employer cannot stipulate measures related to restriction of entry into the office in connection with vaccination or recovery from Covid-19.

Do certain groups of employees require a Covid-19 vaccination to perform the job?

Although there are announcements of the introduction of such measures, especially for health care employees, in Bosnia and Herzegovina there is still no vaccination obligation for any group of employees in order to perform their jobs. As already pointed out, vaccination is carried out on a completely voluntary basis for all categories of the population, and no distinction is made between citizens in terms of the work they perform. Thus, there is no such thing as different vaccine policies for different classes of employees, nor the vaccination for certain groups of employees is mandatory.

Igor Letica
Sajic Law Firm
Collaborating Firm of Andersen Global

BULGARIA

Can employers require employees to test themselves for Covid-19? If yes, how often and are employees obliged to disclose the result of the test?

Upon the latest measures introduced in Bulgaria, employers in healthcare, restaurant, hotel and wellness business, fitness and leisure, as well as retail are obliged to allow only employees with EU digital Covid-19 certificate to work. These employers are entitled to request information regarding the vaccination status and/or negative result from a recent testing from their employees. The PCR tests results are valid for 72 hours, while the results from other tests are valid only 48 hours. Employers in other branches are not entitled to request such information.



Can employers oblige employees to get a Covid-19 vaccination? If yes, under which conditions?

No. Covid-19 vaccination is entirely voluntary in Bulgaria.

Are employers allowed to ask about the Covid-19 vaccination status of its employees?

As already mentioned above, employers in healthcare, restaurants, hotels and wellness business, fitness and leisure, as well as retail are obliged to allow to work only employees with EU digital Covid-19 certificate. These employers are entitled to request information regarding the vaccination status and/or negative result from a recent testing from their employees.

Can employers stipulate that only Covid-19 vaccinated or recovered employees may enter the office?

Only employers in the branches outlined in the latest introduced measures can deny access to employees if they do not have EU digital Covid-19 certificate (vaccination, negative test results and recovery). Other employers cannot adopt such measures.

Do certain groups of employees require a Covid-19 vaccination to perform the job?

No, the vaccination is entirely voluntary, but the employees in the occupation fields mentioned above need a EU COVID-19 Digital certificate to perform their job (either vaccination, recovery or negative result).

Stefan Stefanov
Karambourov & Partners
Collaborating Firm of Andersen Global

CROATIA



Can employers require employees to test themselves for Covid-19? If yes, how often and are employees obliged to disclose the result of the test?

Outside of public service institutions there are still no legal basis for employers to ask for negative Covid-19 legitimization of their employees. However, there have been significant changes enforced by the National Committee for Public Health in domain of health care institutions, public service and those that are in close cooperation with them. We are elaborating this further in answer number five.

Can employers oblige employees to get a Covid-19 vaccination? If yes, under which conditions?

No, employers cannot oblige employees to get vaccination against Covid-19. Likewise, employees have every right to refuse to be vaccinated since there is no current and specific legal provisions which oblige employees to be vaccinated against Covid-19. At the moment, the employee is not even legally obliged to give a reason for refusal to be vaccinated. However, ever since the new decision of National Health Committee is imposed there are certain employers that can, under circumstances stated in answer five, request for vaccine certificate or EU covid passport.

Are employers allowed to ask about the Covid-19 vaccination status of its employees?

According to the legal provisions and available guidelines of the national data protection authority, the general rule is that an employer cannot ask its employees to provide information about their vaccination status, neither to collect such information from the health, or other institutions. Accordingly, the employer cannot make records of the vaccinated employees. Nor can the employer ask the employee for proof of vaccination. The processing of such data is in principle prohibited, so that their processing, in addition to the legal basis, requires the existence of one of the exceptions in Article 9 (2) of the General Data Protection Regulation.

However, there have been recent changes regarding employees working in health care institutions, social welfare industry or public administration. In regard with this we refer you to question 5.

Can employers stipulate that only Covid-19 vaccinated or recovered employees may enter the office?

The employers cannot stipulate, i.e. forbid non-vaccinated employees from entering the office (there are some exceptions, more on that point see question 5) since this could violate the anti-discrimination law and open the employer to liability and trigger legal actions against employers.

Of course, if an employee is sick or shows unquestionable symptoms that may indicate an infection, the employer can take all necessary measures in order to protect other employees, including asking the symptomatic employee to leave the office and consult a emergency, family or other medical specialist.

Do certain groups of employees require a Covid-19 vaccination to perform the job?

Recent obligation for employees in health care institutions and social welfare industry to provide a proof of Covid-19 test at least twice a week is now widened on other public service workers, as well as members of Croatian Armed Forces.

Therefore, all public servants and officials, whether they are working in local or central public administration, are now obliged to show a proof of negative Covid-19 test. Same provisions relate to workers in corporations that are majority-owned or established by Republic of Croatia. However, no proof of testing is needed if they provide the appropriate proof they have been vaccinated or have recovered from Covid-19 within the prescribed timeframe.

More importantly, recently adopted measure in its provision states that duty of providing negative Covid-19 test, Covid-19 certificate or other appropriate proof relates to those who are coming to visit to public servant and officials, providing services or in any other way are entering business premises of public administration.

The measures stated above are enforced by the heads of administrative authorities and companies.

Ivan Matić

Kallay & Partners

Collaborating Firm of Andersen Global

CYPRUS

Can employers require employees to test themselves for Covid-19? If yes, how often and are employees obliged to disclose the result of the test?

Yes. With the current measures imposed in Cyprus, employees in both the private and public sectors, of whatever industry must have rapid tests or PCR tests done. Both the PCR and rapid tests results are valid for 72 hours.

Can employers oblige employees to get a Covid-19 vaccination? If yes, under which conditions?

No. Employers cannot oblige any employee to get vaccinated under any circumstances. Additionally, employees have every right to refuse to be vaccinated since there is no current and specific legal provisions which oblige employees to be vaccinated against Covid-19. At the moment, the employee is not even legally obliged to give a reason for refusal to be vaccinated.

Are employers allowed to ask about the Covid-19 vaccination status of its employees?

Under the local privacy laws and regulations, the general rule is that employers cannot seek information about employees vaccination status from any health or other organization or authority. Collection and processing of such data is essentially prohibited, so that their processing, in addition to the legal basis, requires the existence of one of the exceptions in Article 9 (2) of the General Data Protection Regulation.



Can employers stipulate that only Covid-19 vaccinated or recovered employees may enter the office?

No. Employees have a constitutional right of freedom of work and such action would violate the Constitution. Having said that, employers are free to determine the conditions under which persons may enter the office on the basis and set out internal policy for procedures to adhere to the current measures imposed by the Ministry of Health and guidelines for the protection of health and safety in the workplace. Employers must continuously evaluate the work environment and take all necessary actions to mitigate risks related to the Covid-19 matter.

Do certain groups of employees require a Covid-19 vaccination to perform the job?

Until now, no groups of employees require a Covid-19 vaccination to perform the job and there are no guidelines that have been issued in relation to this point.

GERMANY

Can employers require employees to test themselves for Covid-19? If yes, how often and are employees obliged to disclose the result of the test?

Yes. Under a recent change in legislation, unvaccinated employees who have not already recovered from a Covid-19 infection must be recently tested negative in order to work in the office. A rapid test must have been performed no more than 24 hours, a so-called PCR test no more than 48 hours ago. A test that is merely carried out privately is not sufficient. The test must be carried out by the employer himself or under his supervision. Alternatively, the test can also be carried out by public health services or in testing centers. If these employees do not allow themselves to be tested, they face the threat of unpaid leave and possibly even dismissal. If employees work in the office without being tested or submit falsified test certificates, there is the threat of severe fines.

Furthermore, in certain facilities, such as hospitals or nursing homes, testing is also mandatory for employees who have been vaccinated or have already recovered from a Corona infection. However, they are only required to be tested at least twice a week.

Employers are required to monitor negative test results on a daily basis through follow-up testing and to document them on a regular basis. Employees are therefore obliged to present the test result at the employer's request.

Can employers oblige employees to get a Covid-19 vaccination? If yes, under which conditions?

No, employers cannot oblige its employees to get vaccinated. The decision for or against a vaccination is a private matter. Even if customers or other employees were to require that persons with whom they come into contact are vaccinated, employers would not have the authority to oblige their employees to get vaccinated.

Nicky Xenofontos Fournia
Andersen in Cyprus
Member Firm of Andersen Global



In some areas, however, there is a discussion of making vaccination mandatory (e.g., nursing homes and hospitals).

Are employers allowed to ask about the Covid-19 vaccination status of its employees?

Employees must carry a vaccination or convalescence certificate or a current certificate of a negative Covid-19 test when entering the workplace and the employer must control this. However, the employer's control obligations and the right to process the received health data of the employees are not connected with a comprehensive right of the employer to provide information about the vaccination or convalescence status. Employees who have recovered or been vaccinated are still free to carry current test certificates instead of vaccination or recovery certificates and to present them during access checks by the employer.

Can employers stipulate that only Covid-19 vaccinated or recovered employees may enter the office?

No, employers are not entitled to require that only vaccinated or recovered persons are allowed to enter the office / workplace. This would constitute a mandatory vaccination for still unvaccinated employees "through the back door".

Do certain groups of employees require a Covid-19 vaccination to perform the job?

Until now, no groups of employees require a Covid-19 vaccination to perform the job. However, it is expected that the Federal Constitutional Court will rule that the compulsory measles vaccination is constitutional. In view of this expected ruling, a statutory vaccination requirement, at least for special professional groups (e.g., medical personnel) where a Covid-19 infection is an increased risk for vulnerable groups, will probably be introduced soon.

GREECE

Can employers require employees to test themselves for Covid-19? If yes, how often and are employees obliged to disclose the result of the test?

The legal framework stipulates that all employees who provide their work at the employer's premises as well as interns, trainees etc. are required to undergo testing against Covid-19 (PCR test or rapid test) with the exception of vaccinated individuals or individuals who had been infected with the disease and provide the respective certificates.

The cost of testing against Covid-19 shall be borne by the employee, while testing should be done once a week for the majority of employees in the private sector and twice for specific activities mentioned such as food service etc.

The performance of the diagnostic test (either PCR or rapid test) is proved by a demonstration by the employee, upon entering the workplace, of a certificate, either printed by the digital platform or in digital form. In case the certificate has

Cord Vernunft
Andersen in Germany
Member Firm of Andersen Global



not been issued in time, alternatively a certificate of negative result is issued by the institution or the private doctor who performed the examination, which the employee demonstrates in any appropriate way. Can employers oblige employees to get a Covid-19 vaccination? If yes, under which conditions?

The employers can oblige certain groups of employees to get a Covid-19 vaccination for whom the vaccination is mandatory (question 5).

Are employers allowed to ask about the Covid-19 vaccination status of its employees?

The employer has the right to ask the employees to present the respective certificates in order to ensure that they do not have the obligation to undergo testing against Covid-19 (PCR test or rapid test). As per the provisions of the legislation in effect, employees in public and private sector who have completed the Covid-19 vaccination or have been infected with the disease within the last six months are required to provide their employer with the respective certificates.

Can employers stipulate that only Covid-19 vaccinated or recovered employees may enter the office?

The loss of the right of the employees - offenders to provide their agreed work and to receive the agreed remuneration for this work is not provided as a sanction, as was provided in the case of the self - tests.

Employees who have not been vaccinated or who have not been diagnosed with Covid-19 in the last six months and who refuse to undergo a diagnostic test are entitled to enter the workplace unhindered and to work normally, with only a risk to themselves for the imposition of a fine of 300 or 150 euros, for each non-diagnostic test. The employer has the obligation to submit the declaration required.

Do certain groups of employees require a Covid-19 vaccination to perform the job?

Vaccination became mandatory for certain groups of employees and especially for all staff (medical, paramedical, nursing, administrative and support staff) in nursing homes for the elderly and people with disabilities and in health facilities in the public and private sector.

Anastasios Triantafyllos
Andersen Legal in Greece
Member Firm of Andersen Global

HUNGARY

Can employers require employees to test themselves for Covid-19? If yes, how often and are employees obliged to disclose the result of the test?

Yes, employers may require employees to test themselves for Covid-19, however in case the employer requires employees to test themselves the employer is obliged to cover the expenses of the tests. The frequency of the tests is not regulated by the current legal regulations. According to the applicable legal regulations however, since the tests restrict the rights relating to personality of employees, the employer may only determine the frequency of the tests as strictly necessary for the reasons directly related to the intended purpose of the employment relationship and proportionate for achieving its objective. As the test results contain health data, the results of the tests may only be requested in line with and applying the limitation of the GDPR rules. Employer can only handle the data that the employee tested positive/negative. Employer may only require the employee to present the test results but may not copy them.

Can employers oblige employees to get a Covid-19 vaccination? If yes, under which conditions?

Yes. Currently, as per Government Decree 449/2021 Covid-19 vaccination is already mandatory for the employees who are working at healthcare service providers.

In addition, as per Government Decree 598/2021 on the protection of workplaces against Covid-19 in order to preserve health and taking into account the specifics of the workplace and the job, the employer can determine that vaccination is a condition of employment and shall first inform the employee of this. If the employer applies this option, the employer should specify in its previous measure: the deadline for receiving the vaccination. The deadline shall be at least 45 days in case of a single-dose vaccine and for the first dose of vaccine in the case of a two-dose vaccine. (In case of a two-dose vaccine, the second dose of the vaccine shall be administered at the time specified by the doctor performing the vaccination); the method of how to certify that the vaccination has taken place; and the possible legal consequences of not taking the vaccination.

A person who is contra-indicated for medical reasons and has a medical opinion to certify it may not be required to be vaccinated. The medical opinion shall be issued by a specialist doctor of the competent occupational health service or by another doctor authorized to assess the employee's fitness for work or, in absence of these, by the employee's general medical practitioner.

The fact of vaccination - as specified by the employer - can be proved via presenting simultaneously an official identity document and one of the following documents: Digital EU Covid certificate, immunity card or application - with no expiry date -, a certificate of vaccination issued by the doctor who administered the vaccination, international vaccination certificate issued by the WHO.



From a data protection point of view, we highlight that the Decree allows employers to process data on the employee's official identity card and documents relating to the vaccination and data on the medical opinion relating to the contra-indications to vaccination. The employer may process the aforementioned data only to the extent and for the period necessary to achieve the purpose of the processing, but no longer than until the end of the state of danger.

If the employee has not taken the vaccination within the time limit set by the employer, the employer can order unpaid leave for the employee, unless the employee is exempted from taking the vaccination. If the employee takes the vaccination after the unpaid leave has been ordered, the employer shall immediately terminate the unpaid leave.

An employee who is exempted from his/her obligation to be available for work and to perform work (e.g. incapacitated) before the deadline for complying with the vaccination obligation under the decree may only be required to be vaccinated by the employer after the exemption from the obligation to be available for work and to work has ceased.

The employer can terminate the employment relationship with immediate effect if one year has elapsed from the date of the unpaid leave and the employee has not provided the employer with proof of vaccination or a medical certificate supporting the exemption. However, it should be noted that the new decree will expire at the end of the state of danger. Thus, if the decree is not in force after the one-year period concerned, then it will no longer provide grounds for a termination.

Are employers allowed to ask about the Covid-19 vaccination status of its employees?

Yes. If employer orders vaccination as in Section 2 above, then the employer is allowed to process data on the employee's official identity card and documents relating to the vaccination and data on the medical opinion relating to the contra-indications to vaccination.

If employer doesn't order vaccination, the following rules apply: the employer can ask about the vaccination status within the limitations of GDPR and guidance of the Hungarian Data Protection Authority. If the legal basis for the data processing is the legitimate interest of the employer, the employer is required to prepare a risk assessment for the different job roles and prove in a balance of interest test that the vaccination data of employees are required to ensure the safety and health of other employees and to ensure the compliance with employment and health and safety regulations, as well as necessary and proportionate (e.g. can be proportionate for employees in open offices or workspaces, dealing with customers/public etc., while not reasonable in case of teleworkers). Depending on the results of the risk assessment and the balance of interest test, the employer may ask employees regarding their vaccination status, i.e. ask them to present the immunity card issued for them. The employer can only handle the fact that employee concerned has proved that she/he is protected against Covid-19 and for how long (if this can be established from the immunity card). The immunity card cannot be copied.

Can employers stipulate that only Covid-19 vaccinated or recovered employees may enter the office?

Yes, since the employer is obliged to ensure the healthy and safe working environment of employees. However, the employer is required to prepare a risk assessment for the different job roles and prove in a balance of interest test that the vaccination of employees is required to ensure the safety and health of other employees and to ensure the compliance with employment and health and safety regulations, as well as necessary and proportionate (e.g., can be proportionate for employees in open offices or workspaces, dealing with customers/public etc.) Employer may restrict the use of certain office areas for employees who are not vaccinated, however the principle of equal treatment shall always be taken into consideration when issuing such measures. If the measure is objective (i.e. justified by a reason directly related to the employment relationship) it can be lawful.

Do certain groups of employees require a Covid-19 vaccination to perform the job?

Currently, Covid-19 vaccination is mandatory only for the employees who are holding jobs at healthcare service providers. The minister responsible for health or the Hungarian Government is entitled to order compulsory vaccination in Hungary and may determine further job roles for which vaccination is a condition of employment.

In addition, employers may define job roles where vaccination is mandatory, see section 2 above.

Szilvia Fehérvári
Andersen in Hungary
Member Firm of Andersen Global

ITALY

Can employers require employees to test themselves for Covid-19? If yes, how often and are employees obliged to disclose the result of the test?

No. The test for Covid-19 is always carried out on a voluntary basis even if the employer makes the test available to his employees.

The result is confidential and can only be communicated to the doctor, who reports the positive result to the Health Authority for isolation in case of a positive result.

Can employers oblige employees to get a Covid-19 vaccination? If yes, under which conditions?

No. In Italy, mandatory vaccination can only be imposed by law subject to precise guarantees (such as for example compensation for damage to health). Employees can't be obliged to be vaccinated by employers because the vaccine is considered a health treatment, not personal protective equipment for safety at work and according to the Italian Constitution, no one can be obliged to undergo a health treatment except by law.



Are employers allowed to ask about the Covid-19 vaccination status of its employees?

No. Personal data relating to vaccination is confidential data that can only be processed by doctors for medical reasons. Even the app that is used to check the validity of the Green Pass which is required for access to the workplace only records the validity of the certificate, not the reason why it was issued (if it is for vaccination, testing, recovery from Covid-19 or exemption from vaccination).

The possibility given to the employee (see below) of sharing data linked to the “Green Pass” with the employer is now being debated whether it is compatible with the rules on the processing of personal data.

Can employers stipulate that only Covid-19 vaccinated or recovered employees may enter the office?

Since 2021 October 15th and until the end of the health emergency (currently December 31st), in accordance with Law-Decree n. 147/2021 all public and private employees are required to show the so-called ‘Green Pass’ to access the workplace. This document certifies that they have been vaccinated against Covid-19 or have had a negative test result within the last 48 hours or that the employee became infected with Covid-19 and recovered.

The Law-Decree n. 147/2021 has been converted in formal Law by the Parliament on November 20, 2021.

The employer needs to check all employees and collaborators who access the workplace using a special app, although employees have been allowed to share their “Green Pass” with the employer on a voluntary basis since November 20th in order to avoid daily workplace control. If the employee or collaborator does not have the document or the document is not valid, he/she cannot access the workplace and is not entitled to remuneration until he/she can provide a valid certificate.

An employee who is suspended from work because he or she does not have a Green Pass is still entitled to keep his or her job and can't be dismissed.

Do certain groups of employees require a Covid-19 vaccination to perform the job?

Currently, only doctors, medical staff and staff in social and health care facilities are obliged to get vaccinated. If they refuse to undergo vaccination, they are suspended from work and salary but cannot be dismissed. Pharmacists, doctors working in private practices or in private hospitals are also obliged to vaccinate. If they fail to do so, they can be suspended from their professional activity.

Francesca Capoferri
Matteo Amici
Andersen in Italy
Member Firm of Andersen Global

LIECHTENSTEIN

Can employers require employees to test themselves for Covid-19? If yes, how often and are employees obliged to disclose the result of the test?

In Liechtenstein, employers must ensure that employees are able to comply with the recommendations of the government and the Office of Public Health regarding hygiene and distance. Appropriate measures must be provided and implemented for this purpose.

Employers take further measures according to the STOP principle (substitution, technical measures, organizational measures, personal protective equipment), namely the possibility of home offices, physical separation, separate teams, regular ventilation or the wearing of face masks.

In principle, tests cannot be prescribed and participation in any testing for Covid-19 is voluntary (including so-called company tests). However, testing may be ordered for certain groups of employees who are particularly exposed (for instance in health professions), for example as part of a testing strategy ordered by the state or in the event of an outbreak (multiple infections) in the company. Employees who are infected with Covid-19 must inform their employer immediately, as they could endanger other employees at the workplace.

In addition, please also see the statements regarding the certificate obligation under the next question.

Can employers oblige employees to get a Covid-19 vaccination? If yes, under which conditions?

Liechtenstein employers are entitled to verify the existence of a Covid-19 certificate among their employees if this serves to determine appropriate protective measures. The result of the verification may not be used for other purposes.

If the employer provides for the verification of the existence of a Covid-19 certificate, it shall record this and the measures derived from it in writing. The employees or their representatives shall be heard in advance.

The Liechtenstein Office of Public Health issues, in accordance with Regulation (EU) 2021/95352 and the implementing acts adopted thereunder, Covid-19 certificates to prove:

- (a) a vaccination carried out against Covid-19 (Covid-19 vaccination certificate);
- (b) a recovery from infection with Sars-CoV-2 (Covid-19 recovery certificate);
- (c) a negative result of a test for Sars-CoV-2 (Covid-19 test certificate).

Verification of the authenticity, integrity and validity of a Covid-19 certificate is carried out using a verification app recognized by the Office of Public Health. The verification process should not disclose whether it is a vaccination, recovery or test certificate. In practice, however, it is conceivable that through the verification of the certificates by the employers, the background of the certificate, namely vaccination, recovery or test, is indirectly found out.



To sum up, Liechtenstein employers can require employees to verify the existence of a Covid-19 certificate among their employees. An obligation to get a Covid-19 vaccination has not been enacted so far as the certificate can also be obtained by recovery or test.

Are employers allowed to ask about the Covid-19 vaccination status of its employees?

Employers are generally not allowed to ask about the Covid-19 vaccination status of its employees in Liechtenstein.

When there had been for instance a mask wearing obligation for non-vaccinated employees in a certain office, this information could be indirectly found out. However, due to rising infection rates, it has recently become mandatory again for every person (even for vaccinated) to wear a face mask indoors in employment premises, including in vehicles, where more than one person is present.

Can employers stipulate that only Covid-19 vaccinated or recovered employees may enter the office?

Liechtenstein Employers cannot only grant Covid-19 vaccinated or recovered (existing) employees access to the office. As stated under 2, they may however verify the existence of a Covid-19 certificate among their employees if this serves to determine appropriate protective measures. The certificate may also be obtained through a negative Covid-19 test or recovery, not only by a vaccination.

Do certain groups of employees require a Covid-19 vaccination to perform the job?

No, such a requirement must not apply for existing employment contracts in Liechtenstein. As there is the principle of freedom of contract, an employer may only hire new employees who may provide of a Covid-19 vaccination.

LUXEMBOURG

Can employers require employees to test themselves for Covid-19? If yes, how often and are employees obliged to disclose the result of the test?

Since 19 October 2021, employers have the possibility in Luxembourg to introduce the Covid check scheme within their company knowing that since 1st November 2021, employers in the HORECA sector (acronym designating the hotel, restaurant and café business sector) are obliged to implement the Covid Check scheme.

It belongs to the employers to assess the “necessity” of introducing such a scheme in order to “protect the safety and health of the workers concerned”.

Employers may decide to place the entire site under the Covid Check scheme (access to the workplace), or limit it to certain parts of the premises or to events (meetings, conferences, etc.). Employers must notify the Covid check scheme to the Health Directorate (“Direction de la santé”) via an electronic form.

The use of the Covid Check application, which has been modified on 11 October 2021, is not to be considered as processing personal data under the following conditions: employers must simply scan the QR codes without leaving any trace on any medium, material or file, and they must therefore avoid any recording of this medical data on any medium. Otherwise, there could be illegal processing of personal data.

The concerned persons (employees, collaborators, customers, suppliers, visitors, etc.) are required to present a vaccination certificate, a recovery certificate or a negative test result in order to enter a Covid Check area.

Can employers oblige employees to get a Covid-19 vaccination? If yes, under which conditions?

Employers cannot oblige employees to get a Covid-19 vaccination. According to Luxembourg law, employers whose employees are or may be exposed to Covid-19 notably in the healthcare sector are encouraged according to the risk assessment to provide their employees with the opportunity to be vaccinated against Covid-19.

Are employers allowed to ask about the Covid-19 vaccination status of its employees?

Employers can in no event force employees to disclose their vaccination status. Employers are not allowed to require health information of their employees regarding the vaccination and /or to keep a record of employees’ vaccination. An employee’s vaccination status is a “data concerning health” which is to be considered a special category of personal data and has to be processed in accordance with the applicable regulations. In this context, article 9 of the GDPR prohibits any use of such personal data, unless it is carried out under specific listed circumstances. It also provides Member States with the ability to introduce additional limitations with regard notably to the processing of data concerning health.



Can employers stipulate that only Covid-19 vaccinated or recovered employees may enter the office?

The vaccination against Covid-19 is not mandatory. Indeed, the Luxembourg law does not require employees to be vaccinated under the Covid check scheme. The employer is in no way required to implement the Covid Check system within the company. It is only a possibility left to the discretion of each employer and not an obligation.

If the employer decides to implement the Covid Check scheme, he can also decide to place all or only part of the company under its control. In the case where the Covid Check scheme is applicable, the employees may have access to the offices if they may give:

- A vaccination certificate with a QR code
- A recovery certificate with a QR code
- A Covid-19 test certificate showing a negative result, a QR code or certified by one of the competent persons according to the law

Do certain groups of employees require a Covid-19 vaccination to perform the job?

No, in Luxembourg Covid-19 vaccination is not mandatory for any sector even if the employers may encourage employees to be vaccinated in particular in certain sectors (healthcare, HORECA, educational institutions).

Catherine Graff

CM Law

Collaborating Firm of Andersen Global

MOLDOVA

Can employers require employees to test themselves for Covid-19? If yes, how often and are employees obliged to disclose the result of the test?

No, except for the employees working in educational institutions, such as schools, colleges, universities etc., who are required to test themselves once every 14 days and provide the result of the test to the employer (this obligation does not apply to vaccinated or fully recovered employees).

In respect of other categories of employees, the employer has the legal obligation to monitor the health of the employees at the beginning of each working day. If an employee is found or reports to have symptoms of acute respiratory infection (i.e. Covid-19 related symptoms), the employer shall not allow the employee to attend the workplace, and the latter has the obligation to isolate him/herself and inform the medical doctor who will prescribe him/her the test for Covid-19. The employee is entitled to refuse the test or, if he accepts, not to disclose the result of the test. But he/she will not be allowed to the workplace if the employer has reasonable doubts that the result of the test would be or is positive and, therefore, there is a risk for the health and safety of the other employees.

Can employers oblige employees to get a Covid-19 vaccination? If yes, under which conditions?

No. The employers are only obligated to facilitate and actively encourage the employees to vaccinate against Covid-19.

Are employers allowed to ask about the Covid-19 vaccination status of its employees?

According to the Moldovan Labor Code, the employer cannot request information about the employees' health, except for the data on the employee's ability to fulfill their work obligations. Although the Moldovan authorities issued a guide on Covid-19 prevention measures at workplace, the guide does not regulate the vaccination status aspects, but only provides the general obligations of the employer regarding the employees' safety. The employees have the right, therefore, to plead on the lack of specific regulation in the field and refuse providing the employer with the information about their vaccination status. Such an information would be allowed for processing by the employer subject to the written consent of the employee as the holder of special category data (on health condition

Can employers stipulate that only Covid-19 vaccinated or recovered employees may enter the office?

No, the employer cannot legally prohibit unvaccinated employees and/or healthy employees who did not have Covid-19 (or employees without Covid-19 related symptoms) to enter the office.



Do certain groups of employees require a Covid-19 vaccination to perform the job?

No, except for the employees working in educational institutions, such as schools, colleges, universities etc. who are required to test themselves once every 14 days and provide the negative result of the test to the employer in order to perform their job (this obligation does not apply to vaccinated or fully recovered employees).

NORTH MACEDONIA

Can employers require employees to test themselves for Covid-19? If yes, how often and are employees obliged to disclose the result of the test?

Generally, the employers cannot ask the employees to test themselves for Covid-19 on their own expense.

However, if the employer wants all its employees to be tested for Covid-19, the employer is obliged to provide the tests on its own expense. Having in mind that there is no legal regulation on this question, if the employer pays for the tests, there is no limit on how often the employees can be tested and the results will be disclosed to the employer.

Can employers oblige employees to get a Covid-19 vaccination? If yes, under which conditions?

The employers are not allowed to oblige the employees to get a Covid-19 vaccination. In North Macedonia, the Covid-19 vaccination is not obligatory and therefore, there is no legal basis for the employers to impose such obligation to the employees.

Are employers allowed to ask about the Covid-19 vaccination status of its employees?

The law does not prohibit the employers from asking about the Covid-19 vaccination status of its employees. However, their vaccination status cannot be the deciding factor for granting benefits, imposing sanctions, promotion, employment, etc., nor for discrimination of the employees.

Can employers stipulate that only Covid-19 vaccinated or recovered employees may enter the office?

The employers cannot stipulate that only Covid-19 vaccinated or recovered employees can enter the office. The Covid-19 vaccination is not obligatory in North Macedonia and the restrictions that are currently in force, are all imposed by the government on state level. North Macedonia has not made any legislative changes in this direction so far, and the employers do not enjoy bigger freedom under the excuse of Covid-19.

Iulia Furtuna

Turcan Cazac Law Firm

Collaborating Firm of Andersen Global



Do certain groups of employees require a Covid-19 vaccination to perform the job?

At the moment, the Covid-19 vaccination is not obligatory for anyone in North Macedonia. The government implements different campaigns and projects to stimulate the vaccination, but the final decision is still on the citizens. There is no legal obligation even for the health employees, although they are highly encouraged to get a vaccine and they have an advantage over other citizens in the process of vaccination. In addition, when the vaccination process in North Macedonia started, the health employees were the first ones to get a vaccine. However, beside the advantages, there is no obligation for them to get vaccinated, nor for any other group of employees.

Svetlana Neceva
Pepeljugoski Law Office
Collaborating Firm of Andersen Global

POLAND

Can employers require employees to test themselves for Covid-19? If yes, how often and are employees obliged to disclose the result of the test?

According to the labor law currently applicable in Poland, employers may not require that employees take Covid-19 tests. Even if employers are aware that their employees have been tested for Covid-19, they have no right to demand that they disclose the results. There are no legal restrictions on voluntary Covid-19 tests to be arranged by the employer in the workplace, but even if the employer pays for such tests, the employees may not be forced to take them.

Can employers oblige employees to get a Covid-19 vaccination? If yes, under which conditions?

The vaccination process is not obligatory in Poland and the patient's prior consent is required for vaccination, even with respect to those who are employed in the healthcare sector. Vaccination is not a requirement to be employed and the employer may not require or force employees to get vaccinated.

Are employers allowed to ask about the Covid-19 vaccination status of its employees?

Under the Polish law employers cannot verify or ask whether employees have been vaccinated or recovered from Covid-19. Employees are not required to inform the employer whether they have been vaccinated. However, employers have the right to motivate and encourage employees. The only information about the employee's health which the employer can request is the employment medical examination. Moreover, the information on vaccination status is classified as health-related data and is subject to special protection within the meaning of Article 9 of the General Data Protection Regulation (GDPR).

Now and again a rumor is heard that the relevant legislation will be passed to provide the legal framework for employers to verify the Covid-19 vaccination status of employees. It seems advisable to introduce national legislation that, harmonizing with Article 9(2) of the GDPR, would provide a clear basis for the processing of vaccination data in employment relationships.



Can employers stipulate that only Covid-19 vaccinated or recovered employees may enter the office?

The stipulation that only Covid-19 vaccinated or recovered employees may enter the office would be an act of discrimination in employment, which is prohibited by the Polish labor law. It should be emphasized that if the employee shows serious symptoms of being unwell which may indicate an infection, the employer may take any measures required to protect other employees, which includes ordering the employee to return home and consult a doctor.

Do certain groups of employees require a Covid-19 vaccination to perform the job?

No, in Poland Covid-19 vaccinations are not mandatory for any profession, even for those employed in the healthcare sector.

Magdalena Patryas
Andersen in Poland
Member Firm of Andersen Global

PORTUGAL

Can employers require employees to test themselves for Covid-19? If yes, how often and are employees obliged to disclose the result of the test?

As a preliminary matter, it is relevant to note that, for now, in the Portuguese legal system, it is not provided any specific legislation regarding this matter. However, Article 19 of the Labor Code, more specifically the last part, provides the following: "In addition to the situations provided for in legislation relating to safety and health at work, the employer may not, for the purposes of admission to employment or continued employment, require the job applicant or employee to undergo or present medical tests or examinations of any nature to prove their physical or mental condition, except where the purpose of these is the protection and safety of the employee or of third parties, or where specific requirements inherent to the activity so justify, in which case the job applicant or employer must be provided with the respective grounds in writing".

Thus, the last part of this article seems to include this situation now under analysis and, therefore, it seems that the employer has legitimacy to ask the employees to test themselves.

The General Confederation of Portuguese Employees (CGTP) defended, however, that the employee must be presented with a written justification for the need to test for the presence of Covid-19.

Can employers oblige employees to get a Covid-19 vaccination? If yes, under which conditions?

In Portugal the vaccination against Covid-19 is not mandatory. Thus, and barring future legislative change, employers cannot require their employees to provide proof of such vaccination as a requirement to work in the company. Therefore, Portuguese companies can only recommend the vaccination, without being able to prevent employees who do not want to be vaccinated from returning to the office.



Even though experts have been arguing this theme, the conclusion is that, only with legislation, companies can require their employees to get vaccinated against Covid-19.

Are employers allowed to ask about the Covid-19 vaccination status of its employees?

Although employers can decide to wear a mask in the workplace, Portuguese law does not allow employers to ask their employees whether they have been vaccinated.

The General Confederation of Portuguese Employees (CGTP) has recalled that health data is sensitive personal data, subject to a specially reinforced protection regime. Thus, this means that, according to the Portuguese law, the employer cannot directly collect or register employees' health data, or even be aware of it.

Regarding this matter, it will be relevant to consider the legal solution provided by Article 17 of the Portuguese Labor Code, that states that "the employer cannot require a candidate or an employee to provide information on: their health or state of pregnancy, unless justified by the particular requirements inherent in the nature of the professional activity and provided in writing with the reasoning therefor".

Can employers stipulate that only Covid-19 vaccinated or recovered employees may enter the office?

The control of entry into the workplace and the imposition of vaccination to the employees is not permitted, as there is no legislation authorizing such restriction.

Under the current legislation, as it is not legitimate for the employer to ask for the certificate of vaccination, it is also not permitted to impose such restrictions to the employees. This means that the employer cannot prevent the entry of employees who do not present the vaccination certificate.

Do certain groups of employees require a Covid-19 vaccination to perform the job?

Regarding to certain groups of employees that perform some activities, like health employees, the major understanding has been that the labor law gives room to require vaccination.

Despite this understanding, there is no legislation providing for the legitimacy of the employer of the health employees to require the presentation of the certificate of vaccination.

José Mota Soares
Andersen in Portugal
Member Firm of Andersen Global

ROMANIA



Can employers require employees to test themselves for Covid-19? If yes, how often and are employees obliged to disclose the result of the test?

No, under the current legal framework, employers cannot force the employees to test themselves for Covid-19 or to present a negative test, either PCR or by rapid test, prior to coming to work. The situation does not change if the employer agrees to pay for such tests. Obviously, much less than that, they can neither be obliged to bear the costs for such tests. On the other hand, employees are free to test themselves on a voluntary basis.

Can employers oblige employees to get a Covid-19 vaccination? If yes, under which conditions?

Currently vaccination is not mandatory in Romania. Consequently, employees cannot be forced to be vaccinated against Covid-19. However, Romanian authorities are considering imposing mandatory vaccination for certain professional categories, such as medical staff and teachers. To this end, there is a draft law which is debated in the Romanian Parliament these days. Anyway, there is no clarity on whether the law will be adopted or the form in which the law will be adopted.

Are employers allowed to ask about the Covid-19 vaccination status of its employees?

The employer must organize the activity of the employees who cannot work remotely in compliance with the legal provisions issued by the competent authorities regarding the prevention of contamination with Covid-19. The employer also needs to ensure the safety and health of the employees at work, by also considering the degree of vaccination of the employees, as well as the number of employees who are in the period between the 15th day and the 180th day after the confirmation of infection with Covid-19.

Above-mentioned government decisions do not regulate any express obligation on employers or employees to obtain or provide information on the vaccination status. Moreover, if by absurdity there had been such an obligation, as it was provided by a government decision, the legality of the rule by which the obligation would have been established would have been highly questionable (in the absence of its regulation by a law – enacted by the parliament).

Consequently, having in mind the current legal framework, employers cannot force employees to disclose information on the degree of vaccination / disease status, as there is no legal basis for this. At most, based on the provisions of the Government decision referred to above, employers could only ask employees about the vaccination status (as a survey on an anonymous basis), with appropriate guarantees (e.g., indication that participation in the survey is optional, the sole purpose is to organize the activity at the workplace / ensure work safety, the refusal of participation will not affect in any way the employee etc.).

Can employers stipulate that only Covid-19 vaccinated or recovered employees may enter the office?

No. As mentioned above, since vaccination is not mandatory by law, restricting the access to the office based on the vaccination status would be discriminatory.

Do certain groups of employees require a Covid-19 vaccination to perform the job?

No. In Romania, Covid-19 vaccinations are not mandatory for any profession, even for those employed in the healthcare sector. However, as mentioned above, debates are currently taken place in the Parliament on a draft law that, if adopted, would most probably impose vaccination on certain professional categories, such as medical professionals or teachers.

Șerban Pâslaru
Țuca Zbârcea & Asociații
Collaborating Firm of Andersen Global

RUSSIA

Can employers require employees to test themselves for Covid-19? If yes, how often and are employees obliged to disclose the result of the test?

According to the Russian Labor Code, the employer cannot request information about the health status of the employee, except for the information that relates to the question of the possibility of the employee performing his labor function.

Thus, the employer does not have the right to require an employee to pass a Covid-19 test if such is not a mandatory element of a medical examination. However, such obligations may be imposed by the norms of the legislation on social insurance and health care. For instance, the employer may be required to test its employees for Covid-19 based on the relevant decree of the chief public health officers of the constituent entities of the Russian Federation. In this case, information on the number of tests and general requirements are to be governed by the relevant decree.

Can employers oblige employees to get a Covid-19 vaccination? If yes, under which conditions?

The employers of those employees that perform works that are included in the list of works, the performance of which is associated with a high risk of infectious diseases and requires mandatory preventive vaccinations, must require such employees to get a Covid-19 vaccination to perform these works. If the employee refuses to get the vaccination, this employee will not be allowed to work according to his position.

The employers that fall under the categories as established by the chief public health officers of the constituent entities of the Russian Federation can require their employees to get a Covid-19 vaccination. For instance, Moscow chief public health officer in its decree established: (1) Certain groups of citizens (their spheres of work) subject to mandatory Covid-19 vaccination and (2) Obligation for the employers in the respective spheres to ensure the Covid-19 vaccination within the certain time limits of at list 60% of the total employment.



Again, the employees can refuse to get the vaccination. In this case, the employer can suspend those employees that refuse to get the vaccination without any admissible excuses (until these employees get the vaccination accordingly).

Are employers allowed to ask about the Covid-19 vaccination status of its employees?

According to para. 7 of the first part of Article 88 of the Russian Labor Code, the employer cannot request information about the health status of the employee, except for the information that relates to the question of the possibility of the employee performing his/her labor function.

Thus, information about the Covid-19 vaccination status can be requested by the employer only if this information is directly related to the employee's labor function and this is prescribed by laws. For example, an employer is required to have data on the Covid-19 vaccination status of employees if the employer is obliged to ensure their vaccination under the relevant decree of the chief public health officers of the constituent entities of the Russian Federation.

Can employers stipulate that only Covid-19 vaccinated or recovered employees may enter the office?

If the employer's decision implies the suspension of other (i.e., not Covid-19 vaccinated or recovered) employees, then this decision can only be made by the following employers:

1. The employers of those employees that perform works that are included in the list of works, the performance of which is associated with a high risk of infectious diseases and requires mandatory preventive vaccinations.
2. The employers that fall under the categories as established by the chief public health officers of the constituent entities of the Russian Federation and only within the established percentage of employees according to the respective decree.

In other cases, employers can mutually agree with their employees to perform work remotely due to unfavorable epidemiological situations. The employer's decision in other situations may violate the employee's rights and be considered illegal.

Do certain groups of employees require a Covid-19 vaccination to perform the job?

There is a list of works, the performance of which is associated with a high risk of infectious diseases and requires mandatory preventive vaccinations. This list is approved by the Russian Government and includes, e.g., agricultural, construction works, etc. Employees performing these works are necessarily subject to vaccination in case of unfavorable epidemiological situation. Besides, mandatory vaccination is possible for epidemic indications in case of a threat of infectious diseases. Decisions on carrying out preventive vaccinations according to epidemiological indications are made by the Russian Chief Public Health Officer and the chief public health officers of the constituent entities of the Russian Federation. Consequently, each chief public health officer in its decree may establish certain groups of citizens subject to mandatory Covid-19 vaccination (e.g., employees in the sphere of trade, beauty services, etc. according to the Moscow officer's recent decree).

SERBIA

Can employers require employees to test themselves for Covid-19? If yes, how often and are employees obliged to disclose the result of the test?

There are no specific legal provisions or guidelines regarding this topic. Employers are obliged to secure healthy and safe work environment and to apply the following measures for prevention and control of infectious disease Covid-19: organizing the work process that ensures the maintenance of physical distance, ie mutual distance between two persons of at least two meters and 4m² space per individual; mandatory disinfection of furniture, machines, tools and devices for work; mandatory use of protective equipment, i.e. facemasks by employees, use of disinfection barriers at the entrance etc. Additional preventive measures are prescribed under the Rulebook on Preventive Measures for Safe and Healthy Work To Prevent The Occurrence and Spread of The Infectious Disease Epidemic ("Official Gazette of RS", No. 94/2020). Some employers also measure body temperature of employees, non-employees and everyone entering the employer's premises.

Although use of Covid-19 test by employers is not mandated or regulated by the applicable regulations, we are of the opinion that employers could introduce Covid-19 test as measure for securing safe and healthy work environment as long as taking the test is on voluntary basis and that costs of the test are born by the employer. Negative Covid-19 test does not release the person to apply all preventive measure stated in text above (wearing facemasks, keeping 2m physical distance, hand disinfection etc.).

Can employers oblige employees to get a Covid-19 vaccination? If yes, under which conditions?

No, employers cannot oblige their employees to get a Covid-19 vaccination since vaccination is voluntary for all groups of population.

According to trade unions, it would be legal and possible that employer's internal acts introduce special benefits for vaccinated employees in order to motivate them to vaccinate (e.g. vaccination bonus). The issue is related to the risk of discrimination charges. There is no publicly available court practice on the issue. However, please note that it would not be possible to deny employee a right that already exists under laws, employment contract or employer's internal act (Employment Rules or CBA) due to the fact that employee is not vaccinated. Such practice would be discriminatory and against the law.

Are employers allowed to ask about the Covid-19 vaccination status of its employees?

The general rule is that an employer cannot ask its employees to provide information about their vaccination status, neither to collect such information from the health, or other institutions. Accordingly, the employer cannot make records of the vaccinated employees. Nor can the employer ask the employee for proof of vaccination. The processing of such data is in principle prohibited.



Can employers stipulate that only Covid-19 vaccinated or recovered employees may enter the office?

No, employers cannot limit office access to vaccinated employees. Specifically, in Serbia there are no specific legal provisions or guidelines regarding this topic. Please note that at the moment there is no statutory obligation to vaccinate for neither category of population. Consequently, the fact that an employee has been or has not been vaccinated could not adversely affect his labor rights and thereby, employer could not ask employees to present a vaccination/immunity certificate i.e. to be vaccinated in order to access employer's business premises. Any collection and processing of personal data requires a valid legal basis, but given that vaccination data is health data, as such it represents a special category of personal data in terms of applicable provisions. An employee's vaccine status is sensitive category data, therefore, it can only be processed to a very limited extent

Do certain groups of employees require a Covid-19 vaccination to perform the job?

No, in Serbia vaccination against Covid-19 is not mandatory for any category of population.

Milica Vesić

JSP Law

Collaborating Firm of Andersen Global

SLOVENIA

Can employers require employees to test themselves for Covid-19? If yes, how often and are employees obliged to disclose the result of the test?

According to the government Decree, all employees must meet the PCT condition (vaccination certificate, immunity certificate or negative Covid-19 test result), from 15 September 2021 onwards, to perform their work. In case that the employee has not been vaccinated against Covid-19 or has not been infected with the Covid-19 virus and does not have appropriate certificate, from 8 November 2021 onwards the employee should be tested every 48 hours for Covid-19, however, self-testing at the workplace is sufficient.

The responsible person of the employer determines the place and time of performing the self-test for the employees. It is important that it takes place at equal time intervals (every 48 hours before starting work).

Each employee should fill a self-test record sheet, which must contain the following: test date, test result (negative or positive result) and the signature of the self-tested employee.

It is the responsibility of the employer to ensure that the work is performed only by those employees who meet the PCT condition, otherwise the employee may not be allowed to perform the work.

The costs of self-testing tests are borne by the employer.

Can employers oblige employees to get a Covid-19 vaccination? If yes, under which conditions?

No, employers do not have the right to require their employees to get a Covid-19 vaccination.

Under current legislation, the vaccination against influenza type diseases can be declared obligatory if epidemiological indications are established by the National Institute for Public Health (NIJZ) and such vaccination is declared as obligatory in the National vaccination program. Currently these two conditions are not met and vaccination against Covid-19 is still voluntary only, and prior consent of the patient is required for the injection of vaccine against Covid-19.

Employers may encourage employee to get vaccinated, however the employees who do not wish to get vaccinated must not suffer negative consequences or be treated unequally by the employer.

Are employers allowed to ask about the Covid-19 vaccination status of its employees?

Employers may collect such medical information only if required by law or for the fulfillment of rights and obligations from the employment relationship. For instance, employees that have to get tested on a weekly basis, can be exempted from getting tested if they, amongst other reasons, have been vaccinated. In



such case data collection and processing is limited to insight into the vaccination certificate only.

The employer will keep in the employee's record only the statement of the employee that he/she fulfills one of the exemption reasons (without specifying which one), until when and record of the insight of the supervisor into the certificate (date and number of the certificate).

If vaccination was mandatory, the same limitations as described above would apply, however it would be admissible to process the fact that the employee was vaccinated.

Vaccination data is limited to the data as evident from the certificate of vaccination. Other data may be collected only with employees' consent. Principles of minimization and proportionality of scope of data collection should be observed.

Can employers stipulate that only Covid-19 vaccinated or recovered employees may enter the office?

No, all employees are still required to meet the PCT condition (vaccination certificate, immunity certificate or negative Covid-19 test result) to perform their work.

In September 2021, the government of the Republic of Slovenia has adopted a Decree by which it has decided that employees employed in public administration must meet the PC condition (vaccination certificate or immunity certificate) to perform tasks at the workplace, at the employer's premises.

However, the Constitutional Court of the Republic of Slovenia suspended the implementation of Article 10.a of the Decree until the final decision of the Constitutional Court.

At present, all employees, including public administration employees, are still required to meet the PCT condition to perform their work.

Do certain groups of employees require a Covid-19 vaccination to perform the job?

No, under current legislation vaccination against Covid-19 is still voluntary, without exception for certain groups of employees.

Žiga Sternad
Biljana Pejić
Law Firm Senica & Partners
Member Firm of Andersen Global

SPAIN

Can employers require employees to test themselves for Covid-19? If yes, how often and are employees obliged to disclose the result of the test?

The employer cannot require employees to test themselves for Covid-19. However, if health & safety provider considers it necessary (under some circumstances due to the specific risks of the job position and working center) and covers the obligation of the employer to carry out the tests in the employees, it could be understood that there is legitimacy to require it.

In any case, as fundamental rights are involved (integrity and privacy), the jurisprudence requires the measure to be adequate, necessary (no alternative) and proportional.

On the other hand, neither the employer is obliged to carry these tests to the employees if they required them. Recently the Supreme Court, regarding an ambulance company, has concluded that there is no regulation (neither derived from the pandemic, nor from the former legislation on Occupational Risk Prevention) that protects the performance of rapid antibody detection tests on the technical staff of medical transport who have been in contact with Covid-19 patients. The applicable rule provides that such evidence must be prescribed by a physician.

Can employers oblige employees to get a Covid-19 vaccination? If yes, under which conditions?

There is currently no explicit rule in Spain on the duty to be vaccinated.

Moreover, the Basic Law 41/2002 Regulating Patient Autonomy (art.2.3) establishes the right to refuse treatment (vaccination) with informed consent.

Therefore, although employers have a duty to guarantee employees regular monitoring of their state of health in the light of the risks inherent in the work, they cannot oblige employees in Spain to get a Covid-19 vaccination due to such requirement would be a violation of the individual's constitutional right to freedom of choice and privacy.

Again, it is a case where the fundamental rights are involved (integrity and privacy) and a vaccination imposed by the employer would not pass the mentioned jurisprudence test of proportionality.

Are employers allowed to ask about the Covid-19 vaccination status of its employees?

No, employers are not allowed in Spain to ask about the Covid-19 situation of its employees. The Spanish Data Protection Agency (the 'Agency') recently stated that employers cannot request or process data regarding immunity against Covid-19. This is because information about Covid-19 immunity is sensitive data under the Spanish data protection legislation and there is no legal basis to process this data.



The above also applies where an applicant has voluntarily provided information on Covid-19 during the recruitment process (e.g., by including it in their CV). The Agency has stated that in such scenarios, employers may not consider the information when making the hiring decision and, furthermore, the employer is obliged to delete the information.

In addition, asking an applicant whether they have been vaccinated against Covid-19 may breach the Law on Social Order Infringements and Sanctions. This provides that requesting personal data during the recruitment process which may lead to discrimination when determining access to employment, is a serious infringement of the law - subject to sanctions.

Can employers stipulate that only Covid-19 vaccinated or recovered employees may enter the office?

Denying employees access to their normal place of work on the basis that they refuse to be vaccinated or they have not been recovered is also likely to breach their constitutional rights. Further, mandating vaccines as a condition of access to an employee's normal place of work would be problematic from a privacy perspective because any employee consent gained in these circumstances would not be considered 'freely given consent' by the employee.

In addition, due to vaccination is voluntary, excluding employees from the workplace because they refuse to have the vaccine would effectively be 'mandating vaccination through the back door'. Moreover, it could be considered that the employer is not fulfilling its obligation of providing effective work to the employee, which under some circumstances could give the employee the right of a termination of his/her contract receiving a severance payment.

Do certain groups of employees require a Covid-19 vaccination to perform the job?

As mentioned, at the moment, there is no legislation in Spain providing for the legitimacy of the employer to require the presentation of the certificate of vaccination in any kind of job, even including employees that works on some sensitive sectors as it is the health one.

Clara Marín
Andersen in Spain
Member Firm of Andersen Global

SWEDEN

Can employers require employees to test themselves for Covid-19? If yes, how often and are employees obliged to disclose the result of the test?

According to the Swedish Work Environment Act, employers have a responsibility for the work environment at the workplace which includes prevention of infection and the spread of Covid-19. The employer cannot forcibly subject employees to different types of medical tests. However, agreements on tests can be concluded through individual agreements or collective agreements. If there is such an agreement that an employee violates by refusing to get tested, that breach of contract can have labor law consequences.

Even if there is no agreement on fever tests or other types of Covid-19 tests, a balance of interests must be made between the employee's integrity and the employer's interest in preventing infection and ill health at the workplace. Provided that the tests carried out are not disproportionate, certain tests may be justified to prevent the spread of infection and then a refusal to participate in the testing may have labor law consequences. Before testing is introduced, the issue shall be negotiated with the employee's union.

Can employers oblige employees to get a Covid-19 vaccination? If yes, under which conditions?

No. Employees cannot be forced to get vaccinated against their will. The Swedish legal standpoint is that vaccination constitutes a significant intrusion into the employee's personal integrity. The privacy of the individual weighs heavily and the measures taken in the workplace to reduce the spread of infection must never be disproportionate. It should therefore always be considered whether the employer can reduce the risk of spreading infection in less intrusive ways than by requiring vaccination. Such measures may include, for example, continued social distancing, continued homework, the provision of protective equipment and hand sanitizer or intensified cleaning routines. However, the assessment in these situations must be based on the unique circumstances of each business. It cannot therefore be excluded that, in exceptional cases, employees in certain areas of the labor market who do not want to get vaccinated need to be relocated to other jobs.

Are employers allowed to ask about the Covid-19 vaccination status of its employees?

The employer, who is ultimately responsible for the working environment, is allowed to ask the question. However, it shall also be noted that the employee does not have an obligation to answer. An employer does not have the right to document which employees are vaccinated as such handling of sensitive personal data would typically constitute a violation of data protection legislation (GDPR).



Can employers stipulate that only Covid-19 vaccinated or recovered employees may enter the office?

There is still no legislation or clarifying case law rulings in Sweden that can cast any light on this situation. However, provided that the employer continues to pay employees that have been banned from the office full benefits we cannot see that the implementation will of such a policy will trigger any substantial exposure to damages.

Do certain groups of employees require a Covid-19 vaccination to perform the job?

No, at present there is no such legislation in Sweden.

Johan Karlman
Hellström Advokatbyrå KB
Collaborating Firm of Andersen Global

SWITZERLAND

Can employers require employees to test themselves for Covid-19? If yes, how often and are employees obliged to disclose the result of the test?

The Federal Office of Public Health (FOPH) recommends that people with Covid-19 symptoms get tested as soon as possible. In certain situations, even people without symptoms should be tested, e.g. in case of contact with an infected person or of an outbreak.

Currently, in Switzerland the employer can require employees to get tested for Covid-19, however the test remains voluntary.

The FOPH also recommends conducting regular testing in companies and institutions. These tests should primarily be carried out with pooled PCR saliva samples on site. Participation in such tests is voluntary.

Indeed, workplace testing to detect the presence of Covid-19 is a medical act that the employer can only order if there are indications that the health of employees is impaired as a result of their work.

However, it is possible to order tests for certain groups of employees who are particularly exposed, for example as part of a strategy ordered by the canton or the federal government, or if there is an outbreak (multiple infections) in the company. In these cases, a cost-benefit analysis is performed and the proportionality of the measure must be ensured.

Can employers oblige employees to get a Covid-19 vaccination? If yes, under which conditions?

In Switzerland there is currently neither a general vaccination obligation, nor the intention to introduce one, for this reason it is in principle not possible to oblige all employees of a company to get vaccinated.



The obligation arises only when, despite the precautionary measures, there is still a significant risk for the employees or other people (e.g. patients, clients). Furthermore, the situation may vary depending on the employment relationship (private or public law). Each situation has to be evaluated individually.

The employer cannot order protective measures that could violate the personal integrity of the employee, like the obligation to be vaccinated. However, the Epidemics Act would allow the federal and cantonal governments to enact a vaccination obligation if public health was in serious danger and the population could not be protected by other measures. Moreover, this obligation could only be imposed on narrowly defined groups, such as particularly exposed persons, persons engaged in certain activities or persons at particular risk.

Are employers allowed to ask about the Covid-19 vaccination status of its employees?

According to the actual Ordinance Covid-19, the employer is authorized to verify the existence of a valid Covid-19 certificate (evidence of Covid-19 vaccination, evidence of recovery from the disease or evidence of negative test) if this helps to establish appropriate protective measures according to the STOP principle (substitution, technical measures, organizational measures, personal protective equipment) or the implementation of the Covid-19 testing plan in companies.

The verification of the existence of a valid Covid-19 certificate cannot be used for other purposes by the employer.

Can employers stipulate that only Covid-19 vaccinated or recovered employees may enter the office?

In general, in Switzerland, the employer must allow all employees to have access to the office, even without vaccination. The employer has an obligation to protect the health of their employees and take preventive measures against Covid-19 according to the STOP principle. Also, for the employees who are particularly at risk the employer must ensure preventive measures.

Do certain groups of employees require a Covid-19 vaccination to perform the job?

In Switzerland, no law or ordinance imposing vaccination obligation has been enacted yet. It is however possible, for some group of employees, to require a valid Covid-19 certificate (eg. health and social care facilities).

Donatella Cicognani
Andersen in Switzerland
Member Firm of Andersen Global

UKRAINE

Can employers require employees to test themselves for Covid-19? If yes, how often and are employees obliged to disclose the result of the test?

There have been no amendments to the laws in this regard and no particular rules or carve-outs permitting employers to request employees to test themselves for Covid-19 have been adopted. Accordingly, under the existing regulation employers are not permitted to impose Covid-19 tests on their employees and prevent them from exercising their constitutional right to work on the basis of their refusal to be tested or to impose any disciplinary sanctions in case of such refusal.

Can employers oblige employees to get a Covid-19 vaccination? If yes, under which conditions?

No, employers may not oblige employees to get a Covid-19 vaccination since a mandatory vaccination of all persons against specific infectious diseases may be established by the laws of Ukraine only. Such list does not include Covid-19. At the same time a list of infectious diseases vaccination against which is mandatory may also be approved by the Ministry of Health of Ukraine, but only with regard to specific professions, productions or organizations (if such employees may be infected with infectious diseases or may cause their spread due to conditions of their work) / categories of employees depending on conditions of production / work. Such list came into force on 8 November 2021. Amendments thereto containing a wider list of professions / categories of employees shall come into force on 9 December 2021.

Are employers allowed to ask about the Covid-19 vaccination status of its employees?

There have been no amendments to the laws in this regard and no particular rules or carve-outs permitting employers to request employees to provide information about vaccination have been adopted. Under the existing rules employers are prohibited from requesting from an employee documents and information which are not expressly required by the laws for the employment relationships. In this regard we note that documents with regard to a state of health (specifically, a document evidencing passing a mandatory medical examination and conformity of the state of health with statutory requirements to occupy certain jobs) may be requested by the employer only in cases expressly determined by the laws for specific professions/positions, as well as for underage employees. On the basis of the above it seems that the only legally permissible way for employers to receive such information is a good will of employees.

At the same time the Cabinet of Ministers of Ukraine has recently introduced certain amendments to its Covid-19 related resolution No. 1236 dated 9 December 2020, whereunder the Cabinet of Ministers of Ukraine obliged employers whose employees are subject to the mandatory Covid-19 vaccination to ensure control over administration of such vaccination. It is not clear which legal means the employers may have to comply with such obligation in view of the outlined above restrictions established by the Constitution of Ukraine and the laws of Ukraine, while this new obligation is set out by the subordinated resolution of the Cabinet of Ministers of Ukraine which generally may not contradict the laws of Ukraine.



Can employers stipulate that only Covid-19 vaccinated or recovered employees may enter the office?

Firstly, as noted above employers are not allowed to request from employees any information about their state of health, including information about Covid-19 tests and vaccines. Secondly, employees may not be prevented from exercising their constitutional right to work. Thirdly, the laws prohibit discriminating employees, including on the basis of their state of health. Thus, employers may not limit in any way access to office to those employees that have not been vaccinated or have not recovered from Covid-19.

In case of employees subject to the mandatory Covid-19 vaccination, they may be suspended from work in case of a failure to be vaccinated with at least one dose of Covid-19 vaccine.

Do certain groups of employees require a Covid-19 vaccination to perform the job?

As noted above, the list of infectious diseases vaccination against which is mandatory for specific professions / categories of employees may be approved by the Ministry of Health of Ukraine. The list of professions for which a mandatory Covid-19 vaccination is established was approved by the Ministry of Health of Ukraine on 8 October 2021 and came into force 8 November 2021. Further amendments thereto shall come into force on 9 December 2021. Formally, this is the list of employers rather than professions / categories of employees, and includes employees of the central state authorities, local state administrations, as well as of all types of educational institutions. As of 9 December 2021 the list of such employers shall also include state enterprises and organizations, institutions and organizations providing social security and similar social services.

Under the general rules, in case an employee refuses to pass a mandatory vaccination from infectious diseases the employer upon request of authorized representatives of the state sanitary and epidemiologic service shall suspend such employee from work. Neither the Labour Code of Ukraine, nor specific laws on sanitary-epidemiologic situation and protection against infectious diseases entitle employers to suspend non-vaccinated employees from work on their own discretion, rather obliging employers to perform a suspension request issued by authorized representatives of the state sanitary and epidemiologic service.

At the same time, the suspension procedure as provided for by the resolution of the Cabinet of Ministers of Ukraine No. 1236 dated 9 December 2020 differs from the statutory suspension procedure established by the relevant laws simply requiring employers whose employees are subject to Covid-19 mandatory vaccination and are avoiding such vaccination without valid grounds to ensure their suspension under an employer's order. The consequences of the above discrepancies are not clear.

Iryna Bakina
Sayenko Kharenko
Collaborating Firm of Andersen Global



This newsletter provides an overview of the vaccination information for employers as it relates to Employment and Labor Law provisions and regulations by local governments. This newsletter includes information as it pertains to specific countries on general Employment measures, in specific countries as provided by the member and collaborating firms of Andersen Global.

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