

Bird & Bird & COVID-19 vaccine guidance

HR Data Essentials



Last updated
20 September 2021

Employees & Workers

<p>Can we ask employees if they have been vaccinated?</p>	<p>Yes, but with limitations. Employers must ensure that the request for vaccination status is permitted under the <i>Privacy Act 1988</i> (Cth) (Privacy Act). In respect of employees, information regarding vaccination status may amount to an ‘employee record’ and would therefore be exempt from the requirements regarding use and disclosure, as set out in the Australian Privacy Principles (APPs) in the Privacy Act, once it has been collected. However, it would only exempt the employing entity from such restrictions, and the exemption does not apply to the collection of information. Accordingly, the entity must comply with APPs 3-5 and any entity to which the vaccine information is sent must comply with the rest of the APPs (which govern storage, collection, use and disclosure).</p> <p>APPs applying to collection by the employing entity Information regarding vaccination status is considered sensitive information for the purposes of the Privacy Act, as it is health information about an individual. Accordingly, under APP 3, it must not, therefore, be collected unless:</p> <ol style="list-style-type: none"> 1. the individual has given express or implied consent to the collection; and 2. the information is reasonably necessary for one or more of the entity’s functions or activities. <p>Accordingly, the following steps should be undertaken prior to collecting the vaccine information:</p> <ul style="list-style-type: none"> • Conduct an assessment from a privacy perspective to confirm that the collection is reasonably necessary for one of the entity’s functions or activities. This could be satisfied by the entity’s need to provide, so far as is reasonably necessary, a safe workplace. The entity has the onus of justifying that the collection is reasonably necessary; • Obtain express or implied consent to the collection of the sensitive information. As the entity will have the onus of proving consent if it is challenged, we recommend that express consent is obtained. This can be done via a note to employees: <ul style="list-style-type: none"> o that explains the collection of vaccination documentation is necessary for the prevention and management of COVID-19 in the workplace; o that provides the employee with an opt-in or out to collect the information that is presented clearly and prominently and is not bundled with other purposes for which consent is sought; o that sets out the consequences for not consenting; and o that allows the employee to withdraw their consent at a later date. <p>To avoid providing a separate collection notice, the consent form should also inform the individual of the matters required to be notified to the individual under APP 5 (at, before the time or, if not practicable, as soon as practicable after collection) of the following matters:</p> <ul style="list-style-type: none"> • the identity and contact details of the entity; • the purposes for which the entity collects the personal information; • the main consequences (if any) for the individual if all or some of the personal information is not collected by the entity; • any other entity, body or person, or the types of any other entities, bodies or persons, to which the entity usually discloses personal information of the kind collected by the entity; • that the privacy policy of the entity contains information about how the individual may access the personal information about the individual that is held by the entity and seek the correction of such information; • that the privacy policy of the entity contains information about how the individual may complain about a breach of the APPs and how the entity will deal with such a complaint; • whether the entity is likely to disclose the personal information to overseas recipients; and • if the entity is likely to disclose the personal information to overseas recipients—the countries in which such recipients are likely to be located if it is practicable to specify those countries in the notification or to otherwise make the individual aware of them.
<p>Can we carry out workplace testing of employees / require employees to provide evidence of a negative test?</p>	<p>Workplace testing Yes, but with limitations. Employers must consider:</p> <ol style="list-style-type: none"> 1. That if it will require employees to attend a testing clinic, results are generally not instantaneous and may take up to 24 hours; and 2. The cost of rapid antigen testing, if the employer proposes to test an employee on site. <p>In making the decision to carry out workplace testing of employees, employers should consider their obligations under section 19(1) of the <i>Work Health and Safety Act 2011</i> (Cth) (WHS Act), which provides that a person conducting a business or undertaking must ensure, so far as is reasonably practicable, the health and safety of:</p> <ol style="list-style-type: none"> (a) workers engaged, or caused to be engaged by the person; and (b) workers whose activities in carrying out work are influenced or directed by the person, <p>while the workers are at work in the business or undertaking.</p> <p>The WHS Act goes on to set out at section 19(3) that a business must, so far as is reasonably practicable, ensure:</p> <ul style="list-style-type: none"> • the provision and maintenance of a work environment without risks to health and safety; • the provision and maintenance of safe systems of work; and • that the health of workers and the conditions at the workplace are monitored for the purpose of preventing illness or injury of workers arising from the conduct of the business or undertaking. <p>The above list is not exhaustive; but are the provisions that are relevant to COVID-19.</p>

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	<p>In deciding whether testing is necessary, consideration should be given to:</p> <ul style="list-style-type: none"> • whether workers are exposed to a heightened risk of infection due to the nature of their work; • whether workers have contact with people who would be especially vulnerable to severe disease if they contract COVID-19; • the risk of COVID-19 spreading in the workplace - for example, whether workers work in close proximity to one another; and • whether workers have contact with large numbers of people, such that they could be the catalyst for a “super-spreading” event. <p>If, after consideration of WHS obligations, an employer deems it is necessary to implement workplace testing, it may do so.</p> <p>Requiring employees to provide evidence of a negative test Broadly, if it is deemed a work health and safety requirement for employees to be tested prior to entering the workplace and the employee agrees to such testing, then employers may require employees to provide evidence of a negative test.</p> <p>However, because such information is considered sensitive information, it must be handled in accordance with the Privacy Act, and consent must be obtained to collect the results of the test, in accordance with the APP 3 & 5 requirements set out above.</p>										
<p>Can we require employees to be vaccinated, as a condition of continuing employment? What can or should we do if employees refuse?</p>	<p>Yes, but with limitations. The Fair Work Ombudsman has recently implemented a tiered system to guide employers as to a reasonable and lawful direction to be vaccinated.</p> <table border="1" data-bbox="1982 793 2834 1113"> <thead> <tr> <th>Tier of Work</th> <th>Type of work</th> </tr> </thead> <tbody> <tr> <td>Tier 1 Work ●</td> <td>Where employees are required as part of their duties to interact with people with an increased risk of being infected with coronavirus (for example, employees working in hotel quarantine or border control).</td> </tr> <tr> <td>Tier 2 Work ●</td> <td>Where employees are required to have close contact with people who are particularly vulnerable to the health impacts of coronavirus (for example, employees working in health care or aged care).</td> </tr> <tr> <td>Tier 3 Work ●</td> <td>Where there is interaction or likely interaction between employees and other people such as customers, other employees or the public in the normal course of employment (for example, stores providing essential goods and services).</td> </tr> <tr> <td>Tier 4 Work ●</td> <td>Where employees have minimal face-to-face interaction as part of their normal employment duties (for example, where they are working from home).</td> </tr> </tbody> </table> <p>● Represents very likely lawful and reasonable ● Represents potentially lawful and reasonable ● Represents unlikely being lawful and reasonable</p> <p>This table is merely a guide and the ‘lawful and reasonable’ direction is still to be determined on a case by case basis.</p> <p>For example, if an employer’s workforce predominantly works from home and is likely to do so for the foreseeable future, with no requirement to attend the office, it is likely that they would be considered Tier 4 Work. This means that a direction to be vaccinated is unlikely to be deemed lawful and reasonable.</p> <p>The manner in which an employer would assess the health and safety risks that affect its business would be through a risk assessment. Consideration needs to be given to:</p> <ul style="list-style-type: none"> • whether workers are exposed to a heightened risk of infection due to the nature of their work; • whether workers have contact with people who would be especially vulnerable to severe disease if they contract COVID-19; • the risk of COVID-19 spreading in the workplace - for example, whether workers to work in close proximity to one another; and • whether workers have contact with large numbers of people, such that they could be the catalyst for a “super-spreading” event. <p>As part of this assessment, employers should consider the breadth of ways in which risk can be mitigated, for example, working from home where possible, social distancing, wearing masks etc. Further, not all roles will necessarily have the same risk profile, and therefore this should also be considered before deciding whether mandatory vaccination is reasonable.</p> <p>The other important aspect we note about work health and safety legislation is that it does not require a business to completely eliminate a risk, rather it must do what is reasonably practicable to manage the risk.</p> <p>If an employer determines that the risk profile is high, but can be managed in other ways, for example, by some people working from home on alternating days, wearing masks or other PPE, then it may well adopt an approach that vaccinations are strongly recommended rather than mandated.</p> <p>Notwithstanding, there are certain industries and/or Local Government Areas where at least one dose or full vaccination is required as a condition of continuing employment. Such industries include, but are not limited to aged care workers, health care workers, disability and early childhood workers, quarantine and airport workers.</p>	Tier of Work	Type of work	Tier 1 Work ●	Where employees are required as part of their duties to interact with people with an increased risk of being infected with coronavirus (for example, employees working in hotel quarantine or border control).	Tier 2 Work ●	Where employees are required to have close contact with people who are particularly vulnerable to the health impacts of coronavirus (for example, employees working in health care or aged care).	Tier 3 Work ●	Where there is interaction or likely interaction between employees and other people such as customers, other employees or the public in the normal course of employment (for example, stores providing essential goods and services).	Tier 4 Work ●	Where employees have minimal face-to-face interaction as part of their normal employment duties (for example, where they are working from home).
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	<p>What can or should we do if employees refuse? Depending on an employer's workplace arrangements, if possible, it should consider suggesting that employees who <u>cannot</u> be vaccinated continue working remotely, until at least the target of 70% of individuals (aged 16 and over) are double vaccinated and employers have arrangements in place to best manage the transmission risk of COVID-19.</p> <p>For employees who refuse to be vaccinated, without any basis, the situation should be dealt with on a case by case basis, with careful attention to the individual's particular circumstances and reasons as to why they are refusing to be vaccinated, as there is an inherent risk of a worker arguing that they have been discriminated against on protected grounds of pregnancy, disability or religion (likely to be the most relevant to vaccinations), in the event an employer makes an employment termination decision on the basis of refusal to vaccinate. Of course, if it is considered mandatory for the employee to be vaccinated, and they refuse for simply no reason, then termination <i>may</i> be considered appropriate. Again, this must be considered on a case by case basis.</p>
Can we require employees (i) to be tested and/or (ii) to present a negative test or evidence of immunity in a specified form on a regular basis?	<p>Yes, but with limitations.</p> <p>Require employees to be tested If the testing is requested in order to meet an employer's obligations under health and safety laws, and the requirement to be tested is a lawful and reasonable direction, employees may be required to undertake testing in certain high-risk industries such as healthcare, childcare and transport.</p> <p>Testing involves physical contact with the individual, which means that consent is necessary. To avoid any negligence risk, testing should be carried out by an appropriately qualified person. Consent is usually also required for Privacy Act reasons as health information is sensitive information.</p> <p>Presenting a negative test or evidence of immunity in a specified form on a regular basis Presenting negative tests is likely to be considered sensitive information, and it therefore must be collected with consent each time and handled in accordance with the Privacy Act.</p> <p>Evidence of immunity, once collected with the consent of an employee, may fall within the employee record exemption, and may therefore be stored and used for the purposes of allowing entry into work premises. However, if it is disclosed further, even to a related body corporate, the receiving entity will generally be required to deal with the personal information in accordance with the APPs.</p>
If we require employees to provide evidence of negative tests / immunity, can we require employees to pay for this testing, or are we obliged to pay for it / reimburse employees for any testing costs they incur?	<p>No. Testing and vaccinations themselves do not incur any monetary cost.</p> <p>However, employers may wish to reimburse employees for any travel expenses that they may incur in following such lawful and reasonable direction, or allow the employee time off as an incentive to get tested and/or vaccinated.</p>
Can we require employees to be vaccinated, as a condition of physical attendance at the workplace?	<p>Yes, but with limitations. A work health and safety assessment will need to be conducted to ascertain:</p> <ul style="list-style-type: none"> • whether workers are exposed to a heightened risk of infection due to the nature of their work; • whether workers have contact with people who would be especially vulnerable to severe disease if they contract COVID-19; • the risk of COVID-19 spreading in the workplace - for example, whether workers to work in close proximity to one another; and • whether workers have contact with large numbers of people, such that they could be the catalyst for a "super-spreading" event. <p>If an employer conducts a risk assessment and determines that there are work health and safety risks that cannot be adequately managed by other means than vaccination (e.g. mask wearing, social distancing etc), then it should also consider this assessment against the requirements of the business and the work employees are required to perform. That is, can the health and safety risk be managed by lawful and reasonable means - would the direction to be vaccinated be a lawful and reasonable one? Pending this assessment, the employees may fit under one of the Fair Work Ombudsman's "Tiers" of work; see above.</p>
Can we require employees to be vaccinated, or provide evidence of negative tests/immunity, as a condition of work-related travel?	<p>Yes, but with limitations.</p> <p>Employees who travel for work will need to comply with the applicable requirements for domestic and international travel. Some jurisdictions (including the individual states within Australia) have imposed travel restrictions including closed borders, vaccination requirements and additional quarantine requirements in respect of individuals, dependent upon their point of origin and the State's definition of a "high risk area". There are also testing requirements in place for some domestic and international travel. Therefore, in order to travel for work, employees will need to comply with specific government-imposed requirements.</p> <p>If an employee refuses to comply with any legal requirements causing them to be unable to enter the required state or country, the employer may have grounds to allocate the employee to work which does not involve travel and/or to make an assessment that an employee can no longer perform the inherent requirement of their role (provided that travel is a key part of their role). The question of whether such action is lawful or not will depend on the specific circumstances, including the nature of the role, how essential the travel is for the performance of the role, which jurisdictions are involved, what the entry requirements are, and the reason for refusal. It may be possible to take disciplinary action against employees who refuse to comply but this will depend partly on whether or not the underlying instruction is itself lawful and reasonable.</p> <p>Specific advice should be sought about any requirements for cross-border travel and disciplinary action as the position is complex and constantly changing.</p>

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Are we required to provide accommodations to employees who have not been vaccinated?	<p>No.</p>
Can we retain the vaccination / test / immunity records of employees? (Such records would include vaccine passports, proof of vaccination or other evidence of immunity, test results etc.)	<p>Yes, but with limitations.</p> <p>An employer may ask an employee to provide their vaccination status documentation (vaccination, test, immunity records) and retain that information but only <u>if the employee consents</u> to the collection/storage by the employer.</p> <p>Requirements for the collection of information regarding vaccination status are set out above. Once collected, the information will form part of an employee record, meaning that the employee records exemption will apply (to only that entity) in respect of its use and disclosure.</p> <p>If the employee record exemption does not apply to the entity, for example, where the information is stored by a related body corporate, the following APP requirements will be relevant:</p> <ul style="list-style-type: none"> • APP 11.1 requires that the entity take reasonable steps to protect the information from misuse, interference and loss; and from unauthorised access, modification or disclosure; • APP 11.2 requires that if the entity holds personal information about an individual that it no longer needs for any purpose for which it may be used or disclosed under the APPs, the entity must take such steps as are reasonable in the circumstances to destroy the information or to ensure that the information is de identified; and • APP 6 requires that the information only be used and/or disclosed for the purposes for which it was collected (i.e. to which the individual has consented when it was collected) or where an exception applies. One such exception is where the individual would reasonably expect it be used/disclosed for a secondary purpose and the secondary purpose is directly related to the primary purpose for which the information was collected. We can provide further advice on the requirements regarding disclosure if necessary.
If an employee refuses a request or requirement for vaccination asserting medical reasons, can we require proof of the medical reason?	<p>Yes, but with limitations.</p> <p>If an employer has provided a lawful and reasonable direction to be vaccinated for COVID-19, the employer can also request evidence of the employee's medical reason for not being vaccinated.</p> <p>Such medical exemptions or reasons are likely to be considered sensitive information and therefore must be collected and handled in accordance with the Privacy Act (see row 1 above). However, consent to collection is not required if the collection is required or authorised by law, such as where a public health order applies.</p>

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Can we ask individuals if they have been vaccinated?	<p>Yes.</p> <p>However, an entity must ensure that the request for vaccination status is permitted under the Privacy Act. Vaccination status is considered sensitive information, as it relates to health information and it must not, therefore, be collected unless:</p> <ol style="list-style-type: none"> 1. an individual has given express or implied consent to the collection; and 2. the information is reasonably necessary for one or more of the entity's functions or activities. <p>Accordingly, the following steps should be undertaken prior to collecting the vaccine information:</p> <ul style="list-style-type: none"> • Conduct an assessment from a privacy perspective to confirm that the collection is reasonably necessary for one of the entity's functions or activities. This could be satisfied by the entity's need to provide, so far as is reasonably necessary, a safe workplace. The entity has the onus of justifying that the collection is reasonably necessary. • Obtain express or implied consent to the collection of the sensitive information. As the entity will have the onus of proving consent if it is challenged, we recommend that express consent is obtained. This can be done via a note to contractors: <ul style="list-style-type: none"> o that explains the collection of vaccination documentation is necessary for the prevention and management of COVID-19 in the workplace; o that provides the contractor with an opt-in or out to collect the information that is presented clearly and prominently and is not bundled with other purposes for which consent is sought; o that sets out the consequences for not consenting; and o that allows the contractor to withdraw their consent at a later date. <p>To avoid providing a separate collection notice, the consent form should also inform the contractor of the matters required to be notified to them under APP 5 (at, before the time or, if not practicable, as soon as practicable after collection) of the following matters:</p> <ul style="list-style-type: none"> • the identity and contact details of the entity; • the purposes for which the entity collects the personal information; • the main consequences (if any) for the individual if all or some of the personal information is not collected by the entity; • any other entity, body or person, or the types of any other entities, bodies or persons, to which the entity usually discloses personal information of the kind collected by the entity;

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	<ul style="list-style-type: none"> that the privacy policy of the entity contains information about how the individual may access the personal information about the individual that is held by the entity and seek the correction of such information; that the privacy policy of the entity contains information about how the individual may complain about a breach of the APPs and how the entity will deal with such a complaint; whether the entity is likely to disclose the personal information to overseas recipients; and if the entity is likely to disclose the personal information to overseas recipients—the countries in which such recipients are likely to be located if it is practicable to specify those countries in the notification or to otherwise make the individual aware of them.
<p>Can we carry out workplace testing of individuals /require individuals to provide evidence of a negative test?</p>	<p>Yes, but with limitations.</p> <p>Workplace testing Yes, but with limitations. An entity must consider:</p> <ol style="list-style-type: none"> That if it will require workers to attend a testing clinic, results are generally not instantaneous and may take up to 24 hours; and The cost of rapid antigen testing, if the entity proposes to test a worker on site. <p>In making the decision to carry out workplace testing of workers, an entity should consider their obligations under section 19(1) of the <i>Work Health and Safety Act 2011</i> (Cth) (WHS Act), which provides that a person conducting a business or undertaking must ensure, so far as is reasonably practicable, the health and safety of:</p> <ol style="list-style-type: none"> workers engaged, or caused to be engaged by the person; and workers whose activities in carrying out work are influenced or directed by the person, <p>while the workers are at work in the business or undertaking.</p> <p>The WHS Act goes on to set out at section 19(3) that a business must, so far as is reasonably practicable, ensure:</p> <ul style="list-style-type: none"> the provision and maintenance of a work environment without risks to health and safety; and the provision and maintenance of safe systems of work; and that the health of workers and the conditions at the workplace are monitored for the purpose of preventing illness or injury of workers arising from the conduct of the business or undertaking. <p>The above list is not exhaustive; but the above are the provisions that are relevant to COVID-19.</p> <p>Consideration needs to be given to:</p> <ul style="list-style-type: none"> whether workers are exposed to a heightened risk of infection due to the nature of their work; whether workers have contact with people who would be especially vulnerable to severe disease if they contract COVID-19; the risk of COVID-19 spreading in the workplace - for example, whether workers to work in close proximity to one another; and whether workers have contact with large numbers of people, such that they could be the catalyst for a “super-spreading” event. <p>If after consideration of WHS obligations an employer deems it is necessary to implement workplace testing, it may do so.</p> <p>Requiring individuals to provide evidence of a negative test Broadly, if it is deemed a work health and safety requirement for workers to be tested prior to entering the workplace and the worker agrees to such testing, then an entity may require its worker to provide evidence of a negative test. However, because such information is considered sensitive information, it must be collected and subsequently handled in accordance with the Privacy Act (see the row above for collection requirements).</p>
<p>Can we require individuals to be vaccinated, as a condition of continuing engagement? What can or should we do if an individual refuses?</p>	<p>Yes. If the entity considers, after conducting a work health and safety analysis, that it is a requirement for a worker to be vaccinated it could decide to make it a contractual requirement that all workers (including those with a contract in place) who attend on site have to be vaccinated or provide evidence of vaccination.</p> <p>If an individual simply refuses to be vaccinated, the situation should be dealt with on a case by case basis, with careful attention to the individual’s particular circumstances and reasons as to why they are refusing to be vaccinated, as there is an inherent risk of a worker arguing that they have been discriminated against on protected grounds of pregnancy, disability or religion (likely to be the most relevant to vaccinations).</p>
<p>Can we require individuals (i) to be tested and/or (ii) to present a negative test or evidence of immunity in a specified form on a regular basis?</p>	<p>Yes, with consent. If the testing is requested in order to meet an entity’s obligations under health and safety laws, and the requirement to be tested is considered lawful and reasonable, individuals may be required to undertake testing in certain high-risk industries such as healthcare, childcare and transport.</p> <p>Testing involves physical contact with the individual, which means that consent is necessary. To avoid any negligence risk, testing should be carried out by an appropriately qualified person. Consent is usually also required for Privacy Act reasons as health information is sensitive information.</p> <p>Presenting a negative test or evidence of immunity in a specified form on a regular basis Yes, but with limitations. Presenting negative tests is likely to be considered sensitive information, and it therefore necessary that each time the information is collected, it must be collected in accordance with the Privacy Act.</p> <p>Evidence of immunity, once collected with the consent of an employee, may fall within the employee record exemption, and may therefore be stored and used for the purposes of allowing entry into work premises. However, this will only apply to those constituting employees and not independent contractors. Information of independent contractors must be handled in accordance with the Privacy Act.</p>

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<p>If we required individuals to provide evidence of negative tests / immunity, can we require individuals to pay for this testing, or are we obliged to pay for it / reimburse individuals for any testing costs they incur?</p>	<p>No. Testing and vaccinations do not incur any monetary cost.</p>
<p>Can we require individuals to be vaccinated, as a condition of physical attendance at any premises?</p>	<p>Yes, but with limitations.</p> <p>A work health and safety assessment will need to be conducted to ascertain:</p> <ul style="list-style-type: none"> whether workers are exposed to a heightened risk of infection due to the nature of their work; whether workers have contact with people who would be especially vulnerable to severe disease if they contract COVID-19; the risk of COVID-19 spreading in the workplace - for example, whether workers to work in close proximity to one another; and whether workers have contact with large numbers of people, such that they could be the catalyst for a “super-spreading” event.
<p>Can we require workers to be vaccinated, or provide evidence of negative tests/ immunity, as a condition of work-related travel?</p>	<p>Yes, but with limitations.</p> <p>Workers who travel for work will need to comply with the applicable requirements for domestic and international travel. Some jurisdictions (including the individual states within Australia) have imposed travel restrictions including closed borders, vaccination requirements and additional quarantine requirements in respect of individuals, dependent upon their point of origin and the State’s definition of a “high risk area”. There are also testing requirements in place for some domestic and international travel. Therefore, in order to travel for work, workers will need to comply with specific government-imposed requirements.</p> <p>If a worker refuses to comply with any legal requirements causing them to be unable to enter the required state or country, the employer may have grounds to allocate the employee to work which does not involve travel and/or to make an assessment that a worker can no longer perform the inherent requirement of their role (provided that travel is a key part of their role). The question of whether such action is lawful or not will depend on the specific circumstances, including the nature of the role, how essential the travel is for the performance of the role, which jurisdictions are involved, what the entry requirements are, and the reason for refusal. It may be possible to take disciplinary action against workers who refuse to comply but this will depend partly on whether or not the underlying instruction is itself lawful and reasonable.</p> <p>Specific advice should be sought about any requirements for cross-border travel and disciplinary action as the position is complex and constantly changing.</p>
<p>Are we required to provide accommodations to individuals who have not been vaccinated?</p>	<p>No.</p>
<p>Can we retain the vaccination / test / immunity records of workers? (Such records would include vaccine passports, proof of vaccination or other evidence of immunity, test results etc.).</p>	<p>Yes, but with limitations. An entity may ask an individual to provide their vaccination status documentation (vaccination, test, immunity records) and retain that information but only <u>if the individual consents</u> to the collection/storage by the entity.</p> <p>Entities must ensure that the request for vaccination status is permitted under the Privacy Act and is collected (and, in respect of independent contractors, subsequently used) in accordance with the Privacy Act. The requirements for collection are set out above.</p> <p>As the employee record exemption does not apply to independent contractors, the following APP requirements will be relevant:</p> <ul style="list-style-type: none"> APP 11.1 requires that the entity take reasonable steps to protect the information from misuse, interference and loss; and from unauthorised access, modification or disclosure; APP 11.2 requires that if the entity holds personal information about an individual that it no longer needs for any purpose for which it may be used or disclosed under the APPs, the entity must take such steps as are reasonable in the circumstances to destroy the information or to ensure that the information is de identified; and APP 6 requires that the information only be used and/or disclosed for the purposes for which it was collected (i.e. to which the individual has consented when it was collected) or where an exception applies. One such exception is where the individual would reasonably expect it be used/disclosed for a secondary purpose and the secondary purpose is directly related to the primary purpose for which the information was collected. We can provide further advice on the requirements regarding disclosure if necessary.
<p>If an individual refuses a request or requirement for vaccination asserting medical reasons, can we require proof of the medical reason?</p>	<p>Yes, but with limitations. If a company has provided a lawful and reasonable direction to be vaccinated for COVID-19, it is likely that the company can also ask the employee to provide evidence of their medical reasons for not being vaccinated.</p> <p>Such medical exemptions or reasons are likely to be considered sensitive information and therefore must be collected and handled in accordance with the Privacy Act. However, consent to collection is not required if the collection is required or authorised by law, such as where a public health order applies.</p>

Australia Continued

Visitors	
Can we ask visitors if they have been vaccinated?	Yes, but with limitations. Such information is likely to be considered sensitive information and therefore must be collected and handled in accordance with the Privacy Act (see the collection requirements above).
Can we exclude visitors who have not had a vaccine from the workplace?	Yes. However, the degree to which denying entry to unvaccinated customers mitigates the risk to employees should be balanced, noting that under the <i>Work Health and Safety Act 2011</i> (Cth), an entity does not have to completely eliminate a risk.
Can we test visitors on entry into our premises?	Yes, but with limitations. Testing involves physical contact with the individual, which means that consent is necessary. To avoid any negligence risk, testing should be carried out by an appropriately qualified person. Consent is usually also required for Privacy Act reasons as health information is sensitive information.
As an alternative to asking a visitor to confirm their vaccination status, can we (i) require them to provide evidence of a negative test or (ii) require them to be tested prior to entry to our premises and deny them entry if they return a positive test or refuse to comply?	Yes, but with limitations. An entity may require a visitor to provide evidence of a negative test, however, such information is likely to be considered sensitive information and therefore must be collected and handled in accordance with the Privacy Act, including that it be obtained with consent (see collection requirements above). In the alternative, an entity may wish to test a visitor prior to entry, however, as above, given that it involves the collection and handling of sensitive information, the entity will be subject to the same APP requirements in respect of collection and handling, and accordingly the visitor will need to consent to testing and storage of the test results. Such measure may be considered inconvenient for both parties, noting time and costs constraints for both.
Can we ask for proof of vaccination status?	Yes, but with limitations. Collecting sensitive information from visitors in particular will be challenging from a privacy perspective as all of the requirements in the APPs apply, including those set out above. The Australian government is in the process of rolling out a “vaccination passport”, and whilst we assume that there will be some announcements relatively soon about “access to premises”, denying visitors access before that happens on the basis that they have not provided their vaccination status / testing results may amount to discriminatory conduct. We do note, however, that there is a concerted push by business owners, in particular, publicans, to enact legislation allowing them to deny entry to unvaccinated patrons. This may well be implemented more broadly, if in fact it does happen.
Can we retain the vaccination records of visitors?	Yes, but with limitations (see row above).

Belgium

Employees & Workers	
Can we ask employees if they have been vaccinated?	No, since the criteria for exceptions to the general prohibition of processing of health data are not currently fulfilled unless there are adequate legal provisions or collective labour agreements. Guidance issued by the Belgian DPA states that the vaccination status of a person constitutes health data, which is subject to the general processing prohibition as a special category of data (article 9(1) of the GDPR). Amongst the exceptions to this prohibition, the DPA explicitly rejects the possibility of relying on explicit consent (article 9(2)(a) of the GDPR), since it cannot be given freely. The DPA also rejects the exception based on obligations in the field of employment and social security and social protection law (article 9(2)(b) of the GDPR). Indeed, legal obligations provided for the employer in the existing legal framework, i.e. the Law on employment contracts of 3 July 1978, do not include appropriate safeguards for the fundamental rights and interests of the data subject as required by art.(9)(2)(b) GDPR. Similarly, the DPA rejects exceptions for reasons of substantial public interest or reasons of public interest in the area of public health (articles 9(2)(g) and 9(2)(h) of the GDPR), in the absence of legal provisions or collective labour agreements fulfilling the GDPR requirements. A legal provision to this effect would need to be proportional, respect the essence of data protection, as well as foresee appropriate and specific guarantees to safeguard the fundamental rights and interests of data subjects. A collective labour agreement would need to be sufficiently specific to constitute a legal exception and would need to offer appropriate safeguards for the fundamental rights and interests of data subjects. Neither are currently provided in the Belgian legal framework. Additionally, guidance of the Belgian DPA indicates that the communication of information on the vaccination status of employees by the occupational physician to the employer, would similarly constitute a violation both of data protection provisions and professional secrecy provisions.
Can we carry out workplace testing of employees / require employees to provide evidence of a negative test?	No, but the employee may be required to confidentially notify its positive status to the occupational physician, if they carry out activities with intensive human contact. Guidance of the Belgian DPA states that Covid-19 test results of a person constitute health data, which is subject to the general processing prohibition as a special category of data (article 9(1) of the GDPR). In the absence of a sufficient legal basis or valid consent to constitute exceptions under article 9(2) of the GDPR, employers cannot require employees to be tested in the workplace or to provide evidence of a negative Covid-19 test. According to the Belgian DPA, the only “test” allowed in the workplace would be a simple and direct temperature reading without storage of the reading, since it does not constitute processing of data pursuant to the GDPR. However, the employer may require its employees carrying out activities with intensive human contact to confidentially notify their positive test to the occupational physician. This is derived from employees’ obligations to take care of the health and safety of third parties and other workers under the Law on employment contracts of 3 July 1978 and the Law on the welfare of workers of 4 August 1996. Additionally, employees may voluntarily share the fact that they tested positive with their employer, who may in turn inform other employees without disclosing the identity of the infected employee (article 5(1)(f) and 5(1)(c) of the GDPR).
Can we require employees to be vaccinated, as a condition of continuing employment? What can or should we do if employees refuse?	No, since employers are prohibited from asking employees whether they have been vaccinated. Guidance of the Belgian DPA states that the vaccination status of a person constitutes health data which is subject to the general processing prohibition as a special category of data (article 9(1) of the GDPR). Amongst the exceptions to this prohibition, the DPA explicitly rejects the ability to rely on explicit consent (article 9(2)(a) of the GDPR), since it cannot be given freely. The DPA also rejects the exception based on obligations in the field of employment and social security and social protection law (article 9(2)(b) of the GDPR). Indeed, legal obligations provided for the employer in the existing legal framework, i.e. the Law on employment contracts of 3 July 1978, do not include appropriate safeguards for the fundamental rights and interests of the data subject as required by art. 9(2)(b) GDPR. Similarly, the DPA rejects exceptions for reasons of substantial public interest or reasons of public interest in the area of public health (articles 9(2)(g) and 9(2)(h) of the GDPR), in the absence of legal provisions or collective labour agreements fulfilling the GDPR requirements. A legal provision to this effect would need to be proportional, respect the essence of data protection, as well as foresee appropriate and specific guarantees to safeguard the fundamental rights and interests of data subjects. A collective labour agreement would need to be sufficiently specific to constitute a legal exception and would need to offer appropriate safeguards for the fundamental rights and interests of data subjects. Neither are currently provided in the Belgian legal framework. Additionally, DPA guidance indicates that the communication of information on the vaccination status of employees to the employer by the occupational physician would similarly constitute a violation both of data protection provisions and professional secrecy provisions.

Belgium Continued

Employees & Workers cont	
Can we require employees (i) to be tested and/or (ii) to present a negative test or evidence of immunity in a specified form on a regular basis?	<p>No, since employers are prohibited from requiring employees to get tested.</p> <p>Guidance of the Belgian DPA states that Covid-19 test results of a person constitute health data which is subject to the general processing prohibition as a special category of data (article 9(1) of the GDPR).</p> <p>In the absence of a sufficient legal basis or valid consent to constitute exceptions under article 9.2 of the GDPR, employers cannot require employees to be tested in the workplace or to provide evidence of a negative Covid-19 test. According to the DPA, the only “test” allowed in the workplace would be a simple and direct temperature reading without storage of the reading, since it does not constitute processing of data pursuant to the GDPR.</p> <p>However, the employer may require its employees carrying out activities with intensive human contact to confidentially notify their positive test to the occupational physician. This is derived from employees’ obligations to take care of the health and safety of third parties and other workers under the Law on employment contracts of 3 July 1978 and the Law on the welfare of workers of 4 August 1996.</p> <p>Additionally, employees may voluntarily share the fact that they tested positive with their employer, who may in turn inform other employees without disclosing the identity of the infected employee (article 5(1)(f) and 5(1)(c) of the GDPR).</p>
If we require employees to provide evidence of negative tests / immunity, can we require employees to pay for this testing, or are we obliged to pay for it / reimburse employees for any testing costs they incur?	<p>No, since employers are prohibited from requiring employees to get tested, questions of reimbursement do not arise.</p> <p>Guidance of the Belgian DPA states that Covid-19 test results of a person constitute health data which is subject to the general processing prohibition as a special category of data (article 9(1) of the GDPR).</p> <p>In the absence of a sufficient legal basis or valid consent to constitute exceptions under article 9(2) of the GDPR, employers cannot require employees to be tested in the workplace or to provide evidence of a negative Covid-19 test.</p>
Can we require employees to be vaccinated, as a condition of physical attendance at the workplace?	<p>No, since employers are prohibited from asking employees whether they have been vaccinated.</p> <p>Guidance of the Belgian DPA states that the vaccination status of a person constitutes health data which is subject to the general processing prohibition as a special category of data (article 9(1) of the GDPR).</p> <p>Amongst the exceptions to this prohibition, the DPA explicitly rejects the ability to rely on explicit consent (article 9(2)(a) of the GDPR), since it cannot be given freely.</p> <p>The DPA also rejects the exception based on obligations in the field of employment and social security and social protection law (article 9(2)(b) of the GDPR). Indeed, legal obligations provided for the employer in the existing legal framework, i.e. the Law on employment contracts of 3 July 1978, do not include appropriate safeguards for the fundamental rights and interests of the data subject as required by art. 9(2)(b).</p> <p>Similarly, the DPA rejects exceptions for reasons of substantial public interest or reasons of public interest in the area of public health (articles 9(2)(g) and 9(2)(h) of the GDPR), in the absence of legal provisions or collective labour agreements fulfilling the GDPR requirements. A legal provision to this effect would need to be proportional, respect the essence of data protection, as well as foresee appropriate and specific guarantees to safeguard the fundamental rights and interests of data subjects. A collective labour agreement would need to be sufficiently specific to constitute a legal exception and would need to offer appropriate safeguards for the fundamental rights and interests of data subjects. Neither are currently provided in the Belgian legal framework.</p> <p>Additionally, guidance from the Belgian DPA indicates that the communication of information on the vaccination status of employees to the employer by the occupational physician would similarly constitute a violation both of data protection provisions and professional secrecy provisions.</p>
Can we require employees to be vaccinated, or provide evidence of negative tests/immunity, as a condition of work-related travel?	<p>No, since employers are prohibited from asking employees whether they have been vaccinated and from requiring employees to get tested.</p> <p>Guidance of the Belgian DPA states that the vaccination status, test results and immunity of a person constitute health data, which is subject to the general processing prohibition as a special category of data (article 9(1) of the GDPR).</p> <p>Amongst the exceptions to this prohibition, the DPA explicitly rejects the ability to rely on explicit consent (article 9(2)(a) of the GDPR). It finds that given the relationship of authority between employer and employee, consent could not be given freely.</p> <p>The DPA also rejects the exception based on obligations in the field of employment and social security and social protection law (article 9(2)(b) of the GDPR). Indeed, legal obligations provided for the employer in the existing legal framework, i.e. the Law on employment contracts of 3 July 1978, do not include appropriate safeguards for the fundamental rights and interests of the data subject as required by art. 9(2)(b) GDPR.</p> <p>Similarly, the DPA rejects exceptions for reasons of substantial public interest or reasons of public interest in the area of public health (articles 9(2)(g) and 9(2)(h) of the GDPR), in the absence of legal provisions or collective labour agreements fulfilling the GDPR requirements. A legal provision to this effect would need to be proportional, respect the essence of data protection, as well as foresee appropriate and specific guarantees to safeguard the fundamental rights and interests of data subjects. A collective labour agreement would need to be sufficiently specific to constitute a legal exception and would need to offer appropriate safeguards for the fundamental rights and interests of data subjects. Neither are currently provided in the Belgian legal framework.</p>

Employees & Workers cont	
	<p>Nevertheless, we emphasise that in the case of international work-related travel, obligations for travellers to provide proof of their vaccination status, testing result or immunity to national authorities may be applicable. This obligation is personal to the travellers and does not entitle their employer to process this data. Additionally, some jurisdictions may entirely prohibit the entry of unvaccinated individuals or require them to quarantine. Requirements are constantly evolving and should be monitored closely prior to international travel.</p> <p>If an employee refuses to comply with legally-required vaccination or testing requirements for international travel and where such refusal prevents them from carrying out a particular business travel or any associated agreed work, the employer may have grounds to allocate the employee to work which does not involve travel and/or to take disciplinary action up to and including dismissal. The question of whether such action is lawful or not will depend on the specific circumstances, including the nature of the role, how essential the travel is for the performance of the role, which jurisdictions are involved, what the entry requirements are, and the reason for refusal.</p>
Are we required to provide accommodations to employees who have not been vaccinated?	<p>No, since employers are prohibited from asking employees whether they have been vaccinated.</p> <p>Guidance of the Belgian DPA states that the vaccination status of a person constitutes health data, which is subject to the general processing prohibition as a special category of data (article 9(1) of the GDPR).</p> <p>Amongst the exceptions to this prohibition, the DPA explicitly rejects the ability to rely on explicit consent (article 9(2)(a) of the GDPR), since it cannot be given freely.</p> <p>The DPA also rejects the exception based on obligations in the field of employment and social security and social protection law (article 9(2)(b) of the GDPR). Indeed, legal obligations provided for the employer in the existing legal framework, i.e. the Law on employment contracts of 3 July 1978, do not include appropriate safeguards for the fundamental rights and interests of the data subject as required by art. 9(2)(b) GDPR.</p> <p>Similarly, the DPA rejects exceptions for reasons of substantial public interest or reasons of public interest in the area of public health (articles 9(2)(g) and 9(2)(h) of the GDPR), in the absence of legal provisions or collective labour agreements fulfilling the GDPR requirements. A legal provision to this effect would need to be proportional, respect the essence of data protection, as well as foresee appropriate and specific guarantees to safeguard the fundamental rights and interests of data subjects. A collective labour agreement would need to be sufficiently specific to constitute a legal exception and would need to offer appropriate safeguards for the fundamental rights and interests of data subjects. Neither are currently provided in the Belgian legal framework.</p> <p>Additionally, guidance of the Belgian DPA indicates that the communication of information on the vaccination status of employees to the employer by the occupational physician would similarly constitute a violation both of data protection provisions and professional secrecy provisions.</p>
Can we retain the vaccination / test / immunity records of employees? (Such records would include vaccine passports, proof of vaccination or other evidence of immunity, test results etc.).	<p>No, since the employer should not process vaccination / test / immunity records of employees due to the prohibition to ask employees whether they have been vaccinated and the prohibition to require them to get tested.</p> <p>Guidance of the Belgian DPA states that the vaccination status, test results or immunity of a person constitutes health data, which is subject to the general processing prohibition as a special category of data (article 9(1) of the GDPR).</p> <p>Amongst the exceptions to this prohibition, the DPA explicitly rejects the ability to rely on explicit consent (article 9(2)(a) of the GDPR), since it cannot be given freely.</p> <p>The DPA also rejects the exception based on obligations in the field of employment and social security and social protection law (article 9(2)(b) of the GDPR). Indeed, legal obligations provided for the employer in the existing legal framework, i.e. the Law on employment contracts of 3 July 1978, do not include appropriate safeguards for the fundamental rights and interests of the data subject as required by art. 9(2)(b) GDPR.</p> <p>Similarly, the DPA rejects exceptions for reasons of substantial public interest or reasons of public interest in the area of public health (articles 9(2)(g) and 9(2)(h) of the GDPR), in the absence of legal provisions or collective labour agreements fulfilling the GDPR requirements. A legal provision to this effect would need to be proportional, respect the essence of data protection, as well as foresee appropriate and specific guarantees to safeguard the fundamental rights and interests of data subjects. A collective labour agreement would need to be sufficiently specific to constitute a legal exception and would need to offer appropriate safeguards for the fundamental rights and interests of data subjects. Neither are currently provided in the Belgian legal framework.</p> <p>As a consequence, the employer should not obtain vaccination / test / immunity records of employees, and questions of retention periods do not arise.</p>

Belgium Continued

Employees & Workers cont

<p>If an employee refuses a request or requirement for vaccination asserting medical reasons, can we require proof of the medical reason?</p>	<p>No, since employers are prohibited from asking employees whether they have been vaccinated and cannot therefore require employees to get vaccinated.</p> <p>Guidance of the Belgian DPA states that the vaccination status of a person constitutes health data, which is subject to the general processing prohibition as a special category of data (article 9(1) of the GDPR).</p> <p>Amongst the exceptions to this prohibition, the DPA explicitly rejects the ability to rely on explicit consent (article 9(2)(a) of the GDPR), since it cannot be given freely.</p> <p>The DPA also rejects the exception based on obligations in the field of employment and social security and social protection law (article 9(2)(b) of the GDPR). Indeed, legal obligations provided for the employer in the existing legal framework, i.e. the Law on employment contracts of 3 July 1978, do not include appropriate safeguards for the fundamental rights and interests of the data subject as required by art. 9(2)(b) GDPR.</p> <p>Similarly, the DPA rejects exceptions for reasons of substantial public interest or reasons of public interest in the area of public health (articles 9(2)(g) and 9(2)(h) of the GDPR), in the absence of legal provisions or collective labour agreements fulfilling the GDPR requirements. A legal provision to this effect would need to be proportional, respect the essence of data protection, as well as foresee appropriate and specific guarantees to safeguard the fundamental rights and interests of data subjects. A collective labour agreement would need to be sufficiently specific to constitute a legal exception and would need to offer appropriate safeguards for the fundamental rights and interests of data subjects. Neither are currently provided in the Belgian legal framework.</p> <p>Additionally, guidance of the Belgian DPA indicates that the communication of information on the vaccination status of employees to employers by the occupational physician would similarly constitute a violation both of data protection provisions and professional secrecy provisions.</p>
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Mobile / Gig Economy / Agency Workers

Can we ask individuals if they have been vaccinated?	No. See developments in the “employee” section, applicable <i>mutatis mutandis</i> .
Can we carry out workplace testing of individuals /require individuals to provide evidence of a negative test?	No. See developments in the “employee” section, applicable <i>mutatis mutandis</i> .
Can we require individuals to be vaccinated, as a condition of continuing engagement? What can or should we do if an individual refuses?	No, since employers are prohibited from asking workers whether they have been vaccinated. See developments in the “employee” section, applicable <i>mutatis mutandis</i> .
Can we require individuals (i) to be tested and/or (ii) to present a negative test or evidence of immunity in a specified form on a regular basis?	No, since employers are prohibited from requiring workers to get tested. See developments in the “employee” section, applicable <i>mutatis mutandis</i> .
If we required individuals to provide evidence of negative tests / immunity, can we require individuals to pay for this testing, or are we obliged to pay for it / reimburse individuals for any testing costs they incur?	No, since employers are prohibited from requiring workers to get tested, questions of reimbursement do not arise. See developments in the “employee” section, applicable <i>mutatis mutandis</i> .
Can we require individuals to be vaccinated, as a condition of physical attendance at any premises?	No, since employers are prohibited from asking workers whether they have been vaccinated. See developments in the “employee” section, applicable <i>mutatis mutandis</i> .
Can we require workers to be vaccinated, or provide evidence of negative tests/ immunity, as a condition of work-related travel?	No, since employers are prohibited from asking workers whether they have been vaccinated and from requiring workers to get tested. See developments in the “employee” section, applicable <i>mutatis mutandis</i> .
Are we required to provide accommodations to individuals who have not been vaccinated?	No, since employers are prohibited from asking workers whether they have been vaccinated. See developments in the “employee” section, applicable <i>mutatis mutandis</i> .
Can we retain the vaccination / test / immunity records of workers? (Such records would include vaccine passports, proof of vaccination or other evidence of immunity, test results etc.).	No, since the employer should not obtain vaccination / test / immunity records of workers, resulting from the prohibition to ask workers whether they have been vaccinated or requiring them to get tested. See developments in the “employee” section, applicable <i>mutatis mutandis</i> .
If an individual refuses a request or requirement for vaccination asserting medical reasons, can we require proof of the medical reason?	No, since employers are prohibited from asking workers whether they have been vaccinated. See developments in the “employee” section, applicable <i>mutatis mutandis</i> .

Visitors

Can we ask visitors if they have been vaccinated?	<p>Yes, but the visitor is not required to answer and may not be refused access as a consequence of their refusal to answer.</p> <p>DPA guidance states that the vaccination status of a person constitutes health data, which is subject to the general processing prohibition as a special category of data (article 9(1) of the GDPR).</p> <p>In the absence of a legal provision constituting an exception to this general prohibition, the only remaining ground is explicit consent of the visitor (article 9(2)(a) of the GDPR). However, even in the absence of a relationship of authority between the visitor and the organisation, the visitor cannot freely give consent if they incur negative consequences in case of refusal, such as being refused access to the premises.</p>
Can we exclude visitors who have not had a vaccine from the workplace?	<p>No, since this is not foreseen by any legal provision and since the visitor cannot freely consent to it.</p> <p>DPA guidance states that the vaccination status of a person constitutes health data, which is subject to the general processing prohibition as a special category of data (article 9(1) of the GDPR).</p> <p>In the absence of a legal provision constituting an exception to this general prohibition, the only remaining ground is explicit consent of the visitor (article 9(2)(a) of the GDPR). However, even in the absence of a relationship of authority between the visitor and the organisation, the visitor cannot freely give consent if they incur negative consequences in case of refusal, such as being refused access to the premises.</p>
Can we test visitors on entry into our premises?	<p>Yes, but the visitor is not required to submit to the testing and may not be refused access as a consequence of their refusal.</p> <p>DPA guidance states that submitting visitors to Covid-19 testing would require the processing of health data, which is subject to the general processing prohibition as a special category of data (article 9(1) of the GDPR).</p> <p>In the absence of a legal provision constituting an exception to this general prohibition, the only remaining ground is explicit consent of the visitor (article 9(2)(a) of the GDPR). However, even in the absence of a relationship of authority between the visitor and the organisation, the visitor cannot freely give consent if they incur negative consequences in case of refusal, such as being refused access to the premises.</p>
As an alternative to asking a visitor to confirm their vaccination status, can we (i) require them to provide evidence of a negative test or (ii) require them to be tested prior to entry to our premises and deny them entry if they return a positive test or refuse to comply?	<p>No, since this is not foreseen by any legal provision and since the visitor cannot freely consent to it.</p> <p>DPA guidance states that the vaccination status or test result of a person constitutes health data, which is subject to the general processing prohibition as a special category of data (article 9(1) of the GDPR).</p> <p>In the absence of a legal provision constituting an exception to this general prohibition, the only remaining ground is explicit consent of the visitor (article 9(2)(a) of the GDPR). However, even in the absence of a relationship of authority between the visitor and the organisation, the visitor cannot freely give consent if they incur negative consequences in case of refusal or negative test, such as being refused access to the premises.</p>
Can we ask for proof of vaccination status?	<p>Yes, but the visitor is not required to submit to the testing and may not be refused access as a consequence of their refusal.</p> <p>DPA guidance states that submitting visitors to Covid-19 testing would require the processing of health data, which is subject to the general processing prohibition as a special category of data (article 9(1) of the GDPR).</p> <p>In the absence of a legal provision constituting an exception to this general prohibition, the only remaining ground is explicit consent of the visitor (article 9(2)(a) of the GDPR). However, even in the absence of a relationship of authority between the visitor and the organisation, the visitor cannot freely give consent if they incur negative consequences in case of refusal, such as being refused access to the premises.</p>
Can we retain the vaccination records of visitors?	<p>Yes, but only if the visitor freely gave explicit consent to the processing of their vaccination record and only while necessary.</p> <p>Once the organisation has validly obtained vaccination records of visitors (see above), the storage of these records should be strictly limited to the duration necessary for the purposes of processing, such as ensuring the health and safety of workers during the visit.</p> <p>The organisation should determine an appropriate retention period prior to the collection of these vaccination records. Due to the occasional nature of visitors, this retention period is likely to be rather short. The organisation should periodically review the data it holds and erase or anonymise it when it is no longer needed. The organisation should also be prepared to answer data subjects exercising their rights to erasure or rectification.</p>

* Please note that the Belgian Consultation Committee is monitoring the epidemiological situation on an ongoing basis and may take additional measures - including requiring a vaccination, test or recovery certificate for given places or events.

Employees & Workers

<p>Can we ask employees if they have been vaccinated?</p>	<p>Yes, but with limitations. From a data protection perspective, separate consent from the employees is a general pre-condition, unless employers can prove that this is proportionate and necessary for employers to comply with their legal obligations to ensure the health and safety of their workplace or is out of public health emergency necessity.</p> <p>Processing employees' personal information during this process must comply with Chinese data protection law. The PRC Personal Information Protection Law (effective on 1 Nov.2021, "PIPL") stipulates that personal information shall be processed in accordance with the principles of lawfulness, legitimacy, necessity and good faith, and not in any manner that is misleading, fraudulent or coercive.</p> <ul style="list-style-type: none"> - For employees holding "Limited Positions" (as defined below), employers could consider relying on the legal obligation necessity (art.13(3), PIPL) or public health emergency necessity (art.13(4), PIPL) for processing personal information of employees when asking employees their vaccination status. - As for other employees not within the scope of "Limited Positions", employers should obtain employees' consent, which shall be separate consent under the current case, in accordance with the PIPL for processing employees vaccination information, because vaccination status information is likely defined as a type of sensitive personal information. - Stringent protection should be put in place for processing vaccine status data as a type of sensitive personal information, e.g. conducting a personal information protection impact assessment ("DPIA"). Before requiring vaccine status data to be provided, employers must notify their staff of the information about the processing, e.g. what personal information is required, what it will be used for and who it will be shared with, necessity of such processing, impact on data subjects, etc. In all cases, employers should only collect and retain the minimum amount of information needed to fulfil their purpose in line with the data minimisation principle. In particular, employers should not seek this information unless it is necessary to do so, and if employers' aim could be achieved by other less privacy intrusive, means, it should not request this data. <p>In assessing whether legal obligation necessity or public health emergency necessity under the PIPL can be relied on, employers should note that:</p> <ul style="list-style-type: none"> - There is currently no mandatory legal requirement for employees to be vaccinated under Chinese law, except in limited circumstances. - In practice, individuals working in specific industries and workplaces are required to be vaccinated, i.e. cold chain workers, medical and health personnel, personnel of institutions, students and staff of colleges and universities, service personnel of large supermarkets and personnel related to transportation, logistics and welfare institutions that guarantee the operation of society (based on the announcement issued by the National Health Commission, on 22 April 2021, see here). Some local governments like Beijing issued announcements that to protect the health of consumers, all types of public services, business enterprises and merchants should avoid arranging unvaccinated employees to engage in the direct service to consumers. Therefore, positions which provide direct services to consumers are required under such local policy to be vaccinated. These positions are collectively referred to as "Limited Positions". - It is also worth noting that, on August 2021, the State Council Covid-19 Joint Control Working Group released a set of Protective Guidelines related to the Regular Prevention and Control of COVID-19 in Key Places, Key Units and Key Groups (August 2021 edition), which sets out suggestions on, among others, vaccination requirements on 85 types of key places, units and groups (see here).
<p>Can we carry out workplace testing of employees / require employees to provide evidence of a negative test?</p>	<p>Yes, but with limitations. From a data protection perspective, separate consent from the employees is a general pre-condition, unless employers can prove that this is proportionate and necessary for employers to comply with their legal obligations to ensure the health and safety of their workplace or is out of public health emergency necessity.</p> <p>Like requests to provide vaccine status, when processing of employee testing information employers must comply with Chinese data protection law. See above for more guidance on the requirements of the PIPL.</p> <ul style="list-style-type: none"> - If employers are required by law or regulations to require employees to take a test, employers could consider relying on the legal obligation necessity (art.13(3), PIPL) or public health emergency necessity (art.13(4), PIPL) for processing such testing information of employees. - In other scenarios, employers should obtain employees' separate consent in accordance with the PIPL for processing employees testing information, which is likely consider sensitive personal information. <p>In terms of national guidance relating to COVID-19 testing, specific categories of employee are required or encouraged to be tested for COVID-19 test. In June 2020, the National Health Commission released an Implementation Opinion on Accelerating COVID-19 Nucleic Acid Testing (available here) (Chinese only) applicable nationwide, providing that people in eight categories should receive mandatory COVID-19 nucleic acid testing, while others may do so on a voluntarily basis. These eight categories include: (i) people who have been in close contact with confirmed/suspected cases; (ii) people who visit China from abroad; (iii) outpatients presenting with a fever; (iv) newly admitted patients and their companions; (v) staff of medical institutions; (vi) border control staff; (vii) prison staff; and (viii) staff of social welfare institutions. On August 2021, the State Council Covid-19 Joint Control Working Group released a set of Protective Guidelines related to the Regular Prevention and Control of COVID-19 in Key Places, Key Units and Key Groups (August 2021 edition), which provides guiding opinions, on among others, testing requirements on 85 types of key places, units and groups (see here).</p> <p>In addition, depending on the development of the COVID-19 pandemic in each city locally, a local government might implement mandatory COVID-19 requirements for local residents if the city is required to put into place public health restriction measures due to a fresh outbreak.</p> <p>Also, it should be noted that only the licensed labs (hospitals or CDC labs) can provide COVID-19 testing, while employers themselves cannot test employees.</p>

Employees & Workers cont

<p>Can we require employees to be vaccinated, as a condition of continuing employment? What can or should we do if employees refuse?</p>	<p>Generally no, except for limited positions.</p> <p>There is currently no mandatory legal requirement for employees to be vaccinated under Chinese law, except in limited circumstances. See our answer regarding requesting vaccination status data above.</p> <p>For those Limited Positions (see above), employers may make vaccination a condition of being permitted to work in certain environments, on health and safety grounds. Where an employee refuses to comply with a vaccination requirement, the employer would need to consider the rationale for any termination (there is no concept of at-will employment in China), whether this be by reason of failure to fulfill a lawful and reasonable instruction from the employer or other gross misconduct based on the internal rules. If employees are terminated on the basis of their refusal to be vaccinated (i.e. gross misconduct under the internal rules), they will not be entitled to any statutory and contractual termination payments. The employer should also check whether there are any additional contractual payments which are triggered upon termination (e.g. pro-rata bonuses).</p> <p>Generally speaking, except the above Limited Positions, to require employees to be vaccinated as a condition of continuing employment would trigger the legal risks of illegal termination under Chinese laws. The legal consequence of illegal termination would be either reinstatement of employment plus back payment of salary or double the statutory minimum severance. Reinstatement of employment is not a rare judgement.</p> <p>Specific advice should be sought by any employer looking to introduce a vaccination requirement and/or to take action against an employee for refusing vaccination.</p>
<p>Can we require employees (i) to be tested and/or (ii) to present a negative test or evidence of immunity in a specified form on a regular basis?</p>	<p>Yes, to the extent that employers can prove that this is proportionate and necessary for employers to comply with their legal obligations to ensure the health and safety of their workplace or is out of public health emergency necessity.</p> <p>Provided testing is proportionate and necessary to ensure compliance with an employer's legal obligations or is based on public health emergency necessity (see answer to question on testing above), a regular testing or evidence requirement would in most cases be a reasonable alternative to excluding non-vaccinated employees, whilst also managing the level of risk for other employees. In particular, a set of Protective Guidelines related to the Regular Prevention and Control of COVID-19 in Key Places, Key Units and Key Groups (August 2021 edition) also recommends certain types of key places, units and groups to receive COVID-19 testing on a regular basis, e.g. personnel for public transportation, cleaning personnel at airport or overseas and domestic flight, airport drivers, airport public security auxiliary police, airport loading and unloading workers, etc. (see here).</p> <p>You will need to consider what forms of testing or evidence you will accept, and the regularity of testing or presentation of evidence - taking into account the nature of the employee's role and wider working environment, and the level of risk to others.</p> <p>For employers that are not subject to the legal requirements to receive testing, testing can only be possible on a voluntary basis (see answer to question on testing above).</p>
<p>If we require employees to provide evidence of negative tests / immunity, can we require employees to pay for this testing, or are we obliged to pay for it / reimburse employees for any testing costs they incur?</p>	<p>No specific requirement in this aspect. If the tests are requested by the employer or for the purpose of performing employment duty, the employer should pay for it/reimburse employees for any testing costs. In China, if employees are subject to local requirements to receive a COVID-19 testing, such testing costs can be borne by the medical insurance fund and the government.</p>
<p>Can we require employees to be vaccinated, as a condition of physical attendance at the workplace?</p>	<p>Generally no, except Limited Positions, and there are likely to be legal risks depending on the approach.</p> <p>As mentioned above, there is currently no mandatory legal requirement for employees to be vaccinated under Chinese law, except in Limited Positions (see answer to question on vaccination above).</p> <p>In this case, except Limited Positions, the employer generally cannot prohibit employees from entering the office locations if they are unvaccinated. A blanket requirement of vaccination as a condition for returning to the office may pose some legal risks. The risk will vary depending on whether employees continue to be paid or unpaid whilst being kept away from the office, and also whether their role is such that they are able to do their work remotely. If an employee continues to be paid (regardless of whether or not they are able to work remotely) then employees are unlikely to object to being prohibited from entering the office. Employers could reasonably expect challenge from employees and unwanted media attention were they to take a blanket approach of requiring vaccination as a condition of continued employment.</p> <p>Specific advice should be sought by any employer looking to introduce a vaccination requirement and/or to take action against an employee for refusing vaccination.</p>
<p>Can we require employees to be vaccinated, or provide evidence of negative tests/immunity, as a condition of work-related travel?</p>	<p>Only as necessary for their role and to comply with applicable travel requirements.</p> <p>As mentioned above, there is currently no mandatory legal requirement for employees to be vaccinated under Chinese law, except in Limited Positions (see answer to question on vaccination above).</p> <p>Employees who travel for work will need to comply with the applicable requirements for domestic and international travel. Some jurisdictions have imposed travel restrictions which either (i) prohibit; or (ii) impose additional quarantine requirements in respect of, the entry of unvaccinated individuals to the country. There are also testing requirements in place for all international travel. Therefore, in order to travel for work, employees may need to be vaccinated and will be required to submit to specific government-imposed testing requirements.</p> <p>If an employee refuses to comply with legally-required vaccination or testing requirements, the employer may have grounds to allocate the employee to work which does not involve travel and/or to take disciplinary action up to and including dismissal. The question of whether such action is lawful or not will depend on the specific circumstances, including the nature of the role, how essential the travel is for the performance of the role, which jurisdictions are involved, what the entry requirements are, and the reason for refusal.</p> <p>Specific advice should be sought about any requirements for cross-border travel as the position is complex and constantly changing.</p>

China Continued

Employees & Workers cont	
Are we required to provide accommodations to employees who have not been vaccinated?	The employer should provide reasonable accommodation (including reasonable adjustments to labour conditions and facilities) if an employee has a disability in China.
Can we retain the vaccination / test / immunity records of employees? (Such records would include vaccine passports, proof of vaccination or other evidence of immunity, test results etc.)	<p>Only where collecting such information can be justified and while this remains necessary.</p> <p>The PIPL stipulates that retention period of personal information shall be the shortest time necessary to achieve the processing purpose, except as otherwise provided for by any law or administrative regulation. Thus, vaccination and test data can be retained where this information can be validly collected (see earlier answer) but should only be retained for as long as necessary for the purpose for which the data was collected. In practice, data on test results in particular will be out of date very quickly and the appropriate retention period is therefore likely to be very short. The employer may also anticipate that the retention of such data will depend on developments during the course of the next year. Once the necessity of anti-COVID measures no longer exists, the collection and storage of employees' COVID-19 related information will lose their legal basis. In this case, the relevant information should be deleted or anonymized.</p> <p>In relation to storage of test / vaccination information, the PIPL requires that employers should take all practicable steps to protect the personal data they hold against unauthorised or accidental access, processing, erasure, loss or use. Employers should have particular regard to the nature of the data, the potential harm if those events happen, measures taken for ensuring the integrity, prudence and competence of persons having access to the data, etc. If the employer entrusted a third party to process the personal data held, it must adopt contractual or other means to ensure that the data processor complies with the aforementioned data security requirement.</p>
If an employee refuses a request or requirement for vaccination asserting medical reasons, can we require proof of the medical reason?	<p>Yes, to the extent that employers can prove that this is proportionate and necessary for employers to comply with their legal obligations to ensure the health and safety of their workplace or is out of public health emergency necessity.</p> <p>Assuming the request or requirement for vaccination is justifiable (see above), you are entitled to ask for suitable medical evidence to your satisfaction, within reason. The employer must also demonstrate that processing of such evidence is necessary to comply with their legal obligations to ensure the health and safety of their workplace or is out of public health emergency necessity according to the PIPL.</p> <p>If vaccination is not mandatory for the role and processing is for a legitimate purpose, requesting relevant proof of medical reason will be subject to employees' separate consent.</p> <p>Also, as medical related information indicated via such proof of medical reason is a type of sensitive personal information, such information will be subject to stringent protection (e.g. conducting a DPIA) under the PIPL.</p>

Mobile / Gig Economy / Agency Workers	
Can we ask individuals if they have been vaccinated?	<p>Yes, but with limitations. From a data protection perspective, separate consent from individuals is a general pre-condition, unless companies can prove that this is proportionate and necessary for them to comply with their legal obligations to ensure the health and safety of their workplace or is out of public health emergency necessity.</p> <p>Same rules under the "Employees & Workers" section will apply.</p>
Can we carry out workplace testing of individuals /require individuals to provide evidence of a negative test?	<p>Yes, but with limitations. From a data protection perspective, separate consent from individuals is a general pre-condition, unless companies can prove that this is proportionate and necessary for them to comply with their legal obligations to ensure the health and safety of their workplace or is out of public health emergency necessity.</p> <p>Same rules under the "Employees & Workers" section will apply.</p>
Can we require individuals to be vaccinated, as a condition of continuing engagement? What can or should we do if an individual refuses?	<p>Generally no, except for Limited Positions (see above) and subject to contractual engagement arrangement with the relevant agency.</p> <p>Same rules under the "Employees & Workers" section will apply.</p>
Can we require individuals (i) to be tested and/or (ii) to present a negative test or evidence of immunity in a specified form on a regular basis?	<p>Yes, to the extent that organisations can prove that this is proportionate and necessary for them to comply with their legal obligations to ensure the health and safety of their workplace or is out of public health emergency necessity.</p> <p>Same rules under the "Employees & Workers" section will apply.</p>
If we required individuals to provide evidence of negative tests / immunity, can we require individuals to pay for this testing, or are we obliged to pay for it / reimburse individuals for any testing costs they incur?	<p>No specific requirement in this aspect, and subject to contractual engagement arrangement with the relevant agency. In China, if individuals are subject to local requirements to receive a COVID-19 testing, such testing costs can be borne by the medical insurance fund and the government.</p>
Can we require individuals to be vaccinated, as a condition of physical attendance at any premises?	<p>Generally no, except Limited Positions, and there are likely to be legal risks depending on the approach.</p> <p>Same rules under the "Employees & Workers" section will apply.</p>

Mobile / Gig Economy / Agency Workers cont	
Can we require workers to be vaccinated, or provide evidence of negative tests/ immunity, as a condition of work-related travel?	<p>Only as necessary for their role and to comply with applicable travel requirements</p> <p>Same rules under the "Employees & Workers" section will apply.</p>
Are we required to provide accommodations to individuals who have not been vaccinated?	The employer should provide reasonable accommodation (including reasonable adjustments to labour conditions and facilities) if an employee has a disability in China.
Can we retain the vaccination / test / immunity records of workers? (Such records would include vaccine passports, proof of vaccination or other evidence of immunity, test results etc.)	<p>Only where collecting such information can be justified and while this remains necessary.</p> <p>Same rules under the "Employees & Workers" section will apply.</p>
If an individual refuses a request or requirement for vaccination asserting medical reasons, can we require proof of the medical reason?	<p>Yes, to the extent that organisations can prove that this is proportionate and necessary for organisations to comply with their legal obligations to ensure the health and safety of their workplace or is out of public health emergency necessity.</p> <p>Same rules under the "Employees & Workers" section will apply.</p>

Visitors	
Can we ask visitors if they have been vaccinated?	<p>Yes, but with limitations. From a data protection perspective, separate consent from individuals is a general pre-condition, unless companies can prove that this is proportionate and necessary for them to comply with their legal obligations to ensure the health and safety of their workplace or is out of public health emergency necessity.</p> <p>Same rules under the "Employees & Workers" section will apply.</p>
Can we exclude visitors who have not had a vaccine from the workplace?	<p>Potentially, but subject to certain risks.</p> <p>In theory, organisations may be able to exclude unvaccinated visitors from the physical workplace in certain sectors. For example, a private business may have certain discretion to formulate its visitor policy as long as such policy would not violate local requirements; healthcare, social care and other high-risk sectors may be able to do so if they can demonstrate it is proportionate and necessary to comply with their legal obligations to ensure the health and safety of their workplace or out of public emergency health necessity. However, there are a number of potential legal risks associated with excluding visitors from the physical workplace (or otherwise treating them differently) on the grounds that they have not been vaccinated. In terms of national guidance on vaccines, there is no mandatory requirement for visitors to receive a vaccine, or for organisations to check if their visitors have received a vaccine. It has not yet become a common practice for organisations to ask visitors such information. Excluding visitors on the sole basis that they have not been vaccinated is likely to go beyond an organisation's obligations/duty to maintain workplace safety, unless the visitors have or are likely to present a particular risk to others in the workplace. From a data protection perspective, without a legal obligation necessity or public health emergency necessity, collecting such health-related information can only rely on separate consent from visitors. However, if visitors refusing to provide such consent would deny them entry, such consent would unlikely be considered freely given.</p>
Can we test visitors on entry into our premises?	<p>Yes, but with limitations. From a data protection perspective, separate consent from individuals is a general pre-condition, unless companies can prove that this is proportionate and necessary for them to comply with their legal obligations to ensure the health and safety of their workplace or is out of public health emergency necessity.</p> <p>Again, as with vaccination (see answer above), an organisation must comply with the PIPL for processing personal information relating to the visitor. Guidance issued by the government also emphasizes that organisations should ensure health monitoring of visitors. Hence, it is likely that organisations may rely on legal obligation necessity or public health necessity under the PIPL for processing test information. Data minimisation principle is key - do not collect more information than needed and ensure it is treated with appropriate safeguards. When conducting tests on visitors, real-time temperature testing is recommended as a less privacy-intrusive way. As for COVID-19 tests (i.e. nucleic acid test), organisations would unlikely be authorised to conduct such tests of visitors, subject to local policies and COVID-19 development. Currently, only the licensed labs (hospitals or CDC labs) can provide COVID-19 testing, while companies themselves cannot test visitors.</p>

China Continued

Visitors cont	
As an alternative to asking a visitor to confirm their vaccination status, can we (i) require them to provide evidence of a negative test or (ii) require them to be tested prior to entry to our premises and deny them entry if they return a positive test or refuse to comply?	<p>Only if companies can prove that this is proportionate and necessary for them to comply with their legal obligations to ensure the health and safety of their workplace or is out of public health emergency necessity.</p> <p>In theory, organisations may be able to exclude untested visitors from the physical workplace in certain sectors. For example, a private business may have certain discretion to formulate its visitor policy as long as such policy would not violate local requirements; healthcare, social care and other high-risk sectors may be able to do so if they can demonstrate it is proportionate and necessary to comply with their legal obligations to ensure the health and safety of their workplace or out of public emergency health necessity.</p> <p>Hence, organisations should consider whether they can rely on any local requirement before doing so (see answer above relating to rules relating to specific categories of individuals that should receive COVID-19 testing). Companies should also note that there are a number of potential legal risks associated with excluding visitors from the physical workplace (or otherwise treating them differently) on the grounds that they have not provided the test results. From a data protection perspective, without a legal obligation necessity or public health emergency necessity, collecting such health-related information can only rely on separate consent from visitors. However, if visitors refusing to provide such consent would deny them entry, such consent would unlikely be considered freely given.</p>
Can we ask for proof of vaccination status?	<p>Only if you can demonstrate that it is necessary for a visitor be vaccinated.</p> <p>From a data protection perspective, separate consent from individuals is a general pre-condition, unless companies can prove that this is proportionate and necessary for them to comply with their legal obligations to ensure the health and safety of their workplace or is out of public health emergency necessity.</p> <p>The PIPL stipulates that personal information shall be processed in accordance with the principles of lawfulness, legitimacy, necessity and good faith, and not in any manner that is misleading, fraudulent or coercive. In this case, visitors' separate consent should be obtained in general as required under the PIPL, unless under limited circumstances companies may demonstrate that it is necessary out of legal obligation to ensure the health and safety of their workplace or public health emergency necessity to ask visitors for such proof (see answer above under the "Employees & Workers" section). Further, the company should not seek this information unless it is necessary to do so, and if a company's aim could be achieved by other, less privacy intrusive, means, it should not request this data.</p>
Can we retain the vaccination records of visitors?	<p>Only where collecting such information can be justified and while this remains necessary.</p> <p>Same rules under the "Employees & Workers" section will apply.</p>

Czech Republic

Employees & Workers	
Can we ask employees if they have been vaccinated?	<p>Yes, but with limitations (no specific guidance).</p> <p>The provision of such information should be fully optional.</p> <p>There is currently no guidance that would address the collection of data about vaccination status, however, the employer could argue that it has a legitimate interest in collecting the data to ensure a safe workplace (which is a general duty imposed on employers by the Czech Labour Code). In this regard, a balancing test and DPIA would be recommended.</p> <p>Employees who do not want to disclose their vaccination status must not be discriminated against in any way. At the same time, employees should be offered some alternative to disclosing their vaccination status, e.g. submission of a negative test.</p> <p>Note vaccination status would be considered special category data under the GDPR and would be subject to the restrictions listed in the GDPR.</p>
Can we carry out workplace testing of employees / require employees to provide evidence of a negative test?	<p>Yes, but with limitations.</p> <p>The Czech Ministry of Health issued a brief statement that in order to ensure occupational health and safety protection, employers may maintain testing of their employees (which was mandated by the Government until the end of June). The obligation should, however, be regulated by internal health and safety policy and should reflect the current epidemiological situation and the risks at the workplace.</p>
Can we require employees to be vaccinated, as a condition of continuing employment? What can or should we do if employees refuse?	<p>No.</p> <p>Under applicable legislation, vaccination is fully voluntary in the Czech Republic and employers cannot require their employees to be vaccinated.</p>
Can we require employees (i) to be tested and/or (ii) to present a negative test or evidence of immunity in a specified form on a regular basis?	<p>Yes, as stated above, employers may issue internal health and safety policies regulating mandatory testing (which can, be substituted by evidence of immunity).</p>
If we require employees to provide evidence of negative tests / immunity, can we require employees to pay for this testing, or are we obliged to pay for it / reimburse employees for any testing costs they incur?	<p>No, the employer should bear the costs of the test if it requires their employees to be regularly tested (unless the test is covered by public health insurance).</p>
Can we require employees to be vaccinated, as a condition of physical attendance at the workplace?	<p>No. Employees who are not vaccinated cannot be disadvantaged by not being able to physically attend the workplace. The unvaccinated employees must have an alternative - e.g. a possibility to submit a negative test in order to be able to come to the workplace.</p>
Can we require workers to be vaccinated, or provide evidence of negative tests/ immunity, as a condition of work-related travel?	<p>Yes, under the statement of the Czech Ministry of Health, such an obligation could be imposed if justified by the current epidemiological situation and the risks at the workplace.</p> <p>If justified and part of an internal policy, refusal to comply with testing or vaccination for work related travel could be subject to disciplinary action although specific advice should be sought before such action is taken. Alternatively the employee could be allocated other work if it is within their job description (if the work is outside of their job description, the employee's consent will be needed).</p>
Are we required to provide accommodations to employees who have not been vaccinated?	<p>There is no specific guidance, however, under general labour law and anti-discrimination rules, employers should ensure equal treatment of all employees. Also, sufficient health and safety measures should be put in place.</p> <p>Unvaccinated employees must have an alternative to being vaccinated in order to attend the workplace - e.g. the option to submit a negative test in order to be able to come to the workplace.</p>
Can we retain the vaccination / test / immunity records of employees? (Such records would include vaccine passports, proof of vaccination or other evidence of immunity, test results etc.).	<p>Yes, if mandatory testing (other proof of immunity) is introduced at the workplace, employers should be able to collect and retain relevant evidence for a reasonable period. General data protection principles (such as purpose limitation and storage limitation) must be observed.</p>
If an employee refuses a request or requirement for vaccination asserting medical reasons, can we require proof of the medical reason?	<p>No. If an employee decides not to get vaccinated, the employer cannot take any actions against such an employee including asking why they have chosen not to be vaccinated.</p>

Czech Republic Continued

Mobile / Gig Economy / Agency Workers

Can we ask individuals if they have been vaccinated?	Yes, but with limitations. With respect to mobile / gig economy / agency workers, the legal regime should basically be the same as for employees as they are also present at the workplace of the employer and thus subject to the occupational health and safety rules. Therefore, the rules outlined above in relation to employees should apply also to mobile / gig economy / agency workers.
Can we carry out workplace testing of individuals /require individuals to provide evidence of a negative test?	Yes, but with limitations. The Czech Ministry of Health issued a brief statement that in order to ensure occupational health and safety protection, employers may maintain firm-wide testing of their employees (which was mandated by the Government until the end of June). This obligation could be extended to all individuals present at the workplace.
Can we require individuals to be vaccinated, as a condition of continuing engagement? What can or should we do if an individual refuses?	No. Under applicable legislation, vaccination is fully voluntary in the Czech Republic.
Can we require individuals (i) to be tested and/or (ii) to present a negative test or evidence of immunity in a specified form on a regular basis?	Yes , as stated above, employers may issue internal health and safety policies regulating mandatory testing (which can, of course, be substituted by evidence of immunity).
If we required individuals to provide evidence of negative tests / immunity, can we require individuals to pay for this testing, or are we obliged to pay for it / reimburse individuals for any testing costs they incur?	Not with respect to agency workers. As regards mobile and gig economy workers (i.e. individuals who are not employed but provide their services based on a commercial contract), the employer is not obliged to bear the costs of the tests.
Can we require individuals to be vaccinated, as a condition of physical attendance at any premises?	No. Since vaccination is voluntary, the unvaccinated individuals should have a possibility to e.g. submit a negative test instead.
Can we require workers to be vaccinated, or provide evidence of negative tests/ immunity, as a condition of work-related travel?	Yes , under the statement of the Czech Ministry of Health, such an obligation could be imposed if justified by the current epidemiological situation and the risks at the workplace. For workers who are not employees but provide services based on a commercial contract, it would depend on what has been agreed in the contract. Agency workers are as a general rule subject to the same regime as employees so see answer above.
Are we required to provide accommodations to individuals who have not been vaccinated?	There is no specific guidance, however, sufficient health and safety measures should be put in place.
Can we retain the vaccination / test / immunity records of workers? (Such records would include vaccine passports, proof of vaccination or other evidence of immunity, test results etc.).	Yes , if mandatory testing (other proof of immunity) is introduced at the workplace, employers should be able to collect and retain relevant evidence for a reasonable period. General data protection principles (such as purpose limitation and storage limitation) must be observed.
If an individual refuses a request or requirement for vaccination asserting medical reasons, can we require proof of the medical reason?	No. If an individual decides not to get vaccinated, the employer cannot take any actions against such an individual.

Visitors

Can we ask visitors if they have been vaccinated?	No specific guidance. If possible, less privacy intrusive measures should be introduced. Theoretically, the vaccination status could only be checked at the entrance (e.g. using the QR reader) but no data should be retained. Additionally, provisions of the vaccination status should be optional.
Can we exclude visitors who have not had a vaccine from the workplace?	No specific guidance. The employer may adopt a general (less invasive) measure and ask visitors who show any signs of COVID-19 or who have not had a vaccine and have no evidence of a negative test to voluntarily refrain from entering the company's premises.
Can we test visitors on entry into our premises?	No specific guidance. The company may carry out testing on a voluntary basis but cannot require the visitors to undergo the tests. As an alternative, the visitors can be asked to show a vaccination status or evidence of a negative test.
As an alternative to asking a visitor to confirm their vaccination status, can we (i) require them to provide evidence of a negative test or (ii) require them to be tested prior to entry to our premises and deny them entry if they return a positive test or refuse to comply?	Provision of evidence of a negative test should be acceptable but testing at the site/denying entry may be deemed disproportionate and if possible, less invasive measures should be adopted.
Can we ask for proof of vaccination status?	No specific guidance. Visitors can be asked for proof of vaccination status, but such proof should not be retained. Additionally, providing proof of vaccination status should be fully optional as an alternative to a negative test.
Can we retain the vaccination records of visitors?	No. Retaining visitors' vaccination records would likely be deemed disproportionate and excessive.

Employees & Workers

<p>Can we ask employees if they have been vaccinated?</p>	<p>Yes, but with limitations.</p> <p>Whether or not someone's vaccine status is health data has been a matter of discussion, however it most likely is, particularly when information about the type of vaccine is also submitted, i.e. COVID-19 or hepatitis.</p> <p>The Danish Act on Health information, etc. on the Labour market ("Helbredsoplysningsloven") stipulates that the employer should not request health data about employees (before and during the employment) unless it is of relevance for the performance of the employee's job. At the same time, the employer is required to secure a safe working environment for its employees, cf. the Danish Working Environment Act ("Arbejds miljøloven").</p> <p>Provided it is factually relevant and proportionate in relation to the job the employee is carrying out, the vaccine status can be requested. Typically this would be relevant for health care personnel, front line workers, etc.</p> <p>Where the line is drawn between these two is a matter of debate with no final conclusion so far.</p> <p>From a data protection perspective, there is no available DPA guidance. The employer's purpose in requesting the employee's vaccine status must at all times comply with data protection rules under the GDPR and the Danish Data Protection Act. Provided an employee's vaccine status is health data such data is considered special category data pursuant to the GDPR.</p> <p>Generally, data protection law does not prevent employers from taking necessary steps to keep staff and the public safe. Employers may ask about an employee's vaccine status if there is a good reason to do so. In practice, an employer should not seek this information unless it is necessary and proportionate to do so. For example, if the employees in question are not working from the office, or unlikely to come into contact with each other or customers or suppliers whilst carrying out their duties, requesting this data is unlikely to be deemed reasonable or proportionate. In all cases, employers should only collect and retain the minimum amount of information needed to fulfil their purpose in line with the data minimisation principle.</p> <p>If deemed appropriate, an employee's vaccine status could be processed under para. 12 of the Danish Data Protection Act, the Danish Working Environment Act and the Danish Act on Health information, etc. on the Labour market ("Helbredsoplysningsloven"), in order to comply with employment and social protection law obligations and to pursue a legitimate interest that arises from other law or collective agreements.</p>
<p>Can we carry out workplace testing of employees / require employees to provide evidence of a negative test?</p>	<p>Yes, but with limitations.</p> <p>Workplace testing can be carried out, however it is subject to conditions on administering tests from a health professional perspective as well as testing being objectively justified, cf. below.</p> <p>An employer may also order an employee to get tested in regular test facilities for COVID-19 as soon as possible and to report the result to the employer.</p> <p>This health data can be processed under para.12 of the Danish Data Protection Act and para 1(i) of the Act on Employers' Access to Require Employees to be Tested for COVID-19 etc. (2020-11-19/1641 and 2021-06-29/1439), in order to comply with employment and social protection law obligations and to pursue a legitimate interest that arises from other law or collective agreements.</p> <p>However, the employer may only order employees to get tested, if it is objectively justified in order to limit the spread of COVID-19, which includes work environment considerations and significant operational considerations for the company in question.</p> <p>Before carrying out any tests, an employer must inform the affected employee in writing in accordance with applicable rules that he or she will be required to be tested for COVID-19, and the employer's justification for this. In accordance with relevant legislation and any agreements and arrangements, the information must also be made available to the employees via representatives in the co-operation committee, etc. or through a health and safety representative. The employer must consult the liaison committee in accordance with applicable rules and agreements.</p> <p>Please note that the Act on Employers' Access to Require Employees to be Tested for COVID-19 etc. (2020-11-19/1641) which was set to be repealed automatically on 1 July 2021 has been extended until 1 November 2021.</p> <p>A test imposed by the employer must, as far as possible, be carried out during the employee's normal working hours. If it is not possible to carry out an imposed test during the employee's normal working hours, the employee must be compensated financially for the time spent on the test. In addition, the employee must have covered any reasonable expenses incurred in connection with the implementation of an imposed test.</p> <p>Further, such tests must be carried out in a satisfactory manner in accordance with the rules and guidelines laid down by the relevant authorities. This applies regardless of whether the test is carried out at the workplace or outside the workplace. If an imposed test is performed at the workplace by employees or by the employer, an employee who does not wish to be tested by colleagues or the employer, provided that the purpose of the test is not completely or partially wasted, is tested outside the workplace.</p>
<p>Can we require employees to be vaccinated, as a condition of continuing employment? What can or should we do if employees refuse?</p>	<p>Whilst this is theoretically possible a blanket requirement is likely to be risky for most employers.</p> <p>Under Danish law, negative test results, immunity and vaccination status are considered <u>equal ways</u> to obtain the official documentation (the so-called COVID passport) for being low risk source of infection. This means that the main rule is, that the employer cannot chose vaccination over any of the other ways to obtain the COVID passport.</p> <p>Employers will need to carry out a risk assessment on a case-by-case basis to determine whether a vaccination requirement can be justified and whether adverse (e.g. disciplinary) action can be taken for refusal, taking into account (i) the role in question (including the working environment, the risk posed by the employee to others and vice versa); and (ii) the health and needs of the employee, to determine whether it is reasonable to impose such a condition and take such action.</p>

Employees & Workers cont

	<p>Only in very special situations where vaccination is required over the other options, and provided that the employer has tried to mitigate the adverse consequences of the employee not being vaccinated will it be possible to imagine that failure to be vaccinated could form the basis for a justified termination.</p> <p>Please note that under Danish employment law, protection against unjust termination only applies to salaried employees (office workers, shop workers, technical and clinical assistants and managers) with at least 12 months of employment, and non-salaried employees who are covered by a collective bargaining agreement and have minimum 9 months of employment.</p>
<p>Can we require employees (i) to be tested and/or (ii) to present a negative test or evidence of immunity in a specified form on a regular basis?</p>	<p>Yes, but with limitations.</p> <p>An employer may only order employees to get tested and present results, if it is objectively justified in order to limit the spread of COVID-19, which includes legally required work environment considerations and significant operational considerations for the company in question (see answer to question on testing above).</p> <p>Provided a requirement for tests or other types of proof is proportionate and necessary, regular testing or evidence requirement would in most cases be a reasonable alternative to excluding non-vaccinated employees, whilst also managing the level of risk for other employees. Providing evidence of immunity should only be considered if this is through the authorised channels, e.g. the official COVID-19 app. Antibody testing is not yet commonplace, nor is its accuracy / utility recognised in Denmark as of yet.</p> <p>Before carrying out any tests/ setting requirements for presenting a negative test / evidence of immunity, an employer must inform the affected employee in writing in accordance with applicable rules that he or she will be required to be tested for COVID-19 and/or present acceptable proof, and the employer's justification for this. In accordance with relevant legislation and any agreements and arrangements, the information must also be made available to the employees via representatives in the co-operation committee, etc. or through a health and safety representative. The employer must consult the liaison committee in accordance with applicable rules and agreements.</p> <p>Please note that the Act on Employers' Access to Require Employees to be Tested for COVID-19 etc. (2020-11-19/1641) which was set to be repealed automatically on 1 July 2021 has been extended until 1. November 2021.</p> <p>An employee cannot be forced to take a test. If an employee refuses to comply with a justifiable testing or evidence requirement, you may have grounds to take disciplinary action up to and including dismissal, if the employee has been informed hereof previously. However, there are legal risks associated with this and specific advice should be sought before taking such action.</p>
<p>If we require employees to provide evidence of negative tests / immunity, can we require employees to pay for this testing, or are we obliged to pay for it / reimburse employees for any testing costs they incur?</p>	<p>No. Testing is currently free of charge in Denmark, but if required by the employer and associated with costs, the employer must reimburse the costs related to the testing.</p> <p>Further, please note that in case an employer requires its employees to get tested, the testing should take place within regular working hours. If it is not possible to obtain a test within such hours, the employee should be compensated for time spent on obtaining the test.</p>
<p>Can we require employees to be vaccinated, as a condition of physical attendance at the workplace?</p>	<p>Most likely yes, but with strict limitations.</p> <p>In theory, employers may be able to exclude unvaccinated employees from the physical workplace in certain sectors, on health and safety grounds. This is most likely to be justifiable in the healthcare, social care and other high-risk sectors.</p> <p>If an employer decides to introduce such a requirement, the employer must potentially be able to provide medically and/or operational reasonable grounds for choosing vaccination over immunity or negative test result.</p> <p>The employer must also as a general rule compensate employees who are remunerated with commission and/or bonuses and who would potentially suffer a loss from being denied access to the workplace.</p> <p>The employer may to a reasonable extent provide alternative ways for the unvaccinated employees to be able to perform their work. If this is not possible, the employer may be in breach of contract by not enabling the employees to perform their jobs.</p> <p>There are many reasons why an individual might legitimately be unable, or refuse, to be vaccinated. Employers will need to consider objections carefully and individually.</p> <p>There are several potential legal risks associated with requiring vaccinations as a condition of attendance at the workplace including:</p> <ul style="list-style-type: none"> • A blanket policy could lead to indirect discrimination claims under the Danish Anti-Discrimination Act, e.g. on the basis that the policy places those with protected characteristics at a particular disadvantage. Any such policy would need to be objectively justified and this is a stringent test. Key protected characteristics that may be relevant here are: <ul style="list-style-type: none"> o Disability: employees with medical conditions that prevent them from being vaccinated may be disabled. o Religion or belief: whilst this has yet to be tested on the courts, an 'anti-vaccination' stance could be held to be akin to a religion or belief and therefore amount to a protected characteristic. • Breach of contract: the imposition of such a requirement could amount to a fundamental breach of contract entitling an employee to treat themselves as constructively dismissed. • Unfair dismissal: employees who are protected against unjust termination (salaried employees with more than one year's service/employees covered by collective bargaining agreements with min 9 months' service) who are dismissed for refusing to be vaccinated may have unfair dismissal claims. <p>Employers could reasonably expect challenges from employees and unwanted media attention were they to take a blanket approach of requiring vaccination as a condition of continued employment.</p>

Employees & Workers cont	
Can we require employees to be vaccinated, or provide evidence of negative tests/immunity, as a condition of work-related travel?	<p>Most likely yes, but with strict limitations.</p> <p>Although the employer does not have the power to force employees to be vaccinated under the current legislation, the employer may to a large extent allocate work tasks and give directions in relation to how and under what circumstances the work should be performed, including under what circumstances the employee should represent the employer.</p> <p>Employees who travel for work will need to comply with the applicable requirements for domestic and international travel. Some jurisdictions have imposed travel restrictions which either (i) prohibit; or (ii) impose additional quarantine requirements in respect of, the entry of unvaccinated individuals to the country. There are also testing requirements in place for all international travel. Therefore, in order to travel for work, employees may need to be vaccinated and will be required to submit to specific government-imposed testing requirements.</p> <p>If an employee refuses to comply with legally required vaccination or testing requirements, the employer may have grounds to allocate the employee to work which does not involve travel and/or to take disciplinary action up to and including dismissal. The question of whether such action is lawful or not will depend on the specific circumstances, including the nature of the role, how essential the travel is for the performance of the role, which jurisdictions are involved, what the entry requirements are, and the reason for refusal. The key legal risks associated with imposing a blanket vaccination requirement on employees are summarised in the answers above: the same considerations apply where the requirement is imposed as a condition of travel.</p> <p>Specific advice should be sought about any requirements for cross-border travel as the position is complex and constantly changing.</p> <p>The same considerations as in relation to loss coverage as stated above apply.</p>
Are we required to provide accommodations to employees who have not been vaccinated?	<p>If the employee in question suffers from a disability, the employer may be required to make reasonable adjustments.</p> <p>The Danish Anti-Discrimination Act imposes a duty on employers to make reasonable adjustments to eliminate disadvantages suffered by disabled job applicants, employees and former employees. The duty may therefore apply in respect of employees who have not been vaccinated for medical reasons and who qualify as “disabled” for the purposes of the legislation. Such adjustments may include (i) allowing continued homeworking; (ii) waiving a condition that employees must be vaccinated to attend the office; or (iii) implementing additional safety measures at the workplace to further reduce the risk of infection. A failure to make reasonable adjustments is a form of unlawful disability discrimination.</p> <p>Separately, an employer runs the risk of indirect discrimination claims where it applies a blanket policy that places a group of individuals with a shared protected characteristic at a disadvantage when compared to those without that characteristic, unless that policy can be objectively justified (which is a high bar). As noted, an ‘anti-vaccination’ stance could be held to be akin to a religion or belief and therefore amount to a protected characteristic; and younger employees may be less likely to be fully vaccinated than older employees.</p> <p>Discrimination claims tend to be high-profile, and compensation awarded for such claims is uncapped, so there are clear risks in refusing any form of concession or accommodation for unvaccinated employees where the reason they are not vaccinated is linked to a protected characteristic.</p>
Can we retain the vaccination / test / immunity records of employees? (Such records would include vaccine passports, proof of vaccination or other evidence of immunity, test results etc.).	<p>Only where collecting such information can be justified and while this remains necessary.</p> <p>Vaccination and test data can be retained where this information can be validly collected (see earlier answer) but should only be retained for as long as necessary for the purpose for which the data was collected. Data on test results in particular will be out of date very quickly and the appropriate retention period is therefore likely to be very short.</p> <p>Employers should consider an appropriate retention period at the outset of collecting the data and should periodically review the data they hold and erase or anonymise it when they no longer need it. Employers should also be prepared to receive and manage requests for erasure in respect of vaccination / test / immunity data.</p>
If an employee refuses a request or requirement for vaccination asserting medical reasons, can we require proof of the medical reason?	<p>Only if this is proportionate and necessary for employers to comply with their legal obligations to ensure the health and safety of their workplace, and no details re. the specific medical reason - this may be difficult for many employers to demonstrate.</p> <p>As the main rule, when an employee is prevented from performing contractual obligations due to health, the employer is not entitled to receive information about the specific medical reason for this, but only medical confirmation that the employee was prevented.</p> <p>If vaccination is not mandatory for the role and/or the underlying concern can be managed by regular testing, it will be difficult to justify requiring proof of medical grounds for non-vaccination in any form.</p>

Mobile / Gig Economy / Agency Workers	
Can we ask individuals if they have been vaccinated?	<p>Yes, but with limitations.</p> <p>For the sake of our advice with respect to mobile / gig / agency workers (“workers”), we have assumed that the individuals are not considered as employees and, thus, not covered by Danish mandatory employee legislation. If the worker is considered an employee, please see the corresponding question and advice above.</p> <p>Under Danish law, negative test result, immunity and vaccination are considered <u>equal ways</u> to obtain the official documentation (the so-called COVID passport) for being low risk source of infection.</p> <p>Processing of vaccine status data must, in the light of the above, be necessary for the company’s legitimate interest in meeting its health and safety requirements.</p> <p>From a data protection perspective, there is no available DPA guidance.</p> <p>The company’s purpose in requesting the workers’ vaccine status must at all times comply with data protection rules under the GDPR and the Danish Data Protection Act. Whether or not someone’s vaccine status is health data has been a matter of discussion, however it most likely is, particularly when information about the type of vaccine is also submitted, i.e. COVID-19 or hepatitis. Provided a worker’s vaccine status is health data, such data is considered to be special category data pursuant to GDPR.</p> <p>Generally, data protection law does not prevent companies from taking the necessary steps to keep staff and the public safe. Companies may ask about a worker’s vaccine status if there is a good reason to do so. In practice, a company should not seek this information unless it is necessary and proportionate to do so. For example, if the workers in question are not working from the office, or unlikely to come into contact with each other, employees, customers or suppliers whilst carrying out their duties, requesting this data is unlikely to be deemed reasonable or proportionate. In all cases, companies should only collect and retain the minimum amount of information needed to fulfil their purpose in line with the data minimisation principle.</p> <p>If deemed appropriate, a worker’s vaccine status could be processed under para.7(2) of the Danish Data Protection Act, the Danish Working Environment Act in order to comply with employment and social protection law obligations and to pursue a legitimate interest that arises from other law or collective agreements.</p>
Can we carry out workplace testing of individuals /require individuals to provide evidence of a negative test?	<p>Yes, but only if this is proportionate and necessary for companies to comply with their legal obligations to ensure the health and safety of their workplace - this may be difficult for some companies to demonstrate.</p> <p>Contrary to what applies towards employees, Danish law does not provide for an explicit legal basis for companies to require testing of Mobile / Gig Economy / Agency Workers (unless they are in reality employees).</p> <p>However, workplace testing can be carried out, subject to conditions on administering of tests from a health professional perspective as well as testing being objectively justified, cf. below.</p> <p>A company may also order workers to get tested in regular test facilities for COVID-19, if this is deemed legitimate and proportionate and allowed for either by agreement with e.g. the Agency supplying agency workers, by contract, public guidelines, etc.</p> <p>If testing is deemed legitimate and proportionate, health data can be processed under para.7(2) of the Danish Data Protection Act.</p>
Can we require individuals to be vaccinated, as a condition of continuing engagement? What can or should we do if an individual refuses?	<p>Whilst this is theoretically possible a blanket requirement is likely to be risky for many companies.</p> <p>As a main rule Mobile / Gig Economy / Agency Workers will not be protected against unjust termination.</p> <p>Under Danish law, negative test result, immunity and vaccination are considered <u>equal ways</u> to obtain the official documentation (the so-called COVID passport) for being low risk source of infection. Based on this, a company must potentially be able to provide medically and/or operational reasonable grounds for choosing vaccination over immunity or negative test result. If such grounds do not exist the company may be in breach of contract should it refuse to allow the individual to provide the agreed services if the individual has proof of immunity or a negative test result.</p> <p>Companies will need to carry out a risk assessment on a case-by-case basis to determine whether a vaccination requirement can be justified and whether adverse action can be taken for refusal, taking into account (i) the role in question (including the working environment, the risk posed by the worker to others and vice versa); and (ii) the health and needs of the worker, to determine whether it is reasonable to impose such a condition and take such action.</p> <p>There are many reasons why an individual might legitimately be unable, or refuse, to be vaccinated. Companies will need to consider objections carefully and individually.</p>
Can we require individuals (i) to be tested and/or (ii) to present a negative test or evidence of immunity in a specified form on a regular basis?	<p>Yes, but with limitations.</p> <p>Contrary to what applies towards employees, Danish law does not provide for an explicit legal basis for companies to require testing of Mobile / Gig Economy / Agency Workers (unless they are in reality employees).</p> <p>Provided testing is proportionate and necessary to ensure compliance with a company’s legal obligations (see answer to question on testing above) and managed either by agreement with e.g. the worker, the Agency supplying agency workers, by contract, public guidelines, etc. a regular testing or evidence requirement would in most cases be a reasonable alternative to excluding unvaccinated workers, whilst also managing the level of risk for other members of staff.</p> <p>Providing evidence of immunity should only be considered if this is through the authorised channels, e.g. the official COVID-19 app. Antibody testing is not yet commonplace, nor is its accuracy / utility recognised in Denmark as of yet.</p> <p>A worker cannot be forced to take a test. If a worker refuses to comply with a justifiable testing or evidence requirement, you may have grounds to take disciplinary action in accordance with the contractual relationship. However, there are legal risks associated with this and specific advice should be sought before taking such action.</p>

Mobile / Gig Economy / Agency Workers cont

<p>If we required individuals to provide evidence of negative tests / immunity, can we require individuals to pay for this testing, or are we obliged to pay for it / reimburse individuals for any testing costs they incur?</p>	<p>Yes, but with limitations.</p> <p>For Mobile / Gig Economy / Agency Workers that are not employees, the question of payment is subject to agreement and/or will depend on the contractual relationship with the worker.</p> <p>Please note that in Denmark, COVID-19 tests can be obtained for free, funded by the Government.</p>
<p>Can we require individuals to be vaccinated, as a condition of physical attendance at any premises?</p>	<p>Whilst this is theoretically possible a blanket requirement is likely to be risky for many companies.</p> <p>Mobile / Gig Economy / Agency Workers that are not employees, are generally not protected against unjust termination. As the main rule, neither are they protected under Anti-discrimination or equal treatment regulation.</p> <p>In addition to the above protection, Danish law provides for regulation on anti-discrimination based on ethnic origin with a wider application than the strict employment regulation. To the extent vaccination requirement could be considered ethnically biased, a blanket policy could lead to indirect discrimination claims relating to ethnic origin.</p> <p>Besides the above, setting a requirement of vaccination will thus mainly depend on the contractual relationship.</p> <p>Companies should note that there are many reasons why an individual might legitimately be unable or refuse, to be vaccinated, e.g. health or religious reason. Companies will need to consider objections carefully and individually; they run the risk of claims of discrimination and unwanted media attention if they apply a blanket mandatory vaccination policy or punish employees and other workers, who refuse to comply.</p>
<p>Can we require workers to be vaccinated, or provide evidence of negative tests/ immunity, as a condition of work-related travel?</p>	<p>Only as necessary for their role and to comply with applicable travel requirements.</p> <p>Mobile / Gig Economy / Agency Workers that are not employees are generally not protected against unjust termination. As the main rule, neither are they protected under Anti-discrimination or equal treatment regulation.</p> <p>In addition to the above protection, Danish law provides for regulation on anti-discrimination based on ethnic origin with a wider application than the strict employment regulation. To the extent vaccination requirement could be considered ethnically biased, a blanket policy could lead to indirect discrimination claims relating to ethnic origin.</p> <p>Besides the above, setting a requirement of vaccination will thus mainly be a contractual question.</p> <p>As mentioned above, companies should note that there are many reasons why an individual might legitimately be unable or refuse, to be vaccinated, e.g. health or religious reason. Companies will need to consider objections carefully and individually; they run the risk of claims of discrimination and unwanted media attention if they apply a blanket mandatory vaccination policy or punish employees and other workers, who refuse to comply.</p>
<p>Are we required to provide accommodations to individuals who have not been vaccinated?</p>	<p>Generally, no. However, it depends on the contractual relationship with the worker(s).</p> <p>Mobile / Gig Economy / Agency Workers that are not employees, are generally not protected against unjust termination. As the main rule, neither are they protected under Anti-discrimination or equal treatment regulation.</p>
<p>Can we retain the vaccination / test / immunity records of workers? (Such records would include vaccine passports, proof of vaccination or other evidence of immunity, test results etc.).</p>	<p>Only where collecting such information can be justified and while this remains necessary.</p> <p>Vaccination and test data can be retained where this information can be validly collected (see earlier answer) but should only be retained for as long as necessary for the purpose for which the data was collected. Data on test results in particular will be out of date very quickly and the appropriate retention period is therefore likely to be very short.</p> <p>Companies should consider an appropriate retention period at the outset of collecting the data and should periodically review the data they hold and erase or anonymise it when they no longer need it. Those with a transitional or short-term work force should ensure they do not hold records for those who are no longer engaged unnecessarily. Companies should also be prepared to receive and manage requests for erasure in respect of vaccination / test / immunity data.</p>
<p>If an individual refuses a request or requirement for vaccination asserting medical reasons, can we require proof of the medical reason?</p>	<p>Only if this is proportionate and necessary for companies to comply with their legal obligations to ensure the health and safety of their workplace, and no details re. the specific medical reason - this may be difficult for many companies to demonstrate.</p> <p>For Mobile / Gig Economy / Agency Workers that are not employees, there is generally no basis for sanctioning such refusal, except to exclude them from your premises.</p> <p>If vaccination is not mandatory for the role and/or the underlying concern can be managed by regular testing, it will be difficult to justify requiring proof of medical grounds for non-vaccination in any form.</p>

Visitors

<p>Can we ask visitors if they have been vaccinated?</p>	<p>Yes. Under Danish law, negative test result, immunity and vaccination are considered <u>equal ways</u> to obtain the official documentation (the so-called COVID passport) for being low risk source of infection. Having said that, employers are as a main rule free to require the fulfilment of certain conditions to allow visitors' entry to areas where the general public does not have access - including the presentation of a COVID passport showing vaccination.</p> <p>Whether or not someone's vaccine status is health data has been a matter of discussion, however it most likely is, particularly when information about the type of vaccine is also submitted, i.e. COVID-19 or hepatitis.</p> <p>Provided a visitor's vaccine status is health data, such data is considered to be special category data pursuant to GDPR and can be processed under para.7(2) of the Danish Data Protection Act to comply with employment and social protection law obligations and to pursue a legitimate interest that arises from other law or collective agreements.</p> <p>In Denmark there is an app, which has been developed by the authorities, which serves as official proof of either vaccine, immunity, or test status. If requesting vaccination status is considered legitimate, the app should serve as sufficient proof.</p>
<p>Can we exclude visitors who have not had a vaccine from the workplace?</p>	<p>Most likely yes, but with strict limitations and only from areas where the general public does not have access.</p> <p>Please note, that the COVID-19 vaccine is voluntary in Denmark. If it is possible to exclude visitors, it will only be from physical workplaces or places where the individual may have sufficient physical contact with staff so as to pose a risk (and there are risks in doing so even where this applies). Employers have an obligation to protect the health and safety of their employees in accordance with the Danish Working Environment Act. On that basis, companies may be able to exclude individuals who present a particular risk to their staff from the physical workplace on health and safety grounds. If the company considers that the risk to the staff member in question, to colleagues or to patients, clients or suppliers is sufficiently high AND there was no other way to mitigate or minimise this risk, it may have grounds to exclude visitors from the relevant areas of the physical workplace. However, this has not been tested in the courts and companies could reasonably expect challenges and /or unwanted media attention were they to take a blanket approach of excluding unvaccinated visitors from the workplace.</p> <p>Further, under Danish law, negative test result, immunity and vaccination are considered <u>equal ways</u> to obtain the official documentation (the so-called COVID passport) for being low risk source of infection. This means that the main rule is, that the employer cannot chose vaccination over any of the other ways to obtain the COVID passport from visitors.</p>
<p>Can we test visitors on entry into our premises?</p>	<p>Unless a test is required under official guidelines from Danish authorities, it may be very difficult for organisations to demonstrate onsite testing to be proportionate and necessary for the organisation to comply with their legal obligations to ensure the health and safety of their workplace or to ensure public health, especially as testing (at the moment) is already provided for free in Denmark, funded by the government and results are easily accessible and reliable via the official app.</p> <p>Any such testing should be voluntary, and other types of documentation, such as test results from other test facilities, proof of vaccine or immunity, all accessible via the official Danish app, should be considered to be acceptable alternatives to any onsite testing. An individual cannot be forced to take a test. If an individual refuses to comply with a justifiable testing or evidence requirement, you may have grounds to exclude them from your premises.</p> <p>While organisations can impose stricter COVID-19 measures than those recommended by the authorities, they would need to demonstrate that there is a valid lawful basis for processing special category data relating to the visitor, which cannot be met with other less intrusive means.</p> <p>If stricter measures are imposed, special considerations must be made for individuals who, for medical reasons, are unable to meet such requirements. Denying entry to them could amount to discrimination.</p> <p>It should be noted that while businesses are generally allowed to impose stricter measures if they are administered fairly, it cannot be entirely ruled out that in certain areas, special regulation will hinder such extra measures, e.g. a COVID passport (vaccine, negative test or immunity) as an entry requirement. Currently no examples have been published.</p> <p>If deemed legitimate to perform tests, the test results are health data and could be processed under para.7(2) of the Danish Data Protection Act to comply with employment and social protection law obligations and to pursue a legitimate interest that arises from other law or collective agreements. Data minimisation principle is key - no more information than needed must be collected and it must be treated with appropriate safeguards (see below under retention).</p> <p>Please note that in case testing is permitted, it must be carried out in accordance with conditions for administering of tests from a health professional perspective, which vary depending on the types of test carried out.</p>

Denmark Continued

Visitors	
As an alternative to asking a visitor to confirm their vaccination status, can we (i) require them to provide evidence of a negative test or (ii) require them to be tested prior to entry to our premises and deny them entry if they return a positive test or refuse to comply?	<p>Yes, if the company can demonstrate that it is necessary a visitor has a negative test/is immune.</p> <p>A negative test result (PCR or antigen) or proof of infection within the past 12 months are equally valid COVID-19 documentation in Denmark, thus they should be granted the same status (also available via the official COVID-19 app).</p> <p>Necessity can either be due to a requirement issued by the Danish authorities, or if a business has decided to impose stricter COVID-19 measures, than those imposed by the Danish Authorities, e.g. to wear a mask or show proof of negative test result or vaccine.</p> <p>However, in doing so special considerations must be made to individuals who, for medical reasons, are unable to meet such requirements. Denying them entry could amount to discrimination.</p> <p>While businesses are generally allowed to impose stricter COVID-19 measures, if they are administered fairly, it cannot be entirely ruled out that in certain areas, special regulation will hinder such extra measures, e.g. a COVID passport (vaccine, proof of negative test or immunity) as an entry requirement. Currently no examples have been published.</p> <p>Solely a visual check of documentation validly demonstrating COVID-19 status may not involve data processing. However, making any record of this check would lead to data processing that would require justification under law and compliance with the relevant requirements.</p> <p>If an individual refuses to comply with a justifiable evidence requirement, you may have grounds to exclude them from your premises.</p>
Can we ask for proof of vaccination status?	<p>Only if the company can demonstrate that it is necessary a visitor be vaccinated.</p> <p>As the vaccine is not mandatory in Denmark, and a negative test result (PCR or antigen) or proof of infection within the past 12 months, is considered to be valid COVID-19 documentation, they should be granted the same status (all available via the official COVID-19 app).</p> <p>Provided you have grounds to request and process this data, you can ask for proof of vaccination status. This can either be due to a requirement issued by the Danish authorities, or if a business has decided to impose stricter COVID-19 measures, than those imposed by the Danish Authorities, e.g. to wear a mask or show proof of negative test result or vaccine.</p> <p>However, in doing so special considerations must be made to individuals who, for medical reasons, are unable to meet such requirements. Denying entry to them could amount to discrimination.</p> <p>It should be noted that while businesses are generally allowed to impose stricter measures if they are administered fairly, it cannot be entirely ruled out that in certain areas, special regulation will hinder such extra measures, e.g. a COVID passport as an entry requirement. Currently no examples have been published.</p> <p>Solely a visual check of documentation validly demonstrating COVID-19 status may not involve data processing and this can easily be done via the official app. However, making any record of this check would lead to data processing that would require justification under law and compliance with the relevant requirements.</p> <p>If an individual refuses to comply with a justifiable evidence requirement, you may have grounds to exclude them from your premises.</p>
Can we retain the vaccination records of visitors?	<p>Only where collecting such information can be justified and while this remains necessary.</p> <p>Vaccination and test data can be retained where this information can be validly collected (see earlier answers) but should only be retained for as long as necessary for the purpose for which the data was collected, e.g. if required by law or guidelines issued by Danish Authorities. Data on test results will be out of date very quickly and the appropriate retention period is therefore likely to be very short.</p> <p>Solely a visual check of documentation validly demonstrating COVID-19 status may not involve data processing. However, making any record of this check would lead to data processing that would require justification under law and compliance with the relevant requirements.</p> <p>Any business that wishes to impose stricter restrictions than those determined by the Authorities, is strongly encouraged to only request a visual check of documentation validly demonstrating COVID-19 status, thus avoiding data processing by recording and storing the data.</p>

Finland

Employees & Workers	
Can we ask employees if they have been vaccinated?	<p>Employees cannot be required to disclose information on whether they have been vaccinated. However, informal discussions on COVID-19 vaccinations in the workplace are allowed and employers may ask about vaccinations orally. Employees are not required to answer these questions.</p> <p>According to Article 1 of the GDPR, the regulation applies to the processing of personal data wholly or partly by automated means and to the processing other than by automated means of personal data which form part of a filing system or are intended to form part of a filing system. Asking employees about their vaccination but not documenting this information (into a filing system) does thus not fall under the regulation. However, we do not recommend systematically asking health information from employees, even if this information would not be documented anywhere.</p> <p>If the information is processed by automated means or forms or is intended to form a part of a filing system, information on vaccination status is deemed health data and the employer must have a valid legal basis for processing such information. See more on this below.</p>
Can we carry out workplace testing of employees / require employees to provide evidence of a negative test?	<p>According to the Act on the Protection of Privacy in Working Life, examinations and tests concerning the employees' state of health shall be performed and samples taken by health care professionals, properly trained laboratory personnel and health care services as provided for in the health care legislation. Thus, individuals who do not belong to the group's specified above are not allowed to carry out testing at the workplace.</p> <p>The employer cannot force the employee to take a COVID-19 test, but the employer may require a negative test result before allowing the employee to enter the workplace. The demand for a test result cannot be random and shall be based on a risk assessment, and the testing practice shall be determined in cooperation with the employees.</p>
Can we require employees to be vaccinated, as a condition of continuing employment? What can or should we do if employees refuse?	<p>No. The vaccine and providing information on vaccination is voluntary and not a ground for dismissal.</p> <p>However, if a risk assessment is carried out, and it is determined that unvaccinated employees pose a hazard at the workplace, the employer must first and foremost make an effort to reorganise work tasks so the employee can be offered work that is in accordance with their employment contract. If such work cannot be offered, the employee must be offered, wherever possible, work that otherwise corresponds with their competence and experience, for which the employee can reasonably be trained and which they can carry out safely.</p>
Can we require employees (i) to be tested and/or (ii) to present a negative test or evidence of immunity in a specified form on a regular basis?	<p>The employer cannot force the employee to take a COVID-19 test, but a test can be a prerequisite for entering the workplace if this is in line with the above-mentioned risk assessment.</p>
If we require employees to provide evidence of negative tests / immunity, can we require employees to pay for this testing, or are we obliged to pay for it / reimburse employees for any testing costs they incur?	<p>In the above-mentioned situation, the costs of the COVID-19 test are, in principle, the responsibility of the employer. The reimbursement of costs in the workplace is determined by agreement.</p>
Can we require employees to be vaccinated, as a condition of physical attendance at the workplace?	<p>No. Only allowing vaccinated personnel to the workplace could be seen to constitute discrimination based on employees' health. However, the employer can issue an internal guideline instructing employees who have not been vaccinated not to access the office if remote working options are also in place.</p>
Can we require employees to be vaccinated, or provide evidence of negative tests/immunity, as a condition of work-related travel?	<p>No. As mentioned above, the employer cannot force the employees to show proof of the vaccination or a test/immunity. Employees should also not be discriminated against on the grounds of their health and thus restricting travel of non-vaccinated employees is not recommended. Employers can advise employees that employees without a negative test result should not participate in work-related travel, if this is deemed as a risk for employee safety.</p> <p>Employees who travel internationally for work will need to comply with the applicable requirements for international travel. Some jurisdictions have imposed travel restrictions which either (i) prohibit; or (ii) impose additional quarantine requirements in respect of, the entry of unvaccinated individuals to the country. There are also testing requirements in place for all international travel. Therefore, in order to travel for work, employees may need to be vaccinated and will be required to submit to specific government-imposed testing requirements.</p> <p>If an employee refuses to comply with legally-required vaccination or testing requirements causing them to be unable to enter the required country, the employer may have grounds to allocate the employee to work which does not involve travel and/or to take disciplinary action. The question of whether such action is lawful or not will depend on the specific circumstances, including the nature of the role, how essential the travel is for the performance of the role, which jurisdictions are involved, what the entry requirements are, and the reason for refusal.</p> <p>Specific advice should be sought about any requirements for cross-border travel as the position is complex and constantly changing.</p>
Are we required to provide accommodations to employees who have not been vaccinated?	<p>Employees should not be discriminated against due to their health.</p>

Employees & Workers cont

<p>Can we retain the vaccination / test / immunity records of employees? (Such records would include vaccine passports, proof of vaccination or other evidence of immunity, test results etc.).</p>	<p>Vaccination data is deemed to be health data in accordance with 9 Article of the GDPR.</p> <p>Processing employees' health data must fulfil the necessity requirement specified in Section 3 of the Act on the Protection of Privacy in Working Life. Health data may be processed if the information is necessary considering the rights and obligations of the employment relationship or the special nature of the work concerned. No exceptions can be made to the necessity requirement with the employee's consent. Vaccination data shall be collected primarily from the employee concerned. Collecting vaccination data from an external operator requires obtaining the employee's consent.</p> <p>According to the Act on the Protection of Privacy in Working Life (759/2004), the employer may process the employee's state of health data if it is necessary for the payment of sick pay or equivalent health benefits or to determine whether there is a justified reason for absence from work. The processing of health data is also permitted if the employee expressly wishes his or her ability to work to be determined based on the health data. In addition, the employer has the right to process the employee's health information in situations that are specifically provided for elsewhere in the law. We see that in certain sectors, it would be reasonable and in line with Workplace Safety Legislation to ask employees about their vaccination status. Such sectors include social welfare and healthcare. In these sectors, we assess that the employer could ask employees for their vaccinations status and process this information to carry out a risk assessment.</p> <p>The employer may also request statistical information on occupational health on the coverage of vaccination in the workplace.</p> <p>The above also applies to test results and immunity records.</p>
<p>If an employee refuses a request or requirement for vaccination asserting medical reasons, can we require proof of the medical reason?</p>	<p>No. As specified above, processing health data must satisfy the requirements of Articles 3 and 5 of the Act on Protection of Privacy in Working Life. We see it is highly unlikely that processing information on such medical reasons would fulfil the necessity requirement and be in line with Workplace Safety Legislation, as simply knowing the medical reason for not taking the vaccination would not improve the safety of the workplace.</p>

Mobile / Gig Economy / Agency Workers

<p>Can we ask individuals if they have been vaccinated?</p>	<p>Yes. Asking but not recording the answer is allowed and not considered processing according to GDPR. Individuals can always decline to answer.</p> <p>If an individual is deemed a private contractor and not an employee, the answers regarding visitors would apply to him/her. However, we are more inclined to assess that generally mobile/gig economy/agency workers should be viewed as workers when it comes to privacy in working life.</p>
<p>Can we carry out workplace testing of individuals /require individuals to provide evidence of a negative test?</p>	<p>No, you cannot carry out tests. In principle only healthcare professionals should carry out tests.</p> <p>Employers cannot force anyone to take the test, but they may ask for evidence of a test before allowing anyone to enter their premises.</p>
<p>Can we require individuals to be vaccinated, as a condition of continuing engagement? What can or should we do if an individual refuses?</p>	<p>You cannot force anyone to get tested. However, you can decide to only allow people with negative test results to enter your premises.</p>
<p>Can we require individuals (i) to be tested and/or (ii) to present a negative test or evidence of immunity in a specified form on a regular basis?</p>	<p>You cannot force anyone to get vaccinated. Dismissal is not possible, but reorganization of work can be done to ensure workplace safety.</p>
<p>If we required individuals to provide evidence of negative tests / immunity, can we require individuals to pay for this testing, or are we obliged to pay for it / reimburse individuals for any testing costs they incur?</p>	<p>The costs of the COVID-19 test are, in principle, the responsibility of the employer. If there is no employment relationship in place, this should be agreed on contractually.</p>
<p>Can we require individuals to be vaccinated, as a condition of physical attendance at any premises?</p>	<p>No. Only allowing vaccinated personnel access to the workplace could be seen to constitute discrimination based on employees' health. However, the employer can issue an internal guideline instructing employees who have not been vaccinated not to access the office if remote working options are also in place.</p>

Mobile / Gig Economy / Agency Workers cont

<p>Can we require workers to be vaccinated, or provide evidence of negative tests/ immunity, as a condition of work-related travel?</p>	<p>No.</p> <p>As mentioned above, the employer cannot force the workers to show proof of the vaccination or a test/ immunity. Workers should also not be discriminated against on the grounds of their health and thus restricting travel of non-vaccinated workers is not recommended. Employers can advise workers that workers without a negative test result should not participate in work-related travel, if this is deemed as a risk for employee safety.</p> <p>Workers who travel internationally for work will need to comply with the applicable requirements for international travel. Some jurisdictions have imposed travel restrictions which either (i) prohibit; or (ii) impose additional quarantine requirements in respect of, the entry of unvaccinated individuals to the country. There are also testing requirements in place for all international travel. Therefore, in order to travel for work, workers may need to be vaccinated and will be required to submit to specific government-imposed testing requirements.</p> <p>If a worker refuses to comply with legally-required vaccination or testing requirements causing them to be unable to enter the required country, the employer may have grounds to allocate the worker to work which does not involve travel and/or to take disciplinary action. The question of whether such action is lawful or not will depend on the specific circumstances, including the nature of the role, how essential the travel is for the performance of the role, which jurisdictions are involved, what the entry requirements are, and the reason for refusal.</p> <p>Specific advice should be sought about any requirements for cross-border travel as the position is complex and constantly changing.</p>
<p>Are we required to provide accommodations to individuals who have not been vaccinated?</p>	<p>Individuals should not be discriminated due to their health.</p>
<p>Can we retain the vaccination / test / immunity records of workers? (Such records would include vaccine passports, proof of vaccination or other evidence of immunity, test results etc.).</p>	<p>Only if conditions laid out in Articles 3 and 5 of the Act on Protection of Privacy in Working Life are fulfilled.</p>
<p>If an individual refuses a request or requirement for vaccination asserting medical reasons, can we require proof of the medical reason?</p>	<p>No, we see it would be hard to prove that this information would be necessary to minimize risk.</p>

Visitors

<p>Can we ask visitors if they have been vaccinated?</p>	<p>Yes, but with limitations. There is no direct guidance available. Visitors can in any case refuse to answer. As mentioned before, asking but not recording the answers does not fall under data protection legislation.</p>
<p>Can we exclude visitors who have not had a vaccine from the workplace?</p>	<p>Yes, but with limitations. Generally, visitors can be refused entry provided the organization owns the premises and does not use any unjustified discriminatory measures to exclude visitors.</p>
<p>Can we test visitors on entry into our premises?</p>	<p>No. As a rule, only healthcare professionals should carry out tests.</p>
<p>As an alternative to asking a visitor to confirm their vaccination status, can we (i) require them to provide evidence of a negative test or (ii) require them to be tested prior to entry to our premises and deny them entry if they return a positive test or refuse to comply?</p>	<p>i) Yes, but with limitations. You can ask for evidence of a test, however, visitors do not have to provide it. ii) No. As mentioned, only healthcare professionals can carry out tests.</p>
<p>Can we ask for proof of vaccination status?</p>	<p>Yes, but with limitations. There is no guidance available. Visitors can in any case refuse to answer. If the answers are stored, you need a legal basis under Article 9 of the GDPR.</p>
<p>Can we retain the vaccination records of visitors?</p>	<p>Yes, but with limitations. This is possible only if you have a legal basis for processing health data according to Article 9 of the GDPR.</p>

Employees & Workers	
Can we ask employees if they have been vaccinated?	<p>It depends.</p> <p>The Act of 5th August 2021 on the management of the health crisis provides for two cases: (i) employers of establishments listed in this act are permitted to check the vaccination status of their employees, i.e. for example for caregivers and for health and medico-social professionals, and (ii) in some other listed cases, employers are permitted to check the health pass of their employees (i.e. negative PCR or antigen result, attestation of recovering from Covid-19, attestation of vaccination).</p> <p>For establishments which do not fall under these two categories, the French data protection authority's (the "CNIL") guidelines (see here) and the Protocol and FAQ published on the French Ministry of Employment's website (see here and here) will apply. In accordance with these regulations, data relating to vaccination can only be accessible to the occupational health services and not to the employer.</p>
Can we carry out workplace testing of employees / require employees to provide evidence of a negative test?	<p>Yes, but subject to certain limits.</p> <p>An employer can organise employee-wide screening in the event of a suspected or proven outbreak of the virus in the district in which the company is located. However (i) employees cannot be required to take part in the screening initiative; (ii) these tests can only be carried out by a healthcare professional; and (iii) under no circumstances can the employer receive the results of such tests. At most the employer will receive a medical opinion of whether the employee is fit to work or not.</p>
Can we require employees to be vaccinated, as a condition of continuing employment? What can or should we do if employees refuse?	<p>No. Employers in France cannot force employees to be vaccinated unless they work in a professional sector where the law requires mandatory vaccination. Similarly, it is not possible to force an employee to be tested.</p> <p>Unless the employee will be performing a healthcare role or will be working in a hospital, nursing home, etc, the employer is not permitted to formally condition a job offer on being vaccinated.</p> <p>In France there is an official Health Pass which confirms that an individual is either fully vaccinated, has a negative test result (72 hours old or less) or immunity due to recovery from Covid-19 (6 months ago or less). The French Ministry of Labour has indicated that for roles where a Health Pass will be required (i.e. employees who need to access hospitals) an employer can inform the applicant that:</p> <ul style="list-style-type: none"> - given the nature of the tasks of the job, he/she will be required to provide a valid Health Pass; - failure to do so could lead to a suspension of the employment contract without pay.
Can we require employees (i) to be tested and/or (ii) to present a negative test or evidence of immunity in a specified form on a regular basis?	<p>No. The employer cannot demand such a test as it is not required by law. Only the persons authorised to check the tests (e.g. occupational health) may request proof.</p> <p><i>Exception: health care workers or employees working in locations where the Health Pass is mandatory.</i></p>
If we require employees to provide evidence of negative tests / immunity, can we require employees to pay for this testing, or are we obliged to pay for it / reimburse employees for any testing costs they incur?	<p>Unclear at this stage</p> <p>Covid testing is currently free in France.</p> <p>This will change in the coming weeks but French law does not yet specify whether employees will need to bear the cost of testing.</p> <p>If the legislator considers that PCR tests are business expenses, then the employer will need to reimburse them. This should be clarified in the coming weeks.</p>
Can we require employees to be vaccinated, as a condition of physical attendance at the workplace?	<p>No. Employers in France cannot force employees to be vaccinated unless they work in a professional sector where the law requires mandatory vaccination.</p> <p>Until 15 November 2021, if an employee refuses to present a valid Health Pass in places where it is compulsory, the employer may require the employee to work remotely during a certain number of days per week if the employee's activities can be performed remotely.</p>
Can we require employees to be vaccinated, or provide evidence of negative tests/immunity, as a condition of work-related travel?	<p>Unclear at this stage.</p> <p>A company which does not fall in the scope of Health Pass or mandatory vaccination cannot currently check its employees' Health Pass or vaccination status.</p> <p>However, we believe that the employer could make it conditional for work-related travel to be vaccinated, as a health and safety measure (similar to other vaccinations). The employer cannot take disciplinary measures against the employee and must continue to provide the employee with work. The employer can reallocate the employee to another role with the employee's consent.</p>
Are we required to provide accommodations to employees who have not been vaccinated?	<p>Employees and employers are encouraged to get vaccinated as part of the French health authorities' vaccination strategy.</p> <p>Employers are encouraged to reach out to their occupational health services to organize vaccination.</p> <p>Employers must also allow paid work absence for appointments related to vaccinations against covid-19.</p> <p>Employees who are subject to the Health Pass obligation and fail to present a valid Health Pass can be suspended without pay for 3 days. After these 3 days, a meeting needs to take place with the employee to discuss ways of regularising the situation (e.g. temporary assignment to a position not subject to the above-mentioned obligation, remote work, etc).</p> <p>At the end of the suspension process and in the event of a persistent deadlock, standard termination procedures may be applied.</p>

Can we retain the vaccination / test / immunity records of employees? (Such records would include vaccine passports, proof of vaccination or other evidence of immunity, test results etc.).	<p>It depends.</p> <p>The Act of 5th August 2021 relating to the management of the health crisis indicates as a general principle that it is forbidden for persons authorised to check an employee's health pass to store the health pass or reuse them for other purposes.</p> <p>By way of derogation from this general prohibition, the categories of employers which according to the act must check the vaccination or the health pass of their employees are authorised to keep the result of the verification operation.</p> <p>According to the government's guidelines: "For employees subject to compulsory vaccination, the law allows the employer, or the competent regional health agency if applicable, to keep the result of the check of the proof of vaccination status.</p> <p>Employees subject to the health pass may present their employer with their complete proof of vaccination status. In this case, the employer may keep the result of the check carried out and, if necessary, issue a specific certificate allowing for a simplified verification.</p> <p>The employer may not keep the proof. In other words, the employer may not keep the QR code but only the result of the verification operation, i.e. the information as to whether the pass is valid or not.</p> <p>The information thus collected is personal data subject to the General Data Protection Regulation (GDPR)."</p>
If an employee refuses a request or requirement for vaccination asserting medical reasons, can we require proof of the medical reason?	<p>It depends.</p> <p>For categories of employees which according to the act must be vaccinated against Covid-19, the FAQ published on the French Ministry of Employment's website specifies that a document attesting the medical reasons for non-vaccination may be presented in lieu of the documents required by the health pass.</p> <p>The FAQ also provides that from 16th October 2021, employees subject to compulsory vaccination shall present to their employer a complete vaccination schedule or a document attesting that they are not subject to it due to medical reasons or due to recovery from COVID-19.</p> <p>Certificates of such medical reasons or recovery can be presented to the competent occupational physician, who will inform the employer, without delay, of the fulfilment of the vaccination obligation with, if necessary, the term of validity of the certificate transmitted.</p> <p>For categories of establishments not subject to compulsory vaccination or the health pass, vaccination status or medical reasons justifying non-vaccination are considered as sensitive medical data in the sense of Article 4, §1, 15), of the EU GDPR. As a general principle, it is therefore forbidden for an employer to have access to such data.</p>

Mobile / Gig Economy / Agency Workers	
Can we ask individuals if they have been vaccinated?	<p>No. Except for agency workers, if their role requires mandatory vaccination as per French law.</p> <p>In such cases:</p> <ul style="list-style-type: none"> - in sectors where vaccination is compulsory, the temporary employment agency must undertake to provide the user company with staff who meet the legal vaccination requirements; - and it is up to the user company to apply to temporary employees the Health Pass verification procedures that apply to its permanent employees. <p>In these specific cases where Health Pass or vaccination is made mandatory by law, the agency contract may be suspended under the same conditions as a permanent employment contract in the event of failure to comply with these requirements.</p>
Can we carry out workplace testing of individuals / require individuals to provide evidence of a negative test?	<p>Yes, but only temporary staff who are to be made available to user companies in sectors where vaccination or Health Pass is mandatory (eg: hospitals, restaurants, etc).</p>
Can we require individuals to be vaccinated, as a condition of continuing engagement? What can or should we do if an individual refuses?	<p>Yes, but only temporary staff who are to be made available to user companies in sectors where vaccination or Health Pass is mandatory (e.g. hospitals, restaurants, etc).</p> <p>In these specific cases where Health Pass or vaccination is made mandatory by law, the agency contract may be suspended and eventually terminated under the same conditions as a permanent employment contract in the event of failure to comply with these requirements.</p> <p>However, if the employee is not subject to this vaccination requirement, the company may not terminate the contract for this reason.</p>
Can we require individuals (i) to be tested and/or (ii) to present a negative test or evidence of immunity in a specified form on a regular basis?	<p>Yes, but only temporary staff who are to be made available to user companies in sectors where vaccination or Health Pass is mandatory (e.g. hospitals, restaurants, etc).</p>
If we required individuals to provide evidence of negative tests / immunity, can we require individuals to pay for this testing, or are we obliged to pay for it / reimburse individuals for any testing costs they incur?	<p>Unclear at this stage. Covid testing is currently free in France.</p> <p>This will change in the coming weeks but French law does not yet specify whether employees will need to bear the cost of testing.</p> <p>If the legislator considers that PCR tests are business expenses, then the employer will need to reimburse them. This should be clarified in the coming weeks.</p>

France Continued

Mobile / Gig Economy / Agency Workers cont

Can we require individuals to be vaccinated, as a condition of physical attendance at any premises?	<p>No. Employers in France cannot force agency employees to be vaccinated if they work in a sector where the law requires mandatory vaccination.</p> <p>Until 15 November 2021, if an employee refuses to present a valid Health Pass in places where it is compulsory, the employer may require the employee to work remotely during a certain number of days per week if the employee's activities can be performed remotely.</p>
Can we require workers to be vaccinated, or provide evidence of negative tests/immunity, as a condition of work-related travel?	<p>Unclear at this stage. A company which does not fall under the scope of Health Pass or mandatory vaccination cannot currently check its agency employees' Health Pass or vaccination status.</p> <p>However, we believe that the employer could make it conditional for work-related travel to be vaccinated, as a health and safety measure (similar to other vaccinations).</p> <p>Regarding disciplinary action: For agency workers: same answer as above for employees. For the gig economy: these individuals are not employees and therefore not subject to employment law (so it may be possible to require vaccination as part of a commercial or service agreement).</p>
Are we required to provide accommodations to individuals who have not been vaccinated?	<p>Employees and employers are encouraged to get vaccinated as part of the French health authorities' vaccination strategy.</p> <p>Employers are encouraged to reach out to their occupational health services to organize vaccination.</p> <p>Employers must also allow paid work absence for appointments related to vaccinations against covid-19.</p> <p>Employees who are subject to the Health Pass obligation and fail to present a valid Health Pass can be suspended without pay for 3 days. After these 3 days, a meeting needs to take place with the employee to discuss ways of regularising the situation (e.g. temporary assignment to a position not subject to the above-mentioned obligation, remote work, etc).</p> <p>At the end of the suspension process and in the event of a persistent deadlock, standard termination procedures may be applied.</p>
Can we retain the vaccination / test / immunity records of workers? (Such records would include vaccine passports, proof of vaccination or other evidence of immunity, test results etc.).	<p>It depends.</p> <p>Pursuant to the Protocol and FAQ published on the French Ministry of Employment's website, agency workers are employed by a temporary work company which is responsible for their working conditions, including health and safety at work. The temporary work company must apply the same procedures it applies to permanent workers to agency workers.</p> <p>The Act of 5th August 2021 relating to the management of the health crisis indicates as a general principle that it is forbidden for persons authorised to check employee's health pass to keep them or reuse them for other purposes.</p> <p>By way of derogation from this general prohibition, the categories of employers which according to the act must check the vaccination or the health pass of their employees are authorised to keep the result of the verification operation.</p> <p>According to the government's guidelines: "For employees subject to compulsory vaccination, the law allows the employer, or the competent regional health agency if applicable, to keep the result of the check of the proof of vaccination status.</p> <p>Employees subject to the health pass may present their employer with their complete proof of vaccination status. In this case, the employer may keep the result of the check carried out and, if necessary, issue a specific certificate allowing for a simplified verification.</p> <p>The employer may not keep the proof. In other words, the employer may not keep the QR code but only the result of the verification operation, i.e. the information as to whether the pass is valid or not. The information thus collected is personal data subject to the General Data Protection Regulation (GDPR)."</p>
If an individual refuses a request or requirement for vaccination asserting medical reasons, can we require proof of the medical reason?	<p>It depends. Same rules apply for agency workers.</p> <p>For categories of employees which according to the act must be vaccinated against COVID-19, the FAQ published on the French Ministry of Employment's website specify that a document attesting medical reasons for non-vaccination may be presented in lieu of the documents required by the health pass.</p> <p>The FAQ also provides that from 16th October 2021, employees subject to compulsory vaccination shall present to their employer a complete vaccination schedule or a document attesting that they are not subject to it due to medical reasons or due to recovery from COVID-19.</p> <p>Certificates of such medical reasons or recovery can be presented to the competent occupational physician, who will inform the employer, without delay, of the fulfilment of the vaccination obligation with, if necessary, the term of validity of the certificate transmitted.</p> <p>For categories of establishments not subject to compulsory vaccination or to health pass, vaccination status or medical reasons justifying the absence of vaccination are considered as sensitive medical data in the sense of Article 4, §1, 15), of the EU GDPR. As a general principle, it is therefore forbidden for an employer to have access to such data.</p>

Visitors

Can we ask visitors if they have been vaccinated?	No. However visitors are subject to the same Health Pass presentation obligation in places where such obligation is provided by law (e.g. restaurants, movie theatres, hospitals, airports, etc).
Can we exclude visitors who have not had a vaccine from the workplace?	No. However visitors who are not able to present a valid Health Pass in places where such obligation is provided by law can and should be excluded.
Can we test visitors on entry into our premises?	Yes. On a voluntary basis. However visitors who are not able to present a valid Health Pass in places where such obligation is provided by law can and should be excluded.
As an alternative to asking a visitor to confirm their vaccination status, can we (i) require them to provide evidence of a negative test or (ii) require them to be tested prior to entry to our premises and deny them entry if they return a positive test or refuse to comply?	Yes. But only in places where the Health Pass is mandatory by law.
Can we ask for proof of vaccination status?	No. However visitors who are not able to present a valid Health Pass in places where such obligation is provided by law can and should be excluded.
Can we retain the vaccination records of visitors?	<p>No. The Act of 5th August 2021 about the management of the health crisis specifies that as a general principle, it is forbidden for a person authorised to check health passes to keep them or reuse them for another purposes.</p> <p>During the hearing of the President of the CNIL on the bill of the above-mentioned act dated 21st July 2021, the President of the CNIL indicated that "it is essential to maintain the prohibition on retaining data at the end of the verification process in order to ensure, in particular, that such data cannot be reused for any other purpose. This does not prevent the result of the verification (overall information on the validity or otherwise of the credential) from being kept for as long as necessary."</p> <p>It will only be possible to keep track of the fact that the verification has been carried out and that the result is valid or not.</p>

Germany

Employees & Workers

<p>Can we ask employees if they have been vaccinated?</p>	<p>Yes, but with limitations.</p> <p>There is no general obligation for employees (including applicants) to provide information about their vaccination status.</p> <p>An employee's vaccine status is health data and is considered to be special category data, which can only be processed to a very limited extent in accordance with Article 9 (1) GDPR, Section 26 (3) German Federal Data Protection Act (BDSG), provided there is a specific need to do so. There may be exceptional circumstances where after balancing of both parties' interests, employees may be required to disclose such information, such as for employees in health care.</p> <p>In the absence of a corresponding regulation, German DPAs highlight that the consent of the employee (voluntary basis) is generally required for the processing of personal data (though some specific employment related criteria must be met).</p> <p>Please note that a new law is currently being discussed that would require employees in nursing homes, schools and kindergartens to provide vaccination information. Such sector specific laws already exist e.g. for a number of medical institutions.</p> <p>Please also note that exceptions might exist in COVID legislation on a federal state ("Bundesland") level, e.g. for certain employees that were on "leave" (incl. sabbatical, special leave and comparable time off, home office) and return to the office or meet with a client after the leave. German Data Protection Authorities (DPAs) highlight that, if information on vaccination/test status can be requested, a copy of the document and otherwise documentation must not be made as to which personal exemption reason exists (if not expressly required by laws allowing requesting of information).</p>
<p>Can we carry out workplace testing of employees / require employees to provide evidence of a negative test?</p>	<p>Yes, but with limitations.</p> <p>Even though, a testing requirement may interfere with employees' personal rights, in light of the pandemic the employer's interest in testing / evidence of a negative test will typically prevail over the employees' interest in order to ensure a secure workplace.</p> <p>There is no general obligation for employees (including applicants) to provide information about their negative test results.</p> <p>In the absence of a corresponding regulation, German DPAs highlight that the consent of the employee is generally required for the processing of personal data (though some specific employment related criteria must be met).</p> <p>As of April 2021, there is an obligation for operational testing with exception options. All employees, other than those who work exclusively from home, must be offered at least two free COVID-19 tests per week (PCR tests or professionally/self-applied rapid antigen tests). If possible, the testing offers should be taken advantage of prior to starting the relevant activity. Employers are charged with the cost of the tests. Employees may accept the testing offers but are not required to do so. If there is equivalent protection, the employer is exempt from the testing obligation, e.g. employees for whom there is (voluntary) proof of complete vaccination or of a previous infection that occurred at least 28 days and at most six months ago. Employers have a duty to retain evidence of test procurement and agreements with third parties on the testing of employees.</p>
<p>Can we require employees to be vaccinated, as a condition of continuing employment? What can or should we do if employees refuse?</p>	<p>No.</p> <p>Currently, the German government (including German DPAs) still supports the view that there is no legal obligation to get vaccinated against COVID-19. A vaccination can only therefore be voluntary.</p> <p>As a vaccination is an infringement of someone's physical integrity, it would require a specific justification and will only be legal in exceptional cases. Economic reasons or even the employer's obligation to protect the health of its employees will not justify such an infringement. A specific requirement to be vaccinated could be considered with respect to specific professions where employees are exposed to specific dangers or will be deemed to be a risk for others, in particular employees working in the health sector (e.g. physicians, nurses, etc.). If, however, the German government changes its opinion at a later point in time and creates / extends the legal obligation to get vaccinated then the legal evaluation might be different. That said, we anticipate that even in such a case, employer must very carefully assess whether it can insist on a vaccination as this would interfere with the employee's personal rights, which are protected by the German constitution. However, if an obligation were to exist, but nevertheless the employees refuse to be vaccinated, they might have to accept that they will lose their right to claim for loss of earnings if they are sick or self isolating due to COVID-19 (which may already be the case for employees / job applicants of certain medical institutions and could be extended to further sectors).</p> <p>According to the prevailing opinion, a behavioural dismissal based on refusal to vaccinate is inadmissible, as this would be equivalent to a factual obligation to vaccinate. Exceptionally, however, a person-related termination may be effective if the contractual performance can no longer be provided without restriction due to the lack of vaccination and no other employment opportunities exist (e.g. for employees with contact with particularly vulnerable groups).</p> <p>Employers can make vaccinations available to staff (e.g. company doctors are now allowed to vaccinate against COVID-19) and can actively promote vaccination, but detrimental effects cannot be based on the individual's decision to not have the vaccine. Employers who do so should plan ahead, have a clear, consistent communication strategy and actively engage with staff.</p>

Employees & Workers cont

<p>Can we require employees (i) to be tested and/or (ii) to present a negative test or evidence of immunity in a specified form on a regular basis?</p>	<p>Yes, but with limitations.</p> <p>The employer may only require employees to be tested / present a negative test result or immunity for a justified reason, such as to secure a healthy area for customers (e.g. in case of retail shops) or healthy work place for all employees.</p> <p>In the absence of a corresponding regulation, German DPAs highlight that the employee's consent is generally required to collect such data.</p> <p>There is no general obligation for employees (including applicants) to provide information about their negative test results.</p> <p>Please also note that exceptions might exist in COVID legislation on a federal state level, e.g. for certain employees that were on "leave" (incl. sabbatical, special leave and comparable time off, home office) and return to the office or meet with a client after the leave. German DPAs also highlight that, if information on vaccination/test status can be requested, a copy of the document and otherwise documentation must not be made as to which personal exemption reason exists (if not expressly required by laws allowing the requesting of such information).</p>
<p>If we require employees to provide evidence of negative tests / immunity, can we require employees to pay for this testing, or are we obliged to pay for it / reimburse employees for any testing costs they incur?</p>	<p>No.</p> <p>If the employer requires employees to provide negative test results, the employer must reimburse the costs for such testing.</p> <p>In addition, as per statutory law, employers must offer their employees at least two free COVID-19 tests per week since April 2021 anyway. This quota can therefore also be used to test employees. The costs for the tests carried out at the company are borne by the employer.</p>
<p>Can we require employees to be vaccinated, as a condition of physical attendance at the workplace?</p>	<p>No. As long there is no legal obligation to get vaccinated against COVID-19, employers cannot require their employees to be vaccinated. Please see answer above regarding mandatory vaccinations for more details.</p>
<p>Can we require employees to be vaccinated, or provide evidence of negative tests/immunity, as a condition of work-related travel?</p>	<p>Yes, but with limitations.</p> <p>This is permissible to the extent necessary for employees to perform their duties and to comply with applicable travel regulations. As mentioned above, there is currently no legal obligation to vaccinate, so employers cannot force their employees to be vaccinated.</p> <p>Employees who travel for work must comply with applicable regulations for domestic and international travel. Some countries have enacted travel restrictions that either (i) prohibit unvaccinated individuals from entering the country or (ii) impose additional quarantine requirements. There are also testing requirements for all international travel. Therefore, in order to travel for work, employees may need to be vaccinated or immune and undergo certain government-mandated tests.</p> <p>If an employee refuses to comply with legally required vaccinations or tests, the employer may have grounds to assign the employee to work that does not involve travel and/or take disciplinary action, up to and including discharge (see above).</p>
<p>Are we required to provide accommodations to employees who have not been vaccinated?</p>	<p>Yes, but with limitations.</p> <p>As there is no statutory obligation to get vaccinated, employers are obliged to provide for a healthy work environment for all employees, including employees who are not vaccinated.</p> <p>However, in individual cases, employers might be able to use the (lawfully collected) information on vaccination status e.g. to organize their own work processes (by which unvaccinated employees might be excluded from certain facilities, e.g. canteen).</p>
<p>Can we retain the vaccination / test / immunity records of employees? (Such records would include vaccine passports, proof of vaccination or other evidence of immunity, test results etc.).</p>	<p>Yes, but with limitations.</p> <p>The further storage of vaccination / test / immunity records also requires a legal basis (like the requesting of such documents) under applicable data protection laws (e.g. Section 26 (3) BDSG and Article 9 (2) (b) GDPR in connection with sector specific/local regulations e.g. legal ordinances of the federal states). Generally speaking, retention of vaccination / test / immunity records is not required by law (even if collection of respective data might be allowed) and might also not be necessary to fulfil the purposes of collection of such information. This therefore needs to be assessed on a case-by-case basis.</p> <p>German DPAs also highlight that, if information on vaccination/test status can be requested, a copy of the document and otherwise documentation must not be made as to which personal exemption reason exists (if not expressly required by laws allowing requesting of information). Please note personal exemption reason means whether the employee is fully vaccinated, has tested negative or has immunity due to having recovered from COVID-19.</p> <p>In the absence of a corresponding regulation, German DPAs highlight that the employee's consent is generally required for the processing of personal data in connection with a negative test/evidence of immunity (though some specific employment related criteria must be met).</p>
<p>If an employee refuses a request or requirement for vaccination asserting medical reasons, can we require proof of the medical reason?</p>	<p>Yes, but with limitations.</p> <p>There is no general requirement to get vaccinated. However, if under exceptional circumstances, the request or requirement for vaccination is justifiable, we believe that the employer is entitled to ask the refusing employee for suitable medical evidence to its satisfaction, within reason. The employer must also demonstrate that processing of such evidence is necessary for compliance with health and safety obligations under employment law (Article 9 (2) (b) GDPR in connection with Section 26 (3) BDSG).</p>

Germany Continued

Mobile / Gig Economy / Agency Workers

Can we ask individuals if they have been vaccinated?	<p>Yes, but with limitations. For individuals that are considered “employees” under German laws, see answer to the same question in Section “Employees & Workers” above.</p> <p>For individuals who are not engaged under an employment relationship, the company has broad rights to determine the rules for individuals to access the company’s premises.</p>
Can we carry out workplace testing of individuals /require individuals to provide evidence of a negative test?	<p>Yes, but with limitations. For individuals that are considered “employees” under German laws, see answer to the same question in Section “Employees & Workers” above.</p> <p>For other externals, companies may determine the rules under which external visitors may enter their premises.</p>
Can we require individuals to be vaccinated, as a condition of continuing engagement? What can or should we do if an individual refuses?	<p>Yes, but with limitations. For individuals that are considered “employees” under German laws, see answer to the same question in Section “Employees & Workers” above.</p> <p>For other externals, companies may determine the rules under which external visitors may enter their premises.</p>
Can we require individuals (i) to be tested and/or (ii) to present a negative test or evidence of immunity in a specified form on a regular basis?	<p>Yes, but with limitations. For individuals that are considered “employees” under German laws, see answer to the same question in Section “Employees & Workers” above.</p> <p>For the purpose of securing a health work environment for employees and other externals who access their workplace, a general testing requirement can be implemented.</p>
If we required individuals to provide evidence of negative tests / immunity, can we require individuals to pay for this testing, or are we obliged to pay for it / reimburse individuals for any testing costs they incur?	<p>Yes, but with limitations. For individuals that are considered employees, the company has to reimburse for the costs of such testing, for externals, the Company can require individuals to get tested at their own costs.</p> <p>For employees, employers must offer their employees at least two free Corona tests per week since April 2021 anyway (see above). This quota can therefore also be used to test employees. The costs for the tests carried out at the company are borne by the employer.</p>
Can we require individuals to be vaccinated, as a condition of physical attendance at any premises?	<p>Yes, but with limitations. For individuals that are considered “employees” under German laws, see answer to the same question in Section “Employees & Workers” above.</p> <p>For freelancers / externals, the company can determine the preconditions of access.</p>
Can we require workers to be vaccinated, or provide evidence of negative tests/ immunity, as a condition of work-related travel?	<p>Yes, but with limitations. For individuals that are considered “employees” under German laws, see answer to the same question in Section “Employees & Workers” above.</p> <p>For externals, this might be permissible to the extent necessary to perform their duties and to comply with applicable travel regulations.</p> <p>There is no general obligation to require such documents.</p>
Are we required to provide accommodations to individuals who have not been vaccinated?	<p>Yes, but with limitations. Companies are under an obligation to provide a secure work environment for all individuals engaged under any service agreement, irrespective of whether such individual is vaccinated or not.</p> <p>However, in individual cases, companies might be able to use the (lawfully collected) information on vaccination status e.g. to organize their own work processes (e.g. unvaccinated individuals might be excluded from certain facilities, e.g. canteen).</p>
Can we retain the vaccination / test / immunity records of workers? (Such records would include vaccine passports, proof of vaccination or other evidence of immunity, test results etc.).	<p>Yes, but with limitations. For individuals that are considered “employees” under German laws, see answer to the same question in Section “Employees & Workers” above.</p> <p>For externals: The further storage of vaccination / test / immunity records also requires a legal basis (like the requesting of such documents) under applicable data protection laws (e.g. Article 9 (2) (b) GDPR in connection with sector specific/local regulations e.g. legal ordinances of the federal states).</p> <p>Generally speaking, retention of vaccination / test / immunity records is not required by laws (even if collection of respective data might be allowed) and might also not be necessary to fulfil the purposes of collection of such information. This therefore needs to be assessed on a case-by-case basis.</p> <p>German DPAs also highlight that, if information on vaccination/test status can be requested, a copy of the document and otherwise documentation must not be made as to which personal exemption reason exists (if not expressly required by laws allowing requesting of information).</p> <p>In the absence of a corresponding regulation, German DPAs highlight that the individual’s consent is required for the processing of personal data in connection with a negative test/evidence of immunity.</p>

Mobile / Gig Economy / Agency Workers cont

If an individual refuses a request or requirement for vaccination asserting medical reasons, can we require proof of the medical reason?	<p>Yes, but with limitations.</p> <p>There is no general requirement to get vaccinated. However, if under exceptional circumstances, the request or requirement for vaccination is justifiable, we believe that the employer/company is entitled to ask the refusing individual or suitable medical evidence to its satisfaction, within reason. The employer/company must also demonstrate that processing of such evidence is necessary for compliance with health and safety obligations under employment law (Article 9 (2) (b) GDPR).</p>
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Visitors

	<p>Yes, but with limitations. Generally, based on the domiciliary right (“Hausrecht”) each company may decide to whom access to the company sites shall be granted, especially if the company considers that there is a high risk to its employees which cannot be mitigated differently. Even if so, any measure leading to the processing of personal (health) data of visitors needs to rely on a legal basis as a general principle of data processing.</p>
Can we ask visitors if they have been vaccinated?	<p>In the absence of a corresponding regulation, German DPAs highlight that consent (Art. 6 (1) (a) GDPR) could be considered as the legal basis for collection and further processing of personal data of visitors (e.g. restaurants, retail shops) on the vaccination and testing status.</p> <p>If companies do not want to / cannot collect visitor’s formal consent in a practical way, depending on the specific case, they could arguably also ask for vaccination / test status without formal consent (but on a voluntary basis), as necessary for reasons of substantial public interest, on the basis of COVID 19 specific laws (e.g. federal state ordinances that grant partial exemptions from COVID measures to fully vaccinated persons).</p>
Can we exclude visitors who have not had a vaccine from the premises?	<p>Yes, but with limitations. Generally, based on the domiciliary right (“Hausrecht”) each company may decide to whom access to the company sites shall be granted, especially if the company considers that there is a high risk to its employees which cannot be mitigated differently.</p> <p>German DPAs support this view and state that existing measures recommended by the recommended by the Federal Ministry for Health (see here) and other organizational measures taken by companies would represent less severe means of combating the risk of infection.</p>
Can we test visitors on entry into our premises?	<p>Yes, but with limitations. Generally, companies may determine the rules under which external visitors may enter their premises, based on their domiciliary right (“Hausrecht”), especially if the company considers that there is a high risk to its employees which cannot be mitigated differently. However, if personal data is collected, it must be in line with applicable data protection rules.</p>
As an alternative to asking a visitor to confirm their vaccination status, can we (i) require them to provide evidence of a negative test or (ii) require them to be tested prior to entry to our premises and deny them entry if they return a positive test or refuse to comply?	<p>Yes, but with limitations. Many German federal state rules consider negative test results as an alternative sufficient proof for the granting of partial exemptions from such COVID measures.</p> <p>Visitors with positive tests can be restricted from access.</p> <p>Visitors who refuse to comply could be denied based on the domiciliary right (“Hausrecht”), especially if the company is obligated to collect information on vaccination/test results and considers that there is a high risk to its employees which cannot be mitigated differently. However, as there is no legal obligation to be tested before entering premises and the compliance with general hygienical rules will be sufficient enough such an approach might entail unwanted media attention.</p> <p>With regard to the legal bases for processing of personal data, please see our answers under question “Can we ask visitors if they have been vaccinated?” above.</p>
Can we ask for proof of vaccination status?	<p>Yes, but with limitations. With regard to the legal bases for processing of personal data, please see our answers under question “Can we ask visitors if they have been vaccinated?” above.</p>
Can we retain the vaccination records of visitors?	<p>Yes, but with limitations. The further storage of vaccination records also requires a legal basis (like the requesting of such documents) under applicable data protection laws (e.g. Article 9 (2) (b) GDPR in connection with sector specific/local regulations e.g. legal ordinances of the federal states).</p> <p>Generally speaking, retention of vaccination records is not required by law (even if collection of respective data might be allowed) and might also not be necessary to fulfil the purposes of collection of such information. This therefore needs to be assessed on a case-by-case basis.</p> <p>German DPAs also highlight that, if information on vaccination/test status can be requested, a copy of the document and otherwise documentation must not be made as to which personal exemption reason exists (if not expressly required by laws allowing requesting of information).</p> <p>In the absence of a corresponding regulation, German DPAs highlight that the individual’s consent is required for the processing of personal data in connection with a negative test/evidence of immunity.</p>

Hong Kong

Employees & Workers	
Can we ask employees if they have been vaccinated?	<p>Yes. The employer's purpose in requesting the employee's vaccine status must still comply with data protection rules under the Personal Data (Privacy) Ordinance (PDPO). Data collected must be fair, necessary and not excessive. Asking employees whether they have received a vaccine to prevent or control the spread of disease in the workplace is likely to be allowed, particularly in the context of an employer's duty to provide a safe working environment to all employees. On or before obtaining data on the individual's symptoms, employees must be notified of prescribed information (e.g. what data is collected, the purpose of use, voluntary/ mandatory to provide the data etc.)</p>
Can we carry out workplace testing of employees/require employees to provide evidence of a negative test ?	<p>Yes. This is based on an employer's health and safety duty, as well as other duties and obligations. Data collected must be fair, necessary and not excessive. For instance, asking employees about their temperature readings to prevent or control the spread of disease in the premises is likely to be allowed, particularly in the context of an employer's duty to provide a safe working environment to all employees.</p> <p>Employers may also for example carry out Antigen Rapid Tests (ART) on the basis that testing on-site is a lawful and reasonable direction by the employer to ensure immediate compliance with the Occupational Health & Safety Ordinance (OSHO) to take reasonable care of all of their employees' health and safety. Whether or not such a direction is lawful and reasonable will depend on the circumstances including the make-up of the workplace, proximity of employees between each other and to customers etc.</p> <p>On or before obtaining data on the employees' symptoms, employees must be notified of the prescribed information mentioned above (e.g. what data is collected, the purpose of use, voluntary/ mandatory to provide the data etc.).</p>
Can we require employees to be vaccinated, as a condition of continuing employment? What can or should we do if employees refuse?	<p>Yes, however a blanket requirement would pose a degree of legal risk.</p> <p>There is currently no mandatory legal requirement for employees to be vaccinated under Hong Kong law. An employer does however owe a duty of care to its employees, so far as reasonably practicable, to ensure their health, safety and welfare at work under the Occupational Health & Safety Ordinance (OSHO).</p> <p>Employers may make vaccination a condition of being permitted to work in certain environments, on health and safety grounds. Relevant sectors are likely to include healthcare, social care and other high-risk sectors, where an employer's obligation to ensure employees do not pose a risk to patients or clients and vice versa may include an obligation to ensure such employees are vaccinated against common infections / transmissible illnesses / biological hazards. Where an employee refuses to comply with a vaccination requirement, the employer may have grounds to move the employee onto alternative work and/or to take disciplinary action up to and including dismissal in connection with that refusal. Whether or not such action is lawful or not will depend on the specific circumstances.</p> <p>Employers will need to carry out a risk assessment on a case-by-case basis to determine whether a vaccination requirement can be justified and whether any related disciplinary action can be taken for refusal, taking into account (i) the role in question (including the working environment, the risk posed by the employee to others and vice versa); and (ii) the health and needs of the employee, to determine whether it is reasonable to impose such a condition and take such action.</p> <p>There are many reasons why an individual might legitimately be unable, or refuse, to be vaccinated. Employers will need to consider objections carefully and individually.</p> <p>The main legal risk associated with requiring vaccinations as a condition of continuing employment is an indirect discrimination claim under the Disability Discrimination Ordinance (Cap. 487) (DDO). Some employees may not be able to have the vaccine for legitimate health/ medical reasons (e.g. individuals with immune system disorders). Exceptions should be considered for employees where it is medically advised to do so.</p> <p>Employers could reasonably expect challenges from employees and unwanted media attention were they to take a blanket approach of requiring vaccination as a condition of continued employment.</p> <p>Specific advice should be sought by any employer looking to introduce a vaccination requirement and/or to take action against an employee for refusing vaccination.</p> <p>Currently, vaccines are widely available in Hong Kong to employees and employers may actively promote and encourage vaccination. Employers who do so should plan ahead, have a clear, consistent communication strategy and actively engage with employees.</p>
Can we require employees (i) to be tested and/or (ii) to present a negative test or evidence of immunity in a specified form on a regular basis ?	<p>Yes.</p> <p>A regular testing or evidence requirement would in most cases be a reasonable alternative to excluding an unvaccinated employee, whilst also managing the level of risk for other employees.</p> <p>You will need to consider what forms of testing or evidence you will accept as evidence, and the regularity of testing or presentation of evidence (e.g. an Antigen Rapid Test (ART) self-test, an ART done by a recognised clinic, or a full polymerase chain reaction (PCR) test etc.) taking into account the nature of the employee's role and wider working environment, and the level of risk to others.</p> <p>An employee cannot be forced to take a test. If an employee refuses to comply with a justifiable testing or evidence requirement, you may have grounds to take disciplinary action up to and including dismissal. Specific advice should be sought before taking such action.</p>

Employees & Workers cont	
If we require employees to provide evidence of negative tests / immunity, can we require employees to pay for this testing, or are we obliged to pay for it / reimburse employees for any testing costs they incur?	<p>Technically, testing costs could be recovered from the employee with their express agreement. In practice, there are a number of complexities to this approach especially since the likely reason for requiring an employee to bear the cost of testing is really to encourage vaccination.</p> <p>Legally speaking, there is an implied duty to reimburse an employee for any expenses they incur when fulfilling duties (which may include taking tests in order to continue working) under the employment contract. An express agreement as mentioned above will of course override this implied duty and in our view, such a duty should only apply where an employee is undergoing testing because they are unable to be vaccinated, rather than undergoing tests because they choose not to be vaccinated. Practically speaking, imposing a cost for testing is likely to be unpopular and could carry reputational risk if the communication around this is not carefully handled.</p> <p>As an additional point, if you are looking to recover the costs by deductions from salary, deduction of the testing costs from wages is not strictly permissible under section 32 of the Employment Ordinance (Cap. 32) (EO), unless the cost were to fall under one of the permissible grounds.</p>
Can we require employees to be vaccinated, as a condition of physical attendance at the workplace?	<p>Yes, however a blanket requirement would pose a degree of legal risk.</p> <p>Employers may be able to exclude unvaccinated employees from the physical workplace in certain sectors, again on health and safety grounds. As above, this may include healthcare, social care and other high-risk sectors.</p> <p>If the employer considered that the risk to the employee in question, to colleagues or to patients, clients, suppliers or other third parties was sufficiently high and there was no other way to mitigate or minimise this risk, it may have grounds to exclude the employee from some or all areas of the physical workplace.</p> <p>Employers will need to carry out a risk assessment on a case-by-case basis as to determine whether a vaccination requirement can be justified and whether any related disciplinary action can be taken for refusal, taking into account (i) the role in question (including the working environment, the risk posed by the employee to others and vice versa); and (ii) the health and needs of the employee, to determine whether it is reasonable to impose such a condition and take such action.</p> <p>The main legal risk associated with excluding employees from the physical workplace or otherwise treating them differently on the grounds that they have not been vaccinated is an indirect discrimination claim under the DDO. Some employees may not be able to have the vaccine for legitimate health/ medical reasons (e.g. individuals with immune system disorders). Exceptions should be considered for employees where it is medically advised to do so.</p> <p>Requiring an employee to be vaccinated without their consent as a condition of attendance at the workplace could in theory amount to a repudiatory breach of contract, entitling the employee to claim constructive dismissal, if they resign from their work.</p> <p>Specific advice should be sought by any employer looking to introduce a vaccination requirement and/or to take action against an employee for refusing vaccination. Employers could reasonably expect challenges from employees and unwanted media attention were they to take a blanket approach of excluding unvaccinated employees from the workplace .</p>
Can we require employees to be vaccinated, or provide evidence of negative tests/immunity as a condition of work-related travel?	<p>Vaccination: Yes, however this depends on the specific circumstances. Evidence of negative tests: Yes</p> <p>Where specific health & safety regulations of a country mandate vaccination and/or a negative test result before entry into the country, then this will be a matter of compliance with local regulations and is certainly justified.</p> <p>Outside of this, whether vaccination can be mandated as a pre-condition for work-travel will be dependent on the nature of the employee's job or role, whether travel is essential for the performance of the job or role, where the employee is travelling to and by what means and whether the employer can, as far as reasonably practicable, ensure the employee's health, safety and welfare at work (under the Occupational Health & Safety Ordinance (Cap. 509)).</p> <p>As a separate consideration, fully vaccinated persons are still required to undergo quarantine when returning to Hong Kong (at the time of writing either 7, 14 or 21 days, depending on the originating jurisdiction). It may not be operationally efficient to arrange for an employee to travel for work. The situation with regard to travel is constantly changing so any requirements need to be considered against the background of the travel restrictions prevailing at the time.</p>
Are we required to provide accommodations to employees who have not been vaccinated?	<p>Depends.</p> <p>There is no general requirement that accommodations be provided to those that have not been vaccinated.</p> <p>In the context of a mandatory vaccination requirement imposed by an employer however, as mentioned above such a mandatory requirement could indirectly discriminate against employees with medical reasons under the DDO. If an employee cannot be vaccinated due to a disability, an employer would be obliged to make reasonable accommodations / adjustments to eliminate any disadvantage suffered by a disabled employee because of the requirement to be vaccinated. Such accommodations / adjustments may include ongoing work from home arrangements, not requiring such individuals to have a vaccination to return to the office and/or other additional steps to make the office as COVID-19-safe as possible.</p>

Hong Kong Continued

Employees & Workers cont

<p>Can we retain the vaccination / test records of employees? (Such records would include vaccine passports, proof of vaccination or other evidence of test results etc.).</p>	<p>Yes.</p> <p>Vaccination / test records can be retained (subject to compliance with the data protection rules under the <i>Personal Data (Privacy) Ordinance (Cap. 486)</i>) but should only be retained for as long as necessary for the purpose for which the data was collected. Data on test results in particular will be out of date very quickly and the appropriate retention period is therefore likely to be very short.</p> <p>Generally, there are no statutory provisions governing maximum retention periods for employee medical records and information (including vaccination information). The Code of Practice on Human Resource Management (the “Code”), which though not legally binding will be considered by the Privacy Commissioner in any case which comes before it (with non-compliance weighing unfavourably against a party), suggests a retention period of no longer than 7 years in respect of employment related data (including medical records and information but excluding biometric data) held about an employee from the date the employee leaves employment.</p> <p>Data may be retained for a longer period if:</p> <ul style="list-style-type: none"> the individual has given express consent for the data to be retained for a longer period; or there is a subsisting reason that obliges the employer to retain data for a longer period (e.g. ongoing litigation). <p>Employers should consider an appropriate retention period at the outset of collecting the data and should periodically review the data they hold and erase or anonymise it when they no longer need it. Employers should also be prepared to receive and manage requests for erasure in respect of vaccination / test data.</p>
<p>If an employee refuses a request or requirement for vaccination asserting medical reasons, can we require proof of the medical reason?</p>	<p>Yes, within reason.</p> <p>Assuming the request or requirement for vaccination is justifiable (see above), you are entitled to ask for suitable medical evidence to your satisfaction, within reason.</p> <p>If vaccination is not mandatory for the role and/or the underlying concern can be managed by regular testing, it may be more difficult to justify requiring proof of medical grounds for non-vaccination in any form.</p>

Mobile / Gig Economy / Agency Workers

<p>Can we ask individuals if they have been vaccinated?</p>	<p>Yes.</p> <p>The organisations still need to comply with data protection rules under the PDPO. Data collected must be fair, necessary and not excessive. Information collected should be for a lawful purpose directly related to a function or activity of the organisation. In this regard, asking individuals (agency workers) whether they have received a vaccine to prevent or control the spread of disease in the workplace is likely to be allowed in the context of the organisation fulfilling its own duty to its employees to provide a safe working environment (in particular if workers will be working in the workplace alongside the organisation’s employees). Organisations should nevertheless notify the agency workers with the prescribed information (including information regarding vaccination and purposes) on or before the collection of his/her data.</p>
<p>Can we carry out workplace testing of individuals /require individuals to provide evidence of a negative test?</p>	<p>Yes.</p> <p>Carrying out workplace testing is not legally prohibited if the organisations comply with the data protection rules under the PDPO. If the individuals to be tested will be working in the workplace along with the organisation’s employees, this can be generally justified by an employer’s duty to provide a safe working environment to their employees (see discussion above). In addition, data should be collected by means that are lawful and fair in the circumstances of the case. For example, if the individual is able to provide evidence of a negative test, it may be regarded as unfair/excessive for the organisation to require the individuals to conduct workplace testing without additional factors/reasons taken into account (such as if the testing report the individual provided was not recent).</p>
<p>Can we require individuals to be vaccinated, as a condition of continuing engagement? What can or should we do if an individual refuses?</p>	<p>Generally yes, but please note the considerations below.</p> <p>Requiring an individual to be vaccinated as a precondition of engagement is not prohibited by Hong Kong law. Organisations may make vaccination a condition of being permitted to be engaged in certain environments on health and safety grounds. For example, as the organisation has a duty to provide safe and health environment to all of its employees and if the agency workers will work at the employer’s premises and working closely with their employees, the organisation may consider asking such workers to be vaccinated as “a reasonably practicable step” for employers to take to ensure safety and health in a workplace. Organisations should carry out a risk assessment on a case-by-case basis as to determine whether a vaccination requirement can be justified taking into account (i) the role in question of the agency worker; and (ii) the organisation’s own duty to its employees to provide a safe working environment. Whether the court will agree with such assessment will depend on the specific circumstance.</p> <p>Although it would be unlikely that an organisation would face a discrimination claim under the DDO in the context of engaging agency workers (the risk is much lower than in the employment context), non-legal risks associated with such practice should be taken into account, as it could lead to reputational costs if the news spread around, particular in Hong Kong where many citizens many feel skeptical or emotional about the Covid-19 vaccines.</p>

Mobile / Gig Economy / Agency Workers cont

<p>Can we require individuals (i) to be tested and/or (ii) to present a negative test or evidence of immunity in a specified form on a regular basis?</p>	<p>Yes.</p> <p>Provided testing is permitted (see discussion above), a regular testing or evidence requirement would in most cases not raise compliance risks.</p>
<p>If we required individuals to provide evidence of negative tests / immunity, can we require individuals to pay for this testing, or are we obliged to pay for it / reimburse individuals for any testing costs they incur?</p>	<p>Yes.</p> <p>There is no legal prohibition on organisations to require individuals (non-employees) to bear the costs of testing, and organisations are not bound by any obligation to pay for, or reimburse individuals for, any testing costs.</p>
<p>Can we require individuals to be vaccinated, as a condition of physical attendance at any premises?</p>	<p>Yes, but with a certain degree of risks. In general, organisations are likely to be justified in excluding unvaccinated agency workers from their premises in certain sectors on health and safety grounds e.g. including healthcare, social care and other high-risk sectors. Notwithstanding the above, if the organisation is able to justify that the risks to its own employees, as well as to other third parties such as its clients, suppliers or other third parties, weresufficiently high and there was no other way to mitigate or minimise this risk, it may have grounds to exclude agency workers from some or all areas of its premises.</p> <p>The main legal risk associated with requiring vaccinations as a condition of physical attendance at any premises is a discrimination claim under the DDO if the organisation is a service provider, as it is unlawful under the DDO for service providers to discriminate against customers by refusing to provide them with goods, services or facilities, as some individuals may not be able to have the vaccine for legitimate health / medical reasons (e.g. individuals with immune system disorders). However, in the context of engaging mobile / gig economy / agency workers, such legal risks under the DDO unlikely apply.</p>
<p>Are we required to provide accommodations to individuals who have not been vaccinated?</p>	<p>No.</p>
<p>Can we retain the vaccination / test / immunity records of workers? (Such records would include vaccine passports, proof of vaccination or other evidence of immunity, test results etc.).</p>	<p>Yes, provided the initial collection complies with the PDPO. Vaccination / test records can be retained but should only be retained for as long as necessary for the purpose for which the data was collected. Data on test results in particular (as compared to vaccination record) will likely be out of date very quickly and the appropriate retention period is therefore likely to be short.</p>
<p>If an individual refuses a request or requirement for vaccination asserting medical reasons, can we require proof of the medical reason?</p>	<p>Yes, within reason.</p> <p>Assuming the request or requirement for vaccination is justifiable (see above, including the information requested (medical reason) is not excessive in relation to a lawful purpose), an organisation is entitled to ask for suitable medical evidence to your satisfaction, within reason (e.g. if the individuals are able to provide very recent negative testing report issued by certified testing institution, further requiring and collecting medical reasons for not receiving vaccination may be regarded as excessive in relation to the purpose of data collection).</p>

Visitors

<p>Are we required to provide accommodations to individuals who have not been vaccinated?</p>	<p>Yes.</p> <p>The organisations still need to comply with data protection rules under the PDPO. Data collected must be fair, necessary and not excessive. Information collected should be for a lawful purpose directly related to a function or activity of the organisation. In this regard, asking individuals (visitors) whether they have received a vaccine to prevent or control the spread of disease in the relevant premises is likely to be allowed in the context of the organisation fulfilling its own duty to its employees to provide a safe working environment to its employees. Organisations should nevertheless notify the visitors with prescribed information (including information regarding vaccination and purposes) on or before the collection of his/her data.</p>
<p>Can we exclude visitors who have not had a vaccine from the workplace?</p>	<p>Potentially yes, if it is considered as a reasonably practical step by the employer to ensure the safety and health at work of all of their employees. Depending on the nature of business/sector of the organisation (e.g. healthcare or social-care and other high-risk sectors), it may also be justifiable to exclude visitors from the premises for health and safety grounds.</p> <p>However, above justification should be balanced against the legal risks of a discrimination claim under the DDO where the organisation is a service provider which is under the obligation to not discriminate against customers by refusing to provide them with goods, services or facilities (as some individuals may not be able to have the vaccine for legitimate health / medical reasons).</p>
<p>Can we test visitors on entry into our premises?</p>	<p>Yes, if it is considered as a reasonably practical step by the organisation to ensure the safety and health at work of all of its employees in the workplace (in particular where visitors will be in contact with employees).</p> <p>The collection of testing results is a collection of personal information of the visitors, and such collection must be by means which is fair in the circumstances, and should not be excessive for the purposes of collection. For example, asking visitors to provide temperature readings is likely allowed. If the visitors are able to provide a very recent negative testing report issued by certified testing institution, conducting testing again at the point of entry of visitors may be regarded as excessive collection. On or before collecting test data on visitors, the visitors should be notified of the prescribed information mentioned above.</p>

Visitors cont	
As an alternative to asking a visitor to confirm their vaccination status, can we (i) require them to provide evidence of a negative test or (ii) require them to be tested prior to entry to our premises and deny them entry if they return a positive test or refuse to comply?	Yes, with same considerations as testing visitors on entry to premises (see above).
Can we ask for proof of vaccination status?	Yes, with same considerations as testing visitors on entry to premises (see above) and provided the data protection rules under the PDPO are observed in relation to collection of the information.
Can we retain the vaccination records of visitors?	Yes. Please see our answer to this question in relation to workers.

Employees & Workers	
Can we ask employees if they have been vaccinated?	<p>Yes, but with the below limitations.</p> <p>Based on the guidance of the Hungarian Data Protection Authority (“NAIH”) (dated 01.04.2021), in general the vaccine status of the employee cannot be required to be disclosed.</p> <p>The employer may only require the employees to show the so called “certificate of immunity” issued by the Hungarian Government for those who have been vaccinated or have already recovered from the disease provided that (i) the purpose of processing is health and safety or organisation of work, (ii) risk assessment on the biological exposure of the working environment has been prepared and (iii) the processing affects only certain positions in the case of which processing is absolutely necessary and proportionate.</p> <p>Subject to the above conditions the employer may only record the “fact of immunity” (which may be due to vaccination or recovery from COVID-19) and the expiry date of the plastic card (if any) and the name of the employee.</p> <p>The processing of the fact of the immunity must not be arbitrary, i.e., if the employer processes this personal data, it is required to take the necessary measures (e.g. implementing a seating plan, instructing employees to work remotely) and document that these measures have been taken.</p> <p>The processing of this data is possible based on the legitimate interest of the employer under Article 6(1)(f) of the GDPR, and if the circumstances set out in Article 9(2)(b) also apply.</p>
Can we carry out workplace testing of employees / require employees to provide evidence of a negative test?	<p>Yes, but with the below limitations.</p> <p>Ordering medical checks (i.e., COVID-19 testing) for all employees in general and systematically does not comply with data protection law. However, medical checks may be carried out if the employee voluntarily reports symptoms or if the employer reasonably suspects a case of infection based on the assessment of all relevant circumstances or based on the employer’s risk assessment. Medical checks must be conducted or supervised by medical professionals.</p> <p>In this case the legal basis is legitimate interest and the condition in under Art.9(2)(h) applies, together with the measures set out in Art.9(3) GDPR.</p>
Can we require employees to be vaccinated, as a condition of continuing employment? What can or should we do if employees refuse?	<p>Generally no, however the Government requires vaccination for certain medical service providers.</p> <p>(i) General Generally, the Covid-19 vaccination is not mandatory in Hungary, therefore most probably based on the widely accepted interpretation, employers cannot require staff to be vaccinated, unless there is an act or government decree requiring vaccination.</p> <p>Requiring vaccination could lead to indirect discrimination claims under the Equal Treatment Act, e.g. on the basis that this requirement places those with protected characteristics at a direct or indirect disadvantage. Any such measure would need to be reasonable. Key protected characteristics that may be relevant here are:</p> <ul style="list-style-type: none"> • Disability/health status: employees with medical conditions that prevent them from being vaccinated may be disabled. • Age: younger employees are still less likely to be fully vaccinated. • Religion or belief: whilst this has yet to be tested on the courts, an ‘anti-vaccination’ stance could be held to be akin to a religion or belief and therefore amount to a protected characteristic under the Equal Treatment Act. <p>Employers could reasonably expect challenges from employees and unwanted media attention were they to take an unreasonable approach of requiring vaccination as a condition of continued employment.</p> <p>Specific advice should be sought by any employer looking to introduce a vaccination requirement and/or to take action against an employee for refusing vaccination.</p> <p>(ii) Healthcare service providers However, based on Governmental Decree 449/2021 (VII. 29.) certain medical service providers (hospitals, general practitioners, diagnostic service providers, etc.) must require their employees to be vaccinated at least with the first dose by 15 September 2021. After 15 September 2021, for new joiners, a 15-day ‘grace period’ is provided for them to get vaccinated.</p> <p>If these employees refuse to show a proof of vaccination or a medical certificate that they cannot be vaccinated (due to medical reasons) by the above deadline (15 September 2021), the employer must terminate the employment with immediate effect without any severance pay.</p> <p>Furthermore, non-vaccinated candidates must not be hired for these positions or may not be hired for on-site work.</p>

Employees & Workers cont	
Can we require employees (i) to be tested and/or (ii) to present a negative test or evidence of immunity in a specified form on a regular basis?	<p>Yes, but with limitations.</p> <p>(i) Testing employees and/or requiring a negative test result: Ordering medical checks (i.e., COVID-19 testing) or requiring negative test results for all employees in general and systematically does not comply with data protection law. However, medical checks or negative test results may be required if the employee voluntarily reports symptoms or if the employer reasonably suspects a case of infection based on the assessment of all relevant circumstances or based on the employer's risk assessment. Medical checks must be conducted or supervised by medical professionals.</p> <p>In this case the legal basis is legitimate interest and the condition in under Art.9(2)(h) applies, together with the measures set out in Art.9(3) GDPR.</p> <p>(ii) Requiring an evidence of immunity: The employer may require the employees to show the so called "certificate of immunity" provided that (i) the purpose of processing is health and safety or organisation of work, (ii) risk assessment on the biological exposure of the working environment has been prepared and (iii) the processing affects only certain positions in the case of which processing is absolutely necessary and proportionate.</p> <p>Subject to the above conditions the employer may only record the "fact of immunity" (which may be due to vaccination or recovery from COVID-19) and the expiry date of the plastic card (if any) and the name of the employee.</p> <p>The processing of the fact of the immunity must not be arbitrary, i.e., if the employer processes this personal data, it is required to take the necessary measures (e.g. implementing a seating plan, instructing staff to work remotely) and document that these measures have been taken.</p> <p>The processing of this data is possible based on the legitimate interest of the employer under Article 6(1)(f) of the GDPR, and if the circumstances set out in Article 9(2)(b) also apply.</p>
If we require employees to provide evidence of negative tests / immunity, can we require employees to pay for this testing, or are we obliged to pay for it / reimburse employees for any testing costs they incur?	<p>No, the employer must reimburse all justified work-related costs.</p> <p>Under the general rules of the Labour Code, the employer must reimburse all justified work-related costs to the employee. This includes the obligation to pay such tests which became necessary in connection with performance of work and were ordered by the employer.</p>
Can we require employees to be vaccinated, as a condition of physical attendance at the workplace?	<p>Generally no, however, there are certain medical service providers where the Government requires vaccination for on-site work.</p> <p>(i) General Generally, the Covid-19 vaccination is not mandatory in Hungary, therefore most probably based on the widely accepted interpretation, employers cannot require staff to be vaccinated to enter the workplace, unless there is an act or gov. decree requiring vaccination.</p> <p>Requiring vaccination could lead to indirect discrimination claims under the Equal Treatment Act, e.g. on the basis that this requirement places those with protected characteristics at a direct or indirect disadvantage. Any such measures would need to be reasonable. Key protected characteristics that may be relevant here are:</p> <ul style="list-style-type: none"> Disability/health status: employees with medical conditions that prevent them from being vaccinated may be disabled. Age: younger employees are still less likely to be fully vaccinated. Religion or belief: whilst this has yet to be tested on the courts, an 'anti-vaccination' stance could be held to be akin to a religion or belief and therefore amount to a protected characteristic under the Equal Treatment Act. <p>Employers could reasonably expect challenges from employees and unwanted media attention were they to take an unreasonable approach of requiring vaccination as a condition of on-site work.</p> <p>Specific advice should be sought by any employer looking to introduce a vaccination requirement and/or to take action against an employee for refusing vaccination.</p> <p>(ii) Healthcare service providers However, based on Governmental Decree 449/2021 (VII. 29.) certain medical service providers (hospitals, general practitioners, diagnostic services, etc.) must require their employees to be vaccinated at least with the first dose by 15 September 2021. After 15 September 2021, for new joiners, a 15-day 'grace period' is provided to get vaccinated.</p> <p>Non-vaccinated candidates must not be hired for these positions or may not be hired for on-site work.</p>
Can we require employees to be vaccinated, or provide evidence of negative tests/immunity, as a condition of work-related travel?	<p>Only as necessary for their role and to comply with applicable travel requirements.</p> <p>Employees who travel for work will need to comply with the applicable requirements for domestic and international travel. Some jurisdictions have imposed travel restrictions which either (i) prohibit; or (ii) impose additional quarantine or testing requirements in respect of the entry of unvaccinated individuals to the country. Therefore, in order to travel for work, employees may need to be vaccinated or may be required to submit to specific government-imposed testing requirements.</p>

Employees & Workers cont	
	<p>If an employee refuses to comply with legally required vaccination or testing requirements, the employer may have grounds to allocate the employee to work which does not involve travel and/or to take disciplinary action up to and including termination of employment. The question of whether such action is lawful or not will depend on the specific circumstances, including the nature of the role, how essential the travel is for the performance of the role, which jurisdictions are involved, what the entry requirements are, and the reason for refusal.</p> <p>Specific advice should be sought about any requirements for cross-border travel as the situations and regulations are complex and constantly changing.</p>
Are we required to provide accommodations to employees who have not been vaccinated?	<p>No, there are no such specific requirements concerning those who are not vaccinated.</p> <p>The employer, however, must be aware and comply with the general occupational health and safety requirements at the workplace.</p>
Can we retain the vaccination / test / immunity records of employees? (Such records would include vaccine passports, proof of vaccination or other evidence of immunity, test results etc.).	<p>No, the personal data that may be processed is limited based on the guidance of the NAIH.</p> <p>(i) Test results Based on the guidance of the NAIH (dated 10.03.2020), the employer is entitled to be informed only about the results of the test.</p> <p>(ii) Vaccination status/immunity records Based on the guidance of the NAIH (dated 01.04.2021), in general the vaccine status of the employee cannot be required to be disclosed.</p> <p>Subject to the conditions stated in the guidance the employer may only record the "fact of immunity" (which may be due to vaccination or recovery from COVID-19) and the expiry date of the plastic card (if any) and the name of the employee.</p>
If an employee refuses a request or requirement for vaccination asserting medical reasons, can we require proof of the medical reason?	<p>Generally no unless the vaccination is mandatory for that particular position.</p> <p>(i) General Generally, the Covid-19 vaccination is not mandatory in Hungary, therefore most probably based on the widely accepted interpretation, employers cannot require staff to be vaccinated, and therefore they cannot require a medical reason why they refuse it.</p> <p>(ii) Health care service providers However, based on Governmental Decree 449/2021 (VII. 29.) certain medical service providers (hospitals, general practitioners, diagnostic services, etc.) must require their employees to be vaccinated at least with the first dose by 15 September 2021. After 15 September 2021, for new joiners, a 15-day 'grace period' is provided to get vaccinated.</p> <p>If these employees refuse to show a proof of vaccination, the employer must require a medical certificate about the fact that they cannot be vaccinated (due to medical reasons) by the above deadline (15 September 2021).</p>

Mobile / Gig Economy / Agency Workers

General note: We assume that under Hungarian law these workers typically qualify as employees. Different rules may apply to contractors and contingent workers as for example the guidance of the NAIH (dated 01.04.2021) does cover only employment relationships.

Can we ask individuals if they have been vaccinated?	<p>Yes, but with the below limitations.</p> <p>Based on the guidance of the Hungarian Data Protection Authority ("NAIH") (dated 01.04.2021), in general the vaccine status of the individual cannot be required to be disclosed.</p> <p>The employer may only require the individuals to show the so called "certificate of immunity" issued by the Hungarian Government for those who have been vaccinated or have already recovered from the disease provided that (i) the purpose of processing is health and safety or organisation of work, (ii) risk assessment on the biological exposure of the working environment has been prepared and (iii) the processing affects only certain positions in the case of which processing is absolutely necessary and proportionate.</p> <p>Subject to the above conditions the employer may only record the "fact of immunity" (which may be due to vaccination or recovery from COVID-19) and the expiry date of the plastic card (if any) and the name of the individual.</p> <p>The processing of the fact of the immunity must not be arbitrary, i.e., if the employer processes this personal data, it is required to take the necessary measures (e.g. implementing a seating plan, requiring individuals to work remotely) and document that these measures have been taken.</p> <p>The processing of this data is possible based on the legitimate interest of the employer under Article 6(1)(f) of the GDPR, and if the circumstances set out in Article 9(2)(b) also apply.</p>
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Mobile / Gig Economy / Agency Workers cont

<p>Can we carry out workplace testing of individuals /require individuals to provide evidence of a negative test?</p>	<p>Yes, but with the below limitations.</p> <p>Ordering medical checks (i.e., COVID-19 testing) for all individuals in general and systematically does not comply with data protection law. However, medical checks may be carried out if the individual voluntarily reports symptoms or if the employer reasonably suspects a case of infection based on the assessment of all relevant circumstances or based on the employer's risk assessment. Medical checks must be conducted or supervised by medical professionals.</p> <p>In this case the legal basis is legitimate interest and the condition in under Art.9(2)(h) applies, together with the measures set out in Art.9(3) GDPR.</p>
<p>Can we require individuals to be vaccinated, as a condition of continuing engagement? What can or should we do if an individual refuses?</p>	<p>Generally no, however, there are certain medical service providers where the Government requires vaccination.</p> <p>(iii) General Generally, the Covid-19 vaccination is not mandatory in Hungary, therefore most probably based on the widely accepted interpretation, employers cannot require staff to be vaccinated, unless there is an act or government decree requiring vaccination.</p> <p>Requiring vaccination could lead to indirect discrimination claims under the Equal Treatment Act, e.g. on the basis that this requirement places those with protected characteristics at a direct or indirect disadvantage. Any such measure would need to be reasonable. Key protected characteristics that may be relevant here are:</p> <ul style="list-style-type: none"> Disability/health status: individuals with medical conditions that prevent them from being vaccinated may be disabled. Age: younger individuals are still less likely to be fully vaccinated. Religion or belief: whilst this has yet to be tested on the courts, an 'anti-vaccination' stance could be held to be akin to a religion or belief and therefore amount to a protected characteristic under the Equal Treatment Act. <p>Employers could reasonably expect challenges from individuals and unwanted media attention were they to take an unreasonable approach of requiring vaccination as a condition of continued employment.</p> <p>Specific advice should be sought by any employer looking to introduce a vaccination requirement and/or to take action against an individual for refusing vaccination.</p> <p>(iv) Healthcare service providers However, based on Governmental Decree 449/2021 (VII. 29.) certain medical service providers (hospitals, general practitioners, diagnostic services, etc.) must require their individuals to be vaccinated at least with the first dose by 15 September 2021. After 15 September 2021, for new joiners, a 15 day 'grace period' is provided to get vaccinated.</p> <p>If these individuals refuse to show a proof of vaccination or a medical certificate that they cannot be vaccinated (due to medical reasons) by the above deadline (15 September 2021), the employer must terminate the employment with immediate effect without any severance pay.</p> <p>Furthermore, non-vaccinated candidates must not be hired for these positions or may not be hired for on-site work.</p>
<p>Can we require individuals (i) to be tested and/or (ii) to present a negative test or evidence of immunity in a specified form on a regular basis?</p>	<p>Yes, but with limitations.</p> <p>(iii) Testing individuals and/or requiring a negative test result: Ordering medical checks (i.e., COVID-19 testing) or requiring negative test results for all individuals in general and systematically does not comply with data protection law. However, medical checks or negative test results may be required if the individual voluntarily reports symptoms or if the employer reasonably suspects a case of infection based on the assessment of all relevant circumstances or based on the employer's risk assessment. Medical checks must be conducted or supervised by medical professionals.</p> <p>In this case the legal basis is legitimate interest and the condition in under Art.9(2)(h) applies, together with the measures set out in Art.9(3) GDPR.</p> <p>(iv) Requiring an evidence of immunity: The employer may require the individuals to show the so called "certificate of immunity" provided that (i) the purpose of processing is health and safety or organisation of work, (ii) risk assessment on the biological exposure of the working environment has been prepared and (iii) the processing affects only certain positions in the case of which processing is absolutely necessary and proportionate.</p> <p>Subject to the above conditions the employer may only record the "fact of immunity" (which may be due to vaccination or recovery from COVID-19) and the expiry date of the plastic card (if any) and the name of the individual.</p> <p>The processing of the fact of the immunity must not be arbitrary, i.e., if the employer processes this personal data, it is required to take the necessary measures (e.g. implementing a seating plan, instructing staff to work remotely) and document that these measures have been taken.</p> <p>The processing of this data is possible based on the legitimate interest of the employer under Article 6(1)(f) of the GDPR, and if the circumstances set out in Article 9(2)(b) also apply.</p>

Mobile / Gig Economy / Agency Workers cont

<p>If we required individuals to provide evidence of negative tests / immunity, can we require individuals to pay for this testing, or are we obliged to pay for it / reimburse individuals for any testing costs they incur?</p>	<p>No, the employer must reimburse all justified work-related costs.</p> <p>Under the general rules of the Labour Code, the employer must reimburse all justified work-related costs to the individual. This includes the obligation to pay such tests which became necessary in connection with performance of work and which have been ordered by the employer.</p>
<p>Can we require individuals to be vaccinated, as a condition of physical attendance at any premises?</p>	<p>Generally no, however, there are certain medical service providers where the Government requires vaccination for on-site work.</p> <p>(iii) General Generally, the Covid-19 vaccination is not mandatory in Hungary, therefore most probably based on the widely accepted interpretation, employers cannot require staff to be vaccinated to enter the workplace, unless there is an act or government decree requiring vaccination.</p> <p>Requiring vaccination could lead to indirect discrimination claims under the Equal Treatment Act, e.g. on the basis that this requirement places those with protected characteristics at a direct or indirect disadvantage. Any such measure would need to be reasonable. Key protected characteristics that may be relevant here are:</p> <ul style="list-style-type: none"> Disability/health status: individuals with medical conditions that prevent them from being vaccinated may be disabled. Age: younger individuals are still less likely to be fully vaccinated. Religion or belief: whilst this has yet to be tested on the courts, an 'anti-vaccination' stance could be held to be akin to a religion or belief and therefore amount to a protected characteristic under the Equal Treatment Act. <p>Employers could reasonably expect challenges from individuals and unwanted media attention were they to take an unreasonable approach of requiring vaccination as a condition of on-site work.</p> <p>Specific advice should be sought by any employer looking to introduce a vaccination requirement and/or to take action against an individual for refusing vaccination.</p> <p>(iv) Healthcare service providers However, based on Governmental Decree 449/2021 (VII. 29.) certain medical service providers (hospitals, general practitioners, diagnostic services, etc.) must require their individuals to be vaccinated at least with the first dose by 15 September 2021. After 15 September 2021, for new joiners, a 15-day 'grace period' is provided to get vaccinated.</p> <p>Non-vaccinated candidates must not be hired for these positions or may not be hired for on-site work.</p>
<p>Can we require workers to be vaccinated, or provide evidence of negative tests/ immunity, as a condition of work-related travel?</p>	<p>Only as necessary for their role and to comply with applicable travel requirements.</p> <p>Individuals who travel for work will need to comply with the applicable requirements for domestic and international travel. Some jurisdictions have imposed travel restrictions which either (i) prohibit; or (ii) impose additional quarantine or testing requirements in respect of the entry of unvaccinated individuals to the country. Therefore, in order to travel for work, individuals may need to be vaccinated or a may be required to submit to specific government-imposed testing requirements.</p> <p>If an individual refuses to comply with legally required vaccination or testing requirements, the employer may have grounds to allocate the individual to work which does not involve travel and/or to take disciplinary action up to and including termination of employment. The question of whether such action is lawful or not will depend on the specific circumstances, including the nature of the role, how essential the travel is for the performance of the role, which jurisdictions are involved, what the entry requirements are, and the reason for refusal.</p> <p>Specific advice should be sought about any requirements for cross-border travel as the situations and regulations are complex and constantly changing.</p>
<p>Are we required to provide accommodations to individuals who have not been vaccinated?</p>	<p>No, there are no such specific requirements for those who are not vaccinated.</p> <p>The employer, however, must be aware and comply with the general occupational health and safety requirements at the workplace.</p>
<p>Can we retain the vaccination / test / immunity records of workers? (Such records would include vaccine passports, proof of vaccination or other evidence of immunity, test results etc.).</p>	<p>No, the personal data that may be processed is limited based on the guidance of the NAIH.</p> <p>(iii) Test results Based on the guidance of the NAIH (dated 10.03.2020), the employer is entitled to be informed only about the results of the test.</p> <p>(iv) Vaccination status/immunity records Based on the guidance of the NAIH (dated 01.04.2021), in general the vaccine status of the individual cannot be required to be disclosed.</p> <p>Subject to the conditions stated in the guidance the employer may only record the "fact of immunity" (which may be due to vaccination or recovery from COVID-19) and the expiry date of the plastic card (if any) and the name of the individual.</p>

Hungary Continued

Mobile / Gig Economy / Agency Workers cont

<p>If an individual refuses a request or requirement for vaccination asserting medical reasons, can we require proof of the medical reason?</p>	<p>Generally no, unless the vaccination is mandatory for that particular position.</p> <p>(iii) General Generally, the Covid-19 vaccination is not mandatory in Hungary, therefore most probably based on the widely accepted interpretation, employers cannot require staff to be vaccinated, and therefore they cannot require a medical reason why they refuse it.</p> <p>(iv) Healthcare service providers However, based on Governmental Decree 449/2021 (VII. 29.) certain medical service providers (hospitals, general practitioners, diagnostic services, etc.) must require their individuals to be vaccinated at least with the first dose by 15 September 2021. After 15 September 2021, for new joiners, a 15-day 'grace period' is provided to get vaccinated.</p> <p>If these individuals refuse to show a proof of vaccination, the employer must require a medical certificate about the fact that they cannot be vaccinated (due to medical reasons) by the above deadline (15 September 2021).</p>
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Visitors

<p>Can we ask visitors if they have been vaccinated?</p>	<p>Unclear, the NAIH guidance (dated 01.04.2021) does not provide guidance on collecting the “fact of immunity” from visitors. According to the NAIH, the guidance is “first and foremost applicable to the legal relations covered by Act I of 2012 on the Labour Code”.</p> <p>Thus, it is quite unclear if there is a lawful way of collecting the “fact of immunity” from visitors (or any other persons other than employees under the Labour Code) and this may give rise to high legal risk depending on the given circumstances.</p>
<p>Can we exclude visitors who have not had a vaccine from the workplace?</p>	<p>Unclear, the NAIH guidance (dated 01.04.2021) does not provide guidance on collecting the “fact of immunity” from visitors and their exclusion from the workplace. According to the NAIH, the guidance is “<i>first and foremost applicable to the legal relations covered by Act I of 2012 on the Labour Code</i>”.</p> <p>Thus, it is quite unclear if there is a lawful way of collecting the “fact of immunity” from visitors (or any other persons other than employees under the Labour Code) and this may give rise to high legal risk depending on the given circumstances.</p>
<p>Can we test visitors on entry into our premises?</p>	<p>Only if this is proportionate and necessary for an organisation to comply with their legal obligations to ensure the health and safety of their workplace, or is necessary for public health. Ordering medical checks (i.e., COVID-19 testing) for visitors in general and systematically does not comply with data protection law. However, medical checks may be carried out if the person voluntarily reports symptoms or if the employer reasonably suspects a case of infection based on the assessment of all relevant circumstances or based on the employer’s risk assessment. Medical checks must be conducted or supervised by medical professionals.</p> <p>In this case the legal basis is legitimate interest and the condition in under Art.9(2)(h) applies, together with the measures set out in Art.9(3) GDPR.</p>
<p>As an alternative to asking a visitor to confirm their vaccination status, can we (i) require them to provide evidence of a negative test or (ii) require them to be tested prior to entry to our premises and deny them entry if they return a positive test or refuse to comply?</p>	<p>Only if this is proportionate and necessary for an organisation to comply with their legal obligations to ensure the health and safety of their workplace, or is necessary for public health. Ordering medical checks (i.e., COVID-19 testing) or requiring negative test results for all visitors in general and systematically does not comply with data protection law. However, medical checks or negative test results may be required if the visitor voluntarily reports symptoms or if the employer reasonably suspects a case of infection based on the assessment of all relevant circumstances or based on the employer’s risk assessment. Medical checks must be conducted or supervised by medical professionals.</p> <p>In this case the legal basis is legitimate interest and the condition in under Art.9(2)(h) applies, together with the measures set out in Art.9(3) GDPR.</p>
<p>Can we ask for proof of vaccination status?</p>	<p>Unclear, the NAIH guidance (dated 01.04.2021) does not provide guidance on collecting the “fact of immunity” from visitors. According to the NAIH, the guidance is “<i>first and foremost applicable to the legal relations covered by Act I of 2012 on the Labour Code</i>”.</p> <p>Thus, it is quite unclear if there is a lawful way of collecting the “fact of immunity” from visitors (or any other persons other than employees under the Labour Code) and this may give rise to high legal risk depending on the given circumstances.</p>
<p>Can we retain the vaccination records of visitors?</p>	<p>Unclear, the NAIH guidance (dated 01.04.2021) does not provide guidance on collecting the “fact of immunity” from visitors. According to the NAIH, the guidance is “first and foremost applicable to the legal relations covered by Act I of 2012 on the Labour Code”.</p> <p>Thus, it is quite unclear if there is a lawful way of collecting the “fact of immunity” from visitors (or any other persons other than employees under the Labour Code) and this may give rise to high legal risk depending on the given circumstances.</p>

Italy

**Please note that the Decree on the Green Pass is still under publication in the Italian Official Gazette. Therefore, more specific details will be available after the publication in the Official Gazette.*

Employees & Workers

<p>Can we ask employees if they have been vaccinated?</p>	<p>No, but starting from October 15th employers must ensure that employees have the Green Pass when accessing Company offices/premises.</p> <p>Currently, vaccination is not compulsory in Italy except for employees in some specific sectors (e.g. physician, teachers, etc.). Therefore, the employer is prevented from asking employees whether or not they have been vaccinated (including via an anonymous survey).</p> <p>Only the occupational physician could access, if they deem it necessary, information on vaccination status during their health surveillance activity.</p> <p>On 16 September 2021, the Council of Ministers approved a Law Decree stating that from 15 October employees will only be permitted to access Company premises/offices if they have the so-called “Green Pass”, i.e. an affidavit proving that a person:</p> <ol style="list-style-type: none"> has been vaccinated for Covid; or has negative rapid antigen or molecular test results (for such cases, the Green Pass will expire after 48 or 72 hours depending on the Covid test); or had covid recently and has active antibodies providing immunity <p>Employees are required to have and show on request the Green Pass. Only persons who are exempted from the vaccination campaign on the basis of appropriate medical certification are not under the obligation to submit the Green Pass. Employers must ensure that only employees with the Green Pass have access to the workplace. Employees without the Green Pass are not allowed to enter the premises and are considered absent from work until they will submit a valid Green Pass and are not entitled to receive a salary payment for this period. There are no disciplinary consequences and the employee has the right to keep their job position. Employers must only check that the employees have a valid Green Pass, without asking information about their vaccination status and/or the reason why they obtained the Green Pass. The Green Pass does not show the reason why it has been issued (vaccination, negative test, active antibodies) Only an occupational physician can ask if the employee has received a vaccine if they deem it strictly relevant for health surveillance activities. In particular, this information could be relevant for employees exposed to specific health risks:</p> <ol style="list-style-type: none"> due to their specific health conditions (disabled employees; employees with chronic diseases or illnesses). The occupational physician could ask if the employee received a vaccine so as to exclude the employee from the workplace if working at company premises is considered dangerous for those employees; or due to the specific work conditions (i.e. employees whose working activities do not allow the fulfilment of social distancing measures and/or the use of PPE). However, this case could be more controversial. <p>The occupational physician cannot notify the employer if the employees have been vaccinated nor provide other health information. The occupational physician must notify the employer only if the employees are unfit to perform their tasks taking into account the employees’ health conditions and the risks associated with the duties.</p> <p>Please note that this approach is confirmed by the Italian Data Protection Authority’s FAQs (https://www.garanteprivacy.it/temi/coronavirus/faq) in relation to vaccination.</p> <p>Please note that the Decree on the Green Pass is still under publication in the Italian Official Gazette. Therefore, more specific details will be available after the publication in the Official Gazette.</p>
<p>Can we carry out workplace testing of employees / require employees to provide evidence of a negative test?</p>	<p>No, unless the testing is on a voluntary basis and under the supervision of the occupational physician. As of 15 October, employees will be required to have a valid Green Pass when accessing to the workplace.</p> <p>As a general rule the employer is not allowed to ask the employee for a negative test nor to require evidence of a negative test. Employers can test only an employee’s temperature.</p> <p>A negative Covid test - administered by the health authority - is required only in the following specific cases provided for by law:</p> <ol style="list-style-type: none"> employees who have had Covid symptoms can return to work only if they provide a medical certificate issued by the health authority. In such cases, the occupational physician will visit the employees to assess their suitability for the specific tasks assigned; or quarantined employees who had contact with individuals who tested positive can return to work after quarantine, provided that they have a negative COVID test. The test is administered by the health authorities. <p>Except for the abovementioned specific cases, the employer is not allowed to ask for a negative COVID test. Under certain conditions and under the supervision of the occupational physician, testing is allowed on a voluntary basis.</p> <p>In any case, the health-related data must be processed only by the occupational physician.</p>

Employees & Workers cont	
Can we require employees to be vaccinated, as a condition of continuing employment? What can or should we do if employees refuse?	<p>No - vaccination is not mandatory except for the employees working in specific sectors. As a consequence, no measures can be taken against employees refusing to provide proof of their vaccination.</p> <p>As of 15 October, employers must ensure that employees have the Green Pass when accessing work premises. The Green Pass is only required for access to the workplace and not as a condition of continuing employment. Employees without a valid Green Pass are not allowed to enter the workplace and are considered absent from work without the right to salary until they submit a valid Green Pass. There are no disciplinary consequences for failure to do so, and the employee has the right to keep his job position. Vaccination is not compulsory except for specific sectors (e.g., employees working in the healthcare sector). Except for the sectors where vaccination is required by law, employers cannot force employees to have the vaccination. Therefore, employers cannot require employees to be vaccinated as a condition of continuing employment. Moreover, the Italian Data Protection Authority has stated that employers cannot (i) ask employees for information on vaccination status (ii) register / record any information on vaccination status.</p> <p>Only the occupational physician is entitled to impose restrictions on an employee's work activity during the assessment of their health suitability. The occupational physician's possible restrictions are usually related to the work duties and/or the physical attendance at work; only in very exceptional cases does the occupational physician state that the employee is unsuitable to continue employment (see answer below). On vaccines, please see the details of the "National protocol for the implementation of company plans to set up extraordinary SARS-CoV-2/Covid-19 vaccination points in workplaces" - 6 April 2021, in the section "General - Formal DPA Guidance".</p>
Can we require employees (i) to be tested and/or (ii) to present a negative test or evidence of immunity in a specified form on a regular basis?	<p>No, but as of 15 October employers must ensure that employees have the Green Pass in order to access the workplace. The request of negative tests on a regular basis may be required by the occupational physician if they deem it necessary.</p> <p>Only the occupational physician could ask if the employee has received a vaccine if they deem it strictly relevant for their health surveillance activity.</p> <p>According to the Law Decree on the Green Pass, as of 15 October employers must ensure that employees have the Green Pass when accessing Company offices / premises. Employer checks on the Green Pass must comply with the guidelines to be issued by the Italian Government.</p>
If we require employees to provide evidence of negative tests / immunity, can we require employees to pay for this testing, or are we obliged to pay for it / reimburse employees for any testing costs they incur?	<p>Employers cannot require employees to provide evidence of negative tests or immunity. As of 15 October, employers must ensure that employees have the Green Pass when accessing the Company workplace / premises.</p> <p>In the specific cases where a negative test is required by the law (i.e. for employees who have had Covid symptoms returning to work) the test is administered by the competent health authority.</p> <p>Where the test is required by the occupational physician - which is a quite rare case - the cost should be borne by the company.</p> <p>According to the recent Law Decree on the Green Pass applicable from 15 October 2021, the employer must ensure that employees have the Green Pass when accessing the Company's workplace / premises. Unvaccinated employees can get a temporary Green Pass if they have had a negative rapid antigen or molecular results test. The costs of Covid-test are borne by the employee. The Italian Government provides free Covid tests for employees exempted from vaccination for health reasons.</p>
Can we require employees to be vaccinated, as a condition of physical attendance at the workplace?	<p>Only in limited circumstances, i.e. if the competent company physician - after an internal assessment - formally states that a condition of access to the Company premises is vaccination.</p> <p>However, as of 15 October only employees with the Green Pass can access the workplace. Employees without the Green Pass will not be allowed to enter the premises and will be considered absent from work without the right to salary until they submit a valid Green Pass. There are no disciplinary consequences and the employee has the right to keep their job position. The Green Pass is not required if the employee works from home.</p> <p>As vaccination is currently not mandatory except for specific sectors (e.g., healthcare professionals) employers cannot require the employees to be vaccinated as a condition of physical attendance at the workplace (but from 15 October employers are required to ask the employee to submit a valid Green Pass).</p> <p>Notwithstanding the obligation to have a valid Green Pass, the decision to exclude unvaccinated employees from the office can be taken only by the occupational physician on a case-by-case assessment. The occupational physician must inform the employer when he deems that an employee is unsuitable to work at the office and/or requires restrictions on their work activities.</p> <p>If the occupational physician deems that unvaccinated employees are not able to perform their tasks at the office, the employer should:</p> <ul style="list-style-type: none"> (i) temporarily assign the employee to remote working/smart working; or (ii) reallocate the employee to another role (assigning tasks that do not involve close contact with other employees / customers). <p>If options i) and ii) are not applicable, the employer can temporarily place the employee on garden leave.</p> <p>Employees suffering from serious illnesses or chronic diseases are entitled to be assigned to remote / smart working. In that case, the employer can prevent access to the workplace based on the employees' health conditions regardless of the vaccination status, assigning these employees to remote working (also with different tasks). This rule applies until 31 October 2021. In any case, we suggest involving the occupational physician.</p>

Employees & Workers cont	
Can we require employees to be vaccinated, or provide evidence of negative tests/immunity, as a condition of work-related travel?	<p>The Employer cannot require vaccination or specific evidence of negative tests/immunity. However, as of 15 October employers must ensure that an employee has a valid Green Pass if the travel entails access to a third-party workplace.</p> <p>Moreover, as of 1 September 2021, the Green Pass is a condition for travel for long-distance trips (e.g. flights, trains). Therefore, if business trips involve the travel on a train or a flight, vaccination or a negative test/immunity is necessary.</p>
Are we required to provide accommodations to employees who have not been vaccinated?	No.
Can we retain the vaccination / test / immunity records of employees? (Such records would include vaccine passports, proof of vaccination or other evidence of immunity, test results etc.).	No. Only the occupational physician could collect and retain such details.
If an employee refuses a request or requirement for vaccination asserting medical reasons, can we require proof of the medical reason?	<p>No, as currently Italian legislation does not entitle the employer to request vaccination.</p> <p>As vaccination is currently not compulsory except for specific sectors (e.g., healthcare professionals) the employer cannot ask any information on vaccination status, including any information on employees' health.</p> <p>However, as of 15 October employees will be required to have a Green Pass in order to access the workplace. The Green Pass is not required for employees exempted from vaccination for health reasons but they will need to have a specific medical certificate. We are still waiting for details on the proof of medical reasons for the exemption from the Green Pass.</p>

Mobile / Gig Economy / Agency Workers	
Can we ask individuals if they have been vaccinated?	<p>Employees/Agency Workers No, but as of 15 October 2021 any individuals will be required to have the Green Pass when accessing Company premises/offices. The details set out in the "Employees & Workers" section above apply.</p> <p>Freelancers/genuine self-employees No, but as of 15 October 2021 any individuals will be required to have a Green Pass when accessing Company premises/offices. The Green Pass is not required if the individuals perform their activities outside company premises. It must be recalled that a genuine freelancer should never enter the company premises on a regular basis.</p>
Can we carry out workplace testing of individuals/require individuals to provide evidence of a negative test?	<p>Employees/Agency Workers No, but as of 15 October any individuals will be required to have the Green Pass when accessing Company premises/offices. The details set out in the "Employees & Workers" section above apply.</p> <p>Freelancers/Self-employed No, but from 15 October 2021 any individuals will be required to have the Green Pass when accessing Company premises/offices.</p>
Can we require individuals to be vaccinated, as a condition of continuing engagement? What can or should we do if an individual refuses?	<p>Employees/Agency Workers No, as vaccination is not mandatory, except for specific sectors (healthcare professionals). The Company must only require the Green Pass when an individual is required to access Company premises for working/training purposes. The details set out in the "Employees & Workers" section above apply.</p> <p>Freelancers/Self employees No, as vaccination is not mandatory, except for specific sectors (healthcare professionals). The Company must only require the Green Pass when an individual is required to access Company premises for working/training purposes.</p>
Can we require individuals (i) to be tested and/or (ii) to present a negative test or evidence of immunity in a specified form on a regular basis?	No, but from 15 October 2021 any individuals will be required to have the Green Pass when accessing Company premises/offices for working/training purposes (and/or the individual is required to access to customer/third-party's workplace).
If we required individuals to provide evidence of negative tests / immunity, can we require individuals to pay for this testing, or are we obliged to pay for it / reimburse individuals for any testing costs they incur?	<p>Employees/Agency Workers Employers cannot require employees to provide evidence of negative tests or immunity. However, from 15 October 2021 an individual will be required to have the Green Pass when accessing Company premises/offices for working / training purposes.</p> <p>In the specific cases, where a negative test is required by the law (i.e. employees who had Covid symptoms, returning to work) the test is administered by the health authority. Where the test is required by the occupational physician, the company shall bear the costs.</p> <p>From 15 October 2021 individuals will be required to have the Green Pass when accessing Company premises/offices for working / training purposes. Unvaccinated individuals can get a temporary green pass if they had a negative rapid antigen or molecular test. The costs of the Covid-test are borne by the individual. The Italian Government provides free Covid tests for individuals exempted from vaccination for health reasons.</p>

Mobile / Gig Economy / Agency Workers cont

	<p>Freelancers/Self employees From 15 October 2021 individuals will be required to have the Green Pass when accessing Company premises/offices for working/training purposes. Unvaccinated individuals can have a temporary green pass if they had a negative rapid antigen or molecular test. The costs of the Covid-test are borne by the individual. The Italian Government provides free Covid tests for individuals exempted from vaccination for health reasons.</p>
Can we require individuals to be vaccinated, as a condition of physical attendance at any premises?	<p>Employees/Agency workers No, but from 15 October 2021 individuals will be required to have the Green Pass when accessing any work premises for working/training purposes. Individuals without the Green Pass are not allowed in any workplace. The details set out in the “Employees & Workers” section above apply.</p> <p>Freelancers/Self employees No, but individuals will be required to have the Green Pass when accessing any work premises for working/training purposes as of 15 October 2021. Individuals without the Green Pass are not allowed in any workplace.</p>
Can we require workers to be vaccinated, or provide evidence of negative tests/immunity, as a condition of work-related travel?	<p>Employees/Agency workers No, but from 15 October 2021 individuals will be required to have the Green Pass when accessing any work premises for working/training purposes. Individuals without the Green Pass are not allowed in any workplace. The details set out in the “Employees & Workers” section above apply.</p> <p>Freelancers/Self employees No, but starting from October 15th individuals will be required to have the Green Pass when accessing any work premises for working/training purposes. Individuals without the Green Pass are not allowed in any workplace. The details set out in the “Employees & Workers” section above apply.</p>
Are we required to provide accommodations to individuals who have not been vaccinated?	<p>Employees/Agency workers No. The details set out in the “Employees & Workers” section above apply.</p> <p>Freelancers/Self employees No.</p>
Can we retain the vaccination / test / immunity records of workers? (Such records would include vaccine passports, proof of vaccination or other evidence of immunity, test results etc.)	<p>Employees/Agency workers No. Only the occupational physician can collect and retains such details.</p> <p>Freelancers/Self employed No. Only the occupational physician can collect and retains such details.</p>
If an individual refuses a request or requirement for vaccination asserting medical reasons, can we require proof of the medical reason?	<p>Employees/Agency workers - Freelancers/self employed As vaccination is currently not compulsory except for specific sectors (e.g., healthcare professionals) the employer/firm cannot ask any information on vaccination status, including any information on employee’s health.</p> <p>However, from 15 October 2021 employees will be required to have the Green Pass when accessing the workplace for work/training purposes. The Green Pass is not required for individuals exempted from vaccination due to health reasons stated by the health authority. We are still waiting for details on the proof of health reasons for the exemption from the Green Pass.</p>

Visitors

Can we ask visitors if they have been vaccinated?	<p>No. It is still not clear if visitors (not performing training/work activity) are also required to show the Green Pass when accessing Company offices. More details will be provided after the publication of the Decree on the Green Pass. From the information available to date, the obligation extends only to external collaborators who access company facilities and not to visitors who do not have a contractual relationship with the company whose premises they intend to access.</p> <p>Unless the Italian Government states that the vaccine is mandatory in general or for certain categories, under current legislation the employer cannot ask visitors if they have received a vaccine.</p> <p>Please do note that under the Law-Decree April 22th 2021, n. 52, the following business categories are required to ask visitors to show the EU Green Pass (i.e., a proof of vaccination against SARS-CoV-2 or recovery from SARS-CoV-2 infection, or the performance of a molecular or rapid antigenic test with a negative result for SARS-CoV-2) in order to access to the business premises:</p> <ol style="list-style-type: none"> 1. Food related business activities for food & drinks with indoor consumption at the table; 2. shows open to the public, sporting events and competitions 3. museums, other institutes and places of culture and exhibitions; 4. swimming pools, swimming centers, gyms, team sports, wellness centers, even within wellness centers, even within accommodation facilities, limited to indoor activities; 5. festivals and fairs, conferences and congresses; 6. SPAs, theme parks and amusement parks; 7. cultural centers, social and recreational centers, limited to indoor activities; 8. activities of gambling halls, betting halls, bingo halls and casinos; 9. public competitions.
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Visitors cont

Can we exclude visitors who have not had a vaccine from the workplace?	<p>No.</p> <p>In Italy there is no general obligation to get vaccinated. Therefore, the vaccine cannot be a reason for exclusion from access to the workplace.</p> <p>It is still not clear if also visitors (not performing training/work activity) are required to show the Green Pass when accessing Company offices. More details will be provided after the publication of the Decree on the Green Pass.</p>
Can we test visitors on entry into our premises?	<p>The employer is required to take the temperature of those who must come to the workplace as a matter of necessity (e.g. cleaning services, workers of providers of essential and unpostponable services). If the temperature exceeds 37.5°C, the employer can record the reason why the visitor cannot enter if there is a contractual reason to do so.</p> <p>No further test can be conducted on a visitor.</p> <p>It is still not clear if visitors (not performing training/work activity) are also required to show the Green Pass when accessing Company offices. More details will be provided after the publication of the Decree on the Green Pass.</p>
As an alternative to asking a visitor to confirm their vaccination status, can we (i) require them to provide evidence of a negative test or (ii) require them to be tested prior to entry to our premises and deny them entry if they return a positive test or refuse to comply?	<p>No. It is still not clear if visitors (not performing training/work activity) are also required to show the Green Pass when accessing Company offices. More details will be provided after the publication of the Decree on the Green Pass.</p>
Can we ask for proof of vaccination status?	<p>No. See Q1 on Visitors above.</p>
Can we retain the vaccination records of visitors?	<p>No.</p>

Netherlands

Employees & Workers

Can we ask employees if they have been vaccinated?	<p>Yes, but with limitations.</p> <p>This is hotly debated in media and (legal) doctrine, but not yet tried and tested in court. In our opinion, a Company's decision to ask the question can be well defended.</p> <p>The Company cannot oblige/force employees to answer the query. The Company therefore cannot apply any sanctions to employees who refuse to answer the query. See other answers below in respect of the Company's options to impose work restrictions in case of an employee indicating not to have been vaccinated or an employee abstaining from answering the question.</p> <p>The Company may not process (record/file) the answers to the query, pursuant to applicable data protection legislation.</p>
Can we carry out workplace testing of employees / require employees to provide evidence of a negative test?	<p>Yes, but with limitations.</p> <p>The Company can <i>offer</i> workplace testing on a voluntary basis. The Company cannot force employees to take a test. See other Answers in respect of the Company's options to impose work restrictions in case of an employee not being able to provide evidence of a negative test.</p> <p>The DPA states that if rapid tests are not recorded, do not take place automatically (e.g. by opening a gate, or a red/green light) and are not further processed/recorded, the GDPR does not apply. This provides room to take rapid tests.</p>
Can we require employees to be vaccinated, as a condition of continuing employment? What can or should we do if employees refuse?	<p>No.</p> <p>See other Answers in respect of the Company's options to impose work restrictions in case of an employee not providing evidence of vaccination.</p>
Can we require employees (i) to be tested and/or (ii) to present a negative test or evidence of immunity in a specified form on a regular basis?	<p>(i) No, in the sense that the Company cannot require them to be tested (either ad hoc or on a regular basis).</p> <p>(ii) Yes, as a condition for being allowed unrestricted access to work and provided that the Company will bear the costs of testing.</p>
If we require employees to provide evidence of negative tests / immunity, can we require employees to pay for this testing, or are we obliged to pay for it / reimburse employees for any testing costs they incur?	<p>The Company should bear the costs of testing (if any).</p>
Can we require employees to be vaccinated, as a condition of physical attendance at the workplace?	<p>Yes, but with limitations.</p> <p>This is hotly debated in (legal) doctrine but not yet tried and tested in court. In our opinion (subject to change in view of the foregoing): yes, if the Company can demonstrate that the health and safety of other employees and visitors cannot be guaranteed in any other way (issues involved include: vaccinated people can still infect others).</p> <p>If the Company would deny access to the workplace, it should offer an alternative (e.g. a designated/secure area for non-vaccinated personnel or WFH).</p> <p>Allowing access to non-vaccinated persons to the premises creates a health risk and would be contrary to the Company's obligation to secure a safe and healthy workplace for all employees, although some argue that - since vaccinated persons apparently can still infect others - excluding non-vaccinated personnel only creates a fake sense of safety and that the health risks could be adequately and sufficiently managed through other means (e.g. a negative test requirement for all, social distancing and/or facial masks). It is being argued, in the on-going societal debate, that denial of access to non-vaccinated personnel would breach fundamental (constitutional) rights and/or privacy rights, but we are of the opinion that, even if such fundamental (constitutional) rights and/or privacy rights were at stake, such rights should yield for the Company's obligation to secure a safe & healthy work place for others (employees/visitors).</p> <p>Setting the vaccination-condition will require employees to disclose information/evidence of vaccination status. The Company is not allowed to process or keep a record of such (medical/health) data. Hence, the Company should not in any way record the relevant data. That means applying a 'check and forget'-practice and ad hoc (human; not automated) monitoring and control 'at the gate'. Any infringement may trigger sanctions from the DPA.</p>
Can we require employees to be vaccinated, or provide evidence of negative tests/immunity, as a condition of work-related travel?	<p>Yes, but with limitations.</p> <p>This has not been tried and tested in court. In our opinion (subject to change in view of the foregoing): yes, if the Company can demonstrate that "being vaccinated" or "providing evidence of negative tests/immunity" is a government-imposed or airline-imposed condition for travelling and/or a condition for access to the premises to be visited (imposed by the party to be visited).</p> <p>Such a policy may trigger employment law issues/claims, e.g. in case of 'killing' employee's job and/or promotion opportunities due to denying business travel or in case of redeployment, etc.</p>

Employees & Workers cont

	<p>Setting the vaccination/negative testing/immunity-condition for travelling will require employees to disclose information/evidence of vaccination status. The Company is not allowed to process or keep a record of such (medical/health) data. Hence, the Company should not in any way record the relevant data. That means applying a 'check and forget'-practice and ad hoc (human; not automated) monitoring and control in respect of each intended business trip. Any infringement may trigger sanctions from the DPA.</p>
Are we required to provide accommodations to employees who have not been vaccinated?	<p>Yes, if the Company expects its staff to work at the Company's premises.</p> <p>The question is what the Company wants the 'non-vaccinated' employees to do in case the Company does not grant them access to its premises. Some options: demanding them to work at an alternative work (designated/secure area or premises), allowing them to work from home (provided that there is a suitable home office available) or releasing them from duties (at full pay).</p>
Can we retain the vaccination / test / immunity records of employees? (Such records would include vaccine passports, proof of vaccination or other evidence of immunity, test results etc.).	<p>No.</p> <p>The Company is not allowed to process or keep a record of such (medical/health) data. Hence, the Company should not in any way record the relevant data. That means applying a 'check and forget'-practice and ad hoc (human; not automated) monitoring and control 'at the gate'. Any infringement may trigger sanctions from the DPA.</p>
If an employee refuses a request or requirement for vaccination asserting medical reasons, can we require proof of the medical reason?	<p>No, in the direct sense of requiring that from the employee. Such information implies information on a 'health condition, a possible risk of illness or medical history' and may only be processed, if there is a statutory justification (which we consider not to apply in these circumstances). Absent a statutory justification, the Company is not allowed to process or keep a record of such data.</p> <p>Yes, in the sense that the Company can have its (mandatory) company physician examine the situation and, with the employee's consent, render an opinion in the sense that the employee is prevented from getting vaccinated for medical reasons.</p>

Mobile / Gig Economy / Agency Workers

General note: "Mobile / Gig Economy Workers" are not legally recognised concepts under Dutch law.

	<p>Yes, but with limitations.</p> <p>It is hotly debated in media and (legal) doctrine but is not yet tried and tested in court. In our opinion, a Company's decision to ask the question can be well defended.</p>
Can we ask individuals if they have been vaccinated?	<p>The Company cannot oblige/force contingent workers to answer the query. The Company can hence not apply any sanctions to contingent workers who refuse to answer the query. See other Answers in respect of the Company's options to impose access/work restrictions in case of a contingent worker indicating not to have been vaccinated or a contingent worker abstaining from answering the question.</p> <p>The Company may not process (record/file) the answers to the query, pursuant to applicable data protection legislation.</p>
Can we carry out workplace testing of individuals /require individuals to provide evidence of a negative test?	<p>Yes, but with limitations.</p> <p>The Company can <i>offer</i> workplace testing on a voluntary basis. The Company cannot force contingent workers to take a test. See other Answers in respect of the Company's options to impose work restrictions in case of a contingent worker not being able to provide evidence of a negative test.</p> <p>The DPA now states that if rapid tests are not recorded, do not take place in an automated fashion (e.g. by opening a gate, or a red/green light) or are otherwise not further processed (e.g. recorded), then they fall out of the scope of the GDPR. This provides room to take the temperature and/or rapid test contingent worker, provided other fundamental (privacy) rights and applicable laws are respected.</p>
Can we require individuals to be vaccinated, as a condition of continuing engagement? What can or should we do if an individual refuses?	<p>No statutory impediment, but there may be contractual impediments to set such requirement. Sanctions in case of refusal: this will depend on the contractual arrangements in place.</p>
Can we require individuals (i) to be tested and/or (ii) to present a negative test or evidence of immunity in a specified form on a regular basis?	<p>(i) No, in the sense that the Company cannot require them to be tested (either ad hoc or on a regular basis).</p> <p>(ii) Yes, as a condition for being allowed unrestricted access to work and provided that the Company will bear the costs of testing.</p>
If we required individuals to provide evidence of negative tests / immunity, can we require individuals to pay for this testing, or are we obliged to pay for it / reimburse individuals for any testing costs they incur?	<p>(i) Requiring individual to pay: absent any contractual arrangements to that effect, no.</p> <p>(ii) Obligated to pay for it or reimburse: yes, unless deviating contractual arrangement.</p>

Netherlands Continued

Mobile / Gig Economy / Agency Workers cont	
Can we require individuals to be vaccinated, as a condition of physical attendance at any premises?	<p>Yes, but with limitations.</p> <p>This is hotly debated in (legal) doctrine and not tried and tested in court. In our opinion (subject to change in view of the foregoing): yes, if the Company can demonstrate that the health and safety of (other) workers/ employees and visitors cannot be guaranteed in any other way (issues involved include: vaccinated people can still infect others).</p> <p>If the Company would deny access to the work place, it may be obliged to offer an alternative (e.g. a designated/ secure area for non-vaccinated personnel or WFH) under any contractual arrangements.</p> <p>Allowing access to non-vaccinated persons to the premises creates a health risk and would be contrary to the Company's obligation to secure a safe and healthy workplace for all employees, although some argue that - since vaccinated persons apparently can still infect others - excluding non-vaccinated personnel only creates a fake sense of safety and that the health risks could be adequately and sufficiently managed through other means (e.g. a negative test requirement for all, social distancing and/or face masks). It is being argued, in the on-going societal debate, that denial of access to non-vaccinated personnel would breach fundamental (constitutional) rights and/or privacy rights, but we are of the opinion that, even if such fundamental (constitutional) rights and/or privacy rights were at stake, such rights should yield for the Company's obligation to secure a safe & healthy work place for others (employees/visitors).</p> <p>Setting the vaccination-condition will require employees to disclose information/evidence of vaccination status. The Company is not allowed to process or keep a record of such (medical/health) data. Hence, the Company should not in any way record the relevant data. That means applying a 'check and forget'-practice and ad hoc (human; not automated) monitoring and control 'at the gate'. Any infringement may trigger sanctions from the DPA Authority.</p>
Can we require workers to be vaccinated, or provide evidence of negative tests/ immunity, as a condition of work-related travel?	<p>Yes, but with limitations.</p> <p>This has not been tried and tested in court. In our opinion (subject to change in view of the foregoing): yes, if the Company can demonstrate that "being vaccinated" or "providing evidence of negative tests/immunity" is a government-imposed or airline-imposed condition for travelling and/or a condition for access to the premises to be visited (as imposed by the party to be visited).</p> <p>Such a policy may trigger contractual claims, e.g. in case of the travel ban preventing the contingent worker from receiving the agreed fee.</p> <p>Setting the vaccination/negative testing/immunity-condition for travelling will require contingent workers to disclose information/evidence of vaccination status. The Company is only allowed to process or keep a record of such (medical/health) data if the contingent worker consents to that and such consent may be considered 'freely' given (which may or may not be the case depending on the nature of the contractual arrangement in place). Absent freely given consent, the Company should not in any way record the relevant data. That means applying a 'check and forget'-practice and ad hoc (human; not automated) monitoring and control in respect of each intended business trip. Any infringement may trigger sanctions from the DPA Authority.</p>
Are we required to provide accommodations to individuals who have not been vaccinated?	No, unless the contractual arrangements provide for such requirement.
Can we retain the vaccination / test / immunity records of workers? (Such records would include vaccine passports, proof of vaccination or other evidence of immunity, test results etc.).	<p>Yes, with freely given consent, noting that obtaining freely given consent is difficult in a hierarchical context and may not be feasible in all scenarios.</p> <p>Absent freely given consent: no.</p>
If an individual refuses a request or requirement for vaccination asserting medical reasons, can we require proof of the medical reason?	No.

Visitors	
Can we ask visitors if they have been vaccinated?	Yes, provided that the Company will adhere the data privacy requirements (i.e. justification, such as the individual's explicit consent) when processing or keeping a record of such (medical/health) data. The Company <u>cannot</u> oblige/force visitors to answer the query. The Company can refuse a visitor entry to premises when that individual refuses to answer the query.
Can we ask visitors if they have been vaccinated?	<p>Allowing access to non-vaccinated persons to the premises creates a health risk and would be contrary to the Company's obligation to secure a safe and healthy workplace for all employees, although some argue that - since vaccinated persons apparently can still infect others - excluding non-vaccinated personnel only creates a fake sense of safety and that the health risks could be adequately and sufficiently managed through other means (e.g. a negative test requirement for all, social distancing and/or facial masks). It is being argued, in the on-going societal debate, that denial of access to non-vaccinated personnel would breach fundamental (constitutional) rights and/or privacy rights, but we are of the opinion that, even if such fundamental (constitutional) rights and/or privacy rights were at stake, such rights should yield for the Company's obligation to secure a safe & healthy work place for others (employees/visitors).</p>

Visitors cont	
Can we test visitors on entry into our premises?	The DPA now states that visitors can be tested through rapid tests. However, the Company <u>cannot</u> oblige/force visitors to get tested. The Company can refuse a visitor entry to premises when that individual refuses to be tested.
As an alternative to asking a visitor to confirm their vaccination status, can we (i) require them to provide evidence of a negative test or (ii) require them to be tested prior to entry to our premises and deny them entry if they return a positive test or refuse to comply?	<p>(i) Yes.</p> <p>(ii) No.</p>
Can we ask for proof of vaccination status?	Yes.
Can we retain the vaccination records of visitors?	Only where collecting such information can be justified and while this remains necessary. Vaccination records can be retained where this information can be validly collected (with individual's explicit consent), but should only be retained for as long as necessary for the purpose for which the data was collected. The Company should consider an appropriate retention period at the outset of collecting the data and should periodically review the data they hold and erase or anonymise it when they no longer need it. The Company should also be prepared to receive and manage requests for erasure in respect of vaccination data.

Employees & Workers

<p>Can we ask employees if they have been vaccinated?</p>	<p>Yes, but with limitations.</p> <p>There is no national law that would regulate obtaining vaccination status by employers. We are not aware of the Polish DPA's stance on processing employees' vaccination status. By analogy, we would rely on the DPA's stance on temperature testing / testing employees for COVID-19. Regarding testing, the DPA has said that the employer may implement such preventive measures, if the sanitary authorities ordered or provided guidelines to the employer to take such special measures provided they are necessary to prevent COVID-19 spread. Orders are issued in individual cases (at the employer's request).</p> <p>So far, the sanitary authorities have issued over 60 different guidelines for various sectors or entities. The guidelines are silent about asking employees about their vaccination status (Guidelines).¹</p> <p>Vaccinations are currently voluntary in Poland.</p> <p>Vaccination status is health data and is therefore a special category data in Poland.</p> <p>An employee's vaccination status could be processed on the basis of the employee's explicit consent (Art. 9 (2) (a) GDPR). In Poland, under the Polish Labour Code, explicit consent to process special category data must be given at the employee's initiative.</p> <p>The Polish DPA has expressed doubts about accepting consent as a legal basis for the processing of health data in an employer-employee relationship (due to the inequality that exists between the two entities). Therefore, the procedure for collecting such consents should be carefully prepared.</p> <p>The employer should not require its employees to provide information on their vaccination status. However, the employer may consider introducing a process by which it would offer employees an option to voluntarily inform the employer about their vaccination status. It should be entirely up to the employee to provide such information. The employee cannot be exposed to any adverse consequences for not providing such information. In particular, consent / refusal to provide information cannot serve as grounds for discrimination, including denial of access to the workplace. The employer may offer some less restrictive internal procedures for employees who have been vaccinated.</p> <p>The Polish government is currently working on a draft act enabling employers to collect and process information on employees' vaccination status (Draft). The Draft has not yet been published. Hence, it is not yet known under what circumstances employers will be allowed to collect and process information on employees' vaccination status. We recommend keeping track of further developments of the Draft.</p> <p>In practice, the employer should not collect this information unless it is necessary and proportionate to do so. For example, if the employees in question are not working from the office, or unlikely to come into contact with each other or customers or suppliers whilst carrying out their duties, collecting such data is unlikely to be deemed reasonable or proportionate. In all cases, employers should only collect and retain the minimum amount of the information needed to fulfil their purpose in line with the data minimisation principle.</p>
<p>Can we carry out workplace testing of employees / require employees to provide evidence of a negative test?</p>	<p>Yes, but with limitations.</p> <p>There is no national law that would regulate mandatory testing of employees / requiring employees to provide evidence of a negative test. According to the Polish DPA, the employer may test employees for COVID-19 or require them to provide evidence of a negative test, if the sanitary authorities ordered or provided guidelines to the employer to take such special measures provided they are necessary to prevent COVID-19 spread. Orders are issued in individual cases (at the employer's request).</p> <p>Guidelines are generally silent about COVID-19 testing, except for agricultural producers employing foreigners for seasonal work.</p> <p>Information about the test result is health data and is therefore a special category data in Poland.</p> <p>Information about the test results could be processed on the basis of the employee's explicit consent (Art. 9 (2) (a) GDPR). In Poland, under the Polish Labour Code, explicit consent to process special category data must be given at the employee's initiative.</p> <p>As noted, the Polish DPA has expressed doubts about accepting consent as a legal basis for the processing of health data in an employer-employee relationship. Therefore, the procedure for collecting such consents should be carefully prepared.</p> <p>The employer should not require its employees to be tested or provide evidence of a negative test. However, the employer may consider introducing a process by which it would offer employees an option to take voluntary tests or provide voluntarily evidence of a negative test. It should be entirely up to the employee whether or not they take advantage of this opportunity. Employees who take a voluntary test cannot be compelled to show the result. The employee cannot be exposed to any adverse consequences for not taking the test or providing evidence of a negative test. In particular, consent / refusal to take the test or provide such evidence cannot serve as grounds for discrimination, including denial of access to the workplace. However, even such an organised process was questioned in a press article by a representative of the Polish DPA.</p>

Employees & Workers cont

	<p>As a rule, the employer may adopt a procedure under which: (i) only healthy employees may appear at work, and (ii) in a situation where an employee feels sick at work, he/she should notify the employer about it.</p> <p>In practice, the employer should not collect this information unless it is necessary and proportionate to do so. For example, if the employees in question are not working from the office, or unlikely to come into contact with each other or customers or suppliers whilst carrying out their duties, collecting such data is unlikely to be deemed reasonable or proportionate. In all cases, employers should only collect and retain the minimum amount of information needed to fulfil their purpose in line with the data minimisation principle.</p>
<p>Can we require employees to be vaccinated, as a condition of continuing employment? What can or should we do if employees refuse?</p>	<p>No. Currently, there is discussion about imposing mandatory vaccinations for medical and care workers, however a blanket requirement is highly risky for most employers.</p> <p>An employer cannot force employees to be vaccinated. As a consequence, the employee cannot be exposed to any adverse consequences for not being vaccinated.</p> <p>Currently, vaccines are available only via the government-run National Vaccination Programme, and all employees qualify for the vaccine (individual reasons may disqualify a person from vaccination). An employer can also organise a vaccination point at the workplace by joining the Vaccination at the Workplace Programme. For this purpose, the employer would have to cooperate with a vaccination station and encourage at least 300 employees (including their family members) to take part in the process. Considering how easy individual vaccination has become recently, we consider this option to be too burdensome.</p> <p>However, all employers may actively promote vaccination. The Polish Labour Inspectorate has confirmed that an employer may offer non-financial incentives to promote vaccination (i.e. an extra day off to be vaccinated). If this option is chosen, we recommend that you plan ahead, have a clear, consistent communication strategy, and actively engage with employees.</p>
<p>Can we require employees (i) to be tested and/or (ii) to present a negative test or evidence of immunity in a specified form on a regular basis?</p>	<p>No.</p> <p>There is no national law that would require employees to be tested / present a negative test or evidence of immunity.</p> <p>The employer should not require its employees to be tested / present a negative test or evidence of immunity in a specified form on a regular basis. However, the employer may consider introducing a process by which it would offer employees an option to take voluntary tests or voluntarily provide a negative test or evidence of immunity. It should be entirely up to the employee whether or not they take advantage of this opportunity. Employees who take a voluntary test cannot be compelled to show the result. The employee cannot be exposed to any adverse consequences for not taking the test or providing a negative test or evidence of immunity. In particular, consent / refusal to take the test or provide such a negative test or evidence cannot serve as grounds for discrimination, including denial of access to the workplace. However, even such an organised process was questioned in a press article by a representative of the Polish DPA.</p> <p>As mentioned above, the Polish government is currently working on the Draft. The Draft has not yet been published. Hence, it is not yet known under what circumstances employers will be allowed to collect and process information on employees' vaccination status. We recommend keeping track of further developments of the Draft.</p>
<p>If we require employees to provide evidence of negative tests / immunity, can we require employees to pay for this testing, or are we obliged to pay for it / reimburse employees for any testing costs they incur?</p>	<p>No.</p> <p>However, assuming that the employer will require evidence of negative tests / immunity (with no legal grounds for such a request), consequently the employee cannot be obliged to pay for such evidence. The costs will have to be covered by the employer.</p>
<p>Can we require employees to be vaccinated, as a condition of physical attendance at the workplace?</p>	<p>No.</p> <p>In general, every employee has the right to work from the office, although currently, an employer may only ask employees to work from home under the temporary Covid Act, if they have a suitable place to work at home and the type of work allows this.</p> <p>If an employee voluntarily declares that he/she has been vaccinated, the employer can rescind some internal restrictions for that person, i.e. it can waive the obligation for that employee to wear a face covering in common office areas.</p> <p>A general prohibition for non-vaccinated employees to come to the employer's premises (when the premises are not closed to everyone) is risky. Vaccination itself is not a reason to differentiate an employee's situation if this is not objectively justified. Categorising employees based on their vaccination status could be considered a form of discrimination.</p> <p>Please note that the Polish government is currently working on the Draft which may introduce changes in law related to this matter, i.e. allowing such a requirement. However, the Draft has not yet been published. We recommend keeping track of further developments of the Draft.</p>

¹ The guidelines are published on the Polish Ministries' websites, depending on their subject matter. Business related recommendations are mostly available here (in Polish): <https://www.gov.pl/web/rozwoj-praca-technologie/wytyczne-dla-branz>

Employees & Workers cont

<p>Can we require employees to be vaccinated, or provide evidence of negative tests/immunity, as a condition of work-related travel?</p>	<p>No.</p> <p>There is no national law that would require the employee to get vaccinated, or provide evidence of negative tests/immunity, as a condition of work-related travel.</p> <p>As a rule, the employer may order an employee to attend the business trip and the employee is obliged to follow this order if the law does not grant the right to the employee to refuse (pregnant woman, disabled employees, parent with child under four years old). However, at the beginning of the pandemic the Polish Labour Inspectorate issued the interpretation that each employee may refuse attending a business trip to places where he/she is exposed to infection risk. These guidelines have not changed since the beginning of the pandemic, but in our opinion the current approach of the Polish Labour Inspectorate to business trips should be revised.</p> <p>As the pandemic situation is more stable and employees have the opportunity to protect themselves through vaccinations then the right to refuse attending business trips should be limited to countries where the infection ratio is significantly higher than in the country of permanent working place.</p> <p>As the employer may request the employee to attend a business trip regardless of his / her vaccination status / evidence of negative test/ immunity, then there are no grounds to require proof of vaccination or a negative test.</p> <p>Requesting business trips only from employees who are vaccinated (assuming that the employer has such an information) is quite risky. Vaccination itself is not a reason to differentiate an employee's situation if this is not objectively justified. Categorising employees based on their vaccination status could be considered a form of discrimination.</p> <p>Employees who travel for work will need to comply with the applicable requirements for domestic and international travel. Some jurisdictions have imposed travel restrictions which either: (i) prohibit; or (ii) impose additional quarantine requirements in respect of the entry of unvaccinated individuals to the country. There are also testing requirements in place for all international travel. Therefore, in order to travel for work, employees may need to be vaccinated or tested and will be required to submit to specific government-imposed testing requirements to authorities.</p> <p>If an employee refuses to comply with legally-required vaccination or testing requirements while on a business trip and as a consequence fail to fulfil the employer's request, the employer may have grounds to allocate the employee to work which does not involve travel and/or to take disciplinary action up to and including dismissal. The question of whether such action is lawful or not will depend on the specific circumstances, including the nature of the role, how essential the travel is for the performance of the role, which jurisdictions are involved, what the entry requirements are, and the reason for refusal.</p> <p>Specific advice should be sought about any requirements for cross-border travel as the situation is complex and constantly changing.</p>
<p>Are we required to provide accommodations to employees who have not been vaccinated?</p>	<p>No.</p> <p>In general, every employee has the right to work from the office, although currently employers may ask employees to work from home under the temporary Covid Act.</p>
<p>Can we retain the vaccination / test / immunity records of employees? (Such records would include vaccine passports, proof of vaccination or other evidence of immunity, test results etc.).</p>	<p>Yes, however it is not recommended.</p> <p>There is no national law that would require employees to provide vaccination / test / immunity records. However, employers can request and retain proof of the employee's vaccination / test / immunity records if it is provided voluntarily by the employee.</p> <p>Proof of the employee's vaccination / test / immunity records could be processed on the basis of the employee's explicit consent (Art. 9 (2)(a) GDPR).</p> <p>However, we would not recommend doing so, as it may be considered excessive. We would instead recommend collecting the employee's declarations or, if that is not sufficient, verifying such declarations with vaccination certificates (or another type of proof) without collecting or storing copies of such certificates. This is because the Polish Labour Code gives preference to employees' declarations over collecting of documents. Also, employees' declarations contain less data than such proof.</p> <p>Employers should consider an appropriate retention period at the outset of collecting the data and should periodically review the data they hold and erase or anonymise it when they no longer need it.</p> <p>The Polish government is currently working on the Draft. The Draft has not yet been published. It is not yet clear whether employers will be allowed to keep vaccination / test / immunity records.</p> <p>However, it is said that the Draft may allow employers to directly access the IT system containing information on vaccinated employees. In such a situation, employers would not need to collect information and proof of employees' vaccination status directly from employees, as they could verify it on their own in the system. We recommend keeping track of further developments of the Draft.</p>
<p>If an employee refuses a request or requirement for vaccination asserting medical reasons, can we require proof of the medical reason? If an employee refuses a request or requirement for vaccination asserting medical reasons, can we require proof of the medical reason?</p>	<p>No.</p> <p>Vaccinations are currently voluntary in Poland.</p> <p>There is no local law that would require employees to provide their vaccination status or reasons for not being vaccinated, including medical reasons. Employers are not allowed to require employees to provide such information.</p>

Mobile / Gig Economy / Agency Workers

<p>Can we ask individuals if they have been vaccinated?</p>	<p>Yes, but with limitations.</p> <p>There is no national law that would regulate obtaining the vaccination status by employers. We are not aware of the Polish DPA's stance on processing individuals' vaccination status. By analogy, we would rely on the DPA's stance on temperature testing / testing employees for COVID-19. It said that the employer may implement such preventive measures, if the sanitary authorities ordered or provided guidelines to the employer to take such special measures provided they are necessary to prevent COVID-19 spread. Orders are issued in individual cases (at the employer's request).</p> <p>So far, the sanitary authorities have issued over 60 different Guidelines for various sectors or entities. Guidelines are silent about asking individuals about their vaccination status.</p> <p>Vaccinations are currently voluntary in Poland.</p> <p>Vaccination status is health data and is therefore a special category data in Poland.</p> <p>An individual's vaccination status could be processed on the basis of the individual's explicit consent (Art. 9 (2) (a) GDPR). In Poland, under the Polish Labour Code, explicit consent to process special category data must be given at the employee's initiative. Despite that the Polish Labour Code does not apply to the majority of Mobile / Gig Economy / Agency Workers, we recommend adopting a common approach for staff. It is likely that the Polish DPA will expect the consent to be provided from the initiative of the individual.</p> <p>The Polish DPA has expressed doubts about accepting consent as a legal basis for the processing of health data in an employer-employee relationship (due to the inequality that exists between the two entities). Therefore, the procedure for collecting such consents should be carefully prepared.</p> <p>The employer should not require individuals to provide information on their vaccination status. However, the employer may consider introducing a process by which it would offer individuals an option to voluntarily inform the employer about their vaccination status. It should be entirely up to the individual to provide such information. The individual cannot be exposed to any adverse consequences for not providing such information. In particular, consent / refusal to provide information cannot serve as grounds for discrimination, including denial of access to the workplace. The employer may offer some less restrictive internal procedures for individuals who have been vaccinated.</p> <p>The Polish government is currently working on a draft act enabling employers to collect and process information on employees' vaccination status (Draft). The Draft has not yet been published. Hence, it is not yet known under what circumstances employers will be allowed to collect and process information on employees' / individuals' vaccination status. We recommend keeping track of further developments of the Draft.</p> <p>In practice, the employer should not collect this information unless it is necessary and proportionate to do so. For example, if the individuals in question are not working from the office, or unlikely to come into contact with each other or customers or suppliers whilst carrying out their duties, collecting such data is unlikely to be deemed reasonable or proportionate. In all cases, employers should only collect and retain the minimum amount of the information needed to fulfil their purpose in line with the data minimisation principle.</p>
<p>Can we carry out workplace testing of individuals / require individuals to provide evidence of a negative test?</p>	<p>Yes, but with limitations.</p> <p>There is no national law that would regulate mandatory testing of individuals / requiring individuals to provide evidence of a negative test. According to the Polish DPA, the employer may test individuals for COVID-19 or require them to provide evidence of a negative test, if the sanitary authorities ordered or provided guidelines to the employer to take such special measures provided they are necessary to prevent COVID-19 spread. Orders are issued in individual cases (at the employer's request).</p> <p>Guidelines are generally silent about COVID-19 testing, except for agricultural producers employing foreigners for seasonal work.</p> <p>Information about the test result is health data and is therefore special category data in Poland.</p> <p>Information about the test results could be processed on the basis of the individual's explicit consent (Art. 9 (2) (a) GDPR). In Poland, under the Polish Labour Code, explicit consent to process special category data must be given at the employee's initiative. Despite that the Polish Labour Code does not apply to the majority of Mobile / Gig Economy / Agency Workers, we recommend adopting a common approach for staff. It is likely that the Polish DPA will expect the consent to be provided from the initiative of the individual.</p> <p>The Polish DPA has expressed doubts about accepting consent as a legal basis for the processing of health data in an employer-employee relationship (due to the inequality that exists between the two entities). Therefore, the procedure for collecting such consents should be carefully prepared.</p> <p>The employer should not require individuals to be tested or provide evidence of a negative test. However, the employer may consider introducing a process by which it would offer individuals an option to take voluntary tests or provide voluntarily evidence of a negative test. It should be entirely up to the individual whether or not they take advantage of this opportunity. Individuals who take a voluntary test cannot be compelled to show the result. The individual cannot be exposed to any adverse consequences for not taking the test or providing evidence of a negative test. In particular, consent / refusal to take the test or provide such evidence cannot serve as grounds for discrimination, including denial of access to the workplace. However, even such an organised process was questioned in a press article by a representative of the Polish DPA.</p> <p>As a rule, the employer may adopt a procedure under which: (i) only healthy individuals may appear at work, and (ii) in a situation where an individual feels sick at work, he/she should notify the employer about it.</p>

Mobile / Gig Economy / Agency Workers cont

	In practice, the employer should not collect this information unless it is necessary and proportionate to do so. For example, if the individuals in question are not working from the office, or unlikely to come into contact with each other or customers or suppliers whilst carrying out their duties, collecting such data is unlikely to be deemed reasonable or proportionate. In all cases, employers should only collect and retain the minimum amount of information needed to fulfil their purpose in line with the data minimisation principle.
Can we require individuals to be vaccinated, as a condition of continuing engagement? What can or should we do if an individual refuses?	<p>No. Currently, there is discussion about imposing mandatory vaccinations for medical and care workers, however a blanket requirement is highly risky for most employers.</p> <p>An employer cannot force employees to be vaccinated and this applies also for individuals who perform work on a basis other than an employment contract. Consequently, an individual cannot be exposed to any adverse consequences for not being vaccinated, as long as it does not affect the services provided.</p> <p>If the individual refuses you cannot terminate the contract due to the refusal, but if this affects the level of services provided, you can use it as grounds for termination.</p>
Can we require individuals (i) to be tested and/or (ii) to present a negative test or evidence of immunity in a specified form on a regular basis?	<p>No.</p> <p>There is no national law that would require individuals to be tested / present a negative test or evidence of immunity.</p> <p>The employer should not require individuals to be tested / present a negative test or evidence of immunity in a specified form on a regular basis. However, the employer may consider introducing a process by which it would offer individuals an option to take voluntary tests or voluntarily provide a negative test or evidence of immunity. It should be entirely up to the individual whether or not they take advantage of this opportunity. Individuals who take a voluntary test cannot be compelled to show the result. The individual cannot be exposed to any adverse consequences for not taking the test or providing a negative test or evidence of immunity. In particular, consent /refusal to take the test or provide such a negative test or evidence cannot serve as grounds for discrimination, including denial of access to the workplace. However, even such an organised process was questioned in a press article by a representative of the Polish DPA.</p> <p>As mentioned above, the Polish government is currently working on the Draft. The Draft has not yet been published. Hence, it is not yet known under what circumstances employers will be allowed to collect and process information on employees' / individuals' vaccination status. We recommend keeping track of further developments of the Draft.</p>
If we required individuals to provide evidence of negative tests / immunity, can we require individuals to pay for this testing, or are we obliged to pay for it / reimburse individuals for any testing costs they incur?	<p>No.</p> <p>However, if you will require evidence of negative tests / immunity (with no legal grounds for such a request), consequently the individual cannot be obliged to pay for such evidence. You will have to cover the costs.</p>
Can we require individuals to be vaccinated, as a condition of physical attendance at any premises?	<p>No.</p> <p>In general, an individual cannot demand to be present at any of the employer's premises, unless the contract provides otherwise. However, if for the purpose of the services provided his / her presence is essential, the individual may be requested to provide services from the premises regardless of his/her vaccination status.</p> <p>Consequently, in the case when an individual is allowed to work from the employer's premises and declares voluntarily that he/she has been vaccinated, you can rescind some internal restrictions for that person, i.e. waive the obligation for that individual to wear a face covering in common office areas.</p>
Can we require workers to be vaccinated, or provide evidence of negative tests/ immunity, as a condition of work-related travel?	<p>No.</p> <p>There is no national law that would require an individual to get vaccinated, or provide evidence of negative tests/immunity, as a condition of work-related travel.</p> <p>An employer cannot force employees to be vaccinated and this applies also for individuals who perform work on a basis other than an employment contract. Consequently, an individual cannot be exposed to any adverse consequences for not being vaccinated, as long as it does not affect the services provided. Considering the character of the services business trips may be recognised as an essential part of contractual obligations.</p> <p>If the individual refuses you cannot terminate the contract due to the refusal, but if this affects the level of services provided, you can use it as grounds for termination.</p> <p>Individuals who travel for work will need to comply with the applicable requirements for domestic and international travel. Some jurisdictions have imposed travel restrictions which either: (i) prohibit; or (ii) impose additional quarantine requirements in respect of entry of unvaccinated individuals to the country. There are also testing requirements in place for all international travel. Therefore, in order to travel for work, individuals may need to be vaccinated or tested, and will be required to submit to specific government-imposed testing requirements to authorities.</p>

Mobile / Gig Economy / Agency Workers cont

Are we required to provide accommodations to individuals who have not been vaccinated?	<p>No.</p> <p>In general, individuals cannot demand to be present at any of the employer's premises, unless the contract provides otherwise. Consequently, there is no statutory obligation to provide accommodations to individuals, regardless of their vaccination status.</p> <p>However, in the case when an individual is allowed to work from the employer's premises and voluntarily declares that he/she has been vaccinated, you can rescind some internal restrictions for that person, i.e. waive the obligation for that individual to wear a face covering in common office areas.</p>
Can we retain the vaccination / test / immunity records of workers? (Such records would include vaccine passports, proof of vaccination or other evidence of immunity, test results etc.)	<p>Yes, however it is not recommended.</p> <p>There is no national law that would require individuals to provide vaccination / test / immunity records. However, employers can request and retain proof of the individual's vaccination / test / immunity records if it is provided voluntarily by the individual.</p> <p>Proof of the individual's vaccination / test / immunity records could be processed on the basis of the individual's explicit consent (Art. 9 (2)(a) GDPR). It is likely that the Polish DPA will expect the consent to be provided at the initiative of the individual.</p> <p>However, we would not recommend doing so, as it may be considered excessive. We would instead recommend collecting the individual's declarations or, if that is not sufficient, verifying such declarations with vaccination certificates (or another type of proof) without collecting or storing copies of such certificates. This is because the Polish Labour Code gives preference to employees' declarations over collecting documents. Despite that the Polish Labour Code does not apply to the majority of Mobile / Gig Economy / Agency Workers, we recommend adopting a common approach for staff. Also, individual declarations contain less data than such proof.</p> <p>Employers should consider an appropriate retention period at the outset of collecting the data and should periodically review the data they hold and erase or anonymise it when they no longer need it.</p> <p>The Polish government is currently working on the Draft. The Draft has not yet been published. It is not yet clear whether employers will be allowed to keep vaccination / test / immunity records.</p> <p>However, it is said that the Draft may allow employers to directly access the IT system containing information on the vaccinated employees / individuals. In such a situation, employers would not need to collect information and proof of employees' / individuals' vaccination status directly from employees / individuals, as they could verify it on their own in the system. We recommend keeping track of further developments of the Draft.</p>
If an individual refuses a request or requirement for vaccination asserting medical reasons, can we require proof of the medical reason?	<p>No.</p> <p>Vaccinations are currently voluntary in Poland.</p> <p>There is no local law that would require individuals to provide their vaccination status or reasons for not being vaccinated, including medical reasons. Employers are not allowed to require individuals to provide such information.</p>

Visitors

Can we ask visitors if they have been vaccinated?	<p>Yes, but with limitations.</p> <p>Under the applicable regulations, there are limits of persons who may participate in various events (e.g. concerts, cinemas, hotels). Vaccinated persons are not counted against such limits.</p> <p>According to the Polish DPA, the applicable regulations do not provide for the possibility of requiring persons participating in such events to provide information on their vaccination. These regulations cannot be considered the basis for companies, obliged to comply with the limit of persons participating in their events, to obtain information on the vaccination from the participants (that is based on Art. 9 (2)(i) GDPR). Thus, companies are not entitled to request such data from visitors and visitors are not obliged to provide them.</p> <p>However, the company may collect and process such information if it is volunteered by the visitors (based on the visitor's explicit consent based in Art. 9 (2)(a) GDPR). The above guidance adds additional requirements for such consent, namely that it is provided from the visitor's initiative (as with employees), even though it is not required by law.</p> <p>In relation to visitors to an office, there is no national law, nor the Polish DPA's guidance or Guidelines on this topic. The company may collect vaccination information based on the visitor's explicit consent (Art. 9 (2)(a) GDPR) and offer some less restrictive internal procedures for visitors who have been vaccinated.</p> <p>In practice, the company should remember that the data minimisation principle is key – the company should not collect more information than needed and ensure it is treated with appropriate safeguards.</p>
Can we exclude visitors who have not had a vaccine from the workplace?	<p>Potentially, but only if this is proportionate and necessary for individuals to comply with their legal obligations to ensure the health and safety of their workplace - this may be difficult for many companies to demonstrate.</p> <p>The company must observe the statutory limits of numbers of persons allowed to gather in several public and private spaces (in general, those limits do not apply to office areas). Limits do not apply to fully vaccinated individuals.</p>

Visitors cont	
	<p>Excluding unvaccinated visitors from access to the workplace will be justified if the government introduces the obligation towards specific services (i.e. restaurants, cinemas) to verify vaccination status. Currently, such obligation is not introduced in Poland.</p> <p>In theory, companies may be able to exclude unvaccinated visitors from the physical workplace in certain sectors, again on health and safety grounds. As above, this may include healthcare, social care and other high-risk sectors. If the company considered that the risk to the visitor, to staff or to patients, clients or suppliers was sufficiently high, and there was no other way to mitigate or minimise this risk, it may have grounds to exclude the visitor from the relevant areas of the physical workplace. However, there are a number of potential legal risks associated with excluding visitors from the physical workplace (or otherwise treating them differently) on the grounds that they have not been vaccinated.</p> <p>A blanket policy of excluding unvaccinated visitors is highly risky for most employers.</p> <p>Companies may receive challenges and /or unwanted media attention were they to take a blanket approach of excluding unvaccinated visitors from the workplace.</p>
Can we test visitors on entry into our premises?	<p>Yes, if such test is voluntary for visitors.</p> <p>According to the Polish DPA, the company may test visitors for COVID-19, if the sanitary authorities ordered or provided guidelines to the company to take such tests provided they are necessary to prevent the spread of COVID-19. Orders are issued in individual cases (at the company's request).</p> <p>Guidelines are silent about the issue.</p> <p>Companies may test visitors based on their explicit consent (Art 9(2)(a)). In order that consent is freely given, the company should not refuse the visitors from entering the premises if they have not consented to being tested. However, the company may adopt a procedure under which only healthy visitors may appear at the premises (e.g. the office).</p>
As an alternative to asking a visitor to confirm their vaccination status, can we (i) require them to provide evidence of a negative test or (ii) require them to be tested prior to entry to our premises and deny them entry if they return a positive test or refuse to comply?	<p>No.</p> <p>There is no generally applicable national law that allows companies to require visitors to provide evidence of a negative test or to be tested prior to entering the premises.</p> <p>The company should not deny visitors entry if they deny consent to provide vaccination status or to provide evidence of a negative test, or to be tested prior to entry. If they are denied access, there is a risk of considering the explicit consent as not freely given and therefore invalid.</p> <p>However, the company may adopt a procedure under which only healthy visitors may appear at the premises (e.g. the office). Also, the company may require visitors to confirm they are healthy prior to entry to the premises.</p>
Can we ask for proof of vaccination status?	<p>Yes, but with limitations.</p> <p>The company can ask for proof of the visitor's vaccination status if it is showed voluntarily by the visitor at the entrance.</p> <p>Companies cannot require visitors to provide proof of their vaccination status.</p>
Can we retain the vaccination records of visitors?	<p>No.</p> <p>In accordance with the Polish DPA's stance on collecting and processing personal data of persons participating in various events for the purposes of controlling limits of such persons during the events, there are no grounds for further storage of vaccination information / the visitors' declarations after the information has been verified. The Polish DPA believes that it may excessively interfere with the privacy of a visitor.</p> <p>We believe this also applies to visitors to offices.</p>

Employees & Workers	
Can we ask employees if they have been vaccinated?	<p>Yes. The Ministry of Manpower has advised that employers may collect vaccination information for business purposes, including business continuity planning.</p> <p>Employers can collect information on an employee's vaccination status without obtaining consent from the employee. Under the Personal Data Protection Act 2012 (PDDPA), an employer may collect personal data without consent where this is reasonable for the purpose of managing an employment relationship. In Singapore, employers must comply with regulatory measures to manage the COVID-19 pandemic. In particular, the COVID-19 (Temporary Measures) (Control Order) Regulations 2020 prescribes a number of Safe Management Measures that employers must implement at workplaces and these may require employers to ascertain the vaccination status of employees. Further the Ministry of Manpower and its Tripartite Partners (i.e. the National Trades Union Congress and Singapore National Employers Federation) have also issued guidelines and advisories on workplace response measures. These include a Vaccinate or Regular Test (VoRT) regime which employers in certain higher-risk industries must implement from 1 October 2021. Employers in other industries may also opt to adopt the VoRT regime on a voluntary basis from that date.</p> <p>In view of these regulations and advisories, vaccination information may be collected without consent as this would be reasonable for the purpose of managing the employment relationship. That said, employers should comply with the data protection obligations under the PDDPA (e.g. ensuring reasonable security arrangements are in place and that the personal data will not be used for other purposes without the consent of the data subject or permitted under law).</p>
Can we carry out workplace testing of employees / require employees to provide evidence of a negative test?	<p>Yes. With effect from 1 October 2021, employers in selected sectors (e.g. healthcare, eldercare, settings with children 12 years and below, sectors that interact with customers in higher-risk mask-off settings such as F&B establishments, gyms and fitness studios, personal care services) would be required to undergo regular testing (i.e. "Vaccinate or Regular Testing" (VoRT) regime).</p> <p>Under the VoRT regime, employers will implement vaccination-differentiated workplace measures. Employees who refuse to disclose their vaccination status may be treated as unvaccinated for the purposes of implementing vaccination-differentiated workplace measures and the bearing of Covid-19 related costs. Sectors that are not identified to adopt the VoRT regime may choose to implement this on a voluntary basis.</p> <p>Employers which are required to adopt the VoRT regime, or which do so on a voluntary basis, may carry out workplace testing of unvaccinated employees or require such employees to provide evidence of a negative test. In higher risk sectors, such as dine-in food & beverage businesses, regular testing will be mandatory regardless of an employee's vaccination status.</p>
Can we require employees to be vaccinated, as a condition of continuing employment? What can or should we do if employees refuse?	<p>No. Employers must not impose a vaccination requirement as a condition for continued employment. In an advisory dated 23 August 2021, the Ministry of Manpower and its Tripartite Partners (i.e. the National Trades Union Congress and Singapore National Employers Federation) stated that under no circumstances should employers terminate or threaten to terminate the service of an employee on the basis of vaccination status alone. If an employee refuses to be vaccinated without any medical reason for his/her refusal, that employee may be required to undergo regular testing. Employers may require such employees to bear the costs of testing (provided the costs of such tests are not borne by the government).</p>
Can we require employees (i) to be tested and/or (ii) to present a negative test or evidence of immunity in a specified form on a regular basis?	<p>Yes. At present, higher-risk settings such as food & beverage, personal care services, and gym and fitness studios are subject to mandatory Fast and Easy Test (FET) Rostered Routine Testing (RRT) every fortnight. With effect from 13 September 2021, the Ministry of Health (MOH) has directed that the testing frequency for sectors in higher-risk settings will be increased to once a week. Settings such as retail mall workers, supermarket staff, last-mile delivery personnel (including parcel and food delivery personnel), and public and private transport workers (taxi drivers, private hire car drivers and all public transport frontline staff) must also undergo a seven-day FET RRT regime.</p> <p>Besides sectors subject to mandatory RRT, the Multi-Ministry Taskforce (MTF) will distribute Antigen Rapid Kits (ART) to onsite employees for weekly testing of their staff over a two-month period (i.e. from 13 September 2021 onwards). The MOH expects companies to initiate weekly testing for their onsite staff. Administration of these tests can be done by individuals at home or at the work premises. Employers should put in place a process to ensure that the tests are done properly and report the results to the respective Government Agencies.</p> <p>Employers which are required to adopt the VoRT regime, or which do so on a voluntary basis, may require employees to be tested, present a negative test, or present evidence of immunity (e.g. vaccination records) on a regular basis. In higher risk sectors, such as dine-in food & beverage businesses, regular testing will be mandatory regardless of an employee's vaccination status.</p>
If we require employees to provide evidence of negative tests / immunity, can we require employees to pay for this testing, or are we obliged to pay for it / reimburse employees for any testing costs they incur?	<p>Yes, but only for medically eligible employees who decline to get vaccinated. In an advisory dated 23 August 2021, the Ministry of Manpower and its Tripartite Partners (i.e. the National Trades Union Congress and Singapore National Employers Federation) stated that employers may require unvaccinated employees (excluding employees who are medically ineligible for mRNA vaccines) to bear costs of test kits where such costs are not covered by the Government.</p>
Can we require employees to be vaccinated, as a condition of physical attendance at the workplace?	<p>No. The Ministry of Manpower has advised that employers cannot require vaccination as a condition for entry into a workplace.</p>
Can we require employees to be vaccinated, or provide evidence of negative tests/immunity, as a condition of work-related travel?	<p>Yes, provided this is necessary for their role. An employer may require employees to be vaccinated, or provide evidence of negative tests/immunity as a condition of work-related travel where this is necessary for the performance of their roles. At present, a number of jurisdictions have imposed requirements relating to vaccination and testing for international arrivals. If an employee who is required to travel for work, refuses to comply with such vaccination and testing requirements and is therefore unable to fulfil his/her role, the employer may have grounds to redeploy the employee to a role which does not require travel and/or take disciplinary action against the employee.</p>

Employees & Workers cont	
	The question of whether such action is lawful or not will depend on the specific circumstances, including the nature of the role, how essential the travel is for the performance of the role, which jurisdictions are involved, what the entry requirements are, and the reason for refusal.
Are we required to provide accommodations to employees who have not been vaccinated?	No. There is no requirement for employers to provide accommodations for employees who have not been vaccinated.
Can we retain the vaccination / test / immunity records of employees? (Such records would include vaccine passports, proof of vaccination or other evidence of immunity, test results etc.).	Yes. An employer may retain vaccination, test and immunity records where this is necessary for the purposes for which the data was collected, or where this is reasonably necessary for any legal or business purposes (e.g. for compliance with any applicable law or for business continuity planning purposes). That said, employers should comply with the data protection obligations under the PDPA (e.g. ensuring reasonable security arrangements are in place, retaining the information for no longer than reasonably necessary for any business and legal purposes, and that the personal data will not be used for other purposes without the consent of the data subject or permitted under law).
If an employee refuses a request or requirement for vaccination asserting medical reasons, can we require proof of the medical reason?	No. While an employer may request such information, an employee may refuse to be vaccinated, provide vaccination records, or provide proof of medical reasons. In such cases, the relevant individual may be considered as an unvaccinated individual for the purposes of the VoRT regime and be subject to differentiated workplace measures for vaccinated and unvaccinated employees (e.g. increased testing frequency, Pre-Event Testing before participating in workplace events (if applicable) or the possibility of deployment to another role with a lower risk of Covid-19 infection).

Mobile / Gig Economy / Agency Workers	
Can we ask individuals if they have been vaccinated?	<p>Yes, because such a request is necessary to protect the health and safety of employees at the workplace. To the extent that mobile and agency workers are bound by employment agreements, the same requirements which apply to employees are likely to apply to such workers. In relation to agency workers, businesses should engage the relevant agency to ensure that any requirements to comply with policies and procedures relating to vaccination are passed through to agency workers.</p> <p>A business may collect information on the vaccination status of gig economy workers on the basis of consent and such workers should be notified of the purposes for collection, use and disclosure of such data prior to their consent being obtained. Alternatively, businesses may rely on an applicable exception under the PDPA such as the legitimate interest exception (subject to the meeting the relevant conditions).</p>
Can we carry out workplace testing of individuals /require individuals to provide evidence of a negative test?	<p>Yes, because such a request is necessary to protect the health and safety of employees at the workplace. To the extent that mobile and agency workers are bound by employment agreements, the same requirements which apply to employees are likely to apply to such workers. In relation to agency workers, businesses should engage the relevant agency to ensure that any requirements to comply with policies and procedures relating to vaccination are passed through to agency workers.</p> <p>At present, the authorities have not introduced any regulations or provided detailed guidance on how the VoRT regime or sector-specific testing requirements should be implemented in relation to independent contractors such as gig economy workers. Businesses that intend to implement such testing or which require individuals to provide such evidence may do so on the basis of consent and such workers should be notified of the purposes for collection, use and disclosure of such data prior to their consent being obtained. Alternatively, businesses may rely on an applicable exception under the PDPA such as the legitimate interest exception (subject to the meeting the relevant conditions).</p>
Can we require individuals to be vaccinated, as a condition of continuing engagement? What can or should we do if an individual refuses?	No. To the extent that mobile and agency workers are bound by employment agreements, the same requirements which apply to employees are likely to apply to such workers.
Can we require individuals (i) to be tested and/or (ii) to present a negative test or evidence of immunity in a specified form on a regular basis?	<p>Yes. To the extent that mobile and agency workers are bound by employment agreements, the same requirements which apply to employees are likely to apply to such workers. In relation to agency workers, businesses should engage the relevant agency to ensure that any requirements to comply with policies and procedures relating to vaccination are passed through to agency workers.</p> <p>Mandatory FET RRT is currently in place for higher-risk settings such as F&B, personal care services, and gym and fitness studios, and other settings such as retail mall workers, supermarket staff, last-mile delivery personnel (including parcel and food delivery personnel), and public and private transport workers (taxi drivers, private hire car drivers and all public transport frontline staff). With effect from 13 September 2021, the frequency of the mandatory FET RRT regime will be increased from once every fortnight to once a week.</p>

Mobile / Gig Economy / Agency Workers cont	
	<p>Yes, but only where permitted.</p> <p>To the extent that mobile and agency workers are bound by employment agreements, the same requirements which apply to employees are likely to apply to such workers. In an advisory dated 23 August 2021, the Ministry of Manpower and its Tripartite Partners (i.e. the National Trades Union Congress and Singapore National Employers Federation) stated that employers may require unvaccinated employees (excluding employees who are medically ineligible for mRNA vaccines) to bear costs of test kits where such costs are not covered by the Government.</p> <p>For sectors where the VoRT regime is mandatory or in high-risk sectors where regular testing is mandatory even for vaccinated individuals, independent contractors will themselves be responsible for complying with these requirements. The Government will bear the costs for such testing until the end of 2021. Where a company implements the VoRT regime on a voluntary basis, the party responsible for such costs will need to be determined based on the relevant contractual agreement between the parties.</p>
If we required individuals to provide evidence of negative tests / immunity, can we require individuals to pay for this testing, or are we obliged to pay for it / reimburse individuals for any testing costs they incur?	No. To the extent that mobile and agency workers are bound by employment agreements, the same requirements which apply to employees are likely to apply to such workers. The Ministry of Manpower has advised that employers cannot require vaccination as a condition for entry into a workplace.
Can we require individuals to be vaccinated, as a condition of physical attendance at any premises?	The ability for a business to impose such a condition on gig economy workers will depend on the contractual terms by which such workers are engaged. Where a gig worker requires access to a premises to perform his/her role and complies with any other legal requirements (e.g. regular testing), the worker should not be denied entry to the premises solely on the basis of the individual's vaccination status.
Can we require workers to be vaccinated, or provide evidence of negative tests/ immunity, as a condition of work-related travel?	Yes, where this is required for the worker's role. Workers may be required to be vaccinated, or provide evidence of negative tests/immunity, as a condition of work-related travel where this is necessary for the performance of their roles. At present, a number of jurisdictions have imposed requirements relating to vaccination and testing for international arrivals. If a worker who is required to travel for work, refuses to comply with such vaccination and testing requirements, and is therefore unable to fulfil his/her role, this may be grounds to redeploy the worker to a role which does not require travel and/or take disciplinary action against the worker. The question of whether such action is lawful or not will depend on the specific circumstances, including the nature of the role, how essential the travel is for the performance of the role, which jurisdictions are involved, what the entry requirements are, and the reason for refusal.
Are we required to provide accommodations to individuals who have not been vaccinated?	No. There is no requirement for employers to provide accommodations for employees who have not been vaccinated.
Can we retain the vaccination / test / immunity records of workers? (Such records would include vaccine passports, proof of vaccination or other evidence of immunity, test results etc.).	Yes. A business may retain vaccination, test and immunity records where this is necessary for the purposes for which the data was collected, or where this is reasonably necessary for any legal or business purposes (e.g. for compliance with any applicable law or for business continuity planning purposes). That said, businesses should comply with the data protection obligations under the PDPA (e.g. ensuring reasonable security arrangements are in place, retaining the information for no longer than reasonably necessary for any business and legal purposes, and that the personal data will not be used for other purposes without the consent of the data subject or permitted under law).
If an individual refuses a request or requirement for vaccination asserting medical reasons, can we require proof of the medical reason?	No. While a business may request such information, an individual may refuse to be vaccinated, provide vaccination records, or provide proof of medical reasons. In such cases, the relevant individual may be considered as an unvaccinated individual for the purposes of the VoRT regime and be subject to regular testing.

Visitors	
Can we ask visitors if they have been vaccinated?	Yes. Visitors may be asked for their vaccination status because such a request is necessary to protect the health and safety of employees at the workplace request. Businesses may visually check the vaccination status of individuals either on Government-developed apps on a visitor's mobile phone (e.g. the TraceTogether App or HealthHub App) or via his/her vaccination reports or cards. Where businesses are required to put in place vaccination-differentiated Safe Management Measures under the COVID-19 (Temporary Measures) (Control Order) Regulations 2020, the business may also activate a vaccination status check feature on the Singapore Government's SafeEntry (Business) App to check the vaccination status of visitors. Where a business is legally required to collect information on vaccination status, a visitor would generally be deemed to have provided consent where he/she voluntarily provides such information for the purpose of entry into a premises. Where a business is not obliged to impose vaccination-differentiated measures but opts to do so, appropriate notices should be displayed to notify visitors of the purpose of such collection (e.g. that based on its assessment of risks posed by COVID-19, it has decided to adopt vaccination checks for entry into the premises).
Can we exclude visitors who have not had a vaccine from the workplace?	Yes. Where a business is required to put in place vaccination-differentiated Safe Management Measures under the COVID-19 (Temporary Measures) (Control Order) Regulations 2020, the business may exclude visitors who do not have a "cleared" status in accordance with those requirements. Please note that in addition to vaccinated individuals, an individual may also be considered to have a "cleared" status if the individual has recovered from COVID-19 or obtained a negative Antigen Rapid Test (ART) or a Polymerase Chain Reaction (PCR) test result from a test provider approved by the Ministry of Health. Children below the age of 12 are currently ineligible for vaccination in Singapore but are eligible to receive similar treatment as cleared persons under the vaccination-differentiated Safe Management Measures, subject to certain requirements.

Visitors cont	
	The authorities have not issued any guidelines in relation to businesses which are not legally obliged to restrict access but intend to do so of their own accord. However, an occupier of a privately-owned business premises is generally entitled to limit access to its premises as it deems fit.
Can we test visitors on entry into our premises?	Yes, but only with visitors' consent and where the risks justify such testing. There is currently no legal requirement for businesses to implement on-site testing for COVID-19 for visitors. In general, businesses are advised to rely on the Singapore Government's SafeEntry (Business) App to check the vaccination status of visitors, or to view such status on a visitor's TraceTogether App or HealthHub App, or via his/her vaccination reports or cards. The COVID-19 (Temporary Measures) (Control Order) Regulations 2020 permits businesses to implement more stringent requirements than those stipulated under the regulations based on the business' assessment of the risk of infection. However, the business should ensure that the implementation of such a testing policy is reasonable based on the circumstances, and that it notifies visitors of the purposes for the testing, and seeks their consent in writing.
As an alternative to asking a visitor to confirm their vaccination status, can we (i) require them to provide evidence of a negative test or (ii) require them to be tested prior to entry to our premises and deny them entry if they return a positive test or refuse to comply?	Yes. Where a business is required to put in place vaccination-differentiated Safe Management Measures under the COVID-19 (Temporary Measures) (Control Order) Regulations 2020, the business may exclude visitors who do not have a "cleared" status in accordance with those requirements. Please note that in addition to vaccinated individuals, visitors with a "cleared" status will include individuals who have not been vaccinated but have obtained a negative ART or a PCR test result from a test provider approved by the Ministry of Health. The authorities have not issued any guidelines in relation to businesses which are not legally obliged to restrict access, but intend to do so of their own accord. However, an occupier of a privately-owned business premises is generally entitled to limit access to its premises as it deems fit.
As an alternative to asking a visitor to confirm their vaccination status, can we (i) require them to provide evidence of a negative test or (ii) require them to be tested prior to entry to our premises and deny them entry if they return a positive test or refuse to comply?	Yes. Where a business is required to put in place vaccination-differentiated Safe Management Measures under the COVID-19 (Temporary Measures) (Control Order) Regulations 2020, the business may exclude visitors who do not have a "cleared" status in accordance with those requirements. Please note that in addition to vaccinated individuals, visitors with a "cleared" status will include individuals who have not been vaccinated but have obtained a negative ART or a PCR test result from a test provider approved by the Ministry of Health. The authorities have not issued any guidelines in relation to businesses which are not legally obliged to restrict access, but intend to do so of their own accord. However, an occupier of a privately-owned business premises is generally entitled to limit access to its premises as it deems fit.
Can we ask for proof of vaccination status?	Yes, such a request is necessary to protect the health and safety of employees at the workplace. Businesses may visually check the vaccination status of individuals either on the visitor's TraceTogether App or HealthHub App or via his/her vaccination reports or cards. Where businesses are required to put in place vaccination-differentiated Safe Management Measures under the COVID-19 (Temporary Measures) (Control Order) Regulations 2020, the business may also activate a vaccination status check feature on the Singapore Government's SafeEntry (Business) App to check the vaccination status of visitors. Where a business is legally required to collect information on a vaccination status, a visitor may be deemed to have provided consent where he/she voluntarily provides such information for the purpose of entry to a premises. Where a business is not obliged to impose vaccination-differentiated measures but opts to do so, appropriate notices should be displayed to notify visitors of the purpose of such collection (e.g. that based on its assessment of risks posed by COVID-19, it has decided to adopt vaccination checks for entry into the premises).
Can we retain the vaccination records of visitors?	No. There are no legal requirements which require businesses to retain vaccination records of visitors. While businesses and other organisations may conduct vaccination status checks on visitors, this does not include or extend to storing vaccination records. Under the PDPA, personal data cannot be retained where the purpose for which the data was collected is no longer being served, or where retention is no longer necessary for a legal or business purpose. As there are no legal or reasonable business purposes for retaining vaccination records, such records should not be retained.

Employees & Workers	
Can we ask employees if they have been vaccinated?	No. According to information available at the Slovak labour inspection website, there is not any legislation/decreed enacted enabling the employer to ask employees if they have been vaccinated. Under the Slovak Labour Code, an employer cannot request from their employees any information that does not relate to the employment and performance of work.
Can we carry out workplace testing of employees / require employees to provide evidence of a negative test?	Testing of employees may be carried out only on voluntary basis. There is not any legislation and/or decree of the relevant authorities enabling employers to require employees to provide evidence of a negative test.
Can we require employees to be vaccinated, as a condition of continuing employment? What can or should we do if employees refuse?	No. Under applicable legislation, employers are not entitled to require their employees to get vaccinated. In addition, according to the national vaccination strategy, vaccination shall be voluntary in Slovakia.
Can we require employees (i) to be tested and/or (ii) to present a negative test or evidence of immunity in a specified form on a regular basis?	No. There is not any legislation and/or decree of the relevant authorities enabling employers to require employees to be tested and/or to present a negative test or evidence of immunity in a specified form on a regular basis.
If we require employees to provide evidence of negative tests / immunity, can we require employees to pay for this testing, or are we obliged to pay for it / reimburse employees for any testing costs they incur?	 It is not permitted for employers to require employees to provide evidence of negative test/immunity.
Can we require employees to be vaccinated, as a condition of physical attendance at the workplace?	No, the employer may not require employees to get vaccinated. Vaccination is on a voluntary basis in Slovakia. Currently employers are not entitled to require their staff to get vaccinated as a condition of physical attendance at any premises. Under general labour law and anti-discrimination rules, employers should not be entitled to exclude staff who had not had a vaccine from the workplace. In practice, employers may only motivate their staff to get vaccinated e.g. by providing time off after vaccination.
Can we require employees to be vaccinated, or provide evidence of negative tests/immunity, as a condition of work-related travel?	No. Employers are not entitled to require employees to be vaccinated, or provide evidence of negative tests/immunity as a condition of work-related travel. However, employees shall comply with travel restrictions as imposed individually by every country.
Are we required to provide accommodations to employees who have not been vaccinated?	Vaccines cannot be made a requirement, thus no specific request to provide accommodations to employees who have not been vaccinated.
Can we retain the vaccination / test / immunity records of employees? (Such records would include vaccine passports, proof of vaccination or other evidence of immunity, test results etc.).	No. The Slovak legislation does not allow an employer to request any records on vaccination / test / immunity. Employers may retain only information allowed by the applicable laws. Since employers may not request information on vaccination / test / immunity records, retaining such records (vaccine passports, proof of vaccination or other evidence of immunity) is not permitted under the Slovak law.
If an employee refuses a request or requirement for vaccination asserting medical reasons, can we require proof of the medical reason?	No. The employee may refuse a request or requirement for vaccination without providing proof of the medical reason. The employer is not entitled to request a proof of the medical reason from employee if he/she refuses a request or requirement for vaccination.

Mobile / Gig Economy / Agency Workers

Can we ask individuals if they have been vaccinated?	No. As is the case with employees, employers are not entitled to ask agency workers if they have been vaccinated. The same applies with respect to gig workers. As to gig workers, although these are not legally considered as employees, there is not any legislation adopted enabling employers to request such information from them.
Can we carry out workplace testing of individuals /require individuals to provide evidence of a negative test?	Workplace testing of agency workers/gig workers may be carried out by the employer only on a voluntary basis. The employer is not entitled to require agency workers/gig workers to provide evidence of a negative test.
Can we require individuals to be vaccinated, as a condition of continuing engagement? What can or should we do if an individual refuses?	No. Under applicable legislation, companies cannot require their staff/contractors to get vaccinated. In addition, according to the national vaccination strategy against Covid-19, the vaccination shall be voluntary.
Can we require individuals (i) to be tested and/or (ii) to present a negative test or evidence of immunity in a specified form on a regular basis?	No. Under applicable legislation, employers cannot require their staff/contractors to be tested and/or to present a negative test or evidence of immunity in a specified form on a regular basis.
If we required individuals to provide evidence of negative tests / immunity, can we require individuals to pay for this testing, or are we obliged to pay for it / reimburse individuals for any testing costs they incur?	Employers are not entitled to require agency workers/gig workers to provide evidence of negative tests/immunity.
Can we require individuals to be vaccinated, as a condition of physical attendance at any premises?	No. Employers are not entitled to require their staff to get vaccinated as a condition of physical attendance at any premises. Under general labour law and anti-discrimination rules, employers should not be entitled to exclude staff who had not had a vaccine from the workplace. In practice, employers may only motivate their staff to get vaccinated e.g. by providing time off after vaccination.
Can we require workers to be vaccinated, or provide evidence of negative tests/ immunity, as a condition of work-related travel?	No. There is no applicable law and/or decree of the relevant authority enabling employers to require workers to get vaccinated or provide evidence of negative tests/immunity as a condition of work-related travel. However, individuals are obliged to comply with the local travel restrictions for unvaccinated persons.
Are we required to provide accommodations to individuals who have not been vaccinated?	Vaccines cannot be made a requirement, thus no specific request to provide accommodations to employees who have not been vaccinated.
Can we retain the vaccination / test / immunity records of workers? (Such records would include vaccine passports, proof of vaccination or other evidence of immunity, test results etc.).	No. As employers are not allowed to request information on vaccination / test / immunity records of workers, it is not allowed also to retain such information.
If an individual refuses a request or requirement for vaccination asserting medical reasons, can we require proof of the medical reason?	No. It is not permitted to require an individual to get vaccinated as vaccination is based on a voluntary basis.

Visitors

	It depends on the regime which the company has selected for its visitors. Pursuant to the Decree No. 240 of the Public Health Authority, companies may select between 3 different regimes for visitors/customers. They are also obliged to display a clear notice of the selected regime in a visible place on the premises. Regimes: a) Vaccinated - only fully vaccinated visitors will be allowed to enter (definition of fully vaccinated person is included in the decree) b) Vaccinated/Tested/Recovered visitors will be allowed c) Everybody - all visitors will be allowed to enter. If the company has selected regimes a) or b), they are entitled to request information on vaccination from their customers. If the company has selected the regime c) they are not entitled to request information on vaccination from their customers.
Can we ask visitors if they have been vaccinated?	It depends on the regime which the company has selected for its visitors. Pursuant to Decree No. 240 of the Public Health Authority, companies may choose between 3 different regimes for visitors/customers. They are also obliged to display a clear notice of the selected regime in a visible place on the premises. Regimes: a) Vaccinated - only fully vaccinated visitors will be allowed to enter (definition of fully vaccinated person is included in the decree) b) Vaccinated/Tested/Recovered visitors will be allowed c) Everybody - all visitors will be allowed to enter. If the company has selected the regime a), they can exclude visitors who have not had a vaccine. If the company has selected the regime b) they cannot exclude visitors who have not had a vaccine, if the visitor has a negative test result (not older than 72 hours for PCR or 48 hours for antigen) or has recovered from Covid in last 180 days. If the company has selected the regime c) they cannot exclude visitors who have not had a vaccine.
Can we exclude visitors who have not had a vaccine from the workplace?	It depends on the regime which the company has selected for its visitors. Pursuant to Decree No. 240 of the Public Health Authority, companies may choose between 3 different regimes for visitors/customers. They are also obliged to display a clear notice of the selected regime in a visible place on the premises. Regimes: a) Vaccinated - only fully vaccinated visitors will be allowed to enter (definition of fully vaccinated person is included in the decree) b) Vaccinated/Tested/Recovered visitors will be allowed c) Everybody - all visitors will be allowed to enter. If the company has selected the regime a), they can exclude visitors who have not had a vaccine. If the company has selected the regime b) they cannot exclude visitors who have not had a vaccine, if the visitor has a negative test result (not older than 72 hours for PCR or 48 hours for antigen) or has recovered from Covid in last 180 days. If the company has selected the regime c) they cannot exclude visitors who have not had a vaccine.
Can we test visitors on entry into our premises?	No. Under the applicable legislation, companies are not allowed to test visitors on entry to premises.
As an alternative to asking a visitor to confirm their vaccination status, can we (i) require them to provide evidence of a negative test or (ii) require them to be tested prior to entry to our premises and deny them entry if they return a positive test or refuse to comply?	It depends on the regime which the company has chosen for visitors. (i) If they have chosen, the regime Vaccinated/Tested/Recovered they can ask visitors to confirm their vaccination status and/or to require them to provide evidence of a negative test (72 hours for PCR or 48 hours for antigen) or confirmation on recovery from covid. (ii) Companies cannot require them to be tested prior to entry to premises. Companies can deny them to entry the premises if the visitors do not meet the requirements for the selected regime or refuse to prove it. The decree specifies also how meeting the requirements can be proven - which documents can be requested.
Can we ask for proof of vaccination status?	It is possible to ask for proof of vaccination status for providers of services with respect to visitors, if the selected regimes for entering the premises, is Vaccinated/Tested/Recovered or Vaccinated.
Can we retain the vaccination records of visitors?	No. Companies may only consult the document (ask the visitor to show it), but it is not allowed to retain such record.

Employees & Workers

Can we ask employees if they have been vaccinated?	<p>Yes, but with limitations.</p> <p>Employers can ask employees if they have been vaccinated only if this is proportionate and necessary for employers to comply with their legal obligations to ensure the health and safety of their workplace. It is possible for employers to use this data to establish the necessary measures to ensure safety in the workplace, for example, depending on the number of vaccinated employees, a decision can be made whether to establish social distancing or not, what is not possible is to discriminate between vaccinated and unvaccinated employees.</p> <p>However, individuals have the right to refuse to answer that question, based on their freedom of ideology and thought.</p>
Can we carry out workplace testing of employees / require employees to provide evidence of a negative test?	<p>Yes, but with limitations.</p> <p>One of the main obligations of the employer in the field of occupational risk prevention is the health surveillance of the workers. This health surveillance may be compulsory in accordance with Article 22.1 of the Law 31/1995, of 8 November 1995, on the prevention of occupational hazards with the aim of verifying whether the worker's state of health may constitute a danger to the worker, to other workers, or to others related to the company.</p> <p>Consequently, when applying the provisions of health, labour and, in particular, occupational risk prevention regulations, employers may process personnel data. Such processing must be in accordance with the regulations and the guarantees they establish and be necessary to guarantee the health of employees and adopt the necessary measures by the competent authorities. These measures include protecting the health of other personnel and avoiding contagion within the company and/or work centres that could spread disease to the population as a whole.</p> <p>The company will be able to know whether the worker is infected or not, in order to design, through its prevention service, the necessary contingency plans, or those that have been foreseen by the health authorities. As with collection of vaccine status data, use of test information must not result in any unfair or unjustified treatment of employees, and any negative consequence of use of this information must be justifiable.</p>
Can we require employees to be vaccinated, as a condition of continuing employment? What can or should we do if employees refuse?	<p>No.</p> <p>In Spain, and despite the pandemic, vaccination is an option, not an obligation, so far. Moreover, article 14 of the Spanish Constitution establishes equality, without any discrimination based on any other personal or social circumstance, such that currently it is not legal to discriminate between vaccinated and unvaccinated people. Currently, vaccination is not compulsory even for those jobs that can be considered high-risk, for example, health workers. Some autonomous communities are considering imposing vaccination in these high-risk sectors, but the decision has not yet been taken and, if at any moment it is taken, it remains to be seen whether the courts will declare it valid.</p> <p>A general recommendation to vaccinate can be made, but if an employee chooses not to do so, there can be no consequences whatsoever.</p>
Can we require employees (i) to be tested and/or (ii) to present a negative test or evidence of immunity in a specified form on a regular basis?	<p>Yes, but with limitations.</p> <p>Due to the current health emergency situation, the employer can mandate its employees to present a negative COVID-19 test (paid for by the company) or evidence of vaccination before attending to work due to the employer's duty to protect its employees against occupational hazards in a pandemic context. Therefore, the company should verify the necessity for that measure with the health and safety provider in order to ensure that it is proportional.</p> <p>However, please note that this information should be collected by the company's health and safety provider and not by its own personnel, in order to prevent the company's access to the employee's health data.</p>
If we require employees to provide evidence of negative tests / immunity, can we require employees to pay for this testing, or are we obliged to pay for it / reimburse employees for any testing costs they incur?	<p>The employer must pay for or reimburse employees for tests in any case as it is responsible for implementing the appropriate measures to ensure health and safety at work.</p>
Can we require employees to be vaccinated, as a condition of physical attendance at the workplace?	<p>No.</p> <p>This is one of the most controversial issues in Spain at the moment and is not defined at all. The competence on the decision to be able to ask for the COVID-19 vaccination certificate is not centralised in the central government but each autonomous community decides on the validity of requiring this certificate.</p> <p>The governments of some Autonomous Regions, such as the Canary Islands, the Balearic Islands or Galicia, decided that the COVID-19 vaccination certificate was required to enter, for example, restaurants, but their courts have overturned these decisions on the grounds of lack of legality. Bearing this in mind, employers cannot prevent access to the office to those employees not vaccinated.</p> <p>In Spain it is not possible to discriminate between vaccinated and unvaccinated people.</p>

Employees & Workers cont

Can we require employees to be vaccinated, or provide evidence of negative tests/immunity, as a condition of work-related travel?	<p>It is not possible to require workers to be vaccinated.</p> <p>In Spain, vaccination is optional and, therefore, an employee cannot be obliged to be vaccinated. Additionally, it is not possible to discriminate between vaccinated and unvaccinated people.</p> <p>As noted above, a company does not have the power to force workers to be vaccinated under the current legislation. Individuals who travel for work will need to comply with the applicable requirements for domestic and international travel. Some jurisdictions have imposed travel restrictions which either (i) prohibit; or (ii) impose additional quarantine requirements in respect of, the entry of unvaccinated individuals to the country. There are also testing requirements in place for all international travel. Therefore, in order to travel for work, individuals may need to be vaccinated and will be required to submit to specific government-imposed testing requirements.</p> <p>Notwithstanding the above if traveling is a requirement needed to carry out the employee's functions/duties and he/she cannot travel due to his/her noncompliance of with the applicable requirements for domestic or international travel (COVID test or quarantine), the company may take disciplinary actions, including dismissal, as a consequence of the breach of his/her employment obligations.</p>
Are we required to provide accommodations to employees who have not been vaccinated?	<p>Yes.</p> <p>It is not possible to discriminate between vaccinated and unvaccinated people. What is possible, in order to comply with the obligations to ensure safety at work, is to impose additional and necessary measures in the offices in case unvaccinated persons are present in the offices.</p>
Can we retain the vaccination / test / immunity records of employees? (Such records would include vaccine passports, proof of vaccination or other evidence of immunity, test results etc.)	<p>Yes, but with limitations.</p> <p>To comply with the storage limitation principle, vaccination and test data can be retained for as long as necessary for the purpose for which the data was collected. Data on test results in particular will be out of date very quickly and the appropriate retention period is therefore likely to be very short.</p> <p>Employers should periodically review the data they hold and erase or anonymise it when they no longer need it. Employers should also be prepared to receive and manage requests for erasure in respect of vaccination / test / immunity data.</p>
If an employee refuses a request or requirement for vaccination asserting medical reasons, can we require proof of the medical reason?	<p>No.</p> <p>Taking into consideration that it is not possible to require or request employees to be vaccinated, employers can only recommend vaccination and if an employee refuses it, employers cannot obtain evidence or information about the reasons for the employee's refusal of vaccination. Employees have the right to refuse to answer that question, based on their freedom of ideology and thought.</p>

Mobile / Gig Economy / Agency Workers

Can we ask individuals if they have been vaccinated?	<p>Yes, but with limitations.</p> <p>In the same way that the AEPD states that employers can ask employees, employers can also ask individuals about whether they have had a COVID-19 vaccine if this information is necessary to comply with the obligation of guarantee the safety at the workplace.</p> <p>Employers can ask individuals whether they have received a vaccine or not in order to have enough information to implement appropriate measures regarding the protection of the workplace. However, individuals have the right to refuse to answer that question, based on their freedom of ideology and thought.</p>
Can we carry out workplace testing of individuals /require individuals to provide evidence of a negative test?	<p>Yes, but with limitations.</p> <p>In the same way that the AEPD states that employers can test employees, employers can also test individuals where necessary to comply with the obligation of guarantee the safety at the workplace. The AEPD has recently raised its concern about the fact that some companies are carrying out tests without previously evaluating whether they are necessary. The AEPD insists on the obligation to evaluate the proportionality of testing in compliance with data protection law.</p>
Can we require individuals to be vaccinated, as a condition of continuing engagement? What can or should we do if an individual refuses?	<p>No.</p> <p>Under current Spanish regulation and despite the pandemic, vaccination is a voluntary matter and subject to the individual's decision. Therefore, employers cannot oblige these individuals to receive a vaccine, unless a new regulation which makes it mandatory for justified cases is enacted.</p> <p>So consequently, individuals should be recommended to have the vaccine but if they decide to not have it, no consequences could be imposed on them.</p>

Mobile / Gig Economy / Agency Workers cont

Can we require individuals (i) to be tested and/or (ii) to present a negative test or evidence of immunity in a specified form on a regular basis?	<p>Yes, but with limitations.</p> <p>Due to the current health emergency situation, the employer can require individuals to present a negative COVID-19 test or evidence of vaccination before attending to render services in premises used by the company's workforce, due to the employer's duty to protect its employees against occupational hazards in a pandemic context. Therefore, the company should verify the necessity for that measure with the health and safety provider in order to ensure that it is proportional or even necessary (e.g. if the provider does not physically interact with staff members it is unlikely to be necessary.)</p> <p>However, please note that this information should be collected by the company's health and safety provider and not by its own personnel, in order to prevent the company's access to sensitive information (i.e. health data).</p>
If we required individuals to provide evidence of negative tests / immunity, can we require individuals to pay for this testing, or are we obliged to pay for it / reimburse individuals for any testing costs they incur?	<p>Unless there is a specific provision in the service agreement that may state that the cost should be afforded by the company it would be possible to require these individuals to bear the cost of the tests at their own expense.</p>
Can we require individuals to be vaccinated, as a condition of physical attendance at any premises?	<p>No.</p> <p>As with employees, this is one of the most controversial issues in Spain at the moment and is not defined at all. The competence on the decision to be able to ask for the COVID-19 vaccination certificate is not centralised in the central government but each autonomous community decides on the validity of requiring this certificate.</p> <p>The governments of some Autonomous Regions, such as the Canary Islands, the Balearic Islands or Galicia, decided that the COVID-19 certificate was required to enter, for example, restaurants, but their courts have overturned these decisions on the grounds of lack of legality. Bearing this in mind, employers cannot prevent the access to the office to those individuals not vaccinated.</p> <p>In Spain it is not possible to discriminate between vaccinated and unvaccinated people.</p>
Can we require workers to be vaccinated, or provide evidence of negative tests/immunity, as a condition of work-related travel?	<p>It is not possible to require workers to be vaccinated.</p> <p>In Spain, vaccination is optional and, therefore, a worker cannot be obliged to be vaccinated. Additionally, it is not possible to discriminate between vaccinated and unvaccinated people.</p> <p>As noted above, a company does not have the power to force workers to be vaccinated under the current legislation. Individuals who travel for work will need to comply with the applicable requirements for domestic and international travel. Some jurisdictions have imposed travel restrictions which either (i) prohibit; or (ii) impose additional quarantine requirements in respect of, the entry of unvaccinated individuals to the country. There are also testing requirements in place for all international travel. Therefore, in order to travel for work, individuals may need to be vaccinated and will be required to submit to specific government-imposed testing requirements.</p> <p>Notwithstanding the above if traveling is a requirement needed to carry out the individual's functions/duties and he/she cannot travel due to his/her noncompliance of with the applicable requirements for domestic or international travel (COVID test or quarantine), the company could terminate the service agreement based on the breach of his/her employment obligations, as long as its wording includes a valid and similar ground for termination.</p> <p>It is possible to require employees to provide evidence of negative tests/immunity. In order to comply with the obligation of guarantee the safety at the workplace employers can ask their employees to provide evidence that they are not COVID-19 infected.</p>
Are we required to provide accommodations to individuals who have not been vaccinated?	<p>Yes.</p> <p>It is not possible to discriminate between vaccinated and unvaccinated people. What is possible, in order to comply with the obligations to ensure safety at work, is to impose additional and necessary measures in the offices in case unvaccinated persons are present in the offices.</p>
Can we retain the vaccination / test / immunity records of workers? (Such records would include vaccine passports, proof of vaccination or other evidence of immunity, test results etc.).	<p>Yes, but with limitations.</p> <p>To comply with the storage limitation principle, vaccination and test data can be retained for as long as necessary for the purpose for which the data was collected. Data on test results in particular will be out of date very quickly and the appropriate retention period is therefore likely to be very short.</p> <p>Employers should periodically review the data they hold and erase or anonymise it when they no longer need it. Employers should also be prepared to receive and manage requests for erasure in respect of vaccination / test / immunity data.</p>
If an individual refuses a request or requirement for vaccination asserting medical reasons, can we require proof of the medical reason?	<p>No.</p> <p>Taking into consideration that it is not possible to require or request employees be vaccinated, employers can only recommend the vaccination and if an individual refuses it, employers cannot obtain evidence or information about the reasons for the individual's refusal of vaccination, people have the right to refuse to answer that question, based on their freedom of ideology and thought.</p>

Visitors

Can we ask visitors if they have been vaccinated?	<p>Yes, but with limitations.</p> <p>In the same way that the AEPD states that employers can ask employees, visitors can also be asked about whether they have had a COVID-19 vaccine if this information is necessary to comply with the obligation to guarantee the safety of the collective population's health.</p> <p>However, visitors have the right to refuse to answer that question, based on their freedom of ideology and thought, without consequences.</p>
Can we exclude visitors who have not had a vaccine from the workplace?	<p>No. In Spain it is not possible to discriminate between vaccinated and unvaccinated people.</p>
Can we test visitors on entry into our premises?	<p>Yes, but with limitations.</p> <p>In light of an employer's obligation to protect the health and safety of their employees and the general obligation of guarantee the health of the population, including to prevent infections, it may be reasonable under certain circumstances to test visitors, but not in every case.</p> <p>If there is a less intrusive way to ensure the security of the site or, because of the characteristics of the site, additional measures can be implemented that are not as intrusive, the test will be considered excessive.</p>
As an alternative to asking a visitor to confirm their vaccination status, can we (i) require them to provide evidence of a negative test or (ii) require them to be tested prior to entry to our premises and deny them entry if they return a positive test or refuse to comply?	<p>Yes, but with limitations.</p> <p>The safety of the place is being ensured without requiring attendees to be vaccinated to attend, simply by demonstrating that they are not infected with the virus at the time of the event. It should be kept in mind that Law 33/2011, of 4 October, General Law on Public Health establishes as a very serious infringement the carrying out of conduct that produces a very serious risk or damage to the health of the population. Under this law the organisation of an event in which, without the appropriate measures, a high rate of contagion could occur, could be grounds for sanctions, so it is logical that the organiser of an event is diligent in adopting as many measures as possible to avoid a massive contagion.</p> <p>It would be necessary to consider and evidence the conclusions reached as to whether it is considered necessary and proportionate to require a negative Covid-19 test to entry (or alternatively a full Covid vaccination certificate for those who wish to provide it on a voluntary basis). In principle, we understand that this could be considered as a proportionate measure to ensure the health and safety of the workplace, depending on the particular circumstances of the event (number of attendees, venue conditions, etc.). However, the company must demonstrate that these measures are necessary, appropriate and proportionate to comply with its health and safety obligations and that there were no other less intrusive measures that would have ensured safety at the event to a sufficient degree (e.g. social distancing, use of masks, ventilation, etc.).</p> <p>Taking into consideration that the vaccine is optional in Spain, there is no possibility of denying entry on the grounds of vaccination status. It is possible to ask for proof of vaccination while always giving the possibility to prove that a visitor is free of COVID-19 by other alternative ways. Additionally, if a visitor refuses to prove the absence of COVID-19, it is possible to refuse him/her entry in order to protect the security of the site.</p>
Can we ask for proof of vaccination status?	<p>Yes, but with limitations. It is possible to ask for proof of vaccination whilst giving the possibility to prove that a visitor is free of COVID-19 by other alternative ways (e.g. PCR test).</p>
Can we retain the vaccination records of visitors?	<p>Yes, but with limitations.</p> <p>To comply with the storage limitation principle, vaccination and test data can be retained for as long as necessary for the purpose for which the data was collected. Data on test results in particular will be out of date very quickly and the appropriate retention period is therefore likely to be very short.</p> <p>Employers should periodically review the data they hold and erase or anonymise it when they no longer need it. Employers should also be prepared to receive and manage requests for erasure in respect of vaccination / test / immunity data.</p>

Employees & Workers	
Can we ask employees if they have been vaccinated?	<p>Only if proportionate and necessary for employers to comply with their legal obligations to ensure the health and safety of the workplace - this may be difficult for many employers to argue.</p> <p>An employee's vaccination status constitutes health data, i.e. special category data. As a starting point, collecting special category data is prohibited. There are a few exemptions to the prohibition, such as if data processing is necessary for the purposes of carrying out the obligations in the field of employment. As such, an employer may, after conducting a data protection impact assessment (a "DPIA") and a work environment risk impact assessment, argue that it is strictly necessary to process vaccination data in order to mitigate health risks in the work environment. This may especially be argued where there are many employees who would be working from company premises (i.e. whereby the spread of infection is more likely to occur), or where the employees work with particularly vulnerable individuals. Before processing any health data, employers should conduct a DPIA and adequately establish that the principles for data and special category data processing are complied with; in particular, data minimisation and purpose limitation will be relevant.</p> <p>Further, note that an employee is entitled to refuse to answer and cannot be forced to provide the information.</p>
Can we carry out workplace testing of employees / require employees to provide evidence of a negative test?	<p>Only if proportionate and necessary for employers to comply with their legal obligations to ensure the health and safety of the workplace, and subject to compliance with data protection legislation.</p> <p>The Swedish Public Health Authority (<i>Sw. Folkhälsomyndigheten</i>) recommends for employers to implement voluntary COVID-19 testing where there is widespread transmission of COVID-19 in society. Before any testing is implemented, the employer should conduct a DPIA and a work environment risk impact assessment to demonstrate that the testing is necessary to comply with the employer's health and safety obligations under employment law.</p>
Can we require employees to be vaccinated, as a condition of continuing employment? What can or should we do if employees refuse?	<p>No.</p> <p>Not being vaccinated most likely does not constitute just cause for termination of employment. If an employee refuses to be vaccinated, the employer should consider implementing other measures, such as COVID-19 testing, to mitigate the spread of infection at the workplace. For new hires, it may be possible to implement a vaccination requirement in particular fields of work such as health and/or elderly care; however this has not been legally established.</p>
Can we require employees (i) to be tested and/or (ii) to present a negative test or evidence of immunity in a specified form on a regular basis?	<p>Only if proportionate and necessary for employers to comply with their legal obligations to ensure the health and safety of the workplace, and subject to compliance with data protection legislation.</p> <p>An employee's health or immunity status constitutes health data, i.e. special category data. As a starting point, collecting special category data is prohibited. There are a few exemptions to the prohibition, such as if data processing is necessary for the purposes of carrying out the obligations in the field of employment. As such, an employer may, after conducting a DPIA and a work environment risk impact assessment, argue that it is strictly necessary to process health or immunity data in order to mitigate health risks in the work environment. This may especially be argued where there are many employees who would be working from company premises (i.e. whereby the spread of infection is more likely to occur), or where the employees work with particularly vulnerable individuals. Before processing any health data, employers should conduct a DPIA and adequately establish that the principles for data and special category data processing are complied with; in particular, data minimisation and purpose limitation will be relevant.</p>
If we require employees to provide evidence of negative tests / immunity, can we require employees to pay for this testing, or are we obliged to pay for it / reimburse employees for any testing costs they incur?	<p>In Sweden, vaccination is free, and rapid self-tests are relatively affordable (approx. SEK 60-100 per test). We recommend that the employer bears the testing costs if employees are required to provide a negative test to attend company premises.</p>
Can we require employees to be vaccinated, as a condition of physical attendance at the workplace?	<p>Only if it can be argued that it is necessary from a work environment perspective and subject to compliance with data protection legislation.</p> <p>Considering that unvaccinated employees may have other proof of health or immunity (e.g. a negative test or proof of having recovered from COVID-19), that other measures can be implemented to ensure a safe work environment (remote work, extended cleaning at the workplace, hand sanitizers etc.) and that the protection and effect of the vaccines has not yet been established, it may be difficult to argue that it is necessary to require vaccination as a condition of physical attendance at the workplace. The Swedish Public Health Authority recommends for employers to implement measures such as voluntary COVID-19 testing where there is widespread transmission of COVID-19 in society. If the employees work with particularly vulnerable individuals, such as within health and/or elder care, the employer may argue that it is necessary to require vaccination as a condition of physical attendance at the workplace.</p>
Can we require employees to be vaccinated, or provide evidence of negative tests/immunity, as a condition of work-related travel?	<p>Yes, if necessary for the employee's role and to comply with applicable travel limitations and requirements, and subject to compliance with data protection legislation.</p>

Employees & Workers cont	
Are we required to provide accommodations to employees who have not been vaccinated?	<p>Yes.</p> <p>If return to the office is made contingent on employee vaccination, or if employees will otherwise work remotely, the employer should ensure that the work can be performed remotely.</p>
Can we retain the vaccination / test / immunity records of employees? (Such records would include vaccine passports, proof of vaccination or other evidence of immunity, test results etc.).	<p>Only where processing such information is valid and while it remains necessary. As stated above, data regarding immunity, vaccination status or test results constitutes health data (i.e. special category data) according to the GDPR. Any processing of such data is only valid if an exemption applies according to GDPR and the Swedish Data Protection Act, such as if data processing is necessary for the purposes of carrying out the obligations in the field of employment.</p>
If an employee refuses a request or requirement for vaccination asserting medical reasons, can we require proof of the medical reason?	<p>Only if proportionate and necessary for employers to comply with their legal obligations to ensure the health and safety of the workplace - this may be difficult for many employers to argue.</p> <p>Information about such medical reasons constitutes personal data regarding health, i.e. special category data. Any collection of such health data would need to comply with data protection legislation. As a starting point, collecting special category data is prohibited. There are a few exemptions to the prohibition, such as if data processing is necessary for the purposes of carrying out the obligations in the field of employment. In this regard, it may be difficult to argue that it is strictly necessary for the employer to process information about an employee's specific medical reasons for not being vaccinated. It will be difficult to justify requiring proof of medical grounds for non-vaccination if the health and safety risks at the workplace can be managed by COVID-19 testing or the employee presenting other proof of immunity.</p>

Mobile / Gig Economy / Agency Workers	
Can we ask individuals if they have been vaccinated?	<p>Only if proportionate and necessary for employers to comply with their legal obligations to ensure the health and safety of the workplace - this may be difficult for many employers to argue.</p> <p>An individual's vaccination status constitutes health data, i.e. special category data. As a starting point, collecting special category data is prohibited. There are a few exemptions to the prohibition, such as if data processing is necessary for the purposes of carrying out the obligations in the field of employment. As such, an employer may, after conducting a DPIA and a work environment risk impact assessment, argue that it is strictly necessary to process vaccination data in order to mitigate health risks in the work environment. This may especially be argued where there are many individuals who would be working from company premises (i.e. whereby the spread of infection is more likely to occur), or where the individuals work with particularly vulnerable individuals. Before processing any health data, employers should conduct a DPIA and adequately establish that the principles for data and special category data processing are complied with; in particular, data minimisation and purpose limitation will be relevant.</p> <p>Further, note that an individual is entitled to refuse to answer and cannot be forced to provide the information.</p>
Can we carry out workplace testing of individuals /require individuals to provide evidence of a negative test?	<p>Only if proportionate and necessary for employers to comply with their legal obligations to ensure the health and safety of the workplace, and subject to compliance with data protection legislation.</p> <p>The Swedish Public Health Authority (<i>Sw. Folkhälsomyndigheten</i>) recommends for employers to implement voluntary COVID-19 testing where there is a widespread spread of COVID-19 in society. Before any testing is implemented, the employer should conduct a DPIA and a work environment risk impact assessment to demonstrate that the testing is necessary to comply with the employer's health and safety obligations under employment law.</p>
Can we require individuals to be vaccinated, as a condition of continuing engagement? What can or should we do if an individual refuses?	<p>This depends on the conditions of the contract with the staffing agency. If an individual refuses to get vaccinated, the employer should consider other alternatives to prove his/her health or immunity (e.g. a negative test or proof of having recovered from COVID-19) and/or implementing other measures to mitigate the spread of infection at the workplace.</p>
Can we require individuals (i) to be tested and/or (ii) to present a negative test or evidence of immunity in a specified form on a regular basis?	<p>Only if proportionate and necessary for employers to comply with their legal obligations to ensure the health and safety of the workplace, and subject to compliance with data protection legislation.</p> <p>An individual's health or immunity status constitutes health data, i.e. special category data. As a starting point, collecting special category data is prohibited. There are a few exemptions to the prohibition, such as if data processing is necessary for the purposes of carrying out the obligations in the field of employment. As such, an employer may, after conducting a DPIA and a work environment risk impact assessment, argue that it is strictly necessary to process health or immunity data in order to mitigate health risks in the work environment. This may especially be argued where there are many individuals who would be working from company premises (i.e. whereby the spread of infection is more likely to occur), or where the individuals work with particularly vulnerable individuals. Before processing any health data, employers should conduct a DPIA and adequately establish that the principles for data and special category data processing are complied with; in particular, data minimisation and purpose limitation will be relevant.</p>
If we required individuals to provide evidence of negative tests / immunity, can we require individuals to pay for this testing, or are we obliged to pay for it / reimburse individuals for any testing costs they incur?	<p>In Sweden, vaccination is free, and rapid self-tests are relatively affordable (approx. SEK 60-100 per test). We recommend that the employer bears the testing costs if employees are required to provide a negative test to attend company premises.</p>

Mobile / Gig Economy / Agency Workers cont	
Can we require individuals to be vaccinated, as a condition of physical attendance at any premises?	This depends on the conditions of the contract with the staffing agency and the type of arrangement. Considering that unvaccinated individuals may have other proof of health or immunity (e.g. a negative test or proof of having recovered from COVID-19), that other measures can be implemented to ensure a safe work environment (remote work, extended cleaning at the work place, hand sanitizers etc.) and that the protection and effect of the vaccines has not yet been established, it may be difficult to argue that it is necessary to require vaccination as a condition of physical attendance at the workplace. The Swedish Public Health Authority recommends for employers to implement measures such as voluntary COVID-19 testing where there is widespread transmission of COVID-19 in society. If the individuals work with particularly vulnerable individuals, such as within health and/or elder care, the employer may argue that it is necessary to require vaccination as a condition of physical attendance at the workplace.
Can we require workers to be vaccinated, or provide evidence of negative tests/immunity, as a condition of work-related travel?	Yes. Depending on the conditions of the contract with the staffing agency and the type of arrangement, and subject to compliance with data protection legislations.
Are we required to provide accommodations to individuals who have not been vaccinated?	Yes. If the work is made contingent on the individual's vaccination, the employer should ensure that the work can be performed remotely.
Can we retain the vaccination / test / immunity records of workers? (Such records would include vaccine passports, proof of vaccination or other evidence of immunity, test results etc.).	Only where processing such information is valid and while it remains necessary. As stated above, data regarding immunity, vaccination status or test results constitutes health data (i.e. special category data) according to the GDPR. Any processing of such data is only valid if an exemption applies according to GDPR and the Swedish Data Protection Act such as if data processing is necessary for the purposes of carrying out the obligations in the field of employment.
If an individual refuses a request or requirement for vaccination asserting medical reasons, can we require proof of the medical reason?	Only if proportionate and necessary for employers to comply with their legal obligations to ensure the health and safety of the workplace - this may be difficult for many employers to argue. Information about such medical reasons constitutes personal data regarding health, i.e. special category data. Any collection of such health data would need to comply with data protection legislation. As a starting point, collecting special category data is prohibited. There are a few exemptions to the prohibition, such as if data processing is necessary for the purposes of carrying out the obligations in the field of employment. In this regard, it may be difficult to argue that it is strictly necessary for the employer to process information about an individual's specific medical reasons for not being vaccinated. It will be difficult to justify requiring proof of medical grounds for non-vaccination if the health and safety risks at the workplace can be managed by COVID-19 testing or the individual presenting other proof of immunity.

Visitors	
Can we ask visitors if they have been vaccinated?	Yes , subject to compliance with the GDPR and the Swedish Data Protection Act.
Can we exclude visitors who have not had a vaccine from the workplace?	Yes. If a visitor has not been vaccinated due to e.g. disability, the visitor may argue indirect discrimination. In such case, the company should implement other measures (such as voluntary COVID-19 testing) for entry.
Can we test visitors on entry into our premises?	Yes , subject to compliance with the GDPR and the Swedish Data Protection Act.
As an alternative to asking a visitor to confirm their vaccination status, can we (i) require them to provide evidence of a negative test or (ii) require them to be tested prior to entry to our premises and deny them entry if they return a positive test or refuse to comply?	Yes , subject to compliance with the GDPR and the Swedish Data Protection Act.
Can we ask for proof of vaccination status?	Yes , subject to compliance with the GDPR and the Swedish Data Protection Act.
Can we retain the vaccination records of visitors?	Only where processing such information is valid and while it remains necessary. As stated above, data regarding immunity and vaccination status is considered health data (e.g. special category data) according to the GDPR. Any processing of such data is only valid if an exemption applies according to GDPR and the Swedish Data Protection Act, such as if data processing is necessary for the purposes of carrying out the obligations in the field of employment.

Employers & Workers	
Can we ask employees if they have been vaccinated?	<p>Yes, but only if this is proportionate and necessary for employers to comply with their legal obligations to ensure the health and safety of their workplace - this may be difficult for many employers to demonstrate.</p> <p>ICO guidance states that data protection law does not prevent employers from taking the necessary steps to keep staff and the public safe. However, the employer's purpose in requesting the employee's vaccine status must still comply with data protection rules under the UK GDPR and Data Protection Act 2018. Vaccine status is health data and is therefore special category data in the UK.</p> <p>Processing of vaccination status data must be necessary for the employer's legitimate interest in meeting its health and safety requirements. As special category data, the employer must also demonstrate that processing is necessary for compliance with health and safety obligations under employment law (Article 9(2)(b) UK GDPR). This requires that an employer carry out a Data Protection Impact Assessment (DPIA), to assess the need to collect this information against the employees' right to privacy.</p> <p>The ICO explains that the sector you work in, the kind of work your staff do and the health and safety risks in your workplace should help you to decide if you have legitimate reasons to record whether your staff have had the COVID-19 vaccine. The ICO gives examples of workplaces where such checks may be justified as those where your staff are more likely to encounter infected people, or where infected people and unvaccinated people could pose a risk to clinically vulnerable individuals.</p> <p>The ICO explains that "if you only keep on record who is vaccinated for monitoring purposes, it is more difficult to justify holding this information." Notably, although not determinative, Public Health England's "Working Safely: guidance to employers" proposes numerous measures that employers should consider to reduce coronavirus risks, but does not focus on or suggest the use of the NHS Covid Pass (which allows individuals to demonstrate their COVID status using vaccines and testing) or vaccine status checks as part of its recommendations in any context other than in respect of events. If a requirement for employees to be vaccinated (discussed below) cannot be justified, it is unlikely to be necessary to collect details of vaccination status.</p> <p>Before requiring vaccine status data to be provided, you must tell your staff what personal information you require, what it will be used for and who you will share it with. In all cases, employers should only collect and retain the minimum amount of information needed to fulfil their purpose in line with ICO guidance and the data minimisation principle. The ICO explains that the use of vaccine status data must not result in any unfair or unjustified treatment of employees, and if the collection or use of COVID status information is likely to have a negative consequence for someone, this must be justifiable.</p> <p>The ICO notes that, if solely a visual check is made of a pass validly demonstrating COVID vaccination status, this may not involve data processing. However, making any record of this check - as would be necessary if using failure to confirm vaccination status to take disciplinary action - would result in data processing.</p>
Can we carry out workplace testing of employees / require employees to provide evidence of a negative test?	<p>Yes, but only if this is proportionate and necessary for employers to comply with their legal obligations to ensure the health and safety of their workplace - this may be difficult for many employers to demonstrate. Like requests to provide vaccine status, carrying out workplace testing or requesting information on testing must comply with UK data protection law. A test result, like vaccine status, is health data and is therefore special category data in the UK.</p> <p>As with vaccine status, carrying out testing or requesting test information will require the completion of a DPIA to demonstrate that the proposed testing/collection of test data is necessary to comply with the employer's health and safety obligations under employment law. The ICO recommends that employers identify the purpose for testing and how the tests proposed achieve that purpose. Employers should consider whether other, less privacy intrusive, means are available to achieve the same results. If an employer cannot demonstrate that the testing or collection of test data is necessary, it cannot carry out tests or require that evidence of tests be provided.</p> <p>Before carrying out any tests, or requiring that test evidence be provided, you must tell your staff what personal information you require, what it will be used for and who you will share it with. The ICO also stresses the importance of the accuracy principle - employers should record the date of any test results, because the health status of individuals may change over time and the test result may no longer be valid after a short period.</p> <p>As with collection of vaccine status data, use of test information must not result in any unfair or unjustified treatment of employees, and any negative consequence of use of this information must be justifiable.</p>

Employers & Workers cont	
<p>Can we require employees to be vaccinated, as a condition of continuing employment? What can or should we do if employees refuse?</p>	<p>Whilst this is theoretically possible a blanket requirement is likely to be risky for most employers.</p> <p>The government has the legal power to prevent, control or mitigate the spread of an infection or contamination but this legislation contains a prohibition on powers requiring mandatory medical treatment which would include vaccinations. Public health is a devolved power, so the specific powers and requirements vary slightly across the four nations of the UK. Irrespective, employees cannot be forced to have the vaccine in any of the four nations.</p> <p>That said, employers may make vaccination a condition of being permitted to work in certain environments, on health and safety grounds. Relevant sectors are likely to include healthcare, social care and other high-risk sectors, where an employer's obligation to ensure employees do not pose a risk to patients or clients and vice versa may include an obligation to ensure such employees are vaccinated against common infections / transmissible illnesses / biological hazards. Where an employee refuses to comply with a vaccination requirement, the employer may then have grounds to move the employee onto alternative work and/or to take disciplinary action up to and including dismissal in connection with that refusal. Whether or not such action is lawful or not will depend on the specific circumstances.</p> <p>Employers will need to carry out a risk assessment on a case-by-case basis to determine whether a vaccination requirement can be justified and whether adverse (e.g. disciplinary) action can be taken for refusal, taking into account (i) the role in question (including the working environment, the risk posed by the employee to others and vice versa); and (ii) the health and needs of the employee, to determine whether it is reasonable to impose such a condition and take such action.</p> <p>There are many reasons why an individual might legitimately be unable, or refuse, to be vaccinated. Employers will need to consider objections carefully and individually.</p> <p>There are several potential legal risks associated with requiring vaccinations as a condition of continuing employment, including the following.:</p> <ul style="list-style-type: none"> • A blanket policy could lead to indirect discrimination claims under the Equality Act 2010, e.g. on the basis that the policy places those with protected characteristics at a particular disadvantage. Any such policy would need to be objectively justified and this test is stringent. Key protected characteristics that may be relevant here are: <ul style="list-style-type: none"> o Disability: employees with medical conditions that prevent them from being vaccinated may be disabled. o Age: younger employees are still less likely to be fully vaccinated. o Religion or belief: whilst this has yet to be tested on the courts, an 'anti-vaccination' stance could be held to be akin to a religion or belief and therefore amount to a protected characteristic under the Equality Act 2010. • Breach of contract: the imposition of such a requirement could amount to a fundamental breach of contract entitling an employee to treat themselves as constructively dismissed. • Unfair dismissal: employees with more than two years' service who are dismissed for refusing to be vaccinated may have unfair dismissal claims. <p>Employers could reasonably expect challenges from employees and unwanted media attention were they to take a blanket approach of requiring vaccination as a condition of continued employment.</p> <p>Specific advice should be sought by any employer looking to introduce a vaccination requirement and/or take action against an employee for refusing vaccination.</p> <p>Currently, vaccines are only available from the NHS. If and when vaccines are available privately, employers could make vaccinations available to employees and actively promote vaccination. Employers who do so should plan ahead, have a clear, consistent communication strategy and actively engage with employees.</p>
<p>Can we require employees (i) to be tested and/or (ii) to present a negative test or evidence of immunity in a specified form on a regular basis?</p>	<p>Employees can be required to submit or provide evidence of a test or natural immunity if this is proportionate and necessary for employers to comply with their legal obligations to ensure the health and safety of their workplace - this may be difficult for many employers to demonstrate.</p> <p>Provided testing is proportionate and necessary to ensure compliance with an employer's legal obligations (see answer to question on testing above), a regular testing or evidence requirement would in most cases be a reasonable alternative to excluding non-vaccinated employees, whilst also managing the level of risk for other employees. Providing evidence of immunity should only be considered if this is through the NHS Covid Pass, which recognises potential natural immunity. Antibody testing is not yet commonplace, nor is its accuracy / utility recognised, in the UK.</p> <p>You will need to consider what forms of testing or evidence you will accept, and the regularity of testing or presentation of evidence - taking into account the nature of the employee's role and wider working environment, and the level of risk to others.</p> <p>An employee cannot be forced to take a test. If an employee refuses to comply with a justifiable testing or evidence requirement, you may have grounds to take disciplinary action up to and including dismissal. However, there are legal risks associated with this and specific advice should be sought before taking such action.</p>

Employers & Workers cont	
<p>Can we require employees to provide evidence of negative tests / immunity, can we require employees to pay for this testing, or are we obliged to pay for it / reimburse employees for any testing costs they incur?</p>	<p>Yes but only with agreement, and this may not be forthcoming.</p> <p>In the UK, lateral flow tests (for asymptomatic individuals) are available free of charge to individuals.</p> <p>In theory, where a test is not available free of charge (e.g. because you decide to set up workplace testing), testing costs could be deducted from employee wages or otherwise recovered from the employee, but only with their agreement. In practice:</p> <ul style="list-style-type: none"> • Employees are likely to be reluctant to agree. • Imposing a cost for testing carries the risk of negative media and damage to brand value and reputation. • Employers will also need to consider their national minimum wage (NMW) obligations, as payments / deductions for testing could reduce pay for some employees to below the NMW rate.
<p>Can we require employees to be vaccinated, as a condition of physical attendance at the workplace?</p>	<p>Whilst this is theoretically possible a blanket requirement is likely to be risky for many employers.</p> <p>In theory, employers may be able to exclude unvaccinated employees from the physical workplace in certain sectors, again on health and safety grounds. As above, this is most likely to be justifiable in the healthcare, social care and other high-risk sectors.</p> <p>If the employer considered that the risk to the employee in question, to colleagues or to patients, clients, suppliers or other third parties was sufficiently high and there was no other way to mitigate or minimise this risk, it may have grounds to exclude the employee from some or all areas of the physical workplace.</p> <p>Employers will need to carry out a risk assessment on a case-by-case basis, taking into account (i) the role in question (including the working environment, the risk posed by the employee to others and vice versa); and (ii) the health and needs of the employee, to determine whether a vaccination requirement can be justified and whether adverse action can lawfully be taken against an employee who refuses.</p> <p>There are many reasons why an individual might legitimately be unable, or refuse, to be vaccinated. Employers will need to consider objections carefully and individually.</p> <p>There are several potential legal risks associated with requiring vaccinations as a condition of attendance at the workplace including:</p> <ul style="list-style-type: none"> • A blanket policy could lead to indirect discrimination claims under the Equality Act 2010, e.g. on the basis that the policy places those with protected characteristics at a particular disadvantage. Any such policy would need to be objectively justified and this is a stringent test. Key protected characteristics that may be relevant here are: <ul style="list-style-type: none"> o Disability: employees with medical conditions that prevent them from being vaccinated may be disabled. o Age: younger employees are still less likely to be fully vaccinated. o Religion or belief: whilst this has yet to be tested on the courts, an 'anti-vaccination' stance could be held to be akin to a religion or belief and therefore amount to a protected characteristic under the Equality Act 2010. • Breach of contract: the imposition of such a requirement could amount to a fundamental breach of contract entitling an employee to treat themselves as constructively dismissed. • Unfair dismissal: employees with more than two years' service who are dismissed for refusing to be vaccinated may have unfair dismissal claims. <p>Employers could reasonably expect challenge from employees and unwanted media attention were they to take a blanket approach of requiring vaccination as a condition of continued employment.</p> <p>Specific advice should be sought by any employer looking to introduce a vaccination requirement and/or to take action against an employee for refusing vaccination.</p>
<p>Can we require employees to be vaccinated, or provide evidence of negative tests/immunity, as a condition of work-related travel?</p>	<p>Only as necessary for their role and to comply with applicable travel requirements.</p> <p>As noted above, neither the employer nor the UK government has the power to force employees to be vaccinated under the current legislation.</p> <p>Employees who travel for work will need to comply with the applicable requirements for domestic and international travel. Some jurisdictions have imposed travel restrictions which either (i) prohibit; or (ii) impose additional quarantine requirements in respect of, the entry of unvaccinated individuals to the country. There are also testing requirements in place for all international travel. Therefore, in order to travel for work, employees may need to be vaccinated and will be required to submit to specific government-imposed testing requirements.</p> <p>If an employee refuses to comply with legally-required vaccination or testing requirements, the employer may have grounds to allocate the employee to work which does not involve travel and/or to take disciplinary action up to and including dismissal. The question of whether such action is lawful or not will depend on the specific circumstances, including the nature of the role, how essential the travel is for the performance of the role, which jurisdictions are involved, what the entry requirements are, and the reason for refusal. The key legal risks associated with imposing a blanket vaccination requirement on employees are summarised in the answers above: the same considerations apply where the requirement is imposed as a condition of travel.</p> <p>Specific advice should be sought about any requirements for cross-border travel as the position is complex and constantly changing.</p>

Employers & Workers cont	
Are we required to provide accommodations to employees who have not been vaccinated?	<p>If the relevant employees have a disability there is an obligation to make reasonable adjustments.</p> <p>The Equality Act 2010 imposes a duty on employers to make reasonable adjustments to eliminate disadvantages suffered by disabled job applicants, employees and former employees. The duty may therefore apply in respect of employees who have not been vaccinated for medical reasons and who qualify as “disabled” for the purposes of the legislation. Such adjustments may include (i) allowing continued homeworking; (ii) waiving a condition that employees must be vaccinated to attend the office; or (iii) implementing additional safety measures at the workplace to further reduce the risk of infection. A failure to make reasonable adjustments is a form of unlawful disability discrimination.</p> <p>Separately, an employer runs the risk of indirect discrimination claims where it applies a blanket policy that places a group of individuals with a shared protected characteristic at a disadvantage when compared to those without that characteristic, unless that policy can be objectively justified (which is a high bar). As noted, an ‘anti-vaccination’ stance could be held to be akin to a religion or belief and therefore amount to a protected characteristic; and younger employees may be less likely to be fully vaccinated than older employees.</p> <p>Discrimination claims tend to be high-profile, and compensation awarded for such claims is uncapped, so there are clear risks in refusing any form of concession or accommodation for non-vaccinated employees where the reason they are not vaccinated is linked to a protected characteristic.</p>
Can we retain the vaccination / test / immunity records of employees? (Such records would include vaccine passports, proof of vaccination or other evidence of immunity, test results etc.).	<p>Only where collecting such information can be justified and while this remains necessary.</p> <p>Vaccination and test data can be retained where this information can be validly collected (see earlier answer) but should only be retained for as long as necessary for the purpose for which the data was collected. Data on test results in particular will be out of date very quickly and the appropriate retention period is therefore likely to be very short.</p> <p>Employers should consider an appropriate retention period at the outset of collecting the data and should periodically review the data they hold and erase or anonymise it when they no longer need it. Employers should also be prepared to receive and manage requests for erasure in respect of vaccination / test / immunity data.</p>
If an employee refuses a request or requirement for vaccination asserting medical reasons, can we require proof of the medical reason?	<p>Only if this is proportionate and necessary for employers to comply with their legal obligations to ensure the health and safety of their workplace - this may be difficult for many employers to demonstrate.</p> <p>Assuming the request or requirement for vaccination is justifiable (see above), you are entitled to ask for suitable medical evidence to your satisfaction, within reason. The employer must also demonstrate that processing of such evidence is necessary for compliance with health and safety obligations under employment law (Article 9(2)(b) UK GDPR). This requires that an employer carry out a DPIA, to assess the need to collect this information against the employee’s right to privacy.</p> <p>If vaccination is not mandatory for the role and/or the underlying concern can be managed by regular testing, it will be difficult to justify requiring proof of medical grounds for non-vaccination in any form.</p> <p>One option where a mandatory vaccination is justifiable and an employee is unable to provide appropriate proof may be to require the employee to be examined by a company-appointed medical advisor. However, this is likely to be a fairly unusual scenario and the employer would need to have the employee’s co-operation to do this. Specific advice should be sought on involving a company-appointed medical advisor in this way.</p>

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Can we ask individuals if they have been vaccinated?	<p>Yes, but only if this is proportionate and necessary for companies to comply with their legal obligations to ensure the health and safety of their workplace - this may be difficult for many companies to demonstrate.</p> <p>ICO guidance states that data protection law does not prevent employers from taking the necessary steps to keep staff and the public safe. However, the company’s purpose in requesting a worker’s vaccine status must still comply with data protection rules under the UK GDPR and Data Protection Act 2018. Vaccine status is health data and is therefore special category data in the UK.</p> <p>Processing of vaccination status must be necessary for the company’s legitimate interest in meeting its health and safety requirements. As special category data, the company must also demonstrate that processing is necessary for compliance with health and safety obligations under employment law (Article 9(2)(b) UK GDPR). This requires that a company carry out a Data Protection Impact Assessment (DPIA), to assess the need to collect this information against the workers’ right to privacy.</p> <p>The ICO explains that the sector you work in, the kind of work your staff do and the health and safety risks in your workplace should help you to decide if you have legitimate reasons to record whether your staff have had the COVID-19 vaccine. The ICO gives examples of workplaces where such checks may be justified as those where your staff are more likely to encounter infected people, or where infected people and unvaccinated people could pose a risk to clinically vulnerable individuals.</p> <p>The ICO explains that “if you only keep on record who is vaccinated for monitoring purposes, it is more difficult to justify holding this information.” Notably, although not determinative, Public Health England’s “Working Safely: guidance to employers” proposes numerous measures that employers should consider to reduce coronavirus risks, but does not focus on or suggest the use of the NHS Covid Pass (which allows individuals to demonstrate their COVID status using vaccines and testing) or vaccine status checks as part of its recommendations in all but event settings. If a requirement on workers to be vaccinated (discussed below) cannot be justified, it is unlikely to be necessary to collect details of vaccination status.</p> <p>Before requiring information on vaccine status to be provided, you must tell your staff what personal information you require, what it will be used for and who you will share it with. In all cases, companies should only collect and retain the minimum amount of information needed to fulfil their purpose in line with ICO guidance and the data minimisation principle. The ICO in particular explains that the use of vaccine status information must not result in any unfair or unjustified treatment of staff, and if the collection or use of COVID status information is likely to have a negative consequence for someone, this must be justifiable.</p> <p>The ICO notes that, if solely a visual check is made of a pass validly demonstrating Covid status, this may not involve data processing. However, making any record of this check - as would be necessary if using failure to produce Covid status to take disciplinary action - would result in data processing.</p>
Can we carry out workplace testing of individuals /require individuals to provide evidence of a negative test?	<p>Yes, but only if this is proportionate and necessary for companies to comply with their legal obligations to ensure the health and safety of their workplace - this may be difficult for many companies to demonstrate.</p> <p>Like requests to provide data on vaccine status, carrying out workplace testing or requesting information on testing must comply with UK data protection law. A test result, like vaccine status, is health data and is therefore special category data in the UK.</p> <p>As with vaccine status, carrying out testing or requesting test information will require the completion of a DPIA to demonstrate that the proposed testing/collection of test data is necessary to comply with the company’s health and safety obligations under employment law. The ICO recommends that companies identify the purpose for testing and how the tests proposed achieve that purpose. Companies should consider whether other, less privacy intrusive, means are available to achieve the same results. If an employer cannot demonstrate that the testing or collection of test data is necessary, it cannot carry out tests or require that evidence of tests be provided.</p> <p>Before carrying out any tests, or requiring that test evidence be provided, you must tell your staff what personal information you require, what it will be used for and who you will share it with. The ICO also stresses the importance of the accuracy principle - companies should record the date of any test results, because the health status of individuals may change over time and the test result may no longer be valid. As with collection of vaccine status, use of test information must not result in any unfair or unjustified treatment of staff, and any negative consequence of use of this information must be justifiable.</p>

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<p>Can we require individuals to be vaccinated, as a condition of continuing engagement? What can or should we do if an individual refuses?</p>	<p>Whilst this is theoretically possible a blanket requirement is likely to be risky for many companies.</p> <p>The government has the legal power to prevent, control or mitigate the spread of an infection or contamination but this legislation contains a prohibition on powers requiring mandatory medical treatment which would include vaccinations. Public health is a devolved power, so the specific powers and requirements vary slightly across the four nations of the UK. However, it is clear that workers cannot be forced to have the vaccine.</p> <p>That said, companies may make vaccination a condition of being permitted to work in certain environments, on health and safety grounds. Relevant sectors are likely to include healthcare, social care and other high-risk sectors, where a company's obligation to ensure workers do not pose a risk to patients or clients and vice versa may include an obligation to ensure such workers are vaccinated against common infections / transmissible illnesses / biological hazards. Where a worker refuses to comply with a vaccination requirement, the company may then have grounds to move the worker onto alternative work and/or to terminate the working relationship in connection with that refusal. Whether or not such action is lawful or not will depend on the specific circumstances.</p> <p>Companies will need to carry out a risk assessment on a case-by-case basis to determine whether a vaccination requirement can be justified and whether adverse action can be taken for refusal, taking into account (i) the role in question (including the working environment, the risk posed by the worker to others and vice versa); and (ii) the health and needs of the worker, to determine whether it is reasonable to impose such a condition and take such action.</p> <p>There are many reasons why an individual might legitimately be unable, or refuse, to be vaccinated. Companies will need to consider objections carefully and individually.</p> <p>There are a number of potential legal risks associated with requiring vaccinations as a condition of continuing engagement including:</p> <ul style="list-style-type: none"> • A blanket policy could lead to indirect discrimination claims under the Equality Act 2010, e.g. on the basis that the policy places those with protected characteristics at a particular disadvantage. Any such policy would need to be objectively justified and this is a stringent test. Key protected characteristics that may be relevant here are: <ul style="list-style-type: none"> o Disability: workers with medical conditions that prevent them from being vaccinated may be disabled. o Age: younger workers are still less likely to be fully vaccinated. o Religion or belief: whilst this has yet to be tested on the courts, an 'anti-vaccination' stance could be held to be akin to a religion or belief and therefore amount to a protected characteristic under the Equality Act 2010. • Breach of contract: the imposition of such a requirement could amount to a breach of contract. <p>Companies could reasonably expect challenges from workers and unwanted media attention were they to take a blanket approach of requiring vaccination as a condition of continued engagement.</p> <p>Specific advice should be sought by any company looking to introduce a vaccination requirement and/or to take action against a worker for refusing vaccination.</p> <p>Currently, vaccines are only available from the NHS. If and when vaccines are available privately, companies could make vaccinations available to workers and actively promote vaccination. Companies that do so should plan ahead, have a clear, consistent communication strategy and actively engage with workers.</p>
<p>Can we require individuals (i) to be tested and/or (ii) to present a negative test or evidence of immunity in a specified form on a regular basis?</p>	<p>Individuals can be required to submit or provide evidence of a test or natural immunity if this is proportionate and necessary for companies to comply with their legal obligations to ensure the health and safety of their workplace - this may be difficult for many companies to demonstrate.</p> <p>Provided testing is proportionate and necessary to ensure compliance with a company's legal obligations (see answer to question on testing above), a regular testing or evidence requirement would in most cases be a reasonable alternative to excluding non-vaccinated workers, whilst also managing the level of risk for other members of staff. Providing evidence of immunity should only be considered if this is through the NHS Covid Pass, which recognises potential natural immunity. Antibody testing is not yet commonplace, nor is its accuracy / utility recognised, in the UK.</p> <p>You will need to consider what forms of testing or evidence you will accept, and the regularity of testing or presentation of evidence - taking into account the nature of the worker's role and wider working environment, and the level of risk to others.</p> <p>A worker cannot be forced to take a test. If an individual refuses to comply with a justifiable testing or evidence requirement, you may have grounds to terminate the working relationship. Specific advice should be sought before taking such action.</p>

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<p>If we required individuals to provide evidence of negative tests / immunity, can we require individuals to pay for this testing, or are we obliged to pay for it / reimburse individuals for any testing costs they incur?</p>	<p>Yes but only with agreement, and this may not be forthcoming.</p> <p>In the UK, lateral flow tests (for asymptomatic individuals) are available free of charge to individuals.</p> <p>In theory, where a test is not available free of charge (e.g. because you decide to set up workplace testing), testing costs could be deducted from wages or otherwise recovered from the worker, but only with their agreement. In practice:</p> <ul style="list-style-type: none"> • Workers are likely to be reluctant to agree. • Imposing a cost for testing carries the risk of negative media and damage to brand value and reputation. • Companies will also need to consider their national minimum wage (NMW) obligations, as payments / deductions for testing could reduce pay for some workers to below the NMW rate.
<p>Can we require individuals to be vaccinated, as a condition of physical attendance at any premises?</p>	<p>Whilst this is theoretically possible a blanket requirement is likely to be risky for many companies.</p> <p>In theory, companies may be able to exclude unvaccinated workers from the physical workplace in certain sectors, again on health and safety grounds. As above, this may include healthcare, social care and other high-risk sectors.</p> <p>If the company considered that the risk to the worker in question, to colleagues or to patients, clients, suppliers or other third parties was sufficiently high and there was no other way to mitigate or minimise this risk, it may have grounds to exclude the worker from some or all areas of the physical workplace.</p> <p>Companies will need to carry out a risk assessment on a case-by-case basis, taking into account (i) the role in question (including the working environment, the risk posed by the worker to others and vice versa); and (ii) the health and needs of the worker, to determine to determine whether a vaccination requirement can be justified and whether adverse action can lawfully be taken against a worker who refuses.</p> <p>There are a number of potential legal risks associated with requiring vaccinations as a condition of attendance at the workplace including:</p> <ul style="list-style-type: none"> • A blanket policy could lead to indirect discrimination claims under the Equality Act 2010, e.g. on the basis that the policy places those with protected characteristics at a particular disadvantage. Any such policy would need to be objectively justified and this is a stringent test. Key protected characteristics that may be relevant here are: <ul style="list-style-type: none"> o Disability: workers with medical conditions that prevent them from being vaccinated may be disabled. o Age: younger workers are still less likely to be fully vaccinated. o Religion or belief: whilst this has yet to be tested on the courts, an 'anti-vaccination' stance could be held to be akin to a religion or belief and therefore amount to a protected characteristic under the Equality Act 2010. • Breach of contract: the imposition of such a requirement could amount to a breach of contract. <p>Specific advice should be sought by any company looking to introduce a vaccination requirement and/or to take action against a worker for refusing vaccination. Companies could reasonably expect challenges from workers and unwanted media attention were they to take a blanket approach of excluding unvaccinated workers from the workplace.</p>
<p>Can we require workers to be vaccinated, or provide evidence of negative tests/ immunity, as a condition of work-related travel?</p>	<p>Only as necessary for their role and to comply with applicable travel requirements.</p> <p>As noted above, neither a company nor the UK government has the power to force workers to be vaccinated under the current legislation.</p> <p>Individuals who travel for work will need to comply with the applicable requirements for domestic and international travel. Some jurisdictions have imposed travel restrictions which either (i) prohibit; or (ii) impose additional quarantine requirements in respect of, the entry of unvaccinated individuals to the country. There are also testing requirements in place for all international travel. Therefore, in order to travel for work, individuals may need to be vaccinated and will be required to submit to specific government-imposed testing requirements.</p> <p>If a worker refuses to comply with legally-required vaccination or testing requirements, the company may have grounds to allocate the worker to work which does not involve travel and/or to terminate the working relationship. The question of whether such action is lawful or not will depend on the specific circumstances, including the nature of the role, how essential the travel is for the performance of the role, which jurisdictions are involved, what the entry requirements are, and the reason for refusal. The key legal risks associated with imposing a blanket vaccination requirement on workers are summarised in the answers above: the same considerations apply where the requirement is imposed as a condition of travel.</p> <p>Specific advice should be sought about any requirements for cross-border travel as the position is complex and constantly changing.</p>

Mobile / Gig Economy / Agency Workers cont

<p>Are we required to provide accommodations to individuals who have not been vaccinated?</p>	<p>If the relevant workers have a disability there is an obligation to make reasonable adjustments.</p> <p>The Equality Act 2010 imposes a duty on companies to make reasonable adjustments to eliminate disadvantages suffered by disabled job applicants and workers. The duty may therefore apply in respect of workers who have not been vaccinated for medical reasons and who qualify as “disabled” for the purposes of the legislation. Such adjustments may include (i) allowing continued homeworking; (ii) waiving a condition that workers must be vaccinated to attend the office; or (iii) implementing additional safety measures at the workplace to further reduce the risk of infection. A failure to make reasonable adjustments is a form of unlawful disability discrimination.</p> <p>Separately, a company runs the risk of indirect discrimination claims where it applies a blanket policy that places a group of individuals with a shared protected characteristic at a disadvantage when compared to those without that characteristic, unless that policy can be objectively justified (which is a high bar). As noted, an ‘anti-vaccination’ stance could be held to be akin to a religion or belief and therefore amount to a protected characteristic; and younger workers may be less likely to be fully vaccinated than older workers.</p> <p>Discrimination claims tend to be high-profile, and compensation awarded for such claims is uncapped, so there are clear risks in refusing any form of concession or accommodation for non-vaccinated workers where the reason they are not vaccinated is linked to a protected characteristic.</p>
<p>Can we retain the vaccination / test / immunity records of workers? (Such records would include vaccine passports, proof of vaccination or other evidence of immunity, test results etc.).</p>	<p>Only where collecting such information can be justified and while this remains necessary.</p> <p>Vaccination and test data can be retained where this information can be validly collected (see earlier answer) but should only be retained for as long as necessary for the purpose for which the data was collected. Data on test results in particular will be out of date very quickly and the appropriate retention period is therefore likely to be very short.</p> <p>Companies should consider an appropriate retention period at the outset of collecting the data and should periodically review the data they hold and erase or anonymise it when they no longer need it. Those with a transitional or short-term work force should ensure they do not hold records for those who are no longer engaged unnecessarily. Companies should also be prepared to receive and manage requests for erasure in respect of vaccination / test / immunity data.</p>
<p>If an individual refuses a request or requirement for vaccination asserting medical reasons, can we require proof of the medical reason?</p>	<p>Only if this is proportionate and necessary for companies to comply with their legal obligations to ensure the health and safety of their workplace - this may be difficult for many companies to demonstrate.</p> <p>Assuming the request or requirement for vaccination is justifiable (see above), you are entitled to ask for suitable medical evidence to your satisfaction, within reason. The organisation must also demonstrate that processing of such evidence is necessary for compliance with health and safety obligations under employment law (Article 9(2)(b) UK GDPR). This requires that the company carry out a DPIA, to assess the need to collect this information against the worker’s right to privacy.</p> <p>If vaccination is not mandatory for the role and/or the underlying concern can be managed by regular testing, it will be difficult to justify requiring proof of medical grounds for non-vaccination in any form.</p> <p>One option where a mandatory vaccination is justifiable and a worker is unable to provide appropriate proof may be to require the worker to be examined by a company-appointed medical advisor. However, this is likely to be a fairly unusual scenario and the company would need to have the worker’s co-operation to do this. Specific advice should be sought on involving a company-appointed medical advisor in this way.</p>

Visitors

<p>Can we ask visitors if they have been vaccinated?</p>	<p>Yes, but only if this is proportionate and necessary for an organisation to comply with their legal obligations to ensure the health and safety of their workplace - this may be difficult for many organisations to demonstrate.</p> <p>ICO guidance states that data protection law does not prevent companies from taking the necessary steps to keep staff and the public safe. However, an organisation’s purpose in requesting a visitor’s vaccine status must still comply with data protection rules under the UK GDPR and Data Protection Act 2018. Vaccine status is health data and is therefore special category data in the UK.</p> <p>Processing of vaccination status must be necessary for the company’s legitimate interest in meeting its health and safety requirements, or for ensuring public health. As special category data, the organisation must also demonstrate that processing is necessary for compliance with health and safety obligations under employment law (Article 9(2)(b) UK GDPR) or ensuring public health (Article 9(2)(i) UK GDPR). This requires that a company carry out a Data Protection Impact Assessment (DPIA), to assess the need to collect this information against the individual’s right to privacy.</p> <p>The ICO explains that the sector you work in, the kind of work your staff do and the health and safety risks in your workplace should help you to decide if you have legitimate reasons to record whether your visitors have had the COVID-19 vaccine. The ICO gives examples of industries where such checks may be justified as those where your staff are more likely to encounter infected people, or where infected people and unvaccinated people could pose a risk to clinically vulnerable individuals.</p> <p>The ICO explains that “if you only keep on record who is vaccinated for monitoring purposes, it is more difficult to justify holding this information.” Notably, although not determinative, Public Health England’s “Working Safely: guidance to employers” proposes numerous measures that employers should consider to reduce coronavirus risks, but does not focus on or suggest the use of the NHS Covid Pass (which allows individuals to demonstrate their COVID status using vaccines and testing) or vaccine status checks as part of its recommendations in all but event settings.</p> <p>Before requiring that vaccine status data be provided, you must tell visitors what personal information you require, what it will be used for and who you will share it with. In all cases, companies should only collect and retain the minimum amount of information needed to fulfil their purpose in line with ICO guidance and the data minimisation principle. The ICO in particular explains that the use of vaccine status information must not result in any unfair or unjustified treatment of individuals, and if the collection or use of COVID status information is likely to have a negative consequence for someone, this must be justifiable.</p> <p>If a company intends to rely on the public health basis for processing, it must ensure that either a health professional carries out the processing, or explain to visitors that information on Covid status is treated confidentially and would only be disclosed in clearly defined circumstances.</p> <p>The ICO notes that, if solely a visual check is made of a pass validly demonstrating Covid status, this may not involve data processing. However, making any record of this check - as may be necessary if failure to demonstrate Covid status would lead to a prohibition of entry to, e.g., a ticket holder - would lead to data processing that would require justification under law.</p>
<p>Can we exclude visitors who have not had a vaccine from the workplace?</p>	<p>Potentially, but only if this is proportionate and necessary for companies to comply with their legal obligations to ensure the health and safety of their workplace - this may be difficult for many companies to demonstrate.</p> <p>In theory, companies may be able to exclude unvaccinated visitors from the physical workplace in certain sectors, again on health and safety grounds. As above, this may include healthcare, social care and other high-risk sectors. If the company considered that the risk to the visitor, to staff or to patients, clients or suppliers was sufficiently high and there was no other way to mitigate or minimise this risk, it may have grounds to exclude the visitor from the relevant areas of the physical workplace. However, there are a number of potential legal risks associated with excluding visitors from the physical workplace (or otherwise treating them differently) on the grounds that they have not been vaccinated.</p> <p>A blanket policy of excluding unvaccinated visitors could lead to indirect discrimination claims under the Equality Act 2010 on the basis that the policy places those with disabilities, those in certain age groups, or those with other protected characteristics, at a particular disadvantage. Whilst this has yet to be tested on the courts, an ‘anti-vaccination’ stance could be held to be akin to a religion or belief and therefore amount to a protected characteristic under the Equality Act 2010.</p> <p>Companies may receive challenges and /or unwanted media attention were they to take a blanket approach of excluding unvaccinated visitors from the workplace.</p>

Visitors cont	
Can we test visitors on entry into our premises?	<p>Only if this is proportionate and necessary for an organisation to comply with their legal obligations to ensure the health and safety of their workplace or to ensure public health- this may be difficult for many organisations to demonstrate.</p> <p>Again, as with vaccination, an organisation would need to demonstrate that there was a valid lawful basis for processing special category data relating to the visitor - the result of a test would be health data under the UK GDPR. As special category data, the organisation must demonstrate that processing is necessary for compliance with health and safety obligations under employment law (Article 9(2)(b) UK GDPR) or ensuring public health (Article 9(2)(i) UK GDPR). This requires that the organisation carry out a DPIA, to assess the need to collect this information against visitors' right to privacy.</p> <p>As with vaccine status, carrying out testing or requesting test information will require the completion of a DPIA to demonstrate that the proposed testing/collection of test data is necessary to comply with the company's health and safety obligations under employment law or to ensure public health. The ICO recommends that organisations identify the purpose for testing and how the tests proposed achieve that purpose. Companies should consider whether other, less privacy intrusive, means are available to achieve the same results. If a company cannot demonstrate that the testing or collection of test data is necessary, it cannot carry out tests or require that evidence of tests be provided. Again, it is notable that PHE guidance does not currently recommend in most settings that testing take place.</p> <p>If a company intends to rely on the public health basis for processing, it must ensure that either a health professional carries out the processing, or explain to visitors that information on Covid status is treated confidentially and would only be disclosed in clearly defined circumstances.</p> <p>Before carrying out any tests, or requiring that test evidence be provided, you must tell your visitors what personal information you require, what it will be used for and who you will share it with. The ICO also stresses the importance of the accuracy principle - companies should record the date of any test results, because the health status of individuals may change over time and the test result may no longer be valid. As with collection of vaccine status, use of test information must not result in any unfair or unjustified treatment of individuals, and any negative consequence of use of this information must be justifiable.</p>
As an alternative to asking a visitor to confirm their vaccination status, can we (i) require them to provide evidence of a negative test or (ii) require them to be tested prior to entry to our premises and deny them entry if they return a positive test or refuse to comply?	<p>Only if this is proportionate and necessary for an organisation to comply with their legal obligations to ensure the health and safety of their workplace, or is necessary for public health - this may be difficult for many organisations to demonstrate.</p> <p>Provided testing is permitted (see above), a test or evidence requirement would in most cases be a reasonable alternative to excluding unvaccinated visitors whilst managing the level of risk for staff members, customers and suppliers.</p> <p>You will need to consider what forms of testing or evidence you will accept, and the regularity of testing or presentation of evidence - taking into account the nature of the visitor's activities and the wider working environment, and the level of risk to staff and others with whom they will come into contact.</p> <p>The ICO notes that, if solely a visual check is made of a pass validly demonstrating Covid status, this may not involve data processing. However, making any record of this check - as may be necessary if failure to demonstrate Covid status would lead to a prohibition of entry to, e.g., a ticket holder - would lead to data processing that would require justification under law. This would need to comply with the relevant requirements set out above (such as demonstrating a lawful basis and completing a DPIA).</p> <p>An individual cannot be forced to take a test. If an individual refuses to comply with a justifiable testing or evidence requirement, you may have grounds to exclude them from your premises.</p>
Can we ask for proof of vaccination status?	<p>Only if you can demonstrate that it is necessary a visitor be vaccinated.</p> <p>Provided you have grounds to request and process this data (see above), you can ask for proof of vaccination status. However, as set out above, this may be difficult for most businesses to demonstrate.</p>
Can we retain the vaccination records of visitors?	<p>Only where collecting such information can be justified and while this remains necessary.</p> <p>Vaccination and test data can be retained where this information can be validly collected (see earlier answer) but should only be retained for as long as necessary for the purpose for which the data was collected. Data on test results in particular will be out of date very quickly and the appropriate retention period is therefore likely to be very short.</p> <p>Companies should consider an appropriate retention period at the outset of collecting the data and should periodically review the data they hold and erase or anonymise it when they no longer need it. Companies should also be prepared to receive and manage requests for erasure in respect of vaccination / test / immunity data.</p>



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