### Summary

| Employees & Workers | Can we ask about symptoms? | Yes | No | | Can we test employees? | Yes | No | | Can we ask employees to notify us if they are diagnosed? | Yes | No | | Can we ask employees if they have been vaccinated? | Yes | No | | Can we require employees to have a vaccine? | Yes | No | | Can we exclude employees who have not had a vaccine from the workplace? | Yes | No |
|---------------------|----------------------------|------|----|---------------------|----------------------------|------|----|---------------------|----------------------------|------|----|---------------------|----------------------------|------|----|
| Mobile / Gig Economy / Agency Workers | Can we ask about symptoms? | Yes | No | | Can we test individuals? | Yes | No | | Can we ask individuals to notify us if they are diagnosed? | Yes | No | | Can we ask individuals if they have been vaccinated? | Yes | No | | Can we require individuals to have a vaccine? | Yes | No | | Can we exclude individuals who have not had a vaccine from the workplace or from carrying out their role? | Yes | No |
| Visitors | Can we ask visitors about symptoms? | Yes | No | | Can we take temperature readings? | Yes | No | | Can we ask visitors to notify us if they are diagnosed? | Yes | No | | Can we ask visitors if they have been vaccinated? | Yes | No | | Can we exclude visitors who have not had a vaccine from the workplace? | Yes | No |
| General | Can we record who is infected? | Yes | No | | Can we notify other members of staff about infections? | Yes | No | | Can we notify public health authorities? | Yes | No |
**Employees & Workers**

**Can we ask employees if they have symptoms?**

Yes. There are exceptions to relevant privacy laws which allow for the collection, use and disclosure of information where there is consent or, alternatively, where it is impracticable to obtain consent and the collection use or disclosure is reasonably considered necessary to lessen or prevent a serious risk to the life, health or safety of an individual or public health and safety.

There is also an employee exemption to the requirements of the Privacy Act in relation to the collection, use and disclosure of information, which applies where the collection, use or disclosure is directly related to a current or former employment relationship.

This means that information about the COVID-19 status of an employee can be collected, used or disclosed where it is related to an employment relationship, and also where the relevant activity is necessary for individual or public health or safety purposes.

Employers should think carefully about collection, use and disclosure of information about an employee’s COVID-19 status. Where practicable, it is sensible to obtain the consent of the individual concerned. Where it is not practicable to obtain consent, it is important to consider carefully the extent of necessary uses and disclosures. Where they are reasonably considered to be necessary for individual or public health purposes, it is appropriate to proceed while also making sure that procedures are in place to limit the use and disclosure of personal information to uses and disclosures which are permissible under applicable privacy laws.

**Can we ask about an employee’s travel history?**

Yes. There are exceptions to relevant privacy rules which allow for the collection, use and disclosure of information where there is consent or, alternatively, it is impracticable to obtain consent and the collection use or disclosure is reasonably considered necessary to lessen or prevent a serious risk to the life, health or safety of an individual or public health and safety.

This means that information about the COVID-19 status of an employee – included relevant travel history to high-risk countries – can be collected, used or disclosed where it is related to an employment relationship or records and also where the relevance of the activity is necessary for individuals or public health or safety purposes. The Privacy Commissioner emphasises that employers should collect the minimum amount of information that is reasonably necessary. This might include, for example, information about whether the individual or a close contact has been exposed to a known case of COVID-19 and whether the individual has recently travelled overseas and to which countries.

**Can we test employees?**

Yes, with consent. 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 lawful and reasonable employees may be required to undertake testing in certain high-risk industries such as healthcare.

Testing involves physical contact with the individual, which means that consent is necessary. A detailed risk assessment should be carried out by an appropriately qualified person. Consent is usually also required for Privacy Act reasons as health information is sensitive information. However, as above, if the information is being obtained in order to meet an employer’s obligations under health and safety laws then consent is not required for privacy purposes (but see above).

Given the current government health directions do not support mandatory testing, employers are constrained from requiring or directing an employee to get tested as it is unlikely to constitute a reasonable request/direction in the present circumstances.

Employers may still monitor employees by using temperature checks and may still reasonably direct employees to work from home if they are experiencing symptoms of COVID-19.

**Can we ask any symptoms of an employee’s household?**

Yes, but with limitations. This can be done:
1) With the individual’s consent; or
2) where the household members are not identified (so that personal information is not collected about them); or
3) where the entity reasonably believes that the collection is necessary to lessen or prevent a serious threat to the life, health or safety of any individual, or to public health or safety.

**Can we ask employees to notify us if they are diagnosed?**

Yes. The employee records exemption is likely to apply. Even if this was not the case, the exception set out above relating to public health and safety would be likely to apply.

**Can we ask employees if they have received a vaccine?**

Yes. The employee records exemption is likely to apply which means that the collection of this information is not subject to the use and disclosure principles of the Privacy Act. Even if this was not the case, the exception set out above relating to public health and safety would be likely to apply.

**Employees & Workers cont**

**Can we require employees to have a vaccine?**

No. There is no current government guidance as to whether employers may require their employees to be vaccinated.

Under applicable legislation in Australia, the government has the power to act to protect the health and safety of the public. The power to make orders in relation to the protection of the public health is a state based power arising from each State and Territories own public health legislation.

That said, employers may be able to require staff to have a vaccine in order to work in certain environments, on health and safety grounds. These may include healthcare, social care and other high risk sectors, where an employer’s obligation to ensure staff do not pose a risk to patients or clients and vice versa may include an obligation to ensure such staff members are vaccinated against common infections / transmissible illnesses / biological hazards.

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 staff member to others and vice versa), and (ii) the health and needs of the staff member, to determine whether a vaccination is required (in the same way as it should do for any other mandatory vaccinations).

Employers should note that 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 as they may be based on lawful grounds.

Employers can make vaccinations available to staff and can actively promote vaccination, without directing it (unless a permitted reason as addressed above applies).

Employers who do so should plan ahead, have a clear, consistent communication strategy and actively engage with staff.

**Can we require employees to work from home even if the office is open?**

Yes. As a general rule, excluding employees from the physical workplace (or otherwise treating them differently) on the grounds of their health would amount to discriminatory treatment and therefore expose the employer to potential discrimination claims.

In theory, employers may be able to exclude staff from the physical workplace in certain sectors (e.g. healthcare) on health and safety grounds. As above, this may include healthcare, social care and other high risk sectors. If the employer considered 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 the employee from the relevant areas of the workplace. However, this has not been tested in the courts and employers could reasonably expect challenge from staff and unwanted media attention were they to take this route.

Whilst this has yet to be tested, an ‘anti-vaccination’ stance may be held to be akin to a religious or political belief and therefore protected under Australia’s discrimination laws.

Additionally, where a medical exemption applies to an employee, exclusion will likely constitute discrimination under the Disability Discrimination Act 1992 (Cth). Accordingly, excluding a staff member from a virtual or physical workplace or otherwise treating them differently on the grounds of their vaccination status may also amount to discrimination on the grounds of religion or political belief.
Mobile / Gig Economy / Agency Workers

**Can we ask individuals if they have symptoms?**
Yes, but with limitations. This is likely to fall within the employee records exemption only if the workers are employees. The public health exception may apply where there is recent or prospective contact between the individual and other staff, or clients.

**Can we ask about the travel history of such individuals?**
Yes, but with limitations. This is likely to fall within the employee records exemption only if the workers are employees. The public health exception may apply where there is recent or prospective contact between the individual and other staff, or clients.

**Can we test such individuals?**
Yes, with consent. 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 lawful and reasonable individuals may be required to undertake testing in certain high-risk industries such as healthcare.

Testing involves physical contact with the individual, which means that consent is necessary. To avoid any negligence risk, testing should carried out by an appropriately qualified person. Consent is usually also required for Privacy Act reasons as health information is sensitive information. However, as above, if the information is being obtained in order to meet an employer’s obligations under health and safety laws then consent is not required for privacy purposes (but see above).

Given the current government health directions do not support mandatory testing, employers are constrained from requiring or directing an individual to get tested as it is unlikely to constitute a reasonable request direction in the present circumstances. Employers may still monitor individuals by using temperature checks and may still reasonably direct individuals to work from home if they are experiencing symptoms of COVID-19.

**Can we ask any symptoms of the household(s) of such individuals?**
Yes, but with limitations. This can be done:
1) With the individual’s consent; or
2) where the household members are not identified (so that personal information is not collected about them); or
3) where the entity reasonably believes that the collection is necessary to lessen or prevent a serious threat to the life, health or safety of any individual, or to public health or safety.

**Can we ask such individuals to notify us if they are diagnosed?**
Yes.

**Can we ask such individuals if they have received a vaccine?**
Yes, but with limitations. This is likely to fall within the employee records exemption only if the workers are employees. The public health exception may apply where there is recent or prospective contact between the individual and other staff, or clients.

**Can we exclude individuals who have not had a vaccine from the workplace or carrying out their role?**
No, other than in very limited circumstances (and there are risks in doing so even where this applies). There is no current government guidance on this issue.

As a general rule, excluding staff from the physical workplace (or otherwise treating them differently) on the grounds of their health would amount to discriminatory treatment and therefore expose the company to potential discrimination claims.

In theory, the company may be able to exclude staff 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 staff member in question, to colleagues 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 staff member from the relevant areas of the physical workplace. However, this has not been tested in the courts and companies could reasonably expect challenge from staff and unwanted media attention were they to take this route.

Whilst this has yet to be tested, an ‘anti-vaccination’ stance may be held to be akin to a religious or political belief and therefore protected under Australia’s discrimination laws. Additionally, where a medical exemption applies to a staff member, exclusion will likely constitute discrimination under the Disability Discrimination Act 1992 (Cth). Accordingly, excluding a staff member from a virtual or physical workplace or otherwise treating them differently on the grounds of their vaccination status may also amount to discrimination on the grounds of religion or political belief.

Visitors

**Can we ask visitors if they have symptoms?**
Yes, but with limitations. This can be done with consent or where it is unreasonable and impracticable to obtain the individual’s consent and the entity reasonably believes that the collection is necessary to lessen or prevent a serious threat to the life, health or safety of any individual, or to public health or safety.

**Can we ask about a visitor’s travel history?**
Yes. The exception set out above relating to public health and safety would be likely to apply.

**Can we take temperature readings from visitors?**
Yes with consent. Consent is usually required for Privacy Act reasons as health information is sensitive information. However, if the information is being obtained in order to meet a company’s obligations under health and safety laws, then consent is recommended but not strictly necessary.

**Can we ask any symptoms of a visitor’s household?**
Yes, but with limitations. This can be done:
1) With the individual’s consent; or
2) where the household members are not identified (so that personal information is not collected about them); or
3) where the entity reasonably believes that the collection is necessary to lessen or prevent a serious threat to the life, health or safety of any individual, or to public health or safety.

**Can we ask visitors if they have received a vaccine?**
Yes with consent.

**Can we ask visitors to notify us if they are diagnosed?**
Yes. You cannot however force them to provide this information to you.

**Can we ask visitors if they have received a vaccine?**
Yes, with consent. Consent is usually required for Privacy Act reasons as health information is sensitive information. However, if the information is being obtained in order to meet a company’s obligations under health and safety laws, then consent is recommended but not strictly necessary.
### Australia

#### General cont

<table>
<thead>
<tr>
<th>Question</th>
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<tbody>
<tr>
<td>Can an employer notify customers and visitors of an infected member of staff?</td>
<td>Yes, but with limitations. The employer should consider whether this is necessary and disclose on a need to know basis only. Thought should be given to the form of any disclosure, as there is some potential for defamation of a person incorrectly described as having the virus. This is a further reason to limit the disclosure. Such a limitation would assist in seeking to establish the common law qualified privilege defence to a defamation claim. The test for that defence is generally available where the disclosure was under a legal, moral or social duty to make a communication and all recipients have a reciprocal interest in receiving the information.</td>
</tr>
<tr>
<td>Can I share health data with authorities for public health purposes?</td>
<td>Yes, but with limitations. Reporting anonymised data is permissible. Reporting with the consent of individuals is permissible. In other circumstances, careful thought needs to be given to whether narrow exceptions relating to public health apply. Prior to re-opening an office, an employer must ensure that it complies with the health directions that are in place. Those directions vary from state to state. In NSW, the directions currently require that there is a 1.5 metres between persons or 1 person per 4 square metres. The Federal government has also recently released 10 National COVID-19 Safe Workplace Principles. In accordance with the Principles, Safe Work Australia is developing nationally-consistent and industry-specific work health and safety guidance for COVID-19. The 10 Principles can be found here: <a href="https://www.safeworkaustralia.gov.au/covid-19-information-workplaces/other-resources/national-covid-19-safe-workplace-principles">https://www.safeworkaustralia.gov.au/covid-19-information-workplaces/other-resources/national-covid-19-safe-workplace-principles</a>. As health directions are updated and varied from time to time, employers must ensure that they keep up to date on those directions.</td>
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#### Visitors cont

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<td>Can we exclude visitors who have not had a vaccine from the workplace?</td>
<td>Yes. Yes, but with limitations. Thought should be given to the form of any disclosure, as there is some potential for defamation of a person incorrectly described as having the virus. This is a further reason to limit the disclosure. Such a limitation would assist in seeking to establish the common law qualified privilege defence to a defamation claim. The test for that defence is generally available where the disclosure was under a legal, moral or social duty to make a communication and all recipients have a reciprocal interest in receiving the information.</td>
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<td>What medical testing can an employer carry out and under what conditions?</td>
<td>Medical testing can only be carried out with an employee’s consent as it generally involves personal contact as well as collection of health information. In some cases, the notion of ‘consulting’ about workplace change is embedded in many workplaces through applicable industrial instruments. Employers should carefully consider whether any of the measures they are taking require consultation with employees and/or their representatives prior to implementation of new or changed workplace practice and procedures. For example, if such measures include redundancies, collective consultation obligations involving trade unions/employee representatives may apply.</td>
</tr>
<tr>
<td>Does an employer need to consult with works councils or trade unions before taking any measures?</td>
<td>Yes, in some cases. The notion of ‘consulting’ about workplace change is embedded in many workplaces through applicable industrial instruments. Employers should carefully consider whether any of the measures they are taking require consultation with employees and/or their representatives prior to implementation of new or changed workplace practice and procedures. For example, if such measures include redundancies, collective consultation obligations involving trade unions/employee representatives may apply. There is no concept of a works council in Australia.</td>
</tr>
<tr>
<td>Can an employer keep a record of staff who are diagnosed as infected?</td>
<td>Yes.</td>
</tr>
<tr>
<td>Can an employer notify other members of staff about an employee who has been infected by COVID-19?</td>
<td>Yes, but with limitations. Thought should be given to the form of any disclosure, in order to limit the information to that which is necessary to order to protect the health and safety of other staff members.</td>
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<tr>
<td>Can an employer inform other members of staff about an employee that has died from COVID-19? What duty does an employer owe in this situation?</td>
<td>Yes in some cases. The Australian Federal Privacy Act only protects information about people who are living, however certain state and territory legislation extends to information about people who have died. In general, disclosure is permitted where such disclosure is reasonably necessary to lessen or prevent a serious and imminent threat to the life, health or safety of a person or the public. In a contact tracing context, this exemption is likely to apply so long as the disclosure is made only to those who need to receive it and is made on a confidential basis. Guidance from the OAIC may be found here: <a href="https://www.oaic.gov.au/privacy/guidance-and-advice/coronavirus-covid-19-understanding-your-privacy-obligations-to-your-staff">https://www.oaic.gov.au/privacy/guidance-and-advice/coronavirus-covid-19-understanding-your-privacy-obligations-to-your-staff</a>. Disclosure is also permissible where required or authorised by law (such as to meet workplace safety obligations). Depending upon the circumstances in which the information was obtained, equitable confidentiality obligations may apply. It is prudent to check with the person from whom the information is obtained that they have no objection to disclosure which if confirmed will address the confidentiality issue. Where privacy legislation extends to information about deceased persons, consent can generally be obtained from next of kin.</td>
</tr>
<tr>
<td>Does your country require individuals to wear face masks or face coverings? If not, can an employer require employees to wear face masks or coverings?</td>
<td>No. There is no legal requirement to wear a face mask. Yes. An employer may require employees to wear face (surgical) masks, but if they do so, it is recommended that an employer should provide the masks and should also provide appropriate training and instruction on how to put on, wear, remove and dispose of the mask. [See the Safe Work Australia guidance: <a href="https://www.safeworkaustralia.gov.au/covid-19-information-workplaces/industry-information/office-masks#Tab-4-toc-can_i_direct_a_worker%20to_wear_a_face_mask">https://www.safeworkaustralia.gov.au/covid-19-information-workplaces/industry-information/office-masks#Tab-4-toc-can_i_direct_a_worker%20to_wear_a_face_mask</a>.]</td>
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#### General DPA Guidance

Employees & Workers

Can we ask employees if they have symptoms?
Yes, but with limitations. Employees would not be obliged to answer your question. Moreover, employers cannot compel employees to complete medical questionnaires. However, employees can be encouraged to inform the occupational health doctor in case they show symptoms.

Can we ask about an employee’s travel history?
Yes, but with limitations. However, employees are not required to answer. A less privacy invasive measure would be to ask employees if they have spent time in an infected area e.g., in the last 30 days. In any case, employers may not compel workers to complete questionnaires about their recent travel.

Can we test employees?
No. General and systematic testing, for example systematic temperature checking of workers and visitors, cannot be carried out by an employer but only by the occupational health doctor.

Can we ask about any symptoms of an employee’s household?
Yes, but with limitations. An employee cannot be compelled to answer.

Can we ask employees to notify us if they are diagnosed?
No. General and systematic testing, for example systematic temperature checking of workers and visitors, cannot be carried out by an employer but only by the occupational health doctor.

Can we ask employees if they have received a vaccine?
No. Vaccination against COVID-19 is an employee’s free choice. The employer is therefore not allowed to ask employees (or prospective employees) whether they have been vaccinated. This data is protected by the right to privacy, which is based on the European Convention on Human Rights and the Belgian Constitution.

An employer who disregards this right exposes himself amongst others to criminal/civil sanctions.

Can we ask employees to work from home even if the office is open?
No. Homeworking must be agreed upon in writing between parties, and this is the case even if homeworking is strongly encouraged by the Ministry Decree on Emergency Measures to Limit the Spread of Coronavirus COVID-19 dated 18 March 2020.

Can we exclude employees who have not had a vaccine from the workplace?
No. As there is no obligation to vaccinate, employers will have unrestricted access to the workplace. However, employees are not required to answer. A less privacy invasive measure would be to ask employees if they have spent time in an infected area e.g., in the last 30 days. In any case, employers may not compel workers to complete questionnaires about their recent travel.

Mobile / Gig Economy / Agency Workers

Can we ask such individuals if they have symptoms?
Yes, but with limitations. Individuals falling into this category would not be obliged to answer your question. Moreover, employers cannot compel individuals to complete medical questionnaires. However, individuals can be encouraged to inform the occupational health doctor in case they show symptoms.

Can we ask about the travel history of such individuals?
Yes, but with limitations. Individuals falling into this category cannot be compelled to answer. A less privacy invasive measure would be to ask individuals if they have spent time in an infected area e.g., in the last 30 days. In any case, employers may not compel workers to complete questionnaires about their recent travel.

Can we test such individuals?
No. General and systematic testing, for example systematic temperature checking of workers and visitors, cannot be carried out by an employer but only by the occupational health doctor.

Can we ask about any symptoms of the household(s) of such individuals?
Yes, but with limitations. Individuals cannot be required to answer your question.

Can we ask such individuals to notify us if they are diagnosed?
Yes, but with limitations. Individuals cannot be required to answer your question.

Can we ask individuals if they have received a vaccine?
No. Vaccination against COVID-19 is the individual’s free choice. Employers will therefore not be allowed to ask the individual whether he/she has been vaccinated.

This data is protected by the right to privacy, which is based on the European Convention on Human Rights and the Belgian Constitution.

Visitors

Can we ask visitors if they have symptoms?
Yes, but with limitations. Visitors cannot be required to answer your question.

Can we ask about a visitor’s travel history?
Yes, but with limitations. Visitors cannot be required to answer your question.

Can we take temperature readings from visitors?
No. The practice of generalised and systematic temperature checks of visitors by employers cannot be considered to be proportionate.

Can we ask about any symptoms of a visitor’s household?
Yes, but with limitations. Visitors cannot be required to answer your question.

Can we ask visitors to notify us if they are diagnosed?
Yes, but with limitations. Visitors cannot be required to answer your question.

Can we ask visitors if they have received a vaccine?
No. Vaccination against COVID-19 is the visitor’s free choice. You will therefore not be allowed to ask the visitors whether they have been vaccinated. This data is protected by the right to privacy, which is based on the European Convention on Human Rights and the Belgian Constitution.

Can we exclude visitors who have not had a vaccine from the workplace?
No. As there is no obligation to vaccinate, visitors will have unrestricted access to the premises, subject, however, to compliance with the rules laid down in the company regarding prevention and/or protection against the spread of COVID-19.

General

Formal EDP Guidance
In French: https://www.autoprotectiondonnees.be/covid-19-et-traitement-de-donn%C3%A9es-%C3%A0-caract%C3%A8re-personnel-sur-le-lieu-de-travail

What medical testing can an employer carry out and under what conditions?
The practice of generalised and systematic controls (for example systematically checking the body temperature of workers and / or visitors) by companies or employers cannot be considered to be proportionate. It is the job of the occupational physician to monitor people whose employer presumes that they have been exposed to COVID-19 and / or have symptoms of it. The employer cannot compel workers to complete medical questionnaires or a questionnaire relating to his or her recent trips. It is recommended to encourage workers to voluntarily report risky travel or symptoms. In this case too, the role of the occupational physician must be emphasised.

Does an employer need to consult with works councils or trade unions before taking any measures?
Yes. If there is one, the Health & Safety Committee must be consulted beforehand.

Can an employer keep a record of staff who are diagnosed as infected?
No. Note however that such processing of personal data would need to comply with data protection principles (see Art. 5 GDPR) and the provisions applicable to the processing of special categories of personal data (Art. 9 GDPR). In particular the principle of data minimisation (Art. 5(1)(c) GDPR), ‘purpose limitation’ (Art. 5(1)(b) GDPR) and ‘storage limitation’ (Art. 5(1)(f) GDPR) will be particularly relevant in this context.
Belgium

**General cont**

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<tbody>
<tr>
<td>Can an employer notify other members of staff about an employee that has died from COVID-19?</td>
<td>Out of respect for the deceased and the next of kin, caution is of course recommended.</td>
</tr>
<tr>
<td>Can an employer notify customers and visitors of an infected member of staff?</td>
<td>Yes, but with limitations. Under the principle of confidentiality (Article 5(6) GDPR) and the principle of data minimization (Article 5(1)(c) GDPR), an employer cannot reveal the names of the infected persons. The employer can only inform other individuals of the situation without mentioning the identity of the person(s) concerned.</td>
</tr>
<tr>
<td>Can I share health data with authorities for public health purposes?</td>
<td>Yes. For the processing of this category of personal data, employers can only disclose the data on the basis of Article 6(2)(f) GDPR if they act in execution of explicit directives imposed by the authorities.</td>
</tr>
<tr>
<td>What practical steps should an employer consider when re-opening an office?</td>
<td>Employers should also consider a series of health recommendations announced by the government that will be adopted by the social partners at sector level on the basis of the general guide of good practice adopted by the Group of 10 (guide only available in Dutch (available at belgie.be/sites/default/files/content/news/Generiekegids_light.pdf) and French (<a href="https://emploi.belgique.be/sites/default/files/content/news/Generiekegids_lichte.pdf">https://emploi.belgique.be/sites/default/files/content/news/Generiekegids_lichte.pdf</a>)). In this guidance, reference is made to the 'Getting your workplace ready for COVID-19' guidance of the World Health Organisation (<a href="https://www.who.int/docs/default-source/coronaviruse/getting-workplace-ready-for-covid-19.pdf">https://www.who.int/docs/default-source/coronaviruse/getting-workplace-ready-for-covid-19.pdf</a>) for practical steps for an employer to consider when re-opening an office.</td>
</tr>
<tr>
<td>Does your country require individuals to wear face masks or face coverings?</td>
<td>As from 4 May 2020 wearing face masks or similar protections is mandatory in public transportations, train stations and at bus stops. Employers can require employees working at the premises to wear face masks insofar as this is necessary to protect the health of other individuals (e.g., other employees, customers, clients). Such measures should in any case be discussed within the company’s Health &amp; Safety Committee (if any) or in the absence of this body with the (internal or external) health and safety prevention advisor.</td>
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**China**

**Employees & Workers**

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<td>Yes. Consent from the employees is a general pre-condition, unless the employer is authorised to do so or as required under applicable laws and regulations. Data minimisation principle is key: do not collect more information than needed and ensure it is treated with appropriate safeguards.</td>
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<td>Can we ask about an employee’s travel history?</td>
<td>Yes. Consent from the employees is a general pre-condition, unless the employer is authorised to do so or as required under applicable laws and regulations. Data minimisation principle is key: do not collect more information than needed and ensure it is treated with appropriate safeguards.</td>
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<tr>
<td>Can we test employees?</td>
<td>Yes, but with limitations. From a data protection perspective, consent from the employees is a general pre-condition, unless the employer is authorised to do so or as required under applicable laws and regulations. The data minimisation principle is key: do not collect more information than needed and ensure it is treated with appropriate safeguards.</td>
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<td>Can we ask employees to notify us if they are diagnosed?</td>
<td>Yes, but with limitations. From a data protection perspective, consent from the employees is a general pre-condition. The data minimisation principle is key: do not collect more information than needed and ensure it is treated with appropriate safeguards. Consent from the employees is a general pre-condition, unless the employer is authorised to do so or as required under applicable laws and regulations. The data minimisation principle is key: do not collect more information than needed and ensure it is treated with appropriate safeguards.</td>
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<tr>
<td>Can we ask employees if they have received a vaccine?</td>
<td>Yes, but with limitations. From a data protection perspective, consent from the employees is a general pre-condition. The data minimisation principle is key: do not collect more information than needed and ensure it is treated with appropriate safeguards. The latest national vaccination plan (as of 31 December 2020): On 19 December 2020, an officer of the World Health Organisation described COVID-19 vaccination programme. In terms of national guidance relating to COVID-19 testing, specific categories of employees 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 at <a href="http://www.nhc.gov.cn/xcs/zhengcwj/202006/6c97dc68c7b24fcb997599a8e6afb931.shtml">http://www.nhc.gov.cn/xcs/zhengcwj/202006/6c97dc68c7b24fcb997599a8e6afb931.shtml</a> (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 the 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. For employees not falling into the above categories, testing can only be possible on a voluntary basis. In addition, depending on the development of the COVID-19 pandemic, each city locally, a local government might implement the manditory COVID-19 requirements on local residents if the city is required to put into place public health restrictions. 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. In terms of national guidance on vaccines, there is no mandatory requirement for employees to receive a vaccine, or for employers to check if their employees have received a vaccine. In practice, other than some specific industries or priority groups (as detailed below) where vaccination has become available, it has not yet become a very common practice for other employers to ask employees such information or to request their employees to receive a vaccine. 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Secondly, with the improvement of the production of the vaccine, vaccination will be gradually implemented among more people who are qualified to receive a vaccination. (Reference: <a href="http://www.gov.cn/xwzn/2020-06/27/content_5507243.htm">http://www.gov.cn/xwzn/2020-06/27/content_5507243.htm</a>, in Chinese only). In terms of national guidance on vaccines, there is no mandatory requirement for employees to receive a vaccine, or for employers to check if their employees have received a vaccine. In practice, other than some specific industries or priority groups (as detailed below) where vaccination has become available, it has not yet become a very common practice for other employers to ask employees such information or to request their employees to receive a vaccine. The data minimisation principle is key: do not collect more information than needed and ensure it is treated with appropriate safeguards. 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China Continued

### Mobile / Gig Economy / Agency Workers

**Can we ask such individuals if they have symptoms?**

Yes. Consent from the individuals is a general pre-condition, unless the employer is authorised to do so or as required under applicable laws and regulations. Data minimisation principle is key - do not collect more information than needed and ensure it is treated with appropriate safeguards.

**Can we ask about the travel history of such individuals?**

Yes. Consent from the individuals is a general pre-condition, unless the organisation is authorised to do so or as required under applicable laws and regulations. Data minimisation principle is key - do not collect more information than needed and ensure it is treated with appropriate safeguards.

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### Employees & Workers cont

**Can we require employees to have a vaccine?**

No, other than in very limited circumstances. In terms of national guidance on vaccine, there is no mandatory requirement for employees to receive a vaccine, or for employers to check if their employees have received a vaccine at this stage. In practice, other than some specific industries/priority groups (as detailed below) where vaccination has become available, it has not yet become a very common practice for employers in other industries to ask employees to receive a vaccine. Unless otherwise specifically required/authorised under relevant rules, requiring employees to have a vaccine is likely to go beyond the employer’s duty/legal obligations to maintain health and safety standards in the workplace at this stage.

The latest national vaccination plan (as of 31 December 2020): On 19 December 2020, an officer of the National Health Commission expressed during the Press Conference on the Joint Prevention and Control Mechanism of The State Council that the vaccination will be carried out nationwide in two steps.

Firstly, the vaccination will be carried out among specific categories of individuals, i.e. those who are of a high risk of infection, such as those engaged in cold-chain importing, port quarantine, ship pilotage, aviation crew, fresh produce, public transportation, medical disease control and other staff with a high risk of infection, as well as those who plan to go to medium/high risk countries for work or study.

Secondly, with the improvement of the production of the vaccine, vaccination will be gradually implemented among more people who are qualified to receive a vaccination. (Reference: [http://www.gov.cn/xinwen/2020-12/26/content_5557417.htm](http://www.gov.cn/xinwen/2020-12/26/content_5557417.htm), in Chinese only).

**Can we require employees to work from home even if the office is open?**

Yes. An employer can require remote working where it is reasonable to do so (taking into account health and safety and other duties and obligations).

**Can we exclude employees who have not had a vaccine from the workplace?**

No, other than in very limited circumstances. As a general rule, excluding employees from the physical workplace (or otherwise treating them differently) on the grounds of their health would amount to discriminatory treatment and therefore expose the employer to potential discrimination claims. In terms of national guidance on vaccines, there is no mandatory requirement for employees to receive a vaccine, or for employers to check if their employees have received a vaccine at this stage. In practice, it has not yet become a common practice for employers to ask employees to receive a vaccine, other than some specific industries/priority groups (as detailed above). Unless otherwise specifically required/authorised under relevant rules, requiring employees to have a vaccine is likely to go beyond the employer’s duty/legal obligations to maintain health and safety standards in the workplace at this stage.

**Can we ask employees if they have symptoms?**

Yes. Consent from the individuals is a general pre-condition, unless the employer is authorised to do so or as required under applicable laws and regulations. Data minimisation principle is key - do not collect more information than needed and ensure it is treated with appropriate safeguards.

**Can we ask about the travel history of such individuals?**

Yes. Consent from the individuals is a general pre-condition, unless the organisation is authorised to do so or as required under applicable laws and regulations. Data minimisation principle is key - do not collect more information than needed and ensure it is treated with appropriate safeguards.

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### Mobile / Gig Economy / Agency Workers cont

**Can we test such individuals?**

Yes, but with limitations. Such data collection is possible as long as it is anonymised. However, if a specific household member can be identified, relevant consent and notice requirements should be fulfilled, unless your organisation is authorised to do so or as required under applicable laws and regulations.

**Can we ask such individuals to notify us if they are diagnosed?**

Yes, but with limitations. Consent from the individuals is a general pre-condition.

**Can we require employees to have a vaccine?**

Yes, but with limitations. Consent from the individuals is a general pre-condition, unless the employer is authorised to do so or as required under applicable laws and regulations.

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### In terms of national guidance relating to COVID-19 testing, specific categories of employees 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 at [http://www.nhc.gov.cn/xcs/s4068/202006/6c975e69c72da46b99709a8e6aa9385.shtml](http://www.nhc.gov.cn/xcs/s4068/202006/6c975e69c72da46b99709a8e6aa9385.shtml), in 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 the 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.

For employees not falling into the above categories, testing can only be possible on a voluntary basis. In addition, depending on the development of the COVID-19 pandemic in each city locally, a local government might implement the mandatory COVID-19 requirements on local residents if the city is required to put into place public health restriction measures due to a fresh outbreak. 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.

**In terms of national guidance relating to COVID-19 testing, specific categories of employees are required or encouraged to be tested for COVID-19 test.**


**Can we require employees to have a vaccine?**

Yes, but with limitations. Consent from the individuals is a general pre-condition, unless the employer is authorised to do so or as required under applicable laws and regulations.

**Can we ask such individuals if they have symptoms?**

Yes. Consent from the individuals is a general pre-condition, unless the employer is authorised to do so or as required under applicable laws and regulations. Data minimisation principle is key - do not collect more information than needed and ensure it is treated with appropriate safeguards.

**Can we ask about the travel history of such individuals?**

Yes. Consent from the individuals is a general pre-condition, unless the organisation is authorised to do so or as required under applicable laws and regulations. Data minimisation principle is key - do not collect more information than needed and ensure it is treated with appropriate safeguards.
### Mobile / Gig Economy / Agency Workers cont

<table>
<thead>
<tr>
<th>Question</th>
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<tbody>
<tr>
<td>Can we ask individuals who have not had a vaccine from the workplace or carrying out their role?</td>
<td>No, other than in very limited circumstances. As a general rule, excluding mobile workers from the physical workplace (or otherwise treating them differently) on the grounds of their health would amount to discriminatory treatment and therefore expose the employer to potential discrimination claims.</td>
</tr>
<tr>
<td>In terms of national guidance on vaccine, there is no mandatory requirement for individuals to receive a vaccine, or for employers to check if mobile or gig economy workers have received a vaccine at this stage. In practice, it has not yet become a common practice for employers to ask employees to receive a vaccine, other than some specific industries as detailed above. Unless otherwise specifically required/authorised under relevant rules, requiring employees to have a vaccine is likely to go beyond the employer’s duty/legal obligations to maintain the health and safety in the workplace at this stage.</td>
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### Visitors cont

<table>
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<tr>
<td>Can we ask visitors if they have symptoms?</td>
<td>Yes. Consent from the visitors is a general pre-condition, unless the organisation is authorised to do so or as required under applicable laws and regulations. Data minimisation principle is key - do not collect more information than needed and ensure it is treated with appropriate safeguards.</td>
</tr>
<tr>
<td>Can we ask a visitor’s travel history?</td>
<td>Yes. Consent from visitors is a general pre-condition, unless the organisation is authorised to do so or as required under applicable laws and regulations. Data minimisation principle is key - do not collect more information than needed and ensure it is treated with appropriate safeguards.</td>
</tr>
<tr>
<td>Can we take temperature readings from visitors?</td>
<td>Yes. Consent from visitors is a general pre-condition, unless the organisation is authorised to do so or as required under applicable laws and regulations. Guidance issued by the government also emphasizes that organisations should ensure health monitoring of visitors. Data minimisation principle is key - do not collect more information than needed and ensure it is treated with appropriate safeguards. Real-time temperature testing is recommended.</td>
</tr>
<tr>
<td>Can we ask about any symptoms of a visitor’s household?</td>
<td>Yes, but with limitations. Such data collection is possible as long as it is anonymised. However, if a specific household member of the visitor can be identified, relevant consent and notice requirements should be fulfilled, unless your organisation is authorised to do so or as required under applicable laws and regulations. Data minimisation principle is key - do not collect more information than needed and ensure it is treated with appropriate safeguards.</td>
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<td>Can we ask visitors to notify us if they are diagnosed?</td>
<td>Yes, it is possible, taking into account health and safety and other duties and obligations. Organisations are required to report to the relevant authorities they are aware of such. Data minimisation principle is key - do not collect more information than needed and ensure it is treated with appropriate safeguards. In terms of national guidance on vaccines, there is no mandatory requirement for individuals to receive a vaccine, or for employers to check if visitors have received a vaccine. In practice, it has not yet become a common practice for employers to ask visitors such information.</td>
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<td>Can we ask visitors if they have received a vaccine?</td>
<td>Yes, but with limitations. From a data protection perspective, consent from visitors is a general pre-condition. The data minimisation principle is key: do not collect more information than needed and ensure it is treated with appropriate safeguards. The latest national vaccination plan (as of 31 December 2020): On 19 December 2020, an officer of the National Health Commission expressed during the Press Conference on the Joint Prevention and Control Mechanism of The State Council that the vaccination will be carried out nationwide in two steps. Firstly, the vaccination will be carried out among specific categories of individuals, i.e. those who are of a high risk of infection, such as those engaged in cold-chain importing, port quarantine, ship piloting, aviation crew, fresh produce, public transportation, medical disease control and other staff with a high risk of infection, as well as those who plan to go to medium/high-risk countries for work or study. Secondly, with the improvement of the production of the vaccine, vaccination will be gradually implemented among more people who are qualified to receive a vaccination. (Reference: <a href="https://www.gov.cn/xinwen/2020-02/10/content_5476711.htm">https://www.gov.cn/xinwen/2020-02/10/content_5476711.htm</a>, in Chinese-only).</td>
</tr>
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<td>Can we exclude visitors who have not had a vaccine from the workplace?</td>
<td>No, other than in very limited circumstances. As a general rule, excluding individuals from the physical workplace, preventing them taking on jobs, work or engagements (or otherwise treating them differently) on the grounds of their health would amount to discriminatory treatment and therefore expose the company to potential discrimination claims. In terms of national guidance on vaccine, there is no mandatory requirement for visitors to receive a vaccine, or for employers to check if their visitors have received a vaccine. In practice, it has not yet become a common practice for employers to ask visitors such information. Excluding visitors on the sole basis that they have not have a vaccine is likely to go beyond an employer’s obligations duty to maintain workplace safety, unless the visitors have or are likely to present a particular risk to others in the workplace.</td>
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### General

<table>
<thead>
<tr>
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<tbody>
<tr>
<td>What medical testing can an employer carry out and under what conditions?</td>
<td>The usual principles for testing employees will apply. Employers must have grounds for conducting the test (explicit consent is a pre-condition, unless the employers are authorised to do so or as required under applicable laws or regulations). Temperature checks and health-related questionnaires are the most common measures taken by the employers for the purpose of COVID-19 prevention and control. A notice issued by the State Council outlines that if an employee is identified of suspicious symptoms, the employer should take quarantine measures, report to the local medical authorities and arrange medical testing for the employee in accordance with relevant rules. A notice issued by the National Health Commission also instructs that employers who are based in high-risk or medium-risk areas, should delay the implementation of occupational health examinations for new staff (to prevent cross-infection or the run on medical resources).</td>
</tr>
<tr>
<td>Does an employer need to consult with works councils or trade unions before taking any measures?</td>
<td>Yes, in some cases. Article 4 of the PRC Employment Contract Law requires any internal policies or major matters/measures which have a direct bearing on the immediate interests of its employees should be passed by the statutory democratic process, i.e. consultation with employee representatives or trade union. Whether taking a measure has a direct bearing on the immediate interests of its employees depends on its real situation.</td>
</tr>
<tr>
<td>Can an employer keep a record of staff who are diagnosed as infected?</td>
<td>Yes. Note that such collection of data would need to comply with data protection principles. In particular data minimisation and purpose limitation will be important.</td>
</tr>
<tr>
<td>Can an employer notify other members of staff about an employee who has been infected by COVID-19?</td>
<td>Yes. You should disclose the personal information without consent of the data subject, unless this is necessary for the epidemic prevention and control and after de-sensitisation. You should only disclose information to that which is necessary in order to protect the health and safety of other staff members.</td>
</tr>
<tr>
<td>Can an employer inform other members of staff about an employee that has died from COVID-19? What duty does an employer owe in this situation?</td>
<td>Yes, but with limitations. In general, there is no legal obligation of informing the staff on a particular employee’s death due to COVID-19, unless for security and safety reasons. If the employer decides to share this information, it must be assured that the manner, in which the announcement will be shared, fully respects the dignity and privacy of both the deceased employee and his relatives.</td>
</tr>
<tr>
<td>Can an employer notify customers and visitors of an infected member of staff?</td>
<td>Yes. Where this is relevant to members of staff, including mobile workers, whose roles involve interacting with customers, you can notify your customers and visitors where this is necessary for the epidemic prevention and control and after de-sensitisation.</td>
</tr>
<tr>
<td>Can I share health data with authorities for public health purposes?</td>
<td>Yes. Organisations and individuals are required to report to the relevant authorities if they are aware of suspected or confirmed patients.</td>
</tr>
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**China**

**General cont**

What practical steps should an employer consider when re-opening an office?

While re-opening the office, the primary obligation of the employer is to protect the health and life of employees by ensuring safe and hygienic working conditions. The government has issued Guidance on COVID-19 prevention and control for employers’ office reopening in April 2020 (http://www.gov.cn/zhengce/content/2020-04/09/content_54900685.htm in Chinese). Employers based in low-risk areas are recommended to:

- keep track of employees’ travel history. If employees return from areas of high-risk or medium-risk areas or abroad, more stringent health management measures should be taken. If employees return from low-risk areas, those who pass the temperature check should be allowed to work as usual;
- check the employee’s health status;
- maintain safe working environment, including keeping the offices ventilated, providing sanitation kits, etc.;
- reduce group activities;
- educate employees about COVID-19 prevention and instruct them to wear face mask scientifically; and
- ensure the emergency response capacity.

For employers who are in medium risk or high-risk areas, more stringent measures should be adopted in addition to the above, including for example retaining flexible working hours/methods, setting an isolation area in the workplace, etc.

Does your country require individuals to wear face masks or face coverings? If not, can an employer require employees to wear face masks or face coverings?

Yes, in some cases. The Chinese government issued Guidelines on wearing masks scientifically for the public (http://www.nhc.gov.cn/jk/s3577/202003/04472c0967e444853b6a7446670f4808.html in Chinese). According to the guidelines, people under the following circumstances are not recommended to wear masks:

- stay at home;
- outdoors;
- no crowds; and
- well-ventilated.

The public is advised to carry on wearing masks when in crowded places such as offices, shopping malls, public transport. People in high-risk areas should wear surgical masks all the time when entering such places, while those in medium-risk and low-risk areas need to wear medical masks when in contact with others at the distance of less than 1 meter.

Those who have cold symptoms such as coughing or sneezing, or who live with personnel in quarantine or that have recovered from the COVID-19 and been discharged from the hospital, are suggested to wear disposable medical or surgical masks.

People working in places such as hospitals, train terminals, airports, prisons and nursing homes, and people of suspected cases, confirmed cases or in close contact with the patient, need to wear surgical masks or respirators of grade KN95/N95 or above.

Yes. Employees are recommended to wear masks according to the Guidelines, while its detailed implementation is subject to employers’ decisions case by case according to their respective circumstances.

**Czech Republic**

**Employees & Workers**

Can we ask employees if they have symptoms?

Yes (subject to guidance). Under the Labour Code, as a general rule, employers cannot request from their employees any information that does not relate to the employment and performance of work.

However, employers are required to ensure the protection of the health and safety of their employees at work and employees are required to take all possible care of their own health and safety as well as the health and safety of other individuals in the workplace.

According to the Ministry of Labour and Social Affairs, employees should notify their employer that they have returned from the affected countries (the guidance was issued at the beginning of March when there were only a few cases of COVID-19 in the Czech Republic).

Similarly, we believe that this conclusion would pertain also to other potential risks of the infection by the coronavirus. The processing may be based on Art. 9(2)b) GDPR.

Can we ask an employer about an employee’s travel history?

Yes. The Ministry of Labour and Social Affairs states that employees should inform the employer whether they have visited any affected countries as part of the general obligation under the statutory occupational health and safety rules.

Can we test employees?

Yes, but with limitations. The Czech data Protection Authority issued a brief statement on temperature testing in the workplace, but no guidance with respect to the COVID-19 testing. Checking an employee’s temperature is permitted, if strictly necessary (e.g. considering the aim to be achieved) and provided that all GDPR principles are followed, including data minimisation. Instead of recording results of the temperature checks, an employer may consider recording whether the temperature exceeded a certain threshold.

Employers may carry out testing on a voluntarily basis but cannot require their employees to undergo the tests. An exception to this is that certain specific groups of employees, such as healthcare workers or social care workers, may be required to undergo testing based on health and safety grounds.

However, if an employer suspects that an employee has been infected, it may contact the respective Health Station that may take further steps and adopt appropriate measures.

Can we ask about any symptoms of an employee’s household?

No. No specific guidance. Requesting data concerning health status of third parties may be problematic and thus we do not recommend employers do so. An employer may rather adopt general measures under which employees would be required e.g. to work from home if anyone with whom they have been in contact is infected, or to provide the employer with more information that a member of the employee’s household is infected (without further specification) is infected.

Can we ask employees to notify us if they are diagnosed?

No. No specific guidance. Under the Czech Labour Code, as a general rule, employers cannot request from their employees any information that does not relate to the employment and performance of work.

In our view, requesting information if whether an employee has received a vaccine is not strictly required to protect the employee’s health and safety in the workplace (unless a specific situations requires otherwise). Therefore, this goes beyond the scope of the information that an employer may request.

Can we ask employees if they have received a vaccine?

No. Under applicable legislation, employers are not entitled to require their employees to have a vaccine. In addition, according to the national vaccination strategy against COVID-19, the vaccination shall be voluntary.

Can we require employees to have a vaccine?

Yes. Strictly speaking, remote working is possible only if such option has been agreed in the employment agreement or if the employee agrees to it. However, given the general obligation to protect occupational health and safety and current recommendations of the Czech Government (remote work arrangements are strongly encouraged), we believe that the employer should be entitled to unilaterally order that employees (whose role allows so) shall work from home.

The Czech Labour Code regulates the remote working only to a very limited extent; most conditions for the remote working shall be thus agreed between an employer and an employee. Employees shall be instructed on how to perform their work remotely and appropriate technical solutions shall be adopted/provided in advance.

Can we require employees to work from home even if the office is open?

No. Under general labour law and anti-discrimination rules, employers should not be entitled to exclude employees who have not had a vaccine from the workplace. In our view, certain specific cases, different treatment may be justified based on health and safety grounds but there is currently no guidance addressing this issue.

Can we exclude employees who have not had a vaccine from the workplace?

No specific guidance. However, based on the guidance from the Ministry of Labour and Social Affairs, we believe employees should notify the employer if they have been diagnosed with coronavirus.

Can we ask employees if they have travel history?

No. No specific guidance. Under the Czech Labour Code, as a general rule, employers cannot request from their employees any information that does not relate to the employment and performance of work.

The Czech government issued Guidelines on wearing masks scientifically. For employers who are based in medium-risk or high-risk areas, more stringent measures should be adopted in addition to the above, including for example retaining flexible working hours/methods, setting an isolation area in the workplace, etc.

For the public (health authorities, public transport, etc.) we believe that people (a) should be encouraged to wear masks all the time when entering such places, while those in medium-risk and low-risk areas need to wear medical masks when in contact with others at the distance of less than 1 meter, and (b) should be recommended to wear masks:

- at work;
- outdoors;
- no crowds; and
- well-ventilated.

The public is advised to carry on wearing masks when in crowded places such as offices, shopping malls, public transport. People in high-risk areas should wear surgical masks all the time when entering such places, while those in medium-risk and low-risk areas need to wear medical masks when in contact with others at the distance of less than 1 meter.

Those who have cold symptoms such as coughing or sneezing, or who live with personnel in quarantine or that have recovered from the COVID-19 and been discharged from the hospital, are suggested to wear disposable medical or surgical masks.

People working in places such as hospitals, train terminals, airports, prisons and nursing homes, and people of suspected cases, confirmed cases or in close contact with the patient, need to wear surgical masks or respirators of grade KN95/N95 or above.

Yes. Employees are recommended to wear masks according to the Guidelines, while its detailed implementation is subject to employers’ decisions case by case according to their respective circumstances.

Employers may carry out testing on a voluntarily basis but cannot require their employees to undergo the tests. An exception to this is that certain specific groups of employees, such as healthcare workers or social care workers, may be required to undergo testing based on health and safety grounds.

However, if an employer suspects that an employee has been infected, it may contact the respective Health Station that may take further steps and adopt appropriate measures.

The government has issued Guidelines on COVID-19 prevention and control for employers’ office reopening in April 2020 (http://www.gov.cn/zhengce/content/2020-04/09/content_54900685.htm in Chinese). Employers based in low-risk areas are recommended to:

- check the employee’s health status;
- maintain safe working environment, including keeping the offices ventilated, providing sanitation kits, etc.;
- reduce group activities;
- educate employees about COVID-19 prevention and instruct them to wear face mask scientifically; and
- ensure the emergency response capacity.

For employers who are in medium risk or high-risk areas, more stringent measures should be adopted in addition to the above, including for example retaining flexible working hours/methods, setting an isolation area in the workplace, etc.
**Mobile / Gig Economy / Agency Workers**

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<tr>
<td>Formal DPA Guidance</td>
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| Can we ask such individuals if they have symptoms? | Yes, No specific guidance. With respect to agency workers, the legal regime is basically the same as for employees. As regards mobile/gig economy workers (who do not perform their work at the workplace) and agency workers (under civil law agreements), strictly speaking, they are not subject to the employment law rules. However, given the nature of the relationship which often shows signs of regular employment, it is a common approach that such workers are subject to similar measures as regular employees (even in terms of data processing). From employment law perspective, it might be legitimate to ask such workers whether they have any symptoms of COVID-19 or if they are likely to share the workplace with regular employees. However, as the obtained information would likely qualify as special category data and the legal basis under Art. 9(2)(h) GDPR is applicable only in the field of employment law, it might be difficult to justify the use of Art. 9(2)(h) GDPR in relation to mobile/gig economy workers. |
| Can we test such individuals? | Yes, but with limitations. Under the Czech Labour Code, employers have a general duty to protect the health and safety of individuals in the workplace, and, under current circumstances, this may extend to requesting travel data. As for COVID-19 testing, the conclusion would be the same as for the employees, i.e. testing may only be carried out by the employer on a voluntary basis. |
| Can we ask about any symptoms of the household(s) of such individuals? | No, No specific guidance. Requesting data concerning health status of third parties may be problematic and therefore we do not recommend employers collect this type of data. An employer may instead adopt general measures under which these individuals would be required e.g. to refrain from home if anyone with whom they have been in contact is infected, or to provide the employer with more information that a member of the individual’s household (without further specification) is infected. |
| Can we ask individuals if they have received a vaccine? | Yes, No specific guidance. As regards mobile/gig economy workers, although gig-economy workers are not employees, given the nature of the relationship which often shows signs of regular employment, it is a common approach that such workers are subject to similar measures as regular employees (even in terms of data processing). |
| Can we ask individuals to have a vaccine? | Yes, but with limitations. Under the Czech Labour Code, employers have a general duty to ensure the occupational health and safety protection which pertains to all individuals present at the workplace, and, under the current circumstances, may also include taking temperature readings. In case of visitors, we recommend being more careful - if the nature of operation of the company permits, it would be more recommendable to implement a general measure asking visitors who show any COVID-19 symptoms from refrain from entering the premises. |
| Can we exclude individuals who have not had a vaccine from the workplace or carrying out their role? | No, Under general labour law and anti-discrimination rules, employers should not be entitled to exclude individuals who have not had a vaccine from the workplace. In our view, in certain specific cases, different treatment may be justified based on health and safety grounds but it is currently no guidance addressing this issue. |
| Can we ask employees if they have symptoms? | No, No specific guidance. Requesting data concerning health status of third parties may be problematic and thus we do not recommend to do so. A company may rather adopt general measures under which the visit would be asked to refrain from entering the company’s premises if they have visited the affected countries or show symptoms of the infection. |
| Can we ask about a visitor’s travel history? | Yes, but with limitations. Employers have general duty to ensure the occupational health and safety protection which pertains to all individuals present at the workplace, and, under the current circumstances, may also include taking temperature readings. In case of visitors, we recommend being more careful - if the nature of operation of the company permits, it would be more recommendable to implement a general measure asking visitors who show any COVID-19 symptoms from refrain from entering the premises. |
| Can we ask visitors if they are diagnosed? | Yes, but with limitations. Under the Czech Labour Code, employers have a general duty to protect the health and safety of individuals in the workplace, and, under current circumstances, this may extend to requesting travel data. |
| Can we ask about any symptoms of a visitor’s household? | No, No specific guidance. Requesting data concerning health status of third parties may be problematic and thus we do not recommend to do so. A company may rather adopt general measures under which the visit would be asked to refrain from entering the company’s premises if they have visited the affected countries or show symptoms of the infection. |

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**Employees & Workers**

**Can we ask employees if they have symptoms?**

Yes. Employees are required to inform their employer if they have been infected with coronavirus, or if they suspect they may have been infected.

Employers are generally not allowed to ask employees about any symptoms. However, due to the severity of the outbreak in Denmark, we consider it legitimate and reasonable to ask employees if they are experiencing symptoms.

This health data could be processed under Art 9(2)(h) GDPR and para.12 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 or under Art 9(2)(b) GDPR, where it is necessary for reasons of public interest in the area of public health.

Data minimisation principle is key - not more information than needed must be collected and it must be treated with appropriate safeguards.

**Can we ask an employee’s travel history?**

Yes. The employer may require employees to provide information about trips to countries which the Ministry of Foreign Affairs has advised against travelling to. In the event that an employee has been to these countries, the employer can require the employee to provide information that will allow the employer to determine whether the employee must be placed in preventive home quarantine.

This health data can be processed under Art 9(2)(h) GDPR and para.12 of the Danish Data Protection Act and para 10 of the Act on employers’ access to require employees to be tested for COVID-19 etc. 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.

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, e.g. a situation where the company (the employer) in question has been temporarily shut down due to a major outbreak or all employees sent home.

An order to get tested and/or report test results is considered a control measure and certain limitations applies to control measures, e.g. prior notification requirements in some collective agreements. These must be adhered to.

Please note that the Act on employers’ access to require employees to be tested for COVID-19 etc. (2020-11-19/1641) will be repealed automatically on 1 July 2023.

**Can we test employees?**

Yes, but with limitations. An employer can order an employee to get tested for COVID-19 as soon as possible and to report the result to the employer.

This health data can be processed under Art 9(2)(h) GDPR and para.12 of the Danish Data Protection Act and para 10 of the Act on employers’ access to require employees to be tested for COVID-19 etc. 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.

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, e.g. a situation where the company (the employer) in question has been temporarily shut down due to a major outbreak or all employees sent home.

An order to get tested and/or report test results is considered a control measure and certain limitations applies to control measures, e.g. prior notification requirements in some collective agreements. These must be adhered to.

Please note that the Act on employers’ access to require employees to be tested for COVID-19 etc. (2020-11-19/1641) will be repealed automatically on 1 July 2023.

**Can we ask about an employee’s household?**

No. This will most likely not be considered legitimate and limited to what is necessary.

**Can we ask employees to notify us if they are diagnosed?**

Yes. Employees are required to inform their employer if they have been infected with coronavirus, or if they suspect they may have been infected.

Employers are generally not allowed to ask employees about his/her sickness absence. However, due to severity of the outbreak in Denmark, we consider it legitimate and reasonable to do so, and in accordance with the Danish Working Environment Act for the employer to ask employees if they are experiencing symptoms.

This health data could be processed under Art 9(2)(h) GDPR and para.12 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 or under Art 9(2)(b) GDPR, where it is necessary for reasons of public interest in the area of public health.

Data minimisation principle is key - not more information than needed must be collected and it must be treated with appropriate safeguards.

**Can we ask employees if they have received a vaccine?**

Yes.

Employees may arrange to have a vaccine in their personal capacity, or through a work scheme if offered. Employers may request the employee to provide information about their vaccination status. Employers should have due regard to the security of the data, and consider any duty of confidentiality owed to those individuals who have provided information about their vaccination status.

Employers should focus on making sure that the use of the data is necessary and relevant.

**Can we require employees to have a vaccine?**

No. No available DPA guidance. The COVID-19 vaccine will not be mandatory in Denmark and it seems unlikely that the government will adopt legislation providing all employers with an option to require their employees to be vaccinated. However, whether or not employees in the most vulnerable positions, such as doctors, nurses and other care professionals, either high risk sectors can be ordered to have a COVID-19 vaccine as a result of the employers’ obligation to ensure staff do not pose a risk to patients or clients and vice versa is still a topic of discussion.

Employers can make vaccinations available to staff and can actively promote vaccination. Employers who do so should plan ahead, have a clear, consistent communication strategy and actively engage with staff.

**Can we require employees to work from home even if the office is open?**

Yes. In the current situation where the government has encouraged all employers to let their employees work from home to the extent possible and where it is deemed necessary to ensure public health and working conditions it is assumed that the employer may instruct employees to work from home. The employer has the obligations to ensure the technical possibility to work from home.

**Employees & Workers cont**

**Can we exclude employees who have not had a vaccine from the workplace?**

No, other than in very limited circumstances (and there are risks in doing so where this applies). No available DPA guidance. As a general rule, excluding employees from the physical workplace (or otherwise treating them differently) on the grounds of their health would amount to discriminatory treatment and therefore expose the employer to potential discrimination claims.

In theory, employers may be able to exclude staff from the physical workplace in certain sectors on health and safety grounds, this may include healthcare, care work and other high risk sectors. If the employer considered that the risk to the staff member in question, to colleagues 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 employee from the relevant areas of the physical workplace.

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 staff member to others and vice versa), (ii) the health and needs of the staff member, to determine whether a Covid vaccination is required (in the same way as it should/does for any other vaccinations) and (iii) The Danish Discrimination laws; Employers should note that there are many reasons why an individual might legitimately be unable or refuse to be vaccinated, e.g. health or religious reasons.

A way for an employer to execute this measure is either to encourage the employee to only work from home - or by virtue of managerial right and the above mentioned risk assessment to notify the employee in question about changes to the employment relationship, imposed work from home, in which case the employer also has an obligations to ensure the technical possibility to work from home. The employer can chose to either accept or reject. If the employee rejects, this will be considered a resignation notice.

Employers will need to consider objections carefully and individually; they run the risk of claims of unfair dismissal and unwanted media attention if they apply a blanket mandatory vaccination policy or punish employees who refuse to comply.

**Can we exclude employees who have not had a vaccine from the workplace?**

No, other than in very limited circumstances (and there are risks in doing so where this applies). No available DPA guidance. As a general rule, excluding employees from the physical workplace (or otherwise treating them differently) on the grounds of their health would amount to discriminatory treatment and therefore expose the employer to potential discrimination claims.

In theory, employers may be able to exclude staff from the physical workplace in certain sectors on health and safety grounds, this may include healthcare, care work and other high risk sectors. If the employer considered that the risk to the staff member in question, to colleagues 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 employee from the relevant areas of the physical workplace.

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 staff member to others and vice versa), (ii) the health and needs of the staff member, to determine whether a Covid vaccination is required (in the same way as it should/does for any other vaccinations) and (iii) The Danish Discrimination laws; Employers should note that there are many reasons why an individual might legitimately be unable or refuse to be vaccinated, e.g. health or religious reasons.

A way for an employer to execute this measure is either to encourage the employee to only work from home - or by virtue of managerial right and the above mentioned risk assessment to notify the employee in question about changes to the employment relationship, imposed work from home, in which case the employer also has an obligations to ensure the technical possibility to work from home. The employer can chose to either accept or reject. If the employee rejects, this will be considered a resignation notice.

Employers will need to consider objections carefully and individually; they run the risk of claims of unfair dismissal and unwanted media attention if they apply a blanket mandatory vaccination policy or punish employees who refuse to comply.
### Mobile / Gig Economy / Agency Workers

#### Can we ask such individuals if they have symptoms?

- **Yes.** No available DPA guidance. Due to the severity of the corona outbreak, it would be reasonable to ask these individuals to inform you if they are experiencing symptoms.

This health data could be processed under Art 9(2)(b) GDPR and para 12 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 or under Art 9(2)(b) GDPR, where it is necessary for reasons of public interest in the area of public health. Data minimisation principle is key - not more information than needed must be collected and it must be treated with appropriate safeguards.

#### Can we ask about any symptoms of the household(s) of such individuals?

- **No.** This will most likely not be considered legitimate and limited to what is necessary.

#### Can we ask such individuals to notify us if they are diagnosed?

- **Yes.** No available DPA guidance. Due to the severity of the corona outbreak in Denmark, we consider it legitimate and reasonable to ask individuals to inform if they are diagnosed with COVID-19.

This health data could be processed under Art 9(2)(b) GDPR and para 12 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 or under Art 9(2)(b) GDPR, where it is necessary for reasons of public interest in the area of public health. Data minimisation principle is key - not more information than needed must be collected and it must be treated with appropriate safeguards.

#### Can we test such individuals?

- **Yes, but only if there is an employment relationship.** No available DPA guidance.

With respect to agency workers, the legal regime is basically the same as for employees. As regards mobile/gig economy workers, if the nature of the relationship constitutes an employment relationship, then yes. If not, then no.

#### Can we ask such individuals to receive a vaccine?

- **Yes.** No available DPA guidance. The employer may require individuals to provide information about trips to countries which the Ministry of Foreign Affairs has advised against travelling to.

In the event that an employee has been to these countries, the employer can require the employee to provide information that will allow the employer to determine whether the employee must be placed in preventive home quarantine.

#### Can we require individuals to have a vaccine?

- **No.** No available DPA guidance. The COVID-19 vaccine will not be mandatory in Denmark and it seems unlikely that the government will adopt legislation providing all employees with an option to require their employees or the like to be vaccinated.

However, whether or not individuals in the most vulnerable positions, such as doctors, nurses and other health care professionals/other high risk sectors can be ordered to have a COVID-19 vaccine as a result of their work relationship and an employers obligation to ensure staff do not pose a risk to patients or clients and vice versa is still a topic of discussion.

The company can make vaccinations available to staff and individuals and can actively promote vaccination. Employers who do so should plan ahead, have a clear, consistent communication strategy and actively engage with staff.

#### Can we exclude individuals who have not had a vaccine from the workplace or carrying out their role?

- **No, other than in very limited circumstances (and there are risks in doing so even here this applies).** No available DPA guidance. With respect to agency workers, the legal regime is basically the same as for employees. As a general rule, excluding mobile/gig workers from the physical workplace (or otherwise treating them differently) on the grounds of their health would amount to discriminatory treatment and therefore expose the employer to potential discrimination claims.

In theory, companies may be able to exclude staff from the physical workplace in certain sectors on health and safety grounds, this may include healthcare, social care and other high risk sectors. If the company considered that the risk to the worker in question, to colleagues and others in the workplace, 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 mobile/gig worker from the relevant areas of the physical workplace.

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 mobile/gig worker to others and vice versa), (ii) the health and needs of the mobile/gig worker, to determine whether a COVID-19 vaccination is required (in the same way as it should do for any other vaccinations) and (iii) The Danish Discrimination Laws, Employers 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. Employers will need to consider objections carefully and individually, they run the risk of claims of unfair dismissal and unwanted media attention if they apply a blanket mandatory vaccination policy or punish employees and other workers, who refuse to comply.

### Visitors

#### Can we ask visitors if they have symptoms?

- **Yes.** No available DPA guidance. Due to the severity of the corona outbreak, it would be reasonable to ask visitors to inform you if they are experiencing symptoms.

This health data could be processed under Art 9(2)(b) GDPR and para 12 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 or under Art 9(2)(b) GDPR, where it is necessary for reasons of public interest in the area of public health. Data minimisation principle is key - not more information than needed must be collected and it must be treated with appropriate safeguards.

#### Can we test visitors?

- **No.** Other than in very limited circumstances.

This health data could be processed under Art 9(2)(b) GDPR and para 12 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 or under Art 9(2)(b) GDPR, where it is necessary for reasons of public interest in the area of public health. Data minimisation principle is key - not more information than needed must be collected and it must be treated with appropriate safeguards.

#### Can we ask visitors to notify us if they are diagnosed?

- **Yes.** No available DPA guidance. The employer may require individuals to provide information about trips to countries which the Ministry of Foreign Affairs has advised against travelling to.

With respect to agency workers, the legal regime is basically the same as for employees. As regards mobile/gig economy workers, if the nature of the relationship constitutes an employment relationship, then yes. If not, then no.

#### Can we ask about any symptoms of a visitor’s household?

- **No.** This will most likely not be considered legitimate and limited to what is necessary.

#### Can we exclude visitors who have not had a vaccine?

- **No, other than in very limited circumstances (and there are risks in doing so even here this applies).** No available DPA guidance. With respect to agency workers, the legal regime is basically the same as for employees. As a general rule, excluding mobile/gig workers from the physical workplace (or otherwise treating them differently) on the grounds of their health would amount to discriminatory treatment and therefore expose the employer to potential discrimination claims.

In theory, companies may be able to exclude staff from the physical workplace in certain sectors on health and safety grounds, this may include healthcare, social care and other high risk sectors. If the company considered that the risk to the worker in question, to colleagues and others in the workplace, 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 mobile/gig worker from the relevant areas of the physical workplace.

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 mobile/gig worker to others and vice versa), (ii) the health and needs of the mobile/gig worker, to determine whether a COVID-19 vaccination is required (in the same way as it should do for any other vaccinations) and (iii) The Danish Discrimination Laws, Employers 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. Employers will need to consider objections carefully and individually, they run the risk of claims of unfair dismissal and unwanted media attention if they apply a blanket mandatory vaccination policy or punish employees and other workers, who refuse to comply.

#### Can we ask visitors if they received a vaccine?

- **Yes.** No available DPA guidance. Due to the severity of the corona outbreak, it would be reasonable to ask visitors to inform you if they are experiencing symptoms.

This health data could be processed under Art 9(2)(b) GDPR and para 12 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 or under Art 9(2)(b) GDPR, where it is necessary for reasons of public interest in the area of public health. Data minimisation principle is key - not more information than needed must be collected and it must be treated with appropriate safeguards.

#### Can we ask about any symptoms that the visitor may have?

- **No.** Other than in very limited circumstances.

This health data could be processed under Art 9(2)(b) GDPR and para 12 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 or under Art 9(2)(b) GDPR, where it is necessary for reasons of public interest in the area of public health. Data minimisation principle is key - not more information than needed must be collected and it must be treated with appropriate safeguards.

#### Can we ask about a visitor’s travel history?

- **Yes.** No available DPA guidance. Due to the severity of the corona outbreak, it would be reasonable to ask visitors to inform you if they are experiencing symptoms.

This health data could be processed under Art 9(2)(b) GDPR and para 12 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 or under Art 9(2)(b) GDPR, where it is necessary for reasons of public interest in the area of public health. Data minimisation principle is key - not more information than needed must be collected and it must be treated with appropriate safeguards.

#### Can we ask about a visitor’s travel history?

- **Yes.** No available DPA guidance. Due to the severity of the corona outbreak, it would be reasonable to ask visitors to inform you if they are experiencing symptoms.

This health data could be processed under Art 9(2)(b) GDPR and para 12 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 or under Art 9(2)(b) GDPR, where it is necessary for reasons of public interest in the area of public health. Data minimisation principle is key - not more information than needed must be collected and it must be treated with appropriate safeguards.
Can we exclude visitors who have not had a vaccine from the workplace? No, however maybe under certain circumstances. No available DPA guidance. 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 the employee 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 challenge from visitors and potentially unwanted media attention.

General

What medical testing can an employer carry out and under what conditions? Generally, the employer cannot carry out medical testing.

Does an employer need to consult with works councils or trade unions before taking any measures? No. As a general rule, as long as the measures taken by the employer do not constitute control measures, the employer does not need to consult with works councils.

Can an employer keep a record of staff who are diagnosed as infected? Yes. Data minimisation principle is key - not information that is needed must be collected and it must be treated with appropriate safeguards.

Can an employer notify other members of staff about an employee who has been infected by COVID-19? Yes.

Does an employer need to inform other members of staff about an employee that has died from COVID-19? Yes. The employer may inform the other staff. There are, however, no specific duties owed to the employer.

Can an employer notify customers and visitors of an infected member of staff? Yes. Where this is relevant and necessary, you can notify your customers. It is unlikely that information about specific individuals will be disclosed. However, where identification will be possible, the processing of health-related personal data can be carried out under Art 9(2) (i) GDPR, where it is necessary for reasons of public interest in the area of public health.

Can I share health data with authorities for public health purposes? Yes, it’s unlikely that information about specific individuals will be needed but it is necessary from public health protection legislation will not prevent this.

What practical steps should an employer consider when re-opening an office? The Danish Ministry of Business has prepared guidance to private companies on how to re-open their office. See https://em.dk/media/13654/retningstilskue-med-ansvarlig-indretning-af-kontorarbejdsplader-opdateret-plus-edit.pdf (in Danish only).

• The guidance describes how employers must ensure that there are 2 meters distance between the employees when working and suggest that employees can work in shift.
• Employees that for any reason are at risk should continue to stay at home.
• Meetings and lunch breaks should be organized to ensure the 2 meter distance and buffets are banned.
• Cleaning must be done often and employees are required to wash their hands often and keep distance to each other. Water and soap must be available to all employees and preferably also disinfection gel.
• Companies that do not use fixed workstations must ensure that the workstation is cleaned each time a new employee works at the workstation.
• The guidance also explains how an employer’s illness should be handled

Does your country require individuals to wear face masks? If not, can an employer require employees to wear face masks? No. In Denmark there are currently no official requirements to wear a face mask except for certain health staff groups which this is recommended. https://bygejor.ve.dk/media/advice/subsolutions/afloesning/afloesning-saa-korrekt-power_corona_lovgivning-20200320.pdf (in Danish only). Yes. However, the employer will have a right to require the employees to wear face masks during the work. If so, the employer must carry the cost for the face masks which must be replaced in accordance with the guidelines.

Employees & Workers

Can we ask employees if they have symptoms? No, but with limitations. In certain sectors, it is reasonable to ask. There is no general answer for all sectors. If there is a risk for infection due to the position, we believe one can ask simple questions without need for a medical valuation, probably best to pair it with other questions ("Next to you is someone in quarantine in your close circle."") We cannot give a categorical yes, as there may be sectors where employees can self-quarantine or may stay at home for other reasons without sanctions. It depends also on the guidance given before. If there is no danger to others, employers may not ask.

Can we ask about an employee’s travel history? Yes, if strictly necessary. This can be done by asking for generic data and “yes or no” answers ("Have you travelled in epidemic areas as classified by the Finnish authorities (list?)").

Can we test employees? No, in principle only healthcare professionals should carry out tests.

Can we ask about any symptoms of an employee’s household? No. We recommend issuing guidance to employees on measures to take when symptoms occur in an employee’s household.

Can we ask employees to notify us if they are diagnosed? No, Employees should be advised to contact occupational health care which can evaluate the need for absence from work. However, there might be situations where it is necessary to ask for the employee to notify (e.g. at risk groups).

Can we require employees if they have received a vaccine? Yes, but with limitations. In certain sectors, it is reasonable to ask employees to carry out and under what conditions?

Can we require employees to have a vaccine No. In social welfare and healthcare sectors, the employer may require that the personnel working in contact with patients that are at higher risk have the sufficient protection by vaccination. In such cases the employer may ask for the vaccination information of the employees in order to assess the level of protection. For other sectors, there is no guidance available but asking would most likely not be reasonable.

Can we require employees to work from home even if the office is open? Yes. Employees can be instructed to work from home.

Can we exclude employees who have not had a vaccine from the workplace? No. There are no legitimate grounds that would allow excluding employees from the workplace on the basis of their vaccination status as this would constitute discrimination based on their health.

Mobile / Gig Economy / Agency Workers

Can we ask such individuals if they have symptoms? Yes, but with limitations. There is no difference regarding asking employees at home or at the office per se. One might argue that for those at home there is even less reason to ask, as they are no longer a danger. It would depend on why the person asking the individuals would ask. If it is about entering the work place again and the commons are weighed, asking might be permitted, as currently other methods (going to a doctor) are very much restricted. A general checking for continuity would in our view not be permitted. If there is no danger for others, employers may may not ask.

Can we ask about the travel history of such individuals? Yes, if strictly necessary. This can be done by asking for generic data and “yes or no” answers (“Have you travelled in epidemic areas as classified by the Finnish authorities (list?)”).

Can we test such individuals? No. In principle only healthcare professionals should carry out tests.

Can we ask about any symptoms of the household(s) of such individuals? No. We recommend issuing guidance to these individuals on measures to take when symptoms occur in the individual’s household.

Can we ask such individuals to notify us if they are diagnosed? Yes. The employee is responsible to inform the employer about possible symptoms and contact to others.

Can we ask individuals if they have received a vaccine? Yes, but with limitations. In certain sectors, it is reasonable to ask individuals if they have been vaccinated. In social welfare and healthcare sectors, the employer must ensure that the personnel working with patients that are at higher risk have the sufficient protection by vaccination. In such cases the employer may ask for the vaccination information of the employees in order to assess the level of protection. For other sectors, there is no guidance available but asking would most likely not be reasonable.
### Finland

**Mobile / Gig Economy / Agency Workers cont**

<table>
<thead>
<tr>
<th>Question</th>
<th>Answer</th>
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<tbody>
<tr>
<td>Can we require individuals to have a vaccine?</td>
<td>No. In social welfare and healthcare sectors, the employer may require that the personnel working in contact with patients who are susceptible to severe consequences of infectious diseases have adequate protection from vaccination. However, this requirement is strictly limited to certain diseases stipulated in the Finnish Communicable Diseases Act and does not concern vaccination against COVID-19. For other sectors, there is no guidance available that would derogate from the general rule that vaccination is primarily voluntary.</td>
</tr>
<tr>
<td>Can we exclude individuals who have not had a vaccine from the workplace or carrying out their role?</td>
<td>No. There are no legitimate grounds that would allow excluding individuals from the workplace on the basis of their vaccination status as this would constitute discrimination based on their health.</td>
</tr>
<tr>
<td>Visitors</td>
<td></td>
</tr>
<tr>
<td>Can we ask visitors if they have symptoms?</td>
<td>Yes, but with limitations. There is no clear answer. We believe that the risk to ask visitors about symptoms is low. However, DPA guidance is quite strict. Practically, visitors may refuse to answer.</td>
</tr>
<tr>
<td>Can we ask about a visitor’s travel history?</td>
<td>Yes, but with limitations. There is no clear answer, however we believe in limited cases it might be justified for reasons of public health. Such roles may include sales representatives and other individuals who come into regular contact with the general public. This must be assessed on a case by case basis.</td>
</tr>
<tr>
<td>Can we take temperature readings from visitors?</td>
<td>No. In principle only healthcare professionals should carry out tests.</td>
</tr>
<tr>
<td>Can we ask about any symptoms of a visitor’s household?</td>
<td>Yes, but with limitations. There is no clear answer. We believe that the risk to ask visitors about symptoms in the household is low. However, DPA guidance is quite strict. Practically, visitors may refuse to answer.</td>
</tr>
<tr>
<td>Can we ask visitors to notify us if they are diagnosed?</td>
<td>Yes, but with limitations. There is no clear answer/ specific guidance. We believe that the risk to ask visitors if they have been diagnosed is low. However, DPA guidance is quite strict. Practically, visitors may refuse to answer.</td>
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<td>Can we ask visitors if they have received a vaccine?</td>
<td>Yes, but with limitations. There is no guidance available. We believe that the risk to ask visitors if they have received a vaccine is low. However, DPA guidance is quite strict. Practically, visitors may refuse to answer.</td>
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<tr>
<td>Can we exclude visitors who have not had a vaccine from the workplace?</td>
<td>Yes, but with limitations. There is no guidance available. In general, visitors can be refused entry provided that the company owns the premises and does not use any unjustified discriminatory measures such as skin colour.</td>
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**General**

<table>
<thead>
<tr>
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<th>Answer</th>
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<tbody>
<tr>
<td>What medical testing can an employer carry out and under what conditions?</td>
<td>An employer cannot carry out any medical testing.</td>
</tr>
<tr>
<td>Does an employer need to consult with works councils or trade unions before taking any measures?</td>
<td>No. Unless those concern measures that would be close to surveillance (heat cameras or mandatory check-in), an employer does not need to consult with works councils. Measures that need to be discussed with employee representatives are §9 of the act on cooperation within undertakings.</td>
</tr>
<tr>
<td>Can an employer keep a record of staff who are diagnosed as infected?</td>
<td>Yes, in special circumstances. There is no specific guidance on this. A reason for keeping such a record would be for example tracking infections within the company and informing others of the danger. If in case someone is infected but there is no danger for other employees (e.g. person is on maternity leave), the information may not be tracked by the employer.</td>
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**Can an employer notify other members of staff?**

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<tr>
<td>Can an employer notify other members of staff about an employee who has been infected by COVID-19?</td>
<td>Yes, from the data protection perspective informing staff about death of an co-worker is not forbidden, since neither the GDPR nor the Finnish Data Protection Act apply to the data of deceased persons. Normal work place etiquette applies and any communication regarding deaths must be dignified and appropriate for the situation. It is important to honour the wishes of the relatives and other close ones of the deceased. This is advisable especially given that the section of the Finnish Criminal Code concerning defamation also applies to deceased persons, if the information disseminated regarding the deceased can cause suffering to a person to whom the deceased was particularly close. It is, however, unlikely that neutral message by the employer informing employees about the situation could be considered defamation.</td>
</tr>
<tr>
<td>Can an employer inform other members of staff about an employee that has died from COVID-19?</td>
<td>Yes, but with limitations. The Finnish Legislative does not lay down any particular set of provisions or steps for employers regarding the re-opening of their offices after closure due to the COVID-19 related measures. The statutory employer obligations related to work safety apply. Under the Finnish Occupational Safety and Health Act, the employer has a general duty to ensure occupational health and safety at work in order to protect employees from accidents and health hazards by taking the necessary measures. Due to the COVID-19 pandemic, the employer must pay particular attention to the relevant measures in order to fulfil its work safety obligations and to protect the personnel. In practice, the measures to be taken up highly depend on various factors such as the industry, sector and/or field of a business where the employer is operating. Consequently case-by-case assessment of relevant work safety and health measures is required. The employer should e.g. minimize the risk of infection which may cover updating the hazard analysis and risk assessment in the light of the COVID-19 pandemic or drawing up additional necessary instructions and procedures.</td>
</tr>
<tr>
<td>Can an employer inform customers and visitors of an infected member of staff?</td>
<td>No, unless essential for the protection of the health, the identity of the infected member must not be disclosed.</td>
</tr>
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**Can I share health data with authorities for public health purposes?**

No. Occupational healthcare professionals rather than the employer can transfer the information. It might be that the government will get more competences to order that information.

**Does your country require individuals to wear face masks?**

No. The Finnish legislation does not contain specific rules or requirements for individuals to wear face masks. However, there is a recommendation in force by the Finnish Government and the Finnish Institute for Welfare and Health on the use of face masks in Finland in certain situations, such as in public transport and public spaces. The recommendation is divided into different levels of the corona epidemic, and those maybe vary by region and municipality. In addition, some regional authorities have given recommendations for the use of face masks also in the work places.

Yes. In accordance with the Finnish Occupational Safety and Health Act, since the employer has to ensure the occupational health and safety at work, the employer may require after its careful risk assessment the employees to wear face masks if necessary e.g. in order to ensure the employees’ safety at work and/or the customer protection. This is in accordance with the employer’s order which is made on duly justified grounds by using the employer’s right to manage and decide on how the work is performed. The employer then provides the employees with face masks along with appropriate instructions on their use. It is advisable for the employers to keep an eye on the guidance by authorities and carefully observe and update the workplace instructions accordingly.
Employees & Workers

Can we ask employees if they have symptoms?

No. In its guidelines the CNIL indicates that employers must refrain from collecting information relating to the search of possible symptoms in a systematic and generalised manner, or via individual requests and questionnaires concerning employees and their relatives.

Can we ask about an employee's travel history?

No. Employers cannot require employees to disclose information about personal travels which are in the sphere of employees' private life, but employers can prohibit business travel if they have not had a vaccine from the workplace.

Can we test employees?

Yes but with limitations. An employer can organise employee-wide testing in the event of a suspected or proven outbreak of the virus in the district in which the company is located. However, if an employer chooses to do this then the following principles must be respected: Employees cannot be required to take part in the screening initiative; These tests can only be carried out by a healthcare professional; and Under no circumstances can the employer receive the results of the tests.

Can we ask about any symptoms of an employee's household?

No. In its guidelines the CNIL indicates that employers must refrain from collecting information relating to the search of possible symptoms in a systematic and generalised manner, or via individual requests and questionnaires concerning employees and their relatives.

Can we ask employees to notify us if they are diagnosed?

Yes, but with limitations. Employers can ask employees to provide, either to the company or to the competent health authorities, individual feedback of information concerning them in connection with a possible exposure to the virus. Employers can also encourage employees to contact the occupational doctor.

However, according to the CNIL's guidelines, in case an employee informis his or her employer of a possible infection, the employer can only record:

• the date and identity of the person suspected of having been exposed;
• the organizational measures taken (containment, teleworking, the fact that the employee was put in contact with the occupational doctor …).

Can we ask employees if they have received a vaccine?

No guidance yet. There is no guidance on this topic yet. We assume that the French DPA will probably be strict on this topic (i.e. deny the possibility to process such data).

From an employment law perspective, an employer's request of an employee's vaccine status probably be strict on this topic (i.e. deny the possibility to process such data).

Can we ask employees if they have a vaccine?

No. In France, only people in retirement homes and healthcare professionals have started to receive the vaccine so far, and only on a voluntary basis. Although it is possible that the vaccination could become mandatory for social welfare and healthcare sectors in the future, it is not the case at the moment.

Can we require employees to work from home even if the office is open?

Yes. At this stage, the French government has ordered confinement measures, therefore remote working is promoted.

The CNIL published recommendations that need to be complied in order to ensure security and confidentiality of personal data when using videoconference tools: https://www.cnil.fr/fr/covid-19-les-conseils-de-la-cnil-sur-l'utilisation-des-videoconfere.-

Can we exclude employees who have not had a vaccine from the workplace?

No. Such a measure would likely be discriminatory or deemed excessive, given that (i) vaccinations are not yet open to the entire population, and (ii) the government's official position is that the vaccine should not be mandatory.

Mobile / Gig Economy / Agency Workers

Can we test such individuals?

Yes but with limitations. An employer can organise screening for these individuals in the event of a suspected or proven outbreak of the virus in the district in which the company is located. However, if an employer chooses to do this then the following principles must be respected: Employees cannot be required to take part in the screening initiative; These tests can only be carried out by a healthcare professional; and Under no circumstances can the employer receive the results of the tests.

Can we ask about any symptoms of the household(s) of such individuals?

No. In its guidelines the CNIL indicates that employees must refrain from collecting information relating to the search of possible symptoms in a systematic and generalised manner, or via individual requests and questionnaires concerning relatives.

Can we ask such individuals to notify us if they are diagnosed?

Yes, but with limitations. Employers can invite these individuals to provide, either to the company or to the competent health authorities, individual feedback of information concerning them in connection with a possible exposure to the virus. Employers can also encourage employees to contact the occupational doctor.

However, according to the CNIL's guidelines, in case an individual informs the employer of a possible infection, the employer can only record:

• the date and identity of the person suspected of having been exposed, and
• the organizational measures taken (containment, teleworking, the fact that the employee was put in contact with the occupational doctor …).

Can we ask such individuals if they have received a vaccine?

No guidance yet. There is no guidance on this topic yet. We assume that the French DPA will probably be strict on this topic (i.e. deny the possibility to process such data).

Can we ask such individuals to have a vaccine?

No. In France, only people in retirement homes and healthcare professionals have started to receive the vaccine so far, and only on a voluntary basis.

Although it is possible that the vaccination could become mandatory for social welfare and healthcare sectors in the future, it is not the case at the moment.

Can we require such individuals to have a vaccine?

No. Such a measure would likely be discriminatory or deemed excessive, given that (i) vaccinations are not yet open to the entire population, and (ii) the government's official position is that the vaccine should not be mandatory.

Visitors

Can we ask visitors if they have symptoms?

No. In its guidelines the CNIL indicates that employers must refrain from collecting information relating to the search of possible symptoms in a systematic and generalised manner, or via individual requests and questionnaires.

Can we ask about a visitor’s travel history?

No. Employers cannot require these individuals to disclose information about personal travels which are in the sphere of the individual's private life, but employers can prohibit business travel if they have not had a vaccine from the workplace.

Can we take temperature readings from visitors?

No. Temperature readings are strictly listed by the CNIL as being prohibited.

Can we ask about any symptoms of a visitor’s household?

No. In its guidelines the CNIL indicates that employers must refrain from collecting information relating to the search of possible symptoms in a systematic and generalised manner, or via individual requests and questionnaires concerning relatives.

Can we ask visitors to notify us if they are diagnosed?

No. There are no specific guidelines on this point. However, since at this stage the French government has ordered confinement measures, in principle there should not be visitors.

Can we ask visitors if they have received a vaccine?

No.

Can we exclude visitors who have not had a vaccine from the workplace?

No.
Yes, but with limitations. In the case where an employee reports his or her condition to the employer, the employer can only record:

- the date and identity of the person suspected of having been exposed; and
- the organisational measures taken (containment, teleworking, the fact that the employee was put in contact with the occupational doctor).

The employer can then communicate such information to the health authorities, at their request.

Can an employer notify other members of staff about an employee who has been diagnosed as infected?

Yes, but with limitations. The identity of the affected staff member must be kept confidential.

The employer has an obligation of discretion regarding an employee’s state of health once a problem has been brought to its attention.

Can an employer notify other members of staff about an employee who has died from COVID-19?

Yes, but with limitations. These are no instructions or guidelines in this case. The employer

Can an employer notify other members of staff about an employee who has died from COVID-19? What duty does an employer owe in this situation?

Yes, but with limitations. There are no instructions or guidelines in this case. The employer does not have any specific obligation when an employee has died from COVID-19 to inform other members of safety measures.

Can an employer inform other members of staff about an employee who has died from COVID-19? What duty does an employer owe in this situation?

If a risk of exposure to the virus is assessed that cannot be avoided, and if the employer has no specific obligations, such as introducing staggered working hours, taking into account the rules which set out the maximum number of persons admitted simultaneously in an open space and the management of traffic flows within the company.

b. If all these precautions are not sufficient to ensure the protection of the health and safety of individuals, then they must be completed, by other personal protective measures, such as wearing masks (see below).

The document deals with 8 major topics:

I. Basic measures to be taken in order to protect from virus transmission, and social distancing

II. Recommendations to manage the occupation of open spaces: a minimum space of 4m2 per person must be respected

III. Management of flows of people: manage and anticipate any peak period to avoid or reduce it with plans of circulation

IV. Individual protection equipment: (such as masks) should be used in last resort, provided that the correct conditions of use are respected

V. Testing: the national strategy is to test any person having symptoms and any person who has been in close contact with an infected person. The role of employers is to convey the public authorities’ instructions to their employees, to guide symptomatic agents, to assess precisely the potential impact on the rest of the staff.

VI. Protocol for taking care of a symptomatic person and of his close contacts: the employer, together with the occupational health service, must draft preventively an ad hoc procedure for the prompt management of symptomatic persons, so that they can be quickly isolated in a dedicated room, and invited to go home and contact their attending physicians, depending on the seriousness of the symptoms.

VII. Temperature checks: temperature checks at the entrance of the facilities/structures are not recommended but the Ministry of Solidarity and Health recommends that all persons should measure their temperatures themselves in case of fever and more generally self-monitor the appearance of symptoms suggestive of COVID-19. However (and although it is not recommended), companies, as part of a set of precautionary measures, can organize a temperature check of persons entering their site under specific conditions. This procedure must comply with the provisions of the French Labour Code in terms of internal procedure, be proportionate and give guarantees to employees (such as prior information, decency, consequences in terms of access to the site, no retention of data). The purpose must be limited to the sole verification of the temperature at the entrance of a site by means of a thermometer without contact, without any trace being kept, or any other operation being carried out. An employee cannot be forced to accept temperature checks and in case the employer refuses and the employer then does not allow the employee to enter premises, then the guidance from the French Ministry of Labour specifies that the employer may have to pay the employee for the day of work which was lost.

VIII. Cleaning and disinfection: the sites must be cleaned and disinfected regularly with appropriate products.

Does your country require individuals to wear face masks or face coverings? If not, can an employer require employees to wear face masks or coverings?

Yes, a face mask compliant with the relevant ANFPN standards is considered as an obligation in workplaces (with very limited exceptions).

In order to fully enforce this obligation, (e.g. discipline an employee refusing to wear a mask on company premises), it is recommended to add a specific statement about the requirement to wear a facemask in the company’s internal rules (this modification implies a prior notice to the works council and to the labour inspectorate).

Formal DPA Guidance

Medical testing may only be carried out by an occupational doctor, or by a health professional, not by the employer.

The French Ministry of Labour has issued FAQs and reminds that: “The occupational doctor has an exclusive role in the prevention of occupational risks and in providing information to the employer and employees. As such, the occupational health service relays to its members the health instructions issued by the government. The employer may also request the occupational health service to implement these recommendations (from the Ministry of Labour). As a reminder, the occupational doctor is not competent for issuing a sick leave certificate.”

Are you allowed to collect data on employees’ health for safety reasons and consequently take appropriate safety measures?

Yes. The mission of the Social and Economic Committee (CSE) is to promote health, safety and the improvement of working conditions in the company.

In addition, in companies with more than 50 employees, the CSE shall be informed and consulted on the organisation, management and general running of the company, in particular on working hours or conditions of employment, work and professional training, and on any major developments modifying health and safety working conditions.

This is in particular the case for:

- major changes in the organisation of work;
- use partial activity; and
- exemptions to the rules on working hours and rest periods.

Can an employer notify other members of staff about an employee who has died from COVID-19?

Yes, but with limitations. In the case where an employee reports his or her condition to the employer, the employer can only record:

- the date and identity of the person suspected of having been exposed; and
- the organisational measures taken (containment, teleworking, the fact that the employee was put in contact with the occupational doctor).

The employer can then communicate such information to the health authorities, at their request.

Can an employer notify customers and visitors of an infected member of staff?

Yes, but with limitations. The identity of the affected staff member must be kept confidential.

The employer has an obligation of discretion regarding an employee’s state of health once a problem has been brought to its attention.

Can an employer notify other members of staff about an employee who has been infected by COVID-19?

Yes, but with limitations. The identity of the affected staff member must be kept confidential.

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The employer has an obligation of discretion regarding an employee’s state of health once a problem has been brought to its attention.

Can an employer notify other members of staff about an employee who has been diagnosed as infected?

Yes, but with limitations. In the case where an employee reports his or her condition to the employer, the employer can only record:

- the date and identity of the person suspected of having been exposed; and
- the organisational measures taken (containment, teleworking, the fact that the employee was put in contact with the occupational doctor).

The employer can then communicate such information to the health authorities, at their request.

Can an employer notify customers and visitors of an infected member of staff?

Yes, but with limitations. The identity of the affected staff member must be kept confidential.

The employer has an obligation of discretion regarding an employee’s state of health once a problem has been brought to its attention.
### Germany

#### Employees & Workers

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<thead>
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<tbody>
<tr>
<td>Can we ask employees if they have symptoms?</td>
<td>Yes. Some DPAs have issued guidelines where they permitted to ask employees for specific COVID-19 symptoms (which can be listed). A yes/no answer should be sufficient. Personal data of employees may also be collected and processed if an infection has been detected to be prevented. Employees have been tested positive or contact has been made with a person who is proven to be infected.</td>
</tr>
<tr>
<td>Can we ask about any symptoms of an employee’s household?</td>
<td>Yes, but with limitations. There are no specific guidelines from the DPAs yet. However, general guidelines are available. Data Protection Authorities do not consider an employee’s household to be in the workplace. Employees may ask about an employee’s vaccine status if there is a good reason to do so. Furthermore, a vaccine provider can be asked to provide information about the employee’s vaccination status to make sure that the use of the data is necessary and relevant as well as ensure that the data is deleted if no longer needed.</td>
</tr>
<tr>
<td>Can we test employees?</td>
<td>No. Although employers have to provide a safe work environment, employers may not test their employees for COVID-19. First of all, such tests may only be conducted by medical staff. However, even if an employer were to use medical personnel to perform the tests, there would be a lack of sufficient legal basis. There is no legal obligation for employees to get tested without probable cause. Consent is also not an option, as the GDPR requires it to be voluntary. But as employees who refuse to participate in the test might not be allowed to enter the office, any given consent wouldn’t be voluntary.</td>
</tr>
<tr>
<td>Can we ask an employee’s travel history?</td>
<td>Yes, but with limitations. According to the DPAs, employers are not permitted to ask employees about their general travel history. However, an employer may ask if the employee stayed in an area classified as a “risk area” by the Robert Koch Institute (RKI). The RKI list is updated on a weekly basis. It also lists regions that have been classified as “risk areas” within the past ten days but are no longer counted as such area. We therefore think that is enough to ask whether an employee has spent time in an area that has been classified as “risk area” at any time within the past ten days. However, it is not necessary to ask for the specific travel destination. The question should be limited to a simple yes/no question.</td>
</tr>
<tr>
<td>Can we require employees to have a vaccine?</td>
<td>No. Currently, the German government supports the view that there shall be no legal obligation to get vaccinated against COVID-19. A vaccination can only therefore be voluntary. 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 need to be vaccinated could be discussed 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 at the health sector (e.g. physicians, nurses, car staff etc.). If, however, the German government changes its opinion at a later point in time and creates a legal obligation to get vaccinated - which cannot be excluded then the legal evaluation might change. But we assume that even in such a case, employers cannot insist on a vaccination if it interferes with the employee’s personal rights, which are specially protected by the German constitution. Therefore, if an obligation were to exist, but nevertheless the employees refuse to get 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.</td>
</tr>
<tr>
<td>Can we require employees to work from home even if the office is open?</td>
<td>No. As a general rule, excluding employees from the physical workplace (or otherwise treating them differently) on the grounds of their health would amount to discriminatory treatment and therefore expose the employer to potential discrimination claims. In theory, employers may be able to exclude staff 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 employer considered that the risk to the staff member in question, to colleagues 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 employee from the relevant areas of the physical workplace. However, this is a high risk approach and therefore should be carefully reviewed concerning its necessity. Furthermore, the employer is obliged to pay the regular salary due to a default of acceptance if he decides to exclude staff from the physical workplace and provided that mobile working or working at home is not possible.</td>
</tr>
<tr>
<td>Is there any obligation to pay the employee for not attending work?</td>
<td>Yes. There are no specific guidelines yet from the DPAs. In principle, employers have no right to dispose of their employees’ private homes. So they cannot usually unilaterally order work from home, but an agreement between employer and employee is required. In the current situation and in order to avoid contagion, however, we think that it is possible to do this to limit the spread of the virus, in particular because this is the clear recommendation of the government. It may still be useful for employers to agree with employees on the possibilities of home office work in principle and more frequently. If the work to be carried out at the company’s premises / offices (or client premises, for example) involves considerable risks (e.g. because a colleague has reported a COVID-19 infection / symptoms), than clearly the duty of care requires employers to prohibit the employee from working in the office.</td>
</tr>
<tr>
<td>Can we exclude employees who have not had a vaccine from the workplace?</td>
<td>No. There are no specific guidelines from the DPAs. However, we think it is justified to ask whether an individual falling in this category has specific COVID-19 symptoms (which can be listed). A yes/no answer should be sufficient.</td>
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#### Mobile / Gig Economy / Agency Workers

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</tr>
<tr>
<td>Can we ask the travel history of such individuals?</td>
<td>Yes, but with limitations. According to the DPAs, employers are not permitted to ask such individuals about their general travel history. However, an employer may ask the individual stayed in an area classified as a “risk area” by the Robert Koch Institute (RKI). The RKI list is updated on a weekly basis. It also lists regions that have been classified as “risk areas” within the past ten days but are no longer counted as such area. We therefore think that is enough to ask whether an employee has spent time in an area that has been classified as “risk area” at any time within the past ten days. However, it is not necessary to ask for the specific travel destination. The question should be limited to a simple yes/no question.</td>
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Can we test such individuals?

Yes, but with limitations. In general, offering testing should only be considered if necessary. Therefore, if the individuals do not come into contact with employees, there is no need to test them. In particular, considering how effective these measures are at providing protection against COVID-19. The testing must be conducted by medical staff. If an organisation is providing a service for testing, it must ensure that personal data is only processed lawfully, fairly and transparently. Before carrying out any tests, you must tell your staff what personal data you require, what it will be used for and who you will share it with.

Can we ask such individuals to notify us if they are diagnosed?

Yes, but with limitations. There are no specific guidelines from the DPAs yet. However, general questions about possible symptoms may only be asked as far as relevant.

Can we ask such individuals if they have received a vaccine?

Yes, but with limitations. An individual's vaccine status is health data and is considered to be special category data, which can only be processed to a very limited extent, provided there is a specific need to do so.

Can we require individuals to have a vaccine from the workplace or carrying out their role?

No. As a general rule, excluding agency / gig workers from the physical workplace, preventing them from taking on jobs, work or engagements (or otherwise treating them differently) on the grounds of their health would amount to discriminatory treatment and therefore expose the company to potential discrimination claims.

In theory, companies may be able to exclude staff from the physical workplace or from specific activities or work 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 considers that the risk to the staff member in question, to employees / other colleagues 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 gig / agency worker from the relevant areas of the physical workplace or relevant activities.

Mobile / Gig Economy / Agency Workers cont

Can we test such individuals?

Can we ask about any symptoms of the household(s) of such individuals?

Can we ask such individuals to notify us if they are diagnosed?

Can we ask such individuals if they have received a vaccine?

Can we exclude individuals who have not had a vaccine from the workplace or carrying out their role?

Mobile / Gig Economy / Agency Workers cont

Visitors

Can we ask visitors if they have symptoms?

Yes, but with limitations. There are no specific guidelines from the DPAs yet. However, general questions about possible symptoms may only be asked as far as relevant.

Can we ask visitors if they have visited a risk area?

Can we ask visitors if they have been vaccinated?

Can we ask visitors if they have been to any of the visitors you will share it with.

Can we take temperature readings from visitors?

Can we ask about a visitor’s travel history?

Can we ask about any symptoms of a visitor’s household?

Can we ask visitors to notify us if they are diagnosed?

Can we ask visitors if they have received a vaccine?

Can we exclude visitors who have not had a vaccine from the workplace?
Germany Continued

General

Formal DPA Guidance


What medical testing can an employer carry out and under what conditions?

The scope for testing is essentially limited to asking about symptoms, travel to risk areas, and contact with infected persons.

Referring to the statements above, any medical testing, such as PCR tests or temperature screenings, is not recommended. Only in cases where the participation in testing is fully optional and less intrusive means are not available employers may carry out such tests. This will need to be carefully considered on a case-by-case basis.

However, any testing needs to be carried out by medical staff and it must be focused solely on the relevant matter.

Does an employer need to consult with works councils or trade unions before taking any measures?

Yes, but consider timing. There are no specific guidelines from the DPAs yet.

From a labour law perspective, however, co-determination rights can arise. This applies in particular if the measure influences “the order in the company” or “the behaviour of the employees in the company”, for example by wearing certain protective clothes or temperature readings.

However, given the urgency of the situation, we think it can be argued that as an exception urgent measures are implemented and in parallel discussed with the works council. Government guidance is clear that processes should not lead to jeopardising people’s lives.

Can an employer keep a record of staff who are diagnosed as infected?

Yes, but with limitations. According to the DPAs, an employer may only disclose personal data i.e. the identity of demonstrably infected persons or persons suspected of being infected to other individual they have come in contact with if this is necessary in order to prevent or contain the spread of the virus among employees. We acknowledge that this is a grey area and it is possible that authorities will issue more information in the future.

Can an employer inform other members of staff about an employee who has been infected by COVID-19?

No. Once the employee is recovered, there is no need for the employer to keep a detailed record about the specific disease. Otherwise employers might be tempted to let asymptotically infected employees work with recovered colleagues as they tend to be immune or disadvantage those who have not yet been infected.

Can an employer notify other members of staff about an employee who has died from COVID-19? What duty does an employer owe in this case?

Yes, but with limitations. The GDPR generally does not apply to deceased persons and Germany has only made limited use of the opening clause in this respect (e.g. in the German Social Code). This is not relevant for the above question.

In most cases, the employer learns about the COVID-19 infection of his employee prior to his death as most patients do not die instantly. Following this, the employer usually has already taken the necessary measures to prevent the virus from spreading among the workers, such as informing employees who had contact to the deceased colleague within the incubation period.

If an employee dies from COVID-19 it is neither a duty of the relatives to inform the employer about the cause of death nor may the employer disclose the cause of death to other employees.

Apart from that, the employer should consider the following general duties in connection with the death of an employee from COVID-19 (as in other cases):

- The employer should follow up and deal with the realisation of work (or engagement of temporary workers to cover the deceased employee’s work) if needed.
- The employer needs to inform existing business/company insurance providers (e.g. company life insurance) of the death of the employee.
- The employer will need to make arrangements with regard to outstanding pay (remaining wage and other remuneration entitlements, pension contributions, entitlements of beneficiaries/sureties (e.g. to a company pension).

Can an employer inform other members of staff about an employee that has died from COVID-19? What duty does an employer owe in this situation?

Yes, but with limitations. In case of a confirmed infection, employers should consult their visor contact information and report to the local health authority which individual might have had contact to the infected person. Since the capacities of many local health authorities are exhausted, we think employers may notify potentially infected individuals themselves. In this case, employers should avoid disclosing the identity of the infected member of staff. We acknowledge that this is a grey area and it is possible that DPAs will issue more information in the coming weeks.

Can an employer notify customers and visitors of an infected member of staff?

Yes, but with limitations. In the case of a confirmed infection, employers should consult their contact information and report to the local health authority which individuals might have had contact to the infected person. Since the capacities of many local health authorities are exhausted, we think employers may notify potentially infected individuals themselves. In this case, employers should avoid disclosing the identity of the infected member of staff. We acknowledge that this is a grey area and it is possible that DPAs will issue more information in the coming weeks.

Can I share health data with authorities for public health purposes?

Yes, but this must be assessed on a case-by-case basis. If there is a legal obligation to notify the local health authorities, then the employer may do so. Where authorities request information companies can fulfil these requests but must ensure that any processing of personal data complies with the data protection principles.

General cont

What practical steps should an employer consider when re-opening an office?

In light of COVID-19, employers are obligated:

- to develop actions and measures for a safe return to work, under involvement of the business doctor (Betriebsarzt) and an appointed specialist for safety at work (Fachkraft für Arbeitssicherheit) and to regularly review its measures;
- as far as possible, employers should consider continuing to allow work from home;
- employers should take measures to avoid physical contact to others (including third party workers, customers, etc.) to the possible extent and to enable employees to keep a minimum distance of 1.5m where physical contact cannot be prevented;
- business travel and business meetings should be reduced to the required minimum;
- employers should encourage employees to stay at home when they feel sick and should The German government published guidance for employers in Germany (in German: available here https://www.bmas.de/SharedDocs/Downloads/DE/PDF/Schwerepunkte/sars-cov-2-arbeitsmedizinrechtstandard.pdf?__blob=publicationFile&v=0) and guidance on individual’s behaviour including behaviour at work (in German: available here https://www.inkontionsschutz.de/Downloads/Verhaltensregeln-empfehlungen-CoCovinura.pdf). See also Birn Bird & Bird’s guidance of employers (in German: available here https://www.twobirds.com/de/news/articles/2020/germany/covid-19-dynamische-anforderungen-an-arbeitsmedizin-und-hygienemaessnahmen-2020-arbeitgeber). From a regulatory point of view, the following should be considered:

- Employers should check the applicable state regulations to see whether and which hygiene measures must be implemented.
- In most states, the required hygiene measures for places with walk-in customers include minimum distance control, access control, the obligation to wear face masks and compliance with maximum numbers of customers.

Does your country require individuals to wear face masks or face coverings? If not, can an employer require employees to wear face masks or coverings?

Yes, but with limitations. The general (regulatory) requirements are as follows:

- Currently, all Federal States require individuals, except children up to the age of 7, to wear face masks when using public transportation and in retail stores unless it is unacceptable due to medical reasons. Some states also require individuals to wear face masks in e.g. cultural institutions and medical practices.
- In most Federal States, employees in e.g. retail stores, service enterprises, cultural institutions and/or medical practices are required to wear face masks.
- Individuals can be fined for not wearing a face mask. The employer can be fined if employees do not wear a face mask.

The employer has a general obligation to protect the health and safety of its employees. Under the specific COVID-19 guidelines for employers, employers are obligated to develop actions and measures for a safe return to work and face masks can be one aspect of such measures. The obligation to wear face masks at work will trigger the works council’s co-determination rights, unless the obligation derives from a statutory obligation to wear such masks, as e.g. for employees working in retail stores, public transport, etc.

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- business travel and business meetings should be reduced to the required minimum;
- employers should encourage employees to stay at home when they feel sick and should

The German government published (a) guidance for employers in Germany (in German: available here https://www.bmas.de/SharedDocs/Downloads/DE/PDF/Schwerepunkte/sars-cov-2-arbeitsmedizinrechtstandard.pdf?__blob=publicationFile&v=0) and (b) guidance on individual’s behaviour including behaviour at work (in German: available here https://www.inkontionsschutz.de/Downloads/Verhaltensregeln-empfehlungen-CoCovinura.pdf). See also Bird & Bird’s guidance of employers (in German: available here https://www.twobirds.com/de/news/articles/2020/germany/covid-19-dynamische-anforderungen-an-arbeitsmedizin-und-hygienemaessnahmen-2020-arbeitgeber). From a regulatory point of view, the following should be considered:

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### Employees & Workers

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<td>Can we exclude employees who have not had a vaccine from the workplace?</td>
<td>Yes. Where it is reasonable to do so (taking into account health and safety and other duties and obligations). The Government has recently mandated that travellers entering Hong Kong from any foreign country except Taiwan and Macau will be issued compulsory home quarantine orders, regardless of whether they are Hong Kong residents. Contravening the quarantine requirement would be a criminal offence. Offenders are subject to a maximum fine of $25,000 and imprisonment for six months. Red Outbound Travel Alert (OTA) is also on for all countries and territories other than mainland China, Macau and Taiwan. You may require employees to work from home even if they are serving any compulsory home quarantine orders. You may also want to consider instructing employees to remain at home and not come into work where they have recently come into contact with others who have travelled abroad returned less than 14 days ago. Such employees would be entitled to normal pay, noting that the position may be different for salaried and hourly-paid or casual employees and workers, depending on their terms of employment.</td>
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### Employees & Workers cont

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<td>Yes. Data collected must be fair, necessary and non-excessive. For instance, asking employees about their travel history (e.g. if they have been to any COVID-19 prone areas) to prevent or control the spread of disease in the premises is likely to be allowed. On or before obtaining data on the individual’s symptoms, individuals must be notified of prescribed information mentioned above.</td>
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<td>Can we require individuals to provide such information through personal mobile / Gig Economy / Agency Workers</td>
<td>No. There is currently no mandatory legal requirement for employees to be vaccinated under Hong Kong law. Under the Occupational Health &amp; Safety Ordinance (Cap. 509), an employer owes a general duty of care to its employees, so far as reasonably practicable, to ensure their health, safety and welfare at work. As part of such duty, employers can make vaccinations available to staff and can actively promote vaccination. Employers who do so should plan ahead, have a clear, consistent communication strategy and actively engage with staff.</td>
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Hong Kong

Mobile / Gig Economy / Agency Workers cont

Can we test such individuals?  
Yes. Data collected must be fair, necessary and non-excessive. Collecting temperature readings from individuals to prevent or control the spread of disease in the premises is likely to be allowed. On or before obtaining data on the individual’s symptoms, individuals must be notified of prescribed information mentioned above.

Can we test individuals if they have symptoms?  
Yes. Data collected must be fair, necessary and non-excessive. For instance, asking individuals about their household members’ symptoms to prevent or control the spread of disease in the premises is likely to be allowed. On or before obtaining data on individual’s household members symptoms, data user must ensure that the individual has notified the relevant individual in his/hers household of the prescribed information mentioned above. We recommend incorporating a warranty clause in the privacy notice to effect the above.

Can we test visitors if they have symptoms?  
Yes. Data collected must be fair, necessary and non-excessive. For instance, collecting data on a visitor’s positive diagnosis to prevent or control the spread of disease in the premises is likely to be allowed. On or before obtaining data on the individual’s symptoms, individuals must be notified of prescribed information mentioned above.

Can we ask about any symptoms of the household(s) of such individuals?  
Yes. Data collected must be fair, necessary and non-excessive. For instance, asking about a visitor’s positive diagnosis to prevent or control the spread of disease in the premises is likely to be allowed. On or before obtaining data on the individual’s household members symptoms, data user must ensure that the individual has notified the relevant individual in his/hers household of the prescribed information mentioned above. We recommend incorporating a warranty clause in the privacy notice to effect the above.

Can we ask such individuals to notify us if they are diagnosed?  
Yes. The employer’s purpose in requesting the individual’s vaccine status must still comply with data protection rules under the Personal Data (Privacy) Ordinance (Cap. 486). Data collected must be fair, necessary and non-excessive. For instance, collecting data on whether an individual has been vaccinated to prevent or control the spread of disease in the premises is likely to be allowed. On or before obtaining data on the individual’s symptoms, individuals must be notified of prescribed information mentioned above.

Can we ask such individuals to notify us if they have received a vaccine?  
No. There is currently no mandatory legal requirement for individuals to be vaccinated under Hong Kong law. Mobile / gig / agency workers are generally classified as independent contractors or self-employed persons. As such, there is no employment relationship between independent contractors and the employer. The independent contractor is simply providing services within a commercial relationship and the employer will not owe a duty to independent contractors to ensure their health, safety and welfare.

Can we require individuals to have a vaccine?  
Yes, under very limited circumstances. There is currently no mandatory legal requirement for individuals to be vaccinated under Hong Kong law and there is a risk that excluding such individuals from the workplace may amount to discrimination under the Disability Discrimination Ordinance (Cap. 487). It is noted that there is an exception if (a) the relevant disability is an infectious disease (i.e. COVID-19); and (b) the discriminatory act (i.e. exclusion from workplace) is reasonably necessary to protect public health (i.e. employer’s workforce). However, this exception has not been tested in courts and it will depend on whether being vaccinated would be regarded as “reasonably necessary” to protect public health.

Can we exclude individuals who have not had a vaccine from the workplace or carrying out their roles?  
Yes. Data collected must be fair, necessary and non-excessive. Collecting temperature readings from visitors to prevent or control the spread of disease in the premises is likely to be allowed. On or before obtaining data on the individual’s symptoms, individuals must be notified of prescribed information mentioned above.

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Can we ask visitors if they have a vaccine?  
No. Data collected must be fair, necessary and non-excessive. Collecting temperature readings from visitors to prevent or control the spread of disease in the premises is likely to be allowed. On or before obtaining data on the individual’s symptoms, individuals must be notified of prescribed information mentioned above.

Can we ask visitors about their travel history?  
Yes. Data collected must be fair, necessary and non-excessive. For instance, asking visitors about their travel history (e.g. if they have been to any COVID-19 prone areas) to prevent or control the spread of disease in the premises is likely to be allowed. On or before obtaining data on the individual’s symptoms, individuals must be notified of prescribed information mentioned above.

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Yes. Data collected must be fair, necessary and non-excessive. For instance, asking visitors about their travel history (e.g. if they have been to any COVID-19 prone areas) to prevent or control the spread of disease in the premises is likely to be allowed. On or before obtaining data on the individual’s symptoms, individuals must be notified of prescribed information mentioned above.

Can we ask visitors if they have symptoms?  
Yes. Data collected must be fair, necessary and non-excessive. Collecting temperature readings from visitors to prevent or control the spread of disease in the premises is likely to be allowed. On or before obtaining data on the individual’s symptoms, individuals must be notified of prescribed information mentioned above.

General

Formal DPA Guidance


What medical testing can an employer carry out and under what conditions?  
The usual principles for testing employees will apply. Employers must have grounds for conducting the test (explicit consent is a pre-condition, unless the employers are authorised to do so as required under applicable laws or regulations).

Temperature check and health-related questionnaires are the most common measures taken by employers for the purpose of COVID-19 prevention and control.

Testing should only be used where it provides significantly better evidence than other less intrusive means and this is justified means to achieving the employer’s legitimate aim. If your reason is to protect the workforce on health and safety grounds, this may not be sufficient justification, depending on the wider circumstances.

Testing should be carried out by a reputable provider and based on reliable scientific evidence and should be focused solely on the relevant matters - here, that would mean testing for COVID-19 only. You should not test all workers, whether randomly or not, if only employees carrying out a particular activity or in a particular location pose a risk. Employees in different jobs will pose different risks. Similarly, post-incident testing, where there is a reasonable concern that the particular activity or in a particular location pose a risk. Employees in different jobs will pose different risks.

Can we exclude employees who are considered at higher risk due to their health or any other reason?  
No. Trade union activity is generally very minimal in Hong Kong and there is no concept of works councils in Hong Kong.

Does an employer need to consult with works councils or trade unions before taking any measures?  
Yes. Note that such data may not be retained for longer than is necessary for the purpose for which it was collected. If it has become obsolete, the data user must promptly delete the same. The types of data kept must also be fair, necessary and non-excessive.
Can an employer notify other members of staff about an employee who has died from COVID-19? What duty does an employer owe in this situation?

Yes, but with limitations. As a general rule, employers should ensure that they comply with the principles of the Personal Data (Privacy) Ordinance (PDPO), as well as any local data privacy policies (if any), before disclosing any personal data collected from employees to other members of staff or for any other purposes (i.e. purposes other than the original purpose of its collection or any directly related purposes), unless express and voluntary consent is obtained from the relevant employees or in accordance with the PDPO.

According to the “Fight COVID-19 Pandemic - Guidelines for Employers and Employees” issued by the Privacy Commissioner for Personal Data (https://www.pcpd.org.hk/english/media/statements/press_20200330.html), if an employee unfortunately contracts COVID-19, employers may notify other employees without disclosing personally identifiable information of the infected. Under most circumstances, disclosure of personal particulars (including name) of the affected employee will not be considered as necessary or proportionate.

If an employee has died from COVID-19, by definition of “personal data” under the PDPO, only data relating to a living individual would amount to personal data. Accordingly, the employer is strictly speaking not bound by PDPO obligations. However, employers should be sensitive to the rights of the employee’s family and given the sensitivity of the nature of the information, it would be prudent not to identify an employee that has died from COVID-19 to other members of staff.

Can an employer notify customers and visitors of an infected member of staff?

Yes, but with limitations. The identity of employee must be kept confidential. Otherwise, express consent from the relevant individual is likely required. Although section 59 of the PDPO provides an exemption for health data to be disclosed without the express consent of the individual, this only applies if it can be shown (in each case) that obtaining express consent from the individual for the disclosure would likely cause serious harm to the employee, visitor, customer or others.

Can I share health data with staff?

Yes, but with limitations. The identity of employee must be kept confidential. Otherwise, express consent from the relevant individual is likely required. Although section 59 of the PDPO provides an exemption for health data to be disclosed without the express consent of the individual, this only applies if it can be shown (in each case) that obtaining express consent from the individual for the disclosure would likely cause serious harm to the employee, visitor, customer or others.

Can I share health data with the public in a crowded area, as part of the preventive measures.

Yes. Generally, employers should take all reasonably practicable measures to provide a safe working environment. They should be mindful of their obligations to employees under the Occupational Safety and Health Ordinance and their common law duty of care to provide a safe workplace. In addition, for workplaces such as offices, retail and catering venues, there are specific “Infection Control Guidelines at Workplace” issued by the Occupational Safety & Health Council (http://www.oshc.org.hk/eng/main/infect/infection_crt/). Before reopening the office, an employer should work out a re-opening plan, incorporating flexible working arrangements to minimise the risk of contracting and spreading COVID-19. The return-to-work arrangements should be clearly communicated to all employees so that they are fully aware of their personal obligations in respect of observing personal hygiene (in particular hand hygiene), keeping their offices clean, protecting themselves by wearing face masks and self-reporting their health condition (e.g. temperature).

Further, employers should ensure that they provide disinfectant and soap at their work premises, regularly clean and disinfect common areas and frequently touched surfaces, and maintain good ventilation. Ideally and if possible, employers should provide free masks to their employees, especially if the employees are required to work face to face with the public in a crowded area.

Last but not least, employers should ensure that any steps they take amid COVID-19, and in particular in dealing with employees who have contracted or have close contact with someone with COVID-19, or employees who have COVID-19 symptoms (e.g. fever, dry cough, shortness of breath), do not contravene the terms of the Employment Ordinance or the Disability Discrimination Ordinance, or breach the terms of their employment contracts.

What practical steps should an employer consider when re-opening an office?

Can we ask employees if they have symptoms?

Yes, Employers should require employees to report potential exposure to the virus and other circumstances specified in the employer’s general notice (e.g. travelling to high risk countries). If the employee reports potential exposure to the virus or if the employer suspects infection based on other factors, the employer can process data regarding the symptoms based on legitimate interest and exception the employment law condition in Art. 9(2)(h) GDPR.

Can we ask an employee’s travel history?

Yes, If the employer reports potential exposure to the virus or if the employer suspects infection based on other factors.

Can we test employees?

Yes, but with limitations. 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.

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(2)(d) GDPR.

Can we ask about any symptoms of an employee’s household?

No. The processing of any symptoms of an employee’s household is likely to be disproportionate and excessive under Hungarian data protection law.

Can we ask employees to notify us if they are diagnosed?

Yes, Employers should require employees to report potential exposure to the virus and other circumstances specified in the employer’s general notice (e.g. travelling to high risk countries). The employer must have a legitimate interest if it wants to engage in this kind of data processing.

Can we ask employees if they have received a vaccine?

No guidance yet. There is no guidance on this topic yet. We assume that the Hungarian DPA will probably be strict on this topic (i.e. the collection of such data will be strictly restricted), but we are expecting further guidance on this when vaccination will be on the agenda early this year.

Can we require employees to work from home even if the office is open?

Yes, Under Hungarian law, an employer can require that the employee works in a place other than his or her normal place of work for a maximum of 44 working days or 352 working hours of work in a calendar year.

Can we exclude employees who have not had a vaccine from the workplace?

No. Excluding employees from the physical workplace, preventing them from taking on jobs, work or engagements (or otherwise treating them differently) on the grounds of their health would probably amount to discriminatory treatment and therefore expose the company to potentially discrimination claims.

Notwithstanding the above, if the employer does not want to let these employees work, it may have to pay the base salary for the employee, i.e. these employees must not suffer from any disadvantages based on the fact that they did not have a vaccine.

Can we ask such individuals if they have symptoms?

Yes, If the individual reports potential exposure to the virus or if the employer suspects infection based on other factors.

Can we ask the travel history of such individuals?

Employees & Workers

Yes, Employers should require employees to report potential exposure to the virus and other circumstances specified in the employer’s general notice (e.g. travelling to high risk countries).

Mobile / Gig Economy / Agency Workers

Yes, Employers should require these individuals to report potential exposure to the virus and other circumstances specified in the employer’s general notice (e.g. travelling to high risk countries). If the individual reports potential exposure to the virus or if the employer suspects infection based on other factors, the employer can process data regarding the symptoms based on legitimate interest and exception the employment law condition in Art. 9(2)(h) GDPR.

Does your country require individuals to wear face masks? If not, can your employer require employees to wear face masks?

Yes, Employers may require their employees to do so at their workplaces. It has been recommended by the Centre for Health Protection in their “Health Advice on Prevention of Coronavirus disease (COVID-19) in Workplace (Interim)” (https://www.chp.gov.hk/files/pdf/sd_guideline_workplace_eng.pdf) that staff should wear a mask where required to be face to face with the public in a crowded area, as part of the preventive measures.
Can we test such individuals? Yes, but with limitations. Ordering medical checks (i.e., COVID-19 testing) for these individuals in general and systematically does not comply with data protection law. However, medical checks must be carried out if the person voluntarily reports symptoms of or if the employer reasonably suspects a case of infection based on the assessment of all relevant circumstances or based on the employee’s risk assessment. Medical checks must be conducted or supervised by medical professionals.

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.

Can we ask about any symptoms of the household(s) of such individuals? No. The processing of any symptoms of this individual’s household is likely to be disproportionate and excessive under Hungarian data protection law.

Can we ask such individuals to notify us if they are diagnosed? Yes. Employers should require these individuals to report potential exposure to the virus and other circumstances specified in the employer’s general notice (e.g. travelling to high risk countries). The employer must have a legitimate interest if it wants to engage in this kind of data processing.

Can we ask individuals if they have received a vaccine? No guidance yet. There is no guidance on this topic yet. We assume that the Hungarian DPA will probably be strict on this topic (i.e., the collection of such data will be severely restricted), but we are expecting further guidance on this when vaccination will be on the agenda early this year.

Can we ask individuals if they have a vaccine? No. Employees are currently not entitled to require giga workers to get vaccinated against COVID-19. Based on the current legislation, they are only allowed to encourage vaccination when available. Only the Minister in charge of public health can list those diseases for which vaccination is mandatory in its decree. Currently, COVID-19 is not on this list.

Can we exclude individuals who have not had a vaccine from the workplace or carrying out their role? No. Excluding agency/giga workers from the physical workplace, preventing them from taking on jobs, work or engagements (or otherwise treating them differently) on the grounds of their health would probably amount to discriminatory treatment and therefore expose the company to possible discrimination claims.

Notwithstanding the above, if the employer does not want to let these agency/giga workers work, it must pay to the base salary for the agency/giga worker, i.e., these agency/giga workers may not suffer from any disadvantages based on the fact that they did not have a vaccine.

Visitors

Can we ask visitors if they have received a vaccine? No guidance yet. There is no guidance on this topic yet. We assume that the Hungarian DPA will probably be strict on this topic (i.e., the collection of such data will be somehow strictly restricted), but we are expecting further guidance on this when vaccination will be on the agenda at the beginning of 2021.

Can we exclude visitors who have not had a vaccine from the workplace? No guidance yet. There is no guidance on this topic yet. We assume that the Hungarian DPA will probably be strict on this topic (i.e., the collection of such data will be severely restricted and therefore the exclusion of visitors may not be generally allowed), but we are expecting further guidance on this when vaccination will be on the agenda early this year.

General


What medical testing can an employer carry out and under what conditions? Ordering any kind of medical checks for all employees in general and systematically is not in compliance with data protection law. However, if the employer reports voluntarily or based on the assessment of all relevant circumstances or based on the employer’s risk assessment and in case of positions that are particularly exposed to diseases, any necessary medical checks conducted or supervised by medical professionals can be ordered. In this case the legal basis is legitimate interest and exception under Art. 9(2)(h) applies with the guarantee set out in Art. 9(3) GDPR.

What practical steps should an employer consider when re-opening an office? The employers’ obligation is to ensure the health and safety at the workplace especially after the pandemic. The Hungarian DPA (NAIH) also stressed in its guidance that the employer and the employee should inform each other on issues related to COVID-19 pandemic, however, they have to respect the individuals’ right to privacy. Furthermore, in accordance with the provisions of the Info Act, the data (and certain other persons) of the data subject can also exercise the data subject rights of the dead individual. Therefore, the employer should inform the members of staff about the fact that an employee at the employer has died form COVID-19, but must not disclose any ‘personal data’ of the dead individual.

Can we inform customers of work or trade unions that an employee has been infected by COVID-19? Yes. Where this is relevant to employees, including mobile workers, whose roles involve interacting with customers, you can notify your customers where this is necessary. However, you must not disclose personal data of the infected individuals.

Can we share health data with authorities for public health purposes? Yes. However, an employer must only do this if the authorities issue a formal order to do so. The employers’ obligation is to ensure the health and safety at the workplace especially after the pandemic. The NAIIH mentioned appropriate precautions measures in its guidance that can be applicable after the re-opening of an office. The employer should consider, for instance, specifying basic hygiene measures, cleaning work desks and offices more thoroughly, providing disinfectants and requiring their more frequent use or regulating the order of visiting clients and using glass partitions at customer service desks. The employees might be required to keep distance from each other, and the workstations, carts should be redesigned to meet this requirement.

Can we share health data with the works council? Yes. Works councils have a general right to information on health and safety issues, so it is advisable to inform and involve the works council in any measures taken.

If an employer notify other members of staff about an employee who is suspected of COVID-19, the employer must have a legitimate interest if it wants to engage in this kind of data processing.

Can we inform other members of staff about an employee who is suspected of COVID-19? Yes. In accordance with the general labour safety rules of the Act on Labour Safety and the Labour Code, the employer has an obligation to inform the employees about relevant developments/circumstances that relates to the employment/health & safety. Furthermore, the Hungarian DPA (“NAIH”) also stressed in its guidance that the employer and the employee should inform each other on issues related to COVID-19 pandemic, however, they have to respect the individuals’ right to privacy. Furthermore, in accordance with the provisions of the Info Act, the data (and certain other persons) of the data subject can also exercise the data subject rights of the dead individual. Therefore, the employer should inform the members of staff about the fact that an employee at the employer has died from COVID-19, but must not disclose any ‘personal data’ of the dead individual.

Can we inform public authorities about an employee who is suspected of COVID-19? Yes. However, an employer must only do this if the authorities issue a formal order to do so. The employers’ obligation is to ensure the health and safety at the workplace especially after the pandemic. The NAIIH mentioned appropriate precautions measures in its guidance that can be applicable after the re-opening of an office. The employer should consider, for instance, specifying basic hygiene measures, cleaning work desks and offices more thoroughly, providing disinfectants and requiring their more frequent use or regulating the order of visiting clients and using glass partitions at customer service desks. The employees might be required to keep distance from each other, and the workstations, carts should be redesigned to meet this requirement.

Can we inform public authorities about an employee who has been infected by COVID-19? Yes. Where this is relevant to employees, including mobile workers, whose roles involve interacting with customers, you can notify your customers where this is necessary. However, you must not disclose personal data of the infected individuals.

Does your country require individuals to wear face masks? If not, can an employer require employees to wear face masks? Yes. Face masks are mandatory in shopping centres, restaurants (when entering for delivery purposes), administration offices, social institutions, hospitals, in certain open space areas in cities over 10,000 inhabitants and on public transport (including the connected areas).

Yes. The employer can require an employee to wear face masks in accordance with the provisions of the Act on Labour Safety. If an employer decides to order wearing face masks, it must make an appropriate amount available for the employees, because employees cannot be forced to buy them for themselves. The masks can only be required for “labor safety reasons” which means that the employer can by no means force the employees to wear those face masks in public but only at the workplace.
### Employees & Workers

**Can we ask employees if they have symptoms?**

Yes, but with limitations. Except for taking temperatures at the entrance of the workplace so as to restrict access to those whose temperature reaches the 37.5°C threshold, an employer cannot ask employees if they have symptoms. This restriction does not apply to the sanitary surveillance visits that the H&S doctor can decide to implement to ensure safety in the workplace.

Please note that this is based on the current emergency legislation that expressly refers to the Protocols co-signed by the Italian Government and the Unions, including the one signed on April 24 (http://www.gov.it/sites/news.gov.it/files/dpcm_2020/20200424_allegationt.pdf) which lists in extensive detail all the organizational measures that must be put in place within organisations permitted to continue operating during the emergency period. This is the main legal reference used for the purpose of this table.

**Can we ask employees if they have symptoms?**

Yes, if strictly necessary. An employer may only ask about travel history if this is strictly necessary. This must be considered on a case by case basis and employers cannot request this information from all employees.

Where an employer asks for information about travel history, it should be limited to a simple declaration as to whether the employee travelled to high-risk areas (in Italy or abroad). It is not possible to ask for details of the areas.

**Can we test employees?**

Yes, but with limitations. Employers are required to take the temperature of employees. If the temperature exceeds 37.5°C, the employer must record the reason why the employee cannot enter the workplace.

No further test can be provided/required by the employer unless requested by the company doctor or by the public health authorities. In any case, the health-related data must be processed only by the company doctor.

**Can we ask about any symptoms of an employee’s household?**

No. An employer cannot ask an employee to state whether he or she has had contact with people tested positive for COVID-19, and exceptionally if this is strictly necessary (this depends on a case by case basis and it cannot be implemented as a general measure). It is not permitted to ask for more details about whom this person is.

**Can we ask employees to notify us if they are diagnosed?**

Yes, but with limitations. An employee is only required to notify the employer if he or she has symptoms during the working day. Workers who have already tested positive for COVID-19 must provide the employer with a medical certificate showing that the worker tested negative - in the manner provided for and issued by the relevant territorial prevention department. It would be preferable for the certificate to be provided to the company doctor.

As a general rule, employers cannot ask employees about medical treatments (including if the employees received the vaccine). Only the company doctor can ask if the employee has received a vaccine if he or she deems it strictly relevant for his health monitoring activities. This information could be relevant for employees exposed to specific health risks:

i) due to their specific health conditions (disabled employees; employees with chronic diseases or serious illnesses). The company doctor can ask if the employee received a vaccine and exclude the employee from the workplace if it is not mandatory by law.

ii) due to the specific work conditions (i.e. employees whose working activities do not allow the fulfillment of social distancing measures and/or the use of PPE). However, this case could be more controversial.

**Can we require employees to have a vaccine?**

No. Unless the Italian government states that the vaccine is mandatory in general or for certain categories, the employer cannot impose any medical treatment if it is not mandatory by law.

The Italian government has not provided a general obligation to for individuals to be vaccinated against COVID-19. Therefore, the employer can only encourage individuals to get vaccinated. Employers cannot consider the vaccine a requirement for the performance of an individual’s work activities.

### Employees & Workers cont

**Can we require employees to work from home even if the office is open?**

Yes. This is indeed recommended (or mandatory, depending on the sector of activity, according to the then applicable emergency legislation) provided that the employees’ jobs can be performed remotely and employees are provided with the proper equipment.

**Can we exclude employees who have not had a vaccine from the workplace?**

No, other than in very limited circumstances. Unless the Italian government states that the vaccine is mandatory in general or for certain categories of individual, then, under the current legislation, an employer cannot exclude employees from the workplace if they have not received a vaccine.

The company doctor could exclude employees who are exposed to the risk of infection due to particular health conditions such as employees that suffer from serious illnesses or chronic diseases, immunosuppressed persons, or disabled employees that did not receive a vaccine. However, such decision should be taken by the company doctor.

**Can we test employees if they have symptoms?**

Yes, if strictly necessary. An employer may only ask about travel history where this is strictly necessary (this depends on a case by case basis and it cannot be implemented as a general measure). It is not permitted to ask for more details about whom this person is.

**Can we ask employees to notify us if they are diagnosed?**

Yes, but with limitations. An employer may only ask about travel history where this is strictly necessary (this depends on a case by case basis and it cannot be implemented as a general measure). It is not permitted to ask for more details about whom this person is.

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No. An employer cannot ask an employee to state whether he or she has had contact with people tested positive for COVID-19, and exceptionally if this is strictly necessary (this depends on a case by case basis and it cannot be implemented as a general measure). It is not permitted to ask for more details about whom this person is.

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Yes, but with limitations. An employee is only required to notify the employer if he or she has symptoms during the working day. Workers who have already tested positive for COVID-19 must provide the employer with a medical certificate showing that the worker tested negative - in the manner provided for and issued by the relevant territorial prevention department. It would be preferable for the certificate to be provided to the company doctor.

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i) due to their specific health conditions (disabled employees; employees with chronic diseases or serious illnesses). The company doctor can ask if the employee received a vaccine and exclude the employee from the workplace if it is not mandatory by law.

ii) due to the specific work conditions (i.e. employees whose working activities do not allow the fulfillment of social distancing measures and/or the use of PPE). However, this case could be more controversial.

### Mobile / Gig Economy / Agency Workers

**Can we ask such individuals if they have symptoms?**

Yes, but with limitations. Except for taking temperatures at the entrance of the workplace so as to restrict access to those whose temperature reaches the 37.5°C threshold, an employer cannot ask these individuals about symptoms. No other symptoms may be asked about or collected in relation to the these individuals.

**Can we ask the travel history of such individuals?**

Where an employer asks for information about travel history, it should be limited to a simple declaration as to whether the individual travelled in high risk areas (Italian and foreign). It is not possible to ask for details of the areas.

**Can we ask such individuals if they have symptoms?**

Yes, if strictly necessary. An employer may only ask about travel history where this is strictly necessary. This must be considered on a case by case basis and employers cannot request this information from all individuals.

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Where an employer asks for information about travel history, it should be limited to a simple declaration as to whether the individual travelled in high risk areas (Italian and foreign). It is not possible to ask for details of the areas.

**Can we test such individuals?**

Yes, but with limitations. Employers are required to take the temperature of employees. If this exceeds 37.5°C, the employer must record the reason why the employee cannot enter the workplace.

No further test can be provided/required by the employer unless requested by the company doctor or by the public health authorities. In any case, the health-related data must be processed only by the company doctor.

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As a general rule, employers cannot ask employees about information on medical treatments (including if the employees received the vaccine). Only the company doctor can ask if the employee has received a vaccine if he or she deems it strictly relevant for his health monitoring activities. This information could be relevant for employees exposed to specific health risks:

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ii) due to the specific work conditions (i.e. employees whose working activities do not allow the fulfillment of social distancing measures and/or the use of PPE). However, this case could be more controversial.

**Can we require employees to have a vaccine?**

No. Unless the Italian government states that the vaccine is mandatory in general or for certain categories, the employer cannot impose any medical treatment if it is not mandatory by law.

The Italian government has not provided a general obligation to for individuals to be vaccinated against COVID-19. Therefore, the employer can only encourage individuals to get vaccinated. Employers cannot consider the vaccine a requirement for the performance of an individual’s work activities.

**Can we require employees to have a vaccine?**

Yes, but with limitations. Employers are required to take the temperature of employees. If this exceeds 37.5°C, the employer must record the reason why the employee cannot enter the workplace. Where these individuals do not need to work from a particular location alongside other employees, an employer cannot collect this information.

**Can we test such individuals?**

Yes, but with limitations. Employers are required to take the temperature of employees. If this exceeds 37.5°C, the employer must record the reason why the employee cannot enter the workplace. Where these individuals do not need to work from a particular location alongside other employees, an employer cannot collect this information.

**Can we ask about any symptoms of the household(s) of such individuals?**

No. An employer can only ask an individual to state whether he or she has had contact with people tested positive for COVID-19, and exceptionally if this is strictly necessary (this depends on a case by case basis and it cannot be implemented as a general measure). It is not permitted to ask for more details about whom this person is.

**Can we ask such individuals if they have symptoms?**

Yes, but with limitations. An individual is only required to notify the employer if he or she comes to the workplace and symptoms show during the working day.

**Can we ask individuals if they have received a vaccine?**

Yes, but with limitations. Except for taking temperatures at the entrance of the workplace so as to restrict access to those whose temperature reaches the 37.5°C threshold, an employer cannot ask these individuals about symptoms. No other symptoms may be asked about or collected in relation to the these individuals.

**Can we ask individuals if they have received a vaccine?**

Yes, but with limitations. Except for taking temperatures at the entrance of the workplace so as to restrict access to those whose temperature reaches the 37.5°C threshold, an employer cannot ask these individuals about symptoms. No other symptoms may be asked about or collected in relation to the these individuals.
**Mobile / Gig Economy / Agency Workers cont**

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<td>Can we take temperature readings from visitors?</td>
<td>Yes, but only if strictly necessary. Employers are 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.</td>
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<td>No. Notification will be done through the official channel by the competent authorities when tracing back the contacts. Single exception: if a company uses outsourced personnel who is tested positive for COVID-19, the individual must inform the competent office of the company where he/she is outsourced in order to take the measures provided for in the Protocol and both organizations (outsourcer and outsourcer) must cooperate with the health authority providing useful information to identify any close contacts.</td>
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**General**

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<td>Form DPA Guidance</td>
<td>Yes. The guidance from the DPA (<a href="https://www.garanteprivacy.it/webaen/home/docweb/docweb-display/docweb/98201747">https://www.garanteprivacy.it/webaen/home/docweb/docweb-display/docweb/98201747</a>) is very basic and is partially superseded by the most recent emergency legislation. Please refer also to the Protocol mentioned above (<a href="http://www.governo.it/sites/new.governo.it/files/dpcm_20200213_alla4.pdf">http://www.governo.it/sites/new.governo.it/files/dpcm_20200213_alla4.pdf</a>).</td>
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<td>What medical testing can an employer carry out and under what conditions?</td>
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</tr>
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<td>Does an employer need to consult with works councils or trade unions before taking any measures?</td>
<td>Yes. They need to agree on the internal Protocol based on the one referred to the current emergency legislation (<a href="http://www.governo.it/sites/new.governo.it/files/dpcm_20200213_alla4.pdf">http://www.governo.it/sites/new.governo.it/files/dpcm_20200213_alla4.pdf</a>).</td>
</tr>
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<td>Can an employer keep a record of staff who are diagnosed as infected?</td>
<td>Yes, but with limitations. If an individual tests positive during working time, an employer can record this fact. No other records/list of infected employees are permitted.</td>
</tr>
<tr>
<td>Can an employer notify other members of staff about an employee that has been infected by COVID-19?</td>
<td>No. This should be done by public health authorities (directly or through the company doctor) if deemed relevant according to the health protocols approved by the health authorities for COVID-19 and only for those members of staff who are at risk of infection.</td>
</tr>
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<td>Can an employer inform other members of staff about an employee that has died from COVID-19?</td>
<td>No. Since in Italy the GDPR also applies to the personal data of deceased persons, as well as already clarified in the chart regarding health data of the personnel, the employer could not share health data to the staff unless otherwise provided by the public authority.</td>
</tr>
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<td>Can an employer notify customers and visitors of an infected member of staff?</td>
<td>No. This should be done by public health authorities (directly or through the company doctor) if deemed relevant according to the health protocols approved by the health authorities for COVID-19 and only for those members of staff who are at risk of infection. Single exception: if a company uses outsourced personnel who is tested positive for COVID-19, the individual must inform the competent office of the company where he/she is outsourced in order to take the measures provided for in the Protocol and both organizations (outsourcer and outsourcer) must cooperate with the health authority providing useful information to identify any close contacts.</td>
</tr>
<tr>
<td>Can I share health data with authorities for public health purposes?</td>
<td>Yes. Following a request from a competent health authority, the employer can disclose information about suspected or confirmed cases of infection. Generally speaking, we recommend to follow the measures provided by the Protocols. In particular, in light of the current epidemiological crisis in Italy smart working remains the recommended solution for those activities that do not require physical presence and are compatible with this modality of work. Moreover, for the business not compatible with smart working, once the sanitizing activities of the premises have been carried out and provided that personal protective equipment are available and mandatory for workers (what protective equipment is necessary really depends on how the workplace has been recognized and the type of work of each employee) the organization should arrange for body temperature detection (see relevant answers in the table), it is recommended: • to identify a team (composed of HR, Health and safety manager (RISP), company doctor and company union representative, if any) for the centralized management of potential events. • to formulate internal policies ruling the internal communication of personal data related to COVID-19; • to monitor the temperature of the personnel before entering the premises using infrared thermometer or thermo-scanner, prohibiting access to those who have a fever exceeding 37.5°C; • to cooperate with the health authorities and to strengthen the regular health monitoring activities provided by the company doctor.</td>
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<td>What practical steps should an employer consider when re-opening an office?</td>
<td>Yes. Under the Protocols, if the workplace requires to work at an interpersonal distance of less than 1 meter and other organizational solutions are not possible, it is in any case necessary to use masks and other protective equipment (gloves, goggles, overalls, etc.). Therefore the personnel could not refuse to wear masks if requested by the employer. Please note that wearing face masks is also mandatory outside the workplace in certain environments (for generally whenever someone is in any public place, including street, or transportation, or other places open to the public in certain regions, e.g. Lombardy), as a matter of fact, wearing masks should be quite easily accepted by the employees.</td>
</tr>
</tbody>
</table>
Employees & Workers

Can we ask employees if they have symptoms?
No. According to the Dutch DPA, employers are not allowed to ask employees about symptoms of any illness they may have. Depending on circumstances it could be allowed, however, to ask employees if they are diagnosed?

Can we ask about an employee’s travel history?
No, According to DPA guidance only the company doctor may ask this.

Can we test employees?
Yes, but with limitations. The DPA previously indicated that employers are not allowed to test employees on COVID-19, and should ask employees to test themselves (e.g. by taking their own temperature). This has been amended recently, and the DPA now states that if temperature recordings are not recorded, or otherwise not further processed (e.g. by opening a gate, or a red-green light), then it falls out of scope of the GDPR. This provides room to take the temperature of employees and other individuals, provided other fundamental (privacy) rights and applicable laws are respected.

Can we ask about any symptoms of an employee’s household?
No. The processing of any symptoms of an employee’s household is likely to be considered disproportionate and excessive.

Can we ask employees to notify us if they are diagnosed?
No. Employers may not ask anything material regarding any illness.

Can we ask employees if they have received a vaccine?
No, other than in very limited circumstances. Information about vaccinations indicates a health condition, a possible risk of illness or medical history. Generally speaking, employers are not allowed to process such information under the GDPR and relevant implementing legislation. It must be noted that there might be room to ask employees for proof of vaccination when entering the premises, when such information is not recorded and thus out of scope of the GDPR and provided other fundamental (privacy) rights and applicable laws are respected. Also note that the aforementioned might change or be further formalised once vaccination of the general population is well-under way.

Can we require individuals to have a vaccine?
No. There is no legal obligation to vaccinate in the Netherlands.

Can we ask employees if they have symptoms?
No, other than in very limited circumstances. Information about vaccinations indicates a health condition, a possible risk of illness or medical history. Generally speaking, employers are not allowed to process such information under the GDPR and relevant implementing legislation. It must be noted that there might be room to ask employees for proof of vaccination when entering the premises, when such information is not recorded and thus out of scope of the GDPR and provided other fundamental (privacy) rights and applicable laws are respected. Also note that the aforementioned might change or be further formalised once vaccination of the general population is well-under way.

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Can we require employees to have a vaccine?
No, other than in very limited circumstances.

Can we test employees?
Yes, but with limitations. The DPA previously indicated that employers are not allowed to test employees on COVID-19, and should ask employees to test themselves (e.g. by taking their own temperature). This has been amended recently, and the DPA now states that if temperature recordings are not recorded, or otherwise not further processed (e.g. by opening a gate, or a red-green light), then it falls out of scope of the GDPR. This provides room to take the temperature of employees and other individuals, provided other fundamental (privacy) rights and applicable laws are respected.

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Can we exclude employees who have not had a vaccine from the workplace or carrying out their role?
No, other than in very limited circumstances.

Visitors

Can we ask visitors if they have symptoms?
Yes. There is no DPA guidance available, but considering the severity of the corona outbreak, it would be reasonable to ask visitors to inform you if they are experiencing COVID-19 symptoms.

Can we ask a visitor’s travel history?
Yes. The Dutch DPA has not provided any guidance on this, but in our opinion employers may ask visitors whether they have been in high risk areas before granting them entry. Answers on yes/no basis should be sufficient.

Can we take temperature readings from visitors?
Yes, but with limitations. The DPA previously indicated that employers are not allowed to test temperature recordings on visitors or ask visitors to test themselves (e.g. by taking their own temperature). This has been amended recently, and the DPA now states that if temperature readings are not recorded, or otherwise not further processed (e.g. by opening a gate, or a red-green light), then it falls out of scope of the GDPR. This provides room to take the temperature of employees and other individuals, provided other fundamental (privacy) rights and applicable laws are respected.

Can we ask about a visitor’s travel history?
Yes, but with limitations. The DPA has not provided guidance on this, but in our opinion employers may ask visitors whether they have been in high risk areas before granting them entry. Answers on yes/no basis should be sufficient.

Can we ask about any symptoms of a visitor’s household?
Yes, but with limitations. The DPA has not provided guidance on this, but in our opinion it is possible to ask general questions about symptoms of the visitor’s household as long as no more information is collected than needed. Visitors may refuse to answer the questions and not enter.

Can we ask visitors to notify us if they are diagnosed?
Yes. There is no DPA guidance available, but considering the severity of the pandemic we consider it legitimate and reasonable to ask visitors to inform the company if they are diagnosed with COVID-19.

Can we exclude visitors who have not had a vaccine from the workplace?
No, other than in very limited circumstances. Information about vaccinations indicates a health condition, a possible risk of illness or medical history.

Can we ask visitors if they have symptoms?
No, other than in very limited circumstances. Information about vaccinations indicates a health condition, a possible risk of illness or medical history.

Can we exclude visitors who have not had a vaccine from the workplace?
No, other than in very limited circumstances.

Can we ask employees if they have symptoms?
No, other than in very limited circumstances. Information about vaccinations indicates a health condition, a possible risk of illness or medical history. Generally speaking, employers are not allowed to process such information under the GDPR and relevant implementing legislation. It must be noted that there might be room to ask employees for proof of vaccination when entering the premises, when such information is not recorded and thus out of scope of the GDPR and provided other fundamental (privacy) rights and applicable laws are respected. Also note that the aforementioned might change or be further formalised once vaccination of the general population is well-under way.

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Can we exclude employees who have not had a vaccine from the workplace?
No, other than in very limited circumstances.
Yes.

What medical testing can an employer carry out and under what conditions?

According to the Dutch DPA, employers cannot carry out any medical testing, unless there is a specific law allowing this. Currently, there is no law authorising employers to test for COVID-19. The DPA previously indicated that in the healthcare sector employers may test employees for COVID-19. However, this appears to have been retracted by the DPA. The current guidance states that employers in all sectors are not allowed to test employees for COVID-19.

Does an employer need to consult with works councils or trade unions before taking any measures?

No, but exceptions may apply. The DPA has not provided guidance on this. This can only be assessed on a case-by-case basis - not for ‘measures’ in general. However, given that the measures to be taken likely are of a temporary nature and hence do not constitute an ‘irreversible change of a policy’, we consider very well defendable not to seek works council consultation in respect of COVID-19 measures.

Can an employer keep a record of staff who are diagnosed as infected?

No. Only a company doctor may do this.

Can an employer notify other members of staff about an employee who has been infected by COVID-19?

No. Notification should be done by public health authorities (which can be alerted by the company doctor).

Can an employer inform other members of staff about an employee that has died from COVID-19? What duty does an employer owe in this situation?

Yes. An employer can inform members of staff about a deceased employee. No specific legal rules apply to the format of such an announcement. However, if the announcement is considered in breach of what is considered decent in society (e.g. is published widely online without consulting the relatives), the deceased’s relatives might be able to sue on the basis of tort.

Can an employer notify customers and visitors of an infected member of staff?

No. Notification should be done by public health authorities (which can/must be alerted by the company doctor).

Can I share health data with authorities for public health purposes?

Yes. The company doctor rather than the employer can transfer the information.

What practical steps should an employer consider when re-opening an office?

Currently, the Dutch government urges employers to let employees work from home if this is possible. This measure is in place until May 19th, but is likely to be extended - either in its current form or possibly with more room for employers to start re-opening their offices. Should the restrictions be amended or lifted, it is assumed that offices must take adequate measures to ensure that employees and other individuals on the work floor keep 1.5 metres distance from other persons. Such measures could include rearranging office spaces and working in alternating shifts between working from home and working from the office.

Does your country require individuals to wear face masks or face coverings? If not, can an employer require employees to wear face masks or coverings?

No. The use of face masks is currently not required by the Dutch government.

Can we ask employees if they have symptoms?

Yes, but with limitations. According to the Polish DPA, the employer may collect and store information on symptoms, if the sanitary authorities ordered or provided guidelines to the employer to take such special measures, provided they are necessary to prevent the spread of COVID-19. Orders are issued in individual cases (at the employer’s request).

So far, the sanitary authorities have issued over 60 different guidelines for various sectors or entities. 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-tecnologia/wytyczne-dla-brazn.

The guidelines are inconsistent. Most of them do not cover the topic. However, employers in e.g. factories may decide to introduce employee questionnaires in which employees are asked to confirm that they: (i) do not have any symptoms, and (ii) had no contact with a person who had visible symptoms or who was exposed to contact with an infected person (https://www.gov.pl/web/rozwoj/zaklady-przemyslowe). The employer needs to receive the employee’s consent (i.e. an employee may provide information voluntarily). This should not be understood as GDPR consents, as according to the DPA, such consent is not a valid legal basis for processing such data (consent needs to be freely given and in the case of special categories of data, it needs to be provided at the employers’ initiative).

In addition, a number of guidelines state that employees who have symptoms should not come to work (e.g. shopping centres - https://www.gov.pl/web/rozwoj/centra-handlowe). Therefore, the employer may prohibit the employee with symptoms from entering the premises and collect information about symptoms if the employee volunteers them.

Depending on the type of sector or entity, we recommend verifying this issue on a case-by-case basis.

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.

Can we ask about an employee’s travel history?

Yes, but with limitations. According to the Polish DPA, the employer may collect and store information on symptoms, if the sanitary authorities ordered or provided guidelines to the employer to take such special measures, provided they are necessary to prevent the spread of COVID-19. Orders are issued in individual cases (at the employer’s request).

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The guidelines are inconsistent. As a rule, the guidelines are silent on the possibility of collecting information on employees’ travel history. However, some guidelines may regulate it differently.

Depending on the type of sector or entity, we recommend verifying this issue on a case-by-case basis.

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.
Can we ask employees to notify us if they are diagnosed?
Yes. Generally, the employer receives information that the employee was diagnosed with COVID-19 (positive COVID-19 test) automatically via the social insurance system (E-Platnik). Therefore, the employer has this information without asking the employee.

The employee has a choice when he or she is diagnosed: (i) the employee may take a sick leave, in which case the employee must notify the employer about the leave and provide a medical certificate (and there will be no need to specify the illness), or information the employer about has or her COVID-19 infection (often used in practice, as medical certificates are currently rarely issued); or (ii) if the employee feels well enough to work, the employee may inform the employer that he or she will continue working remotely, if applicable, regardless of being diagnosed with COVID-19. Once the employee intends to continue working, the notification of being infected by COVID-19 to the employer is a must as working during the illness is prohibited.

Can we exclude employees who have not had a vaccine from the workplace?
No. In general, excluding employees who did not undergo vaccination is discriminatory, and risks employment claims. As for now, there is no legal basis for obligatory COVID-19 vaccinations (these are not included in the list of obligatory vaccinations). Employers might exclude employees from being physically present in the workplace by requesting remote work if applicable. If remote work is not possible, and the infection exposure is relatively high. In that case, the employer might reorganise working space by excluding employees’ presence in certain workplace areas but still allows them to work.

Can we require employees to have a vaccine?
Yes, but with limitations. The DPA and the guidelines of the sanitary authorities are silent on this topic. The Polish government declares that receiving a vaccination will be voluntary. By law, some restrictions will be lifted for people vaccinated against COVID-19, e.g., the obligation to stay under quarantine after having contact with a person with COVID-19 or crossing the border. We believe the company may collect and process such information if it is volunteered by the visitors. The company may offer some less restrictive internal procedures for visitors who have been vaccinated.

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.

Can we require employees to work from home even if the office is open?
No. The employee cannot require employees to get vaccinated. The employer may encourage and inform employees to receive a vaccination on a voluntary basis (even sponsor such a vaccination, once they are available on the market for private use). However, the currently binding regulations do not require employees to undergo vaccination. The vaccines are currently available only via the government run National Vaccination Programme. It is divided into 3 stages of voluntary vaccinations; employees (not working in the healthcare sector) qualify for the last stage. The vaccines are not currently available on the market for private purchase/use.

Can we test employees?
Yes, but with limitations. According to the Polish DPA, the employer may test employees, 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).

So far, the sanitary authorities have issued over 60 different guidelines for various sectors or entities. 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-technologia/wytyczne-dla-branz.

COVID testing: As a rule, there are no guidelines ordering the testing of employees for COVID-19.

Temperature testing: Some guidelines allow employers in certain sectors, under specific circumstances, to take temperature readings (e.g., hairdressers). Some guidelines say that the employer needs to receive the employee’s consent (i.e. an employee may provide information voluntarily). This should not be understood as GDPR consent, as according to the DPA, the consent is not a valid legal basis for processing such data (consent needs to be freely given and in the case of special categories of data, it needs to be provided at the employees’ initiative).

The guidelines are inconsistent. Depending on the type of sector or entity, this issue should be verified on a case-by-case basis. 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. Employers can introduce voluntary testing. 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.

In practice, the company should remember that the data minimisation principle is key — the employer needs to receive the employee’s consent (i.e. an employee may provide information voluntarily). This should not be understood as GDPR consent, as according to the DPA, the consent is not a valid legal basis for processing such data (consent needs to be freely given and in the case of special categories of data, it needs to be provided at the employees’ initiative).

Can we ask the employer to notify us if an employee’s household?
Yes, but with limitations. According to the Polish DPA, the employer may test employees, 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).

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Can we ask such individuals if they have symptoms?

Yes, but with limitations. According to the Polish DPA, the employer may collect and store information on symptoms, if the sanitary authorities ordered or provided guidelines to the employer to take such special measures provided they are necessary to prevent the spread of COVID-19. Orders are issued in individual cases (at the employer’s request). So far, the sanitary authorities have issued over 60 different guidelines for various sectors or entities. 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-przeciwko-wytyczne-dla-braz.

The guidelines are inconsistent. Most of them do not cover this topic. However, employers in e.g. factories may decide to introduce employee questionnaires in which employees are asked to confirm that they: (i) do not have any symptoms, and (ii) had no contact with a person who had visible symptoms or who was exposed to contact with an infected person (https://www.gov.pl/web/rozwoj/naklady-przemytnowe).

In addition, a number of guidelines state that employees who have symptoms should not come to work (e.g., shopping centres - https://www.gov.pl/web/rozwoj/centra-handlowe). Therefore, the employer may prohibit the individuals with symptoms from entering the premises and collect information about symptoms if the individual volunteers them. Depending on the type of sector or entity, we recommend verifying this issue on a case-by-case basis. 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 fulfill their purpose in line with the data minimisation principle.

Can we test such individuals?

Yes, but with limitations. According to the Polish DPA, the employer may collect and store information, 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). So far, the sanitary authorities have issued over 60 different guidelines for various sectors or entities. 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/centra-handlowe).

The guidelines are inconsistent. As a rule, the guidelines are silent on the possibility of collecting systematic manner information on travel history to high risk areas (Polish or foreign) or whether the employer may forbid individuals who have been in certain areas from entering the workplace. As a rule, the employer may collect information individuals voluntarily provide about their travel history. However, some guidelines may regulate it differently. Depending on the type of sector or entity, we recommend verifying this issue on a case-by-case basis. 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 fulfill their purpose in line with the data minimisation principle.

Can we ask about any symptoms of the household(s) of such individuals?

Yes, but with limitations. According to the Polish DPA, the employer may collect and store information, 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). So far, the sanitary authorities have issued over 60 different guidelines for various sectors or entities. 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-przeciwko-wytyczne-dla-braz.

The guidelines are inconsistent. As a rule, the guidelines are silent on the possibility of collecting systematic manner information on symptoms suffered by members of their employees’ households. However, there are some exceptions. Depending on the type of sector or entity, we recommend verifying this issue on a case-by-case basis. In practice, the employer should remember that the data minimisation principle is key - the employer should not collect more information than needed and ensure it is treated with appropriate safeguards.

Can we ask such individuals to notify us if they are diagnosed?

Yes, Depending on the legal basis for engaging the individual, the employer may receive information that the individuals were diagnosed with COVID-19 (positive COVID-19 test) automatically via the social insurance system (E-Platnik). Therefore, the employer has such information without asking the employee. That is the case with individuals working on the basis of mandate contract. The individual has a choice when he or she is diagnosed: (i) the employee may take a sick leave, in which case the employee must notify the employer about the leave and provide a medical certificate (and there will be no need to specify the illness), or information the employer about his her COVID-19 infection (often used in practice, as medical certificates are currently rarely issued); or (ii) if the employee feels well enough to work, the employee may inform the employer that he or she will continue working remotely, if applicable, regardless of being diagnosed with COVID-19. Once the employee intends to continue working, the notification of being infected by COVID-19 to the employer is a must as working during the illness is prohibited. In other cases (e.g. agency workers), the employer does not have access to information about the individual’s diagnosis in E-Platnik. Therefore, the individual or agency should notify the employer that the individual is absent due to illness. The above on whether individual takes a sick leave or is willing to work remotely applies by analogy.
Can we ask individuals if they have received a vaccine?

No. The employer cannot require individuals to get vaccinated. The employer may encourage and inform individuals to receive a vaccine on a voluntary basis (or even sponsor such a vaccination, once they are available on the market for private use). However, the currently binding regulations do not require employees to undergo vaccination.

Visitors cont

Can we ask about any symptoms of a visitor’s household?

Yes, but with limitations. According to the Polish DPA, the company may collect and store information, if the sanitary authorities ordered or provided guidelines to the company to take such special measures provided they are necessary to prevent COVID-19 spread. Orders are issued in individual cases (upon the company’s request).

Can we ask about any symptoms of a visitor’s household?

Yes, but with limitations. According to the Polish DPA, the company may collect and store information on symptoms, if the sanitary authorities ordered or provided guidelines to the company to take such special measures provided they are necessary to prevent COVID-19 spread. Orders are issued in individual cases (upon the company’s request).

Can we ask visitors if they have received a vaccine?

Yes, but with limitations. According to the Polish DPA, the company may collect and store information, if the sanitary authorities ordered or provided guidelines to the company to take such special measures provided they are necessary to prevent COVID-19 spread. Orders are issued in individual cases (upon the company’s request).

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Can we ask visitors if they have received a vaccine?

Yes, but with limitations. According to the Polish DPA, the company may collect and store information, if the sanitary authorities ordered or provided guidelines to the company to take such special measures provided they are necessary to prevent COVID-19 spread. Orders are issued in individual cases (upon the company’s request).
Visitors cont

Can we exclude visitors who have not had a vaccine from the workplace?

No. Currently, when the vaccination is not commonly available to everyone, excluding visitors who did not undergo vaccination may be considered discriminatory. As for now, there is no legal basis for obligatory COVID-19 vaccinations (these are not included in the list of obligatory vaccinations). Once the vaccine will be fully available for everyone, the risk of discrimination of excluding visitors, who have not had a vaccine from the workplace, will be limited provided that such exclusion is strictly necessary to assure health and safety of employees.

General

No. The DPA has not issued formal guidance. However, it did release three statements and gave some interviews in the press. The most recent statement of 5 May 2020 provides that:

1. Collecting body temperature or other health data collected, e.g. via questionnaires, their recording and sharing constitutes processing of special categories of personal data.

2. Data protection law does not oppose processing of such data. Article 9(2)(g) GDPR should apply as processing is necessary for reasons of public interest in the area of public health, such as protecting against serious cross-border threats to health, on the basis of Member State law.

3. According to Article 17 of the Act of 2 March 2020 on Specific Solutions Related to the Prevention and Combating COVID-19 (in Polish: Ustawą dnia 2 marca 2020 r. o szczególnych rozwiązanach związanych z zapobieganiem, przeciwdziałaniem i zwalczaniem COVID-19, innych chorób zakaźnych oraz wywołanych nimi sytuacji kryzysowych) (“COVID-19 Act”), the Chief Sanitary Inspector (or regional sanitary inspectors) may order undertaking specific measures (by way of recommendations or decisions) addressed to employers/entrepreneurs/ other entities and individuals aimed at preventing the spread of COVID-19.

4. Sanitary authorities may decide that it is necessary to undertake specific measures (for example, to introduce temperature reading of employees and guests entering the premises or collecting data on health symptoms from those persons). If such decision is issued, employers will be obliged to comply. The decision constitutes legal grounds for processing health data.

The DPA seems to imply that guidelines of the sanitary authority may also serve as a legal basis for processing health data. Currently there are over 60 guidelines published and the number is growing daily. It seems that this guidelines may constitute legal basis for processing health data. 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-technologia/branza-spozywcza-i-logistyka.

Formal DPA Guidance

No. There is no explicit legal obligation to notify, but we would highly recommend it as an occupational health and safety measure. Some guidelines introduce such obligation (ex. in Polish: https://www.gov.pl/web/rozwoj-praca-technologia/branza-spozywcza-i-logistyka). Additional measures can be imposed on the employer by the Chief Sanitary Inspector.

Can we exclude visitors who have not had a vaccine from the workplace?

No. Currently, when the vaccination is not commonly available to everyone, excluding visitors who did not undergo vaccination may be considered discriminatory. As for now, there is no legal basis for obligatory COVID-19 vaccinations (these are not included in the list of obligatory vaccinations). Once the vaccine will be fully available for everyone, the risk of discrimination of excluding visitors, who have not had a vaccine from the workplace, will be limited provided that such exclusion is strictly necessary to assure health and safety of employees.

General cont

What medical testing can an employer carry out and under what conditions?

The general data protection principles must be followed, including data minimisation. According to the Polish DPA, the employer may test employees, 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).

So far, the sanitary authorities have issued over 60 different guidelines for various sectors and entities and the number is growing. 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-technologia/branza-spozywcza-i-logistyka. The guidelines are inconsistent. Only some of these guidelines allow employers to take temperature readings from employees (e.g., agricultural producers employing foreigners for seasonal work: https://www.gov.pl/web/rolnictwo/wytyczne-mirwi-gis-dla-producentow-rolnych-zatrudniajacych-cudzoziemcow-przy-praczach-sezonowych-aktualizacja). The employer needs to collect employee’s consent (in the employment law sense which means the test needs to be voluntary). This should not be understood as consent under the GDPR, as according to the DPA, the consent is not a valid legal basis for processing such data (consent needs to be freely given and in the case of special categories of data, it needs to be provided at the employer’s initiative). Exceptionally the guidelines allow employers to carry out tests for COVID-19 (guidelines dedicated to agricultural producers employing foreigners for seasonal work - such producers are allowed to ask the employed foreigners to undergo the test for COVID-19 (https://www.gov.pl/web/rolnictwo/wytyczne-mirwi-gis-dla-producentow-rolnych-zatrudniajacych-cudzoziemcow-przy-praczach-sezonowych-aktualizacja). Depending on the type of sector or entity, employers are recommended to verify this issue on a case-by-case basis.

Does an employer need to consult with works councils or trade unions before taking any measures?

No, but the Polish Labour Inspectorate issued the guidance recommending employers involvement in the process of risk assessment. This is organisational and management action to be immediately implemented.

However, as the Polish Labour Inspectorate stated that as in normal working conditions, also under the restrictions to prevent the spread of the COVID-19, the identification of physical, biological, chemical and psychosocial hazards and a properly conducted risk assessment in the work environment is the starting point for occupational health and safety management. When reviewing Company’s risk assessment, management should pay attention to abnormal situations that may be causing problems and how the preventive measures are taken in order to help the business restore full production and operational capacity. Thus the participation of employees and their representatives in the risk assessment verification process is very important.

Can an employer keep a record of staff who are diagnosed as infected?

No. There is no legal obligation to keep such record. Additional measures can be imposed on the employer by the Chief Sanitary Inspector.

Can an employer notify other members of staff about an employee who has been infected by COVID-19?

Yes. In our opinion, as a rule, an employer can notify other staff members, provided that the identity of the infected staff member is kept confidential. As a rule, there is no explicit obligation to notify, but we would highly recommend it as an occupational health and safety measure. Some guidelines introduce such obligation (ex. in Polish: https://www.gov.pl/web/rozwoj-praca-technologia/branza-spozywcza-i-logistyka). Additional measures can be imposed on the employer by the Chief Sanitary Inspector.
**General cont**

**Can an employer inform other employees that an employee has died from COVID-19? What duty does an employer owe in this situation?**

Yes, but with limitations. In general, there is no legal obligation to inform staff about a particular employee’s death due to COVID-19. However, sharing this information is not forbidden. If the employer decides to share this information, it must be assured that the manner in which the announcement is shared respects both the dignity and privacy of both the deceased employee and their relatives. Otherwise, the employer might be exposed to claims relating to violating the personal interests of the deceased. Legal duties imposed on the employer in such a situation relate to the employment relationship only (e.g. issuing a work certificate, post-mortem severance payment and other actions which are not done publicly).

Information about an employee’s death and whether or not this was related to COVID-19 might be important and available to some limited staff of the employer (e.g. health and safety staff, HR, and technology) in the following extraordinary circumstances:

(i) the deceased employee was working at the facilities or meeting with other employees at least 14 days before dying, then his/her workplace should be specially treated by health and safety staff, and all employees that were in contact with such employee should be informed about prevention measures (this process will probably be managed by Epidemiology authorities, but here fast acting is crucial);

(ii) the employee has no next of kin in Poland and the employer is taking care of burial and other related operations;

(iii) the deceased employee was covered by the company with Life Insurance and/or post mortem benefits; therefore, support in managing such benefits or contacts with insurers may require knowledge of cause of death (still a limited circle of employees).

**Can an employer inform customers and visitors of an infected member of staff?**

Yes. In our opinion, as a rule, an employer can notify customers and visitors, provided that the identity of the infected staff member is kept confidential. However, there is no obligation to notify.

Additional measures can be imposed on the employer by the Chief Sanitary Inspector.

**Can I share health data with authorities for public health purposes?**

Yes. As long as the public health authority makes such a request (there is no general obligation to share data) or when it is in line with sectoral guidelines. The number of guidelines of the sanitary authorities for particular sectors or entities (e.g. hotels, shopping centres, furniture and building stores, libraries, rehabilitation centres) provide that the undertaking should notify the sanitary authorities about the person suspected of infection (employee or the client).


**What practical steps should an employer consider when re-opening the office?**

When re-opening the office, the primary obligation of the employer is to protect the health and life of employees by ensuring safe and hygienic working conditions. The employer should take specific actions to protect employees with the appropriate use of the achievements of science and technology. This obligation should be adjusted to the specifics of a given workplace (factory workers vs office workers).

1. First of all, the employer has to comply with specific COVID-19 regulations, which stipulate the need to provide disposable gloves, sanitizers and workplace rearrangement - ensuring at least 1.5m distance between employees.
2. Office workers to whom the employer provides disposable gloves or hand sanitizers, and for whom the distance between workplaces is at least 1.5m. Employees are obliged to wear a mask if there is more than 1 person in the room (unless the employer decides otherwise), or if employees provide direct service to clients or customers.
3. The employer may consider flexible working hours or staff rotation / dividing the staff present in a given workplace at the same time to avoid possible COVID-19 exposure.
4. Employee working time or working week might be reduced.

**Does your country require individuals to wear face masks?**

Yes. In Poland, there is a general obligation to cover the mouth and nose in public and it can be done using protective masks, visors, scarfs, shawls etc. There are some exceptions (which are not applicable to the work environment).

Employees are obliged to wear a mask if there is more than 1 person in the room (unless the employer decides otherwise), or if employees provide direct service to clients or customers.

Employees who cannot wear face masks because of a specific health condition are exempted from this obligation if they can provide an appropriate medical certificate.

**Can we ask employees if they have symptoms?**

Yes. Employers can collect personal data of their employees (e.g. health symptoms and travel history) without obtaining consent under the exception that it is necessary to respond to an emergency that threatens the life, health or safety of other individuals. That said, employers should comply with the data protection obligations under the PDPA (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).

**Can we ask an employee's travel history?**

Yes. Employers can collect personal data of their employees (e.g. health symptoms and travel history) without obtaining consent under the exception that it is necessary to respond to an emergency that threatens the life, health or safety of other individuals. That said, employers should comply with the data protection obligations under the PDPA (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).

**Can we test employees?**

Yes. The Tripartite partners (the Ministry of Manpower (MOM), National Trades Union Congress and the Singapore National Employers Federation) have issued several guidelines on the measures employers should adopt in the workplace. One of which is for employers to conduct temperature screening.

**Can we ask about any symptoms of an employee's household?**

Yes. Only to the extent this is necessary to respond to COVID-19, which would fall under the emergency exception.

**Can we ask employees to notify us if they are diagnosed?**

Yes. Employers can collect health information on whether the employee has been diagnosed without obtaining consent under the exception that it is necessary to respond to an emergency that threatens the life, health or safety of other individuals. That said, employers should comply with the data protection obligations under the PDPA (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).

**Can we ask employees if they have received a vaccine?**

Yes. There are no legal provisions in Singapore which would apply to employers in order to justify a lawful direction to employees to vaccinate. However, we would monitor this issue in case of any further development or direction from the Singapore government and relevant authorities (Ministry of Manpower and Ministry of Health).

**Can we require employees to have a vaccine?**

Yes. The Tripartite partners (the Ministry of Manpower (MOM), National Trades Union Congress and the Singapore National Employers Federation) have issued several guidelines on the measures employers should adopt in the workplace. One of the measures encouraged is for employers to set up business continuity plans and allow staff to work from home where feasible.

To our knowledge, many companies in Singapore have required their employees to work from home even though the office is open.

**Can we require employees to work from home even if the office is open?**

Yes. Assuming that the purpose of such exclusion is to prevent the risk of transmission of COVID-19, an argument can be made that this exclusion is in line with the prevailing requirement for employers to put in place Safe Management Measures, the robustness of which is unlikely to be called into question by the authorities.

**Can we exclude employees who have not had a vaccine from the workplace?**

Yes. Employers can collect personal data of these individuals (e.g. health symptoms and travel history) without obtaining consent under the exception that it is necessary to respond to an emergency that threatens the life, health or safety of other individuals. That said, employers should comply with the data protection obligations under the PDPA (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).

**Can we make employees work from home?**

Yes. Employers can collect personal data of their employees (e.g. health symptoms and travel history) without obtaining consent under the exception that it is necessary to respond to an emergency that threatens the life, health or safety of other individuals. That said, employers should comply with the data protection obligations under the PDPA (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).

**Can we ask such individuals if they have symptoms?**

Yes. Employers can collect personal data of these individuals (e.g. health symptoms and travel history) without obtaining consent under the exception that it is necessary to respond to an emergency that threatens the life, health or safety of other individuals. That said, employers should comply with the data protection obligations under the PDPA (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).

**Mobile / Gig Economy / Agency Workers**

**Can we require employees to have a vaccine?**

Yes. Employers can collect personal data of their employees (e.g. health symptoms and travel history) without obtaining consent under the exception that it is necessary to respond to an emergency that threatens the life, health or safety of other individuals. That said, employers should comply with the data protection obligations under the PDPA (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).

**Can we ask about any symptoms of an employee's household?**

Yes. Employers can collect health information on whether the employee has been diagnosed without obtaining consent under the exception that it is necessary to respond to an emergency that threatens the life, health or safety of other individuals. That said, employers should comply with the data protection obligations under the PDPA (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).

**Can we require employees to work from home even if the office is open?**

Yes. Assuming that the purpose of such exclusion is to prevent the risk of transmission of COVID-19, an argument can be made that this exclusion is in line with the prevailing requirement for employers to put in place Safe Management Measures, the robustness of which is unlikely to be called into question by the authorities.

**Can we exclude employees who have not had a vaccine from the workplace?**

Yes. Employers can collect personal data of these individuals (e.g. health symptoms and travel history) without obtaining consent under the exception that it is necessary to respond to an emergency that threatens the life, health or safety of other individuals. That said, employers should comply with the data protection obligations under the PDPA (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).

**Can we make employees work from home?**

Yes. Employers can collect personal data of their employees (e.g. health symptoms and travel history) without obtaining consent under the exception that it is necessary to respond to an emergency that threatens the life, health or safety of other individuals. That said, employers should comply with the data protection obligations under the PDPA (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).

**Can we ask such individuals if they have symptoms?**

Yes. Employers can collect personal data of these individuals (e.g. health symptoms and travel history) without obtaining consent under the exception that it is necessary to respond to an emergency that threatens the life, health or safety of other individuals. That said, employers should comply with the data protection obligations under the PDPA (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).
Mobile / Gig Economy / Agency Workers cont

Can we ask about the travel history of such individuals?  
Yes, Employers can collect personal data of these individuals (e.g. health symptoms and travel history) without obtaining consent under the exception that it is necessary to respond to an emergency that threatens the life, health or safety of other individuals. That said, employers should comply with the data protection obligations under the PDPA (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).

Can we test such individuals?  
Yes, The Tripartite partners (the Ministry of Manpower (MOM), National Trades Union Congress and the Singapore National Employers Federation) have issued several guidelines on the measures employers should adopt in the workplace. One of which is for employers to conduct temperature screening.

Can we ask about any symptoms of the household(s) of such individuals?  
Yes, Only to the extent this is necessary to respond to COVID-19, which would fall under the emergency exception.

Can we ask such individuals to notify us if they are diagnosed?  
Yes, Employers can collect health information on whether the worker has been diagnosed without obtaining consent under the exception that it is necessary to respond to an emergency that threatens the life, health or safety of other individuals. That said, employers should comply with the data protection obligations under the PDPA (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).

Can we ask such individuals if they have received a vaccine?  
Yes, Similar to the situation regarding an employer’s diagnosis, it would be reasonable for an employer to say that such knowledge is necessary to respond to an emergency that threatens the life, health or safety of other individuals, in particular, because of the requirement that employers must put in place Safe Management Measures in the workplace. To this end, the employer should be able to know who has been vaccinated and who has not, in order to reduce the risk of having higher risk (i.e. non-vaccinated individuals) intermingling. That said, employers should comply with the data protection obligations under the PDPA (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).

Can we require individuals to have a vaccine?  
No, There are no legal provisions in Singapore which would allow to employers in order to justify a lawful direction to employees to vaccine. However, we would monitor this issue in case of any further development or direction from the Singapore government and relevant authorities (Ministry of Manpower and Ministry of Health).

Can we exclude individuals who have not had a vaccine from the workplace or carrying out their role?  
Yes, Assuming that the purpose of such exclusion is to prevent the risk of transmission of COVID-19, an argument can be made that this exclusion is in line with the prevailing requirement for employers to put in place Safe Management Measures, the robustness of which is unlikely to be called into question by the authorities.

Can we ask individuals if they have symptoms?  
Yes, Employers can collect personal data of visitors (e.g. health symptoms and travel history) without obtaining consent under the exception that it is necessary to respond to an emergency that threatens the life, health or safety of other individuals. That said, employers should comply with the data protection obligations under the PDPA (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).

Can we take temperature readings from visitors?  
Yes, The Tripartite partners (the Ministry of Manpower (MOM), National Trades Union Congress and the Singapore National Employers Federation) have issued several guidelines on the measures employers should adopt in the workplace. One of which is for employers to conduct temperature screening.

Can we ask about any symptoms of a visitor’s household?  
Yes, Only to the extent this is necessary to respond to COVID-19, which would fall under the emergency exception.

Visitors cont

Can we ask visitors to notify us if they are diagnosed?  
Yes, Employers can collect health information on whether the visitor has been diagnosed without obtaining consent under the exception that it is necessary to respond to an emergency that threatens the life, health or safety of other individuals. That said, employers should comply with the data protection obligations under the PDPA (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).

Can we ask visitors if they have received a vaccine?  
Yes, Similar to the situation regarding a visitor’s symptoms and travel history, it would be reasonable for an employer to say that such knowledge is necessary to respond to an emergency that threatens the life, health or safety of other individuals, in particular, because of the requirement that employers must put in place Safe Management Measures in the workplace. To this end, the employer should be able to know who has been vaccinated and who has not, in order to reduce the risk of having higher risk (i.e. non-vaccinated individuals) intermingling. That said, employers should comply with the data protection obligations under the PDPA (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).

Can we exclude visitors who have not had a vaccine from the workplace?  
Yes, Assuming that the purpose of such exclusion is to prevent the risk of transmission of COVID-19, an argument can be made that this exclusion is in line with the prevailing requirement for employers to put in place Safe Management Measures, the robustness of which is unlikely to be called into question by the authorities.

Visitors

What medical testing can an employer carry out and under what conditions?  
At the time of writing, we are not aware of any specific testing which employers may carry out. Based on the advisory of the Ministry of Manpower (MOM), an employer may encourage an employee who is feeling unwell to visit a doctor. The doctor seeing the affected employee will then decide if he/she should be sent to the hospital for further testing.

Does an employer need to consult with works councils or trade unions before taking any measures?  
No, We are not aware of any legal obligations imposed on the employer when they encourage their employees to visit a doctor.

Can an employer keep a record of staff who are diagnosed as infected?  
Yes, Employers may keep a record of staff who are diagnosed as infected but must continue to comply with the data protection obligations under the PDPA (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).

Can an employer notify other members of staff about an employee who has been infected by COVID-19?  
Yes, Employers may notify members of staff to the extent that is necessary to respond to the emergency i.e. COVID-19, which means that the employer should consider whether its contact tracing and response measures require the disclosure of the facts by all or if other measures can be taken, or if disclosure should only be made to a limited group of staff for example.

Formal DPA Guidance

Can an employer inform other members of staff about an employee who has died from COVID-19?  
Yes, but with limitations. From an employment law perspective, an employer is permitted to inform other members of staff about an employee who has died from COVID-19, for safety reasons. We are not aware of any specific duties imposed on the employer in this situation under employment law. As a matter of best practice, the employer should disclose this news in a sensitive and respectful manner.

However, from a data privacy perspective the employer can only do so if such disclosure complies with the PDPA. Unlike the GDPR, the PDPA applies to personal data of individuals who have been dead for 10 years or fewer, which includes personal data of an employee who has died from COVID-19. Under the PDPA, the employer can only inform other members of staff about an employee’s death from COVID-19 if consent was provided or an exception applies. Therefore, the employer should consider the following:

1. Did the deceased give consent for such disclosure, for example as part of his employment contract? If yes, the disclosure can be done.
2. If not, is the disclosure necessary to respond to an emergency that threatens the life, health or safety of other individuals (‘Emergency Exception’)? If yes, the disclosure is permitted under the Emergency Exception of the PDPA.
3. If neither 1 or 2 applies, the employer would need to obtain consent from the person who may act on behalf of the estate of the deceased in matters relating to the deceased’s personal data. If no such person is available, this would be the deceased’s nearest relative as set out in the Personal Data Protection Regulations 2014.

General

Can we ask such individuals if they are diagnosed?  
Yes. Employees can collect health information on whether the visitor has been diagnosed without obtaining consent under the exception that it is necessary to respond to an emergency that threatens the life, health or safety of other individuals. That said, employees should comply with the data protection obligations under the PDPA (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).

Can we ask visitors if they have received a vaccine?  
Yes. Similar to the situation regarding a visitor’s symptoms and travel history, it would be reasonable for an employer to say that such knowledge is necessary to respond to an emergency that threatens the life, health or safety of other individuals, in particular, because of the requirement that employers must put in place Safe Management Measures in the workplace. To this end, the employer should be able to know who has been vaccinated and who has not, in order to reduce the risk of having higher risk (i.e. non-vaccinated individuals) intermingling. That said, employees should comply with the data protection obligations under the PDPA (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).

Can we exclude visitors who have not had a vaccine from the workplace?  
Yes. Assuming that the purpose of such exclusion is to prevent the risk of transmission of COVID-19, an argument can be made that this exclusion is in line with the prevailing requirement for employers to put in place Safe Management Measures, the robustness of which is unlikely to be called into question by the authorities.
Can an employer notify customers and visitors of an infected member of staff? Yes. Where this is relevant to members of staff, including mobile workers whose roles involve interacting with customers, you can notify your customers where this is necessary. It is unlikely that information about specific individuals will need to be disclosed.

Can I share health data with authorities for public health purposes? Yes. If such health data is required by the Director of Medical Services of the Ministry of Health pursuant to the Infectious Diseases Act, or to the extent that such disclosure falls under the PDPA exception which allows for disclosure without consent to a public agency that is necessary in the public interest, or the emergency exception. Sharing any/all health data would likely be too broad.

What practical steps should an employer consider when re-opening an office? Based on the existing measures in the COVID-19 (Temporary Measures) (Control Order) Regulations 2020 (“Temporary Measures Regulations”) and guidance from the Ministry of Manpower, employers may consider the following when re-opening their offices:

a. Allow natural ventilation in the office (if it is reasonably practicable);
b. Take the temperature of all the employees;
c. Employees to wear masks;
d. Ensure that all employees are seated at least one metre away from each other;
e. Adopt flexible work arrangements (i.e. employers can organise split teamwork arrangement to minimize human contact);
f. Increase the frequency of the cleaning of common areas (i.e. pantry, toilets, meeting rooms); and
g. Ensure that employees maintain good personal hygiene (i.e. by washing their hands, avoid touching the faces, cover the mouth when sneezing or coughing).

Does your country require individuals to wear face masks or face coverings? If not, can an employer require employees to wear face masks or coverings? Yes. According to the Temporary Measures Regulations, every individual must wear a mask when he is outside his place of residence. Individuals with a child that is 2 years of age and above must also ensure that the child wears a mask. The masks can only be removed in a few instances (e.g. the individual’s identity has to be ascertained).

Can we ask employees if they have symptoms? Yes, Under the Act No. 124/2006 Coll. on health and safety at work, the employer is obliged to take measures necessary to ensure health and safety in the workplace, including health risk assessments and taking appropriate measures to protect employees’ health.

Employees & Workers

Can we ask employees if they have symptoms? Yes, Under the Act No. 124/2006 Coll. on health and safety at work, the employer is obliged to take measures necessary to ensure health and safety in the workplace, including health risk assessments and taking appropriate measures to protect employees’ health.

Asking employees if they have symptoms (or other questions - see below) can be considered as measure taken to prevent risks to other employees’ health. The data minimisation principle is key - do not collect more information than needed and ensure it is treated with appropriate safeguards.

Questionnaires are a recommended way to minimize personal data processing to fulfill the purpose and to have a standardized set of questions which are the same for all employees.

Can we ask about an employee’s travel history? Yes. Under the Act No. 124/2006 Coll. on health and safety at work, the employer is obliged to take measures necessary to ensure health and safety in the workplace, including health risk assessments and taking appropriate measures to protect employees’ health. No DPA guidance has been issued on this topic.

Can we test employees? Yes but with limitations. On 17 April the Slovak DPA issued a statement related to temperature testing. Based on this statement it is acceptable to measure the temperature of employees and agency workers at the entrance of industrial enterprises (and hospitals).


- For visitors and employees of other (non-industrial) types of businesses (e.g. shops), the statement remains silent and there is no detailed guidance from authorities available in Slovakia. For those cases the general GDPR principles would apply. Taking into account that the employer is obliged to take measures necessary to ensure health and safety in the workplace, checking temperature may be acceptable, if strictly necessary and provided that all GDPR principles are followed, including data minimization and proportionality principle.

The Slovak DPA confirmed that the recording of temperatures could be considered where this was necessary for reasons of public health (Art.9(2)(f) GDPR).

It would be reasonable to believe that the COVID-19 testing would be assessed similarly. However, the Slovak DPA seems to have different approach in case of COVID-19 tests. Recently, Slovak DPA considered that the Decree of the public health authority – which imposed several restrictions (home quarantine) for people without a negative test during lockdown in Slovakia - was not a sufficient legal basis for administering COVID-19 tests on employees (https://dataprotection.gov.sk/ueoo/ke/content/prebereme-stanovisko-urad-k-precizovaniu-sa-negativnym-vysledkom-testu-certifikatu-a-0). Therefore, the DPA seems to adopt a stricter assessment with regard to tests, in comparison with temperature testing. Nonetheless, we are of the view that in rigorously assessed cases under the GDPR, this health data could be potentially processed under Act 92(b)(i) GDPR to comply with employment and social protection law obligations (i.e. health & safety) or under Art 9(2)(f) GDPR, where it is necessary for reasons of public interest in the area of public health. However, this would have to be assessed on a strictly individual basis and subject to GDPR principal of minimisation, i.e. the employer would have to prove that it was necessary to required the tests. In practice, an employer should not seek this information unless it is necessary and proportionate to do so. If the employer’s aim could be

Can we ask about any symptoms of an employee’s household? No. Although there is no DPA guidance, the processing of health data of household members (without other evidence pointing to infection, e.g. symptoms or travel history) could be considered to be excessive and not in line with the data minimisation principle.

Can we ask employees to notify us if they are diagnosed? Yes. Based on the employer’s obligations under Act No. 124/2006 Coll. This health data could be processed under Act 92(b)(i) GDPR to comply with employment and social protection law obligations (i.e. health & safety) or under Art 9(2)(f) GDPR, where it is necessary for reasons of public interest in the area of public health.
Can we ask employees if they have received a vaccine?  Generally yes. There is no DPA guidance available at the moment. The employer’s purpose in requesting the employee’s vaccine status must still comply with data protection rules under the GDPR. However, we are of the view that this health data could be processed under Art 9(2)(b) GDPR to comply with employment and social protection law obligations (i.e. health & safety) or under Art 9(2)(d) GDPR, where it is necessary for reasons of public interest in the area of public health.

Under Act No. 124/2006 Coll. on health and safety at work, the employer is obliged to take measures necessary to ensure health and safety in the workplace, including health risk assessments and taking appropriate measures to protect employees’ health.

Asking employees if they were vaccinated could be considered as measure taken to prevent risks to other employees’ health. The data minimisation principle is key: do not collect more information than needed and ensure it is treated with appropriate safeguards.

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, employees should only collect and retain the minimum amount of information needed to fulfil their purpose in line with the data minimisation principle, i.e. if the employer’s aim can be achieved by other, less privacy intrusive, means, it should not request this data.

Can we require employees to have a vaccine?  No. In principle, only Slovak state authorities have the power to require mandatory vaccination programs. According to the current status, the COVID-19 vaccination is optional in Slovakia. However, employers may actively promote the vaccination.

Can we require employees to work from home even if the office is open?  Yes. Based on the Amendment of the Labour Code the employer may require employees to work from home, provided that the nature of the work allows it. DPA guidance recommends to take appropriate measures to protect data in employees’ computers while working from home, as other people (family members) could have access to it.

Generally no. The exclusion of employees by means of dismissal is subject to strict conditions. We are of the view that the (non) vaccination would not be such a case. Nonetheless, under §55 Slovak Labor Code, the employer could change the position of an employee in explicitly provided and limited cases, particularly if it is necessary according to a medical report or a decision of a public health authority in order to protect the health of others from transmissible diseases.

The work to which the employee is reassigned must correspond to the employee’s medical fitness of public health (Art.9(2)(i) GDPR). Please see the comment in the first question above for the data minimisation principle.

Any such cases have to be assessed on individual basis, they are subject to strict regulation and should be assessed with caution in order to avoid the claims from employees.

Can we exclude employees who have not had a vaccine from the workplace?  Yes, but with limitations. If individuals come into contact with other employees, then the employee’s obligations under Act No. 124/2006 Coll. will prevail. However, where the individual does not come into contact with other employees or is not based in the office, it is not possible to ask about travel history.

Can we ask employees if they have symptoms?  Yes, but with limitations. If individuals come into contact with other employees, then the employee’s obligations under Act No. 124/2006 Coll. will prevail. However, where the individual does not come into contact with other employees or is not based in the office, it is not possible to ask about travel history.

Can we ask the travel history of such individuals?  We are of the view that this health data could be processed under Art 9(2)(b) GDPR to comply with employment and social protection law obligations (i.e. health & safety) or under Art 9(2)(d) GDPR, where it is necessary for reasons of public interest in the area of public health.

Yes, but with limitations. If individuals come into contact with other employees, then the employee’s obligations under Act No. 124/2006 Coll. will prevail. However, where the individual does not come into contact with other employees or is not based in the office, it is not possible to ask about travel history.

Can we require individuals to have a vaccine?  No. As a general rule, the processing of health data of household members (without other evidence pointing to infection, e.g. symptoms or travel history) could be considered to be excessive and not in line with the data minimisation principle.

Can we ask any symptoms of the household(s) of such individuals?  Generally yes. There is no DPA guidance available at the moment. The employer’s purpose in requesting the agency employees’ vaccine status must still comply with data protection rules under the GDPR.

Yes, but with limitations. If individuals come into contact with other employees, then the employer’s obligations under Act No. 124/2006 Coll. will prevail. However, where the individual does not come into contact with other employees or is not based in the office, it is not possible to ask about symptoms.

Can we test such individuals?  Generally yes. If individuals come into contact with other employees, then the employee’s obligations under Act No. 124/2006 Coll. will prevail. The Slovak DPA confirmed that the Decree of the public health authority – which imposed several restrictions (home quarantine) for people without the negative test during lockdown period in Slovakia – was not a sufficient legal basis for processing COVID-19 test results on employees (https://dataprotection.gov.sk/nuos/ik/content/predbezne-stanoviskio-uradok-preklausavani-sa-negativnym-vysledkom-vedu-certifikatom-z-0). We are of the view that in rigorously assessed cases under the GDPR, this health data could be potentially processed under Art 9(2)(b) GDPR to comply with employment and social protection law obligations (i.e. health & safety) or under Art 9(2)(d) GDPR, where it is necessary for reasons of public interest in the area of public health. However, this would have to be assessed on a strictly individual basis and subject to GDPR principal of minimisation, i.e. the employer would have to prove that it was necessary to required the tests. In practice, an employer should not seek this information unless it is necessary and proportionate to do so. If the employer’s aim could be achieved by other, less privacy intrusive, means, it should not request this data.

Can we ask such individuals to notify us if they are diagnosed?  Yes, but with limitations. If individuals come into contact with other employees, then the employee’s obligations under Act No. 124/2006 Coll. will prevail. However, where the individual does not come into contact with other employees or is not based in the office, it is very likely that obliging him or her to have their temperature taken would be excessive and thus illegal.

Can we ask such individuals if they have symptoms?  We are of the view that this health data could be processed under Art 9(2)(b) GDPR to comply with employment and social protection law obligations (i.e. health & safety) or under Art 9(2)(d) GDPR, where it is necessary for reasons of public interest in the area of public health.

Yes, but with limitations. If individuals come into contact with other employees, then the employer’s obligations under Act No. 124/2006 Coll. will prevail. However, where the individual does not come into contact with other employees or is not based in the office, it is not possible to ask about travel history.

Can we ask such individuals if they have symptoms?  Yes, but with limitations. If individuals come into contact with other employees, then the employee’s obligations under Act No. 124/2006 Coll. will prevail. However, where the individual does not come into contact with other employees or is not based in the office, it is not possible to ask about symptoms.

Can we ask about the travel history of such individuals?  Yes, but with limitations. If individuals come into contact with other employees, then the employer’s obligations under Act No. 124/2006 Coll. will prevail. However, where the individual does not come into contact with other employees or is not based in the office, it is not possible to ask about travel history.

Can we require individuals to have a vaccine?  No. In principle, only Slovak state authorities have the power to require mandatory vaccination programs. According to the current status, the COVID-19 vaccination is optional in Slovakia. However, the employers may actively promote the vaccination.
**Mobile / Gig Economy / Agency Workers cont**

**Can we exclude individuals who have not had a vaccine from the workplace or carrying out their role?**

No. The exclusion of agency worker by means of termination of contract is permitted only subject to mandatory conditions vested in the law. We are of the view that the (non) vaccination would not be such a case.

Nonetheless, under §55 Slovak Labor Code, the employer would be obliged to change the position of an employee in explicitly provided and limited cases, particularly if it is necessary according to a medical report or a decision of a public health authority in order to protect the health of others from transmissible diseases.

The work to which the employee is reassigned must correspond to the employee's medical fitness for work. The employer is also obliged to take into account that this work is suitable for the employee with regard to his abilities and qualifications.

We are of the view that the above-mentioned regulation of employees would apply to agency workers as well, as appropriate.

Any such cases have to assessed on individual basis, they are subject to strict regulation and should be assessed with caution in order to avoid the claims from employees.

### Visitors

**Can we ask visitors if they have symptoms?**

Yes. In light of the employer’s obligations under Act No.124/2006 Coll., the employer may take measures in respect of visitors where it is appropriate for the purposes of protecting the health and safety of employees.

**Can we ask about a visitor’s travel history?**

Yes. In light of the employer’s obligations under Act No.124/2006 Coll., the employer may take measures in respect of visitors where it is appropriate for the purposes of protecting the health and safety of employees.

**Can we take temperature readings from visitors?**

Yes. Although there is no DPA guidance, the processing of health data of household members (without other evidence pointing to infection, e.g. symptoms or travel history) could be considered to be excessive and not in line with the data minimisation principle.

**Can we ask about any symptoms of a visitor’s household?**

Yes. In light of the employer’s obligations under Act No.124/2006 Coll., the employer may take measures in respect of visitors where it is appropriate for the purposes of protecting the health and safety of employees.

**Can we ask visitors to notify us if they are diagnosed?**

Yes. In light of the employer’s obligations under Act No.124/2006 Coll., the employer may take measures in respect of visitors where it is appropriate for the purposes of protecting the health and safety of employees.

**Can we ask visitors if they have received a vaccine?**

Yes, in limited circumstances. Please note that there is no specific DPA guidance on this topic. Nonetheless, we are of the view that it could be possible to exclude visitors from the workplace in very limited circumstances and only 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).

In light of the employer’s obligations under Act No.124/2006 Coll., the employer may take measures in respect of visitors where it is appropriate for the purposes of protecting the health and safety of employees. On this 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, however, we are not aware of any relevant previous case law and companies could reasonably expect legal challenge from such individuals and unwanted media attention were they to take this route. Accordingly, excluding an individual from a virtual or physical workplace or otherwise treating them differently on the grounds of their anti-vaccination stance may also amount to discrimination (on the grounds of religion or belief).

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### General

**Formal DPA Guidance**

No. The DPA has not issued formal guidance. However, it did release statements. The Slovak DPA released a statement related to temperature readings. Please see the comment in the first question above for the guidance of DPA.

**What medical testing can an employer carry out and under what conditions?**

There is no explicit guidance on what medical tests can be carried out on employees. Therefore, general data protection principles must be followed, including data minimisation. Temperature readings can be accepted as a measure to prevent risks to other employees’ health. However, as stated previously, this must be proportionate and only carried out where strictly necessary.

Consultation with the health and safety officer/specialist is recommended.

**Does an employer need to consult with works councils or trade unions before taking any measures?**

Yes. Measures to protect employees’ health requires consultation with works councils under the Slovak Labour Code section 237 (9).

**Can an employer keep a record of staff who are diagnosed as infected?**

Yes. Although there is no explicit guidance from the Slovak DPA, the DPA indicated that processing of personal data related to COVID-19 could be processed based on Art. 9 GDPR for reasons of public interest in the area of public health. GDPR principles have to be followed, in particular the data minimisation and purpose limitation will be important.

**Can an employer notify other members of staff about an employee who has been infected by COVID-19?**

Yes, but with limitations. The Slovak DPA has not issued guidance on this point. Disclosing the identity of the individual is generally not recommended. Notifying other employees who worked with the individual that they have been in contact with someone suspected or confirmed to have COVID-19 is recommended. However, such notification should be carried without revealing the individual’s identity. Reporting on the number of affected employees to higher levels of management on a need-to-know basis is possible.

However, we do not recommend notifying the general employee population of the same information. Whether the identities of affected employees need to be reported to higher levels of management should be considered on a case by case basis, taking into account the data minimisation and other data protection principles. In our view, this approach is not recommended, unless strictly necessary to take preventative measures.

**Can an employer inform other members of staff about an employee that has died from COVID-19? What duty does an employer owe in this situation?**

Yes, but with limitations. In general, it is not mandatory to inform the staff on a particular employee’s death due to COVID-19. Disclosing of the identity of the dead employee is generally not recommended, unless absolutely required, e.g. such information might be important and available to some limited staff of the employer (e.g. health and safety staff, HR) under certain circumstances, i.e. under health and safety prevention obligations of the employer. Where anonymous information would suffice to fulfil the purpose, disclosing the identity is not possible. If disclosing the identity of an individual, the individual’s identity must be assured the respect of the dignity and privacy of both the deceased employee and his or her relatives. The disclosure must be limited only to what is necessary. Otherwise, the employer might be exposed to post-mortem personality protection claims.

**Can an employer notify customers and visitors of an infected member of staff?**

Yes. The Slovak DPA has not issued guidance on this point. Anonymous reporting is possible. However, disclosing the identity of the individual is generally not recommended, unless strictly necessary for reasons of public health.

**Can I share health data with authorities for public health purposes?**

Yes. Where requested by the relevant authorities, an employer can share personal data but must ensure that such sharing complies with data protection principles.
### General cont

**What practical steps should an employer consider when re-opening an office?**

An employer should continue to be mindful of any government (and WHO) guidance, which are amended often based on the development of the COVID-19 situation in Slovakia. In general, under the Health and Safety regulation the employer is obliged to assess the risks of the work environment and take appropriate measures in order to protect employees’ health. The risks and measures must be consulted with the health and safety officer/specialist (where such officer is appointed) and reflect the respective workplace. The recommended measures may include: provision of personal protective equipment (mask, hand sanitizers), requiring employees to wear masks (see also the question 46), cancellation of business trips, cancellation or discouraging the employees from personal meetings, arrangement of the workplace enabling the social distancing (e.g. to arrange desks in open space office). Employees must be informed of the measures which are applicable for them.

Yes. According to the Guidance of Office of Public Health (OPH) No. OLP/2640/2020, it is generally required to wear a mask in the “public” with some exceptions (which are not applicable to work environment).

Yes. We are of the view that in workplaces accessible by public (e.g. shops, restaurants) it is mandatory to wear the masks. In addition to it, employers in selected sectors (e.g. hospital sector) are obliged to provide their employees with the masks as protective equipment under Guidance OPH No. OLP/2640/2020. However the governmental guidance is expected to be amended soon and to release some restriction of mask wearing requirement based on the currently good COVID-19 country results. As per the other workplaces (which are not open to public), there is no explicit guidance provided by the authorities and general principles apply, requiring the employer to assess the health risk and take into account circumstances applicable for the respective workplace. Consultation with health and safety officer/specialist and implementation of protective measures (e.g. ensuring social distancing (cancel the personal meetings, arrangement of the seats in workplace) is mandatory. Some Health and Safety specialists suggest that masks should be obligatory in those workplaces where workers work closer than 2 meters to each other.

### Employees & Workers

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<tr>
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As a general rule, excluding employees from the physical workplace (or otherwise treating them differently) on the grounds of their health would amount to discriminatory treatment and therefore expose the employer to potential discrimination claims. On the basis of protecting employees’ health and safety, and only for justified reasons, employers could put into place alternative measures (e.g. remote working) to allow non-vaccinated employees to work without being in contact with the other employees. However, absent strong and justified reasons, excluding employees from the workplace would be considered discriminatory and could be sanctioned by the courts.

Please note that the AEPD has not provided guidance on this point.

The AEPD states that employers can ask employees about their symptoms. It would be contrary to the principle of data minimisation to circulate extensive and detailed health questionnaires, or questionnaires that include questions not related to COVID-19.

The AEPD states that it is justified to ask for information related to risk factors such as countries visited. Nevertheless, according to the proportionality principle, questions should be limited to those countries with a high prevalence of the virus and in the incubation period of the disease (for the last two weeks).

The AEPD has not provided guidance on this point.

The AEPD does not mention the possibility of asking for information about employee’s household. However, following the minimisation and proportionality principles we would suggest to ask employees to notify if they have been in contact with someone infected with COVID-19.

The AEPD states that employers can ask employees about whether they have received a vaccine or not in order to have enough information to implement appropriate measures regarding the protection of the workplace. Employers can offer their employees the possibility to carry out the tests, but cannot make them compulsory.

Employees should notify their employer and the occupational risk prevention team, if they are diagnosed with COVID-19.

The AEPD states that employers can ask employees about 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.

Under current Spanish regulation, vaccination is a voluntary matter and subject to the employee’s decision. Therefore, companies cannot require employees to receive a vaccine, unless a new regulation which makes it mandatory for justified cases (i.e. healthcare personnel) is enacted.

From an employment law perspective, employers can offer their employees the possibility to be tested for COVID-19 if they have a medical diagnosis or evidence of recent COVID-19 infection. The AEPD guidance is silent on this point. Employers are entitled to adopt the necessary measures to ensure the right to health protection of other employees and to prevent contagion within the company.

Yes. AEPD guidance is silent on this point. Employers are entitled to adopt the necessary measures to ensure the right to health protection of other employees and to prevent contagion within the company.

From an employment law perspective, employers can offer their employees the possibility to be tested for COVID-19 if they have a medical diagnosis or evidence of recent COVID-19 infection. From an employment law perspective, employers can offer their employees the possibility to be tested for COVID-19 if they have a medical diagnosis or evidence of recent COVID-19 infection. This measure must be temporary and exceptional (i.e. for the duration of the state of alarm). Please note that remote working is strongly recommended by the government: Occupational risk prevention obligations will be considered fulfilled by the Labour Inspectorate provided that each employee carries out a self-evaluation.

No. As a general rule, excluding employees from the physical workplace (or otherwise treating them differently) on the grounds of their health would amount to discriminatory treatment and therefore expose the employer to potential discrimination claims. On the basis of protecting employees’ health and safety, and only for justified reasons, employers could put into place alternative measures (e.g. remote working) to allow non-vaccinated employees to work without being in contact with the other employees. However, absent strong and justified reasons, excluding employees from the workplace would be considered discriminatory and could be sanctioned by the courts.

Please note that the AEPD has not provided guidance on this point.

The AEPD insists on the obligation to evaluate the proportionality of testing in compliance with data protection law. Under certain circumstances, taking temperature readings may constitute a proportionate measure for supervising health of these individuals, but not in every case. The AEPD emphasizes the need to follow the instructions of health authorities, which have recently declared that a percentage of infected individuals do not experience fever.

The AEPD states that it is justified to ask for information related to risk factors such as countries visited. Nevertheless, according to the proportionality principle, questions should be limited to those countries with a high prevalence of the virus and in the incubation period of the disease (for the last two weeks).

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## Mobile / Gig Economy / Agency Workers

**Can we ask such individuals if they have symptoms?**
Yes, The AEPD states that employers can ask people about the existence of symptoms. It would be contrary to the principle of data minimisation to circulate extensive and detailed health questionnaires, or questionnaires that include questions not related to the disease.

**Can we ask about the travel history of such individuals?**
Yes, The AEPD states that it is justified to ask for information related to risk factors such as countries visited. Nevertheless, according to the proportionality principle, questions should be limited to those countries with a high prevalence of the virus and in the incubation period of the disease (for the last two weeks).

**Can we test such individuals?**
Yes, but with limitations. 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.

Under certain circumstances, taking temperature readings may constitute a proportionate measure for supervising health of these individuals, but not in every case. The AEPD emphasizes the need to follow the instructions of health authorities, which have recently declared that a percentage of infected individuals do not experience fever.

From an employment law perspective, employers can offer their employees the possibility to carry out the tests, but cannot make them compulsory.

**Can we ask about any symptoms of the household(s) of such individuals?**
Yes, The AEPD does not mention the possibility of asking for information about the individual’s household. However, following the minimisation and proportionality principles we would suggest to ask individuals to notify if they have been in contact with someone infected with COVID-19.

**Can we ask such individuals if they are diagnosed?**
Yes. In the same way that the AEPD states that employers can ask people about symptoms, employers can also ask individuals about whether they have had a COVID-19 vaccine.

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.

**Can we ask such individuals if they are diagnosed?**
Yes. People who have been vaccinated against COVID-19 can be isolated but not compulsorily.

**Can we exclude such individuals who have not had a vaccine from the workplace or carrying out their role?**
No. Under current Spanish regulation, vaccination is a voluntary matter and subject to the individual’s decision. Therefore, employers cannot oblige these individuals to do otherwise, unless a new regulation which makes it mandatory for justified cases (i.e. healthcare personnel) is enacted.

**Visitors cont**

**Can we ask visitors to notify us if they are diagnosed?**
Yes. The AEPD states that visitors can be asked questions about the existence of symptoms. Nevertheless, this health data could be processed under Art 9(2)(b) GDPR to comply with employment and social protection law obligations (i.e. health & safety) or under Art 9(2)(G) GDPR, where it is necessary for reasons of public interest in the area of public health.

**Can we ask visitors if they have received a vaccine?**
No. The AEPD states that the companies cannot process data relating to an individual’s immunity against COVID-19. The statement issued by the AEPD is related to job applicants but it could apply to anyone outside of an employment relationship.

**Can we ask visitors to notify us if they are diagnosed?**
No. As a general rule, excluding individuals from the physical workplace, preventing them from taking on jobs, work or engagements (or otherwise treating them differently) on the grounds of their health would amount to discriminatory treatment and therefore expose the company to potential discrimination claims.

The AEPD has not published any guidance in this regard so it is recommended to apply the GDPR principles such as purpose limitation and data minimisation, avoiding the processing of this personal data unless strictly necessary. It is very likely that the competent authorities will issue specific guidance.

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**Mobile / Gig Economy / Agency Workers**

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<td>Yes. In the same way that the AEPD states that employers can ask people about symptoms, employers can also ask individuals about whether they have had a COVID-19 vaccine. 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.</td>
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<tr>
<td>Can we ask such individuals if they are diagnosed?</td>
<td>Yes. People who have been vaccinated against COVID-19 can be isolated but not compulsorily.</td>
</tr>
<tr>
<td>Can we exclude such individuals who have not had a vaccine from the workplace or carrying out their role?</td>
<td>No. Under current Spanish regulation, vaccination is a voluntary matter and subject to the individual’s decision. Therefore, employers cannot oblige these individuals to do otherwise, unless a new regulation which makes it mandatory for justified cases (i.e. healthcare personnel) is enacted.</td>
</tr>
</tbody>
</table>
### General cont

The Spanish Ministry of Health has published several measures that companies must implement regarding the re-opening of its offices, which include the following:

**a) Measures in the workplace:**
- Work tasks and processes must be planned so that employees can maintain an interpersonal distance of approximately 2 metres, both when entering and leaving the work centre and during their stay there.
- The Company should stagger schedules as much as possible if the workplace does not allow interpersonal distance to be maintained during ordinary shifts, contemplating possibilities of task redistribution and/or teleworking.
- The return of the Company's activities that carry a risk of agglomeration should occur last. In any case, activities involving crowding should be avoided.
- Entrance to work should be organized in a staggered manner to avoid congestion on public transport and at the entrance to the Company’s workplaces.
- In those companies or establishments which are open to the public, measures to minimize contact between employees and customers or the public should be implemented.
- It is recommended to grant teleworking and perform meetings by telematics means, especially if the workplace does not have spaces where workers can respect interpersonal distance.

**b) Organisational measures:**
- The Company must inform the staff in a reliable, updated and regular way of the health recommendations that all employees must follow.
- The Company must provide the staff with the necessary hygiene products to be able to follow the individual recommendations, adapting them to each specific activity. In general, it is necessary to maintain an adequate supply of soap, hydro alcoholic solution and disposable tissues.
- The Company must maintain a sufficient supply of cleaning material in order to be able to carry out reinforced hygiene tasks on a daily basis. These include bleach and products authorised by the Ministry of Health to disinfect.
- The Company must take specific measures to minimize the risk of transmission to particularly sensitive employees when they have to attend to the workplace.
- It is advisable to carry out a contingency plan, identifying the risk of exposure to the virus from the different activities carried out in the work centre, adopting protection measures in each case in accordance with the regulations applicable at any given time. Prevention delegates or workers’ representatives must be consulted when drawing up such contingency plan.
- Protocols need to be established in the event that employees show symptoms in their workplace in order to protect them and the rest of the staff.

**c) Hygiene measures in the workplace:**
- Carry out periodic ventilation tasks in the facilities and, at least, on a daily basis and for a period of 5 minutes. Also, it is advisable to reinforce the cleaning of air filters and increase the level of ventilation of air conditioning systems to renew the air more regularly.
- It is advisable to reinforce cleaning tasks in all rooms, with special emphasis on surfaces, especially those that are most frequently touched such as windows or door knobs, as well as all devices commonly used by employees (e.g. tables and computers).
- It is necessary to clean the work area used by an employee at each shift change.
- In any case, proper protection of the cleaning personnel must be ensured. All tasks must be carried out with a mask and single-use gloves. Once cleaning is complete, and after removing the mask and gloves, it is necessary for cleaning personnel to perform complete hand hygiene with soap and water for at least 40-60 seconds.
- In the case of work uniforms or similar, they shall be bagged and closed, and moved to the point where they are normally washed, with a recommended full cycle wash at a temperature of between 60 and 90 degrees.

**Mobile / Gig Economy / Agency Workers**

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<td>Yes, if strictly necessary. Generally, it should not be necessary for employers to test employees in order to fulfil their obligations according to Swedish employment/work environment law. In our view, in very specific situations, the employer could argue that such a measure would be strictly necessary in order to protect the employees and the workplace. However, if such a safety measure is adopted, this needs to be agreed with the safety delegate(s) or safety committee (where such has been established) and preferably consulted with relevant trade union(s) before implementation.</td>
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<td>Can we ask employees to have a vaccine?</td>
<td>Yes, but employees may refuse to answer. Whether or not an employee has received a vaccine constitutes personal data regarding health, i.e. special category data. Therefore, any collection of such health data would need to comply with GDPR and the Swedish Data Protection Act.</td>
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<td>Can we require employees to work from home even if the office is open?</td>
<td>Yes. Employees may be required by law to self-quarantine in case of suspected COVID-19 infection (Swedish Infectious Disease Control Act).</td>
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<td>Can we exclude employees who have not had a vaccine from the workplace?</td>
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Generally no. It is not mandatory to wear a mask during the working day if the type of work does not require it and interpersonal distance is maintained.

No. In this regard, the employer cannot require employees to wear face masks if it is not necessary due to the type of work. However, the Spanish government has recommended the use of masks to the entire population. Notwithstanding the above, the company shall provide personal protective equipment where the risks cannot be avoided or sufficiently limited by technical means of collective protection or by work organisational measures.
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<td><strong>What practical steps should an employer consider when re-opening an office?</strong></td>
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<td><strong>Does your country require individuals to wear face masks? If not, can an employer require employees to wear face masks?</strong></td>
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### Employees & Workers cont

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<tr>
<td>Can employees work from home if the office is open?</td>
<td>Yes. According to ADGM’s ODP, Data Controllers can ask their employees to work from home, as long as they have implemented robust IT security measures to protect any Personal Data that may be processed during that period. The DIFC CDP guidance note also includes key considerations for organizations and employees alike when working from home.</td>
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<td>Can employees have had a vaccine?</td>
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<td>Can we ask individuals if they have received a vaccine?</td>
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<td>Can we require individuals to have a vaccine?</td>
<td>No guidance yet. Vaccines have been rolled out on a voluntary basis at the moment.</td>
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<td>Can we exclude individuals who have not had a vaccine from the workplace or carrying out their role?</td>
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UAE Continued

General

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<tr>
<td>What medical testing can an employer carry out and under what conditions?</td>
<td>There is no specific guidance on the type of medical testing that can be carried out. The most common have been temperature checks.</td>
</tr>
<tr>
<td>Does an employer need to consult with works councils or trade unions before taking any measures?</td>
<td>No. There are no works councils or trade unions in the UAE.</td>
</tr>
<tr>
<td>Can an employer keep a record of staff who are diagnosed as infected?</td>
<td>Yes. According to the DIFC CDP and ADGM ODP, an employer should inform staff about any cases of COVID-19 and take the necessary measures to protect employees. They must not however share more information than is necessary and should avoid naming individuals, whenever possible.</td>
</tr>
<tr>
<td>Can an employer notify other members of staff about an employee who has been infected by COVID-19?</td>
<td>Yes, but with limitations. There is no guidance or instructions in this case. While informing members of staff about an employee’s death is not prohibited under the law, care must be taken to respect the dignity of the deceased and his or her family. The employer must also take the necessary precautions to protect any member of staff who might have been in contact with the deceased employee to prevent the further spread of the virus.</td>
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<td>Can I share health data with authorities for public health purposes?</td>
<td>Yes. According to the ADGM ODP and DIFC CDP, it is possible to share such information with the relevant authorities provided there is a legal basis for the processing of the Personal or Sensitive Personal Data and appropriate safeguards have been in place.</td>
</tr>
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</table>
| What practical steps should an employer consider when re-opening an office? | Employers are required to implement health and safety measures for those returning to the workplace in accordance with UAE directives. These measures include:  
- **Entrance health checks:** Any individual entering the building including staff and visitors need to undergo temperature checks. All employees and those showing signs are prohibited entry.  
- **Provision of masks and hand sanitizers:** All employees/visitors are mandated to wear masks at all times in the building. Non-compliance must lead to denial of entry. Employers must install hand sanitizers and provide masks to all who enter the building.  
- **Physical distancing:** Ensure a 2 metre distancing measure is maintained in all common areas, service desks, customer service, etc.  
- **Office sanitization:** All the common areas of the building must be cleaned after each use and entrance areas must be sterilized. Pantries must remain closed and employees must be provided single use and disposable utensils. |
| Does your country require individuals to wear face masks or face coverings? If not, can an employer require employees to wear face masks or coverings? | Yes. The wearing of masks in public is compulsory in the UAE. Employees are required to wear masks in the workplace. A penalty of AED 3,000 applies in case of non-compliance. While not compulsory, it is also recommended to wear gloves. |

UK

The ICO has issued guidance on its regulatory approach during the coronavirus public health emergency. In summary, the ICO recognises that employers may have had to redirect resources, whether they are finances or people away from usual compliance or information governance work. Accordingly, the ICO explains that it will be flexible in its regulatory approach. However, the ICO cannot extend statutory deadlines and so employers must be mindful of responding to data subject requests and to put in place “robust recovery plans” to ensure to reduce any backlogs within a reasonable timeframe.

Generally, the ICO explains that it will:

- continue to recognise the rights and protections granted to people by the law around their personal information;
- focus its efforts on the most serious challenges and greatest threats to the public;
- assist organisations by providing advice and guidance on data protection laws and how to meet their obligations in response to new requirements and initiatives;
- take firm action against those looking to exploit the public health emergency through nuisance calls or by misusing personal information;
- be flexible in its approach, taking into account the impact of the potential economic or resource burden the ICO’s actions could place on organisations; and
- be ready to provide maximum support for businesses as they recover from the pandemic.

More specifically, the ICO explains organisations’ resources initially assigned to support the emergency pandemic have begun to be released back to dealing with information rights complaints, with the majority of organisations now able to deal with complaints they receive from individuals. Where organisations have a backlog of complaints, the ICO expects them to have robust recovery plans in place to ensure they reduce these backlogs within a reasonable timeframe. With that in mind, the ICO explains that it has recommenced its formal regulatory action in connection with outstanding information request backlogs held by organisations that pre-date the pandemic.

Employees & Workers

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Can we test employees?

Employers & Workers cont

Yes, ICO guidance states that data protection law does not prevent employers from taking the necessary steps to keep staff and the public safe. Employers may have legal bases for compliance with health and safety obligations under employment law (Article 9(2)(c) UK GDPR; para.1, Sch.1 Data Protection Act 2018 (“DPA 2018”)) and for reasons of public health (Art.9(2)(c) UK GDPR; para.3, Sch.1 DPA 2018). The ICO stresses that the condition in the DPA 2018 would cover most of what employers need to do, as long as they are not collecting or sharing irrelevant or unnecessary data. The ICO also states that employers should conduct a DPIA.

Regarding testing generally, the ICO recommends that employers consider whether the tests achieve your goals in running a testing regime. Other than established testing or antibody testing, you may choose to consider alternative measures to monitor symptoms related to COVID-19 or social distancing. These could include using CCTV to monitor behaviour, or temperature checks.

Employers should consider how effective these measures are at providing accurate results. You need to be mindful of the latest government guidance about the most effective and reliable tests for indicating whether an employee may have contracted COVID-19. If your organisation is providing a service for testing employees, you must ensure that you are processing personal information lawfully, fairly and transparently. Before carrying out any tests, you must tell your staff what personal information you require, what it will be used for and who you will share it with.

Regarding temperature testing, the ICO has also considered the use of more intrusive technologies (such as thermal cameras) and has expressed that employers should give specific thought to the purpose and context of its use, and be able to make a use case for using it. Ongoing monitoring of employees needs to be necessary and proportionate. The ICO recommends that employers consider whether other, less privacy intrusive, means are available to achieve the same results.

In the context of test results, you need to ensure you do not collect unnecessary or excessive information from employees. The ICO recommends that employers consider which testing options are available to ensure that only necessary and proportionate results are being collected. The ICO stresses the importance of the accuracy principles - 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. As an employer, you must also ensure that any lists you maintain on individuals’ temperature readings do not result in any unfair or harmful treatment of employees, such as through recording inaccurate information or a failure to acknowledge an individual’s health status changing over time. You should also not be fair to use or retain information you collect about the number of staff who report COVID-19 symptoms for purposes they would not reasonably expect.

The health data could be processed under Article 9(2)(c) UK GDPR and para.1, Sch.1 DPA 2018 to comply with employment and social protection law obligations (i.e. health & safety) or under Art 9(2)(b) to protect public health. Employers may have already been told that they are required to maintain records of who is absent from work so that they can monitor or track absence trends, and can report to the authorities. This is an important aspect of the employer’s duty of care. Where testing is carried out, the health data could be processed under Art 9(2)(b) UK GDPR and para.1, Sch.1 DPA 2018 to protect health and safety of employees. Employers should consider which tests could be carried out to comply with relevant health & safety law and which tests are necessary to protect public health. Employees may have already been told that they are required to maintain records of who is absent from work so that they can monitor or track absence trends, and can report to the authorities. This is an important aspect of the employer’s duty of care.

Can we ask about any symptoms of an employee’s household?

Employers & Workers cont

Yes. 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. An employee’s vaccine status is health data and is considered to be special category data in the UK.

The ICO guidance states that data protection law does not prevent employers from taking the necessary steps to keep staff and the public safe. Employers may have legal bases for compliance with health and safety obligations under employment law (Article 9(2)(c) UK GDPR; para.1, Sch.1 Data Protection Act 2018 (“DPA 2018”)) and for reasons of public health (Art.9(2)(c) UK GDPR; para.3, Sch.1 DPA 2018). The ICO stresses that the condition in the DPA 2018 would cover most of what employers need to do, as long as they are not collecting or sharing irrelevant or unnecessary data. The ICO also states that employers should conduct a DPIA. If the employer’s aim could be achieved by other, less privacy intrusive, means, it should not request this data.

Employees may arrange to have a vaccine in their personal capacity, or through a scheme if offered. Employees may volunteer the fact of their vaccination to an employer. Employees should have due regard to the security of the data, and consider any duty of confidentiality owed to those individuals who have provided information about their vaccination status. Employers should focus on making sure that the use of the data is necessary and relevant.

Can we ask employees to notify us if they are diagnosed?

Employers & Workers cont

Yes. 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. An employee’s vaccine status is health data and is considered to be special category data in the UK.

The ICO guidance states that data protection law does not prevent employers from taking the necessary steps to keep staff and the public safe. Employers may have legal bases for compliance with health and safety obligations under employment law (Article 9(2)(c) UK GDPR; para.1, Sch.1 Data Protection Act 2018 (“DPA 2018”)) and for reasons of public health (Art.9(2)(c) UK GDPR; para.3, Sch.1 DPA 2018). The ICO stresses that the condition in the DPA 2018 would cover most of what employers need to do, as long as they are not collecting or sharing irrelevant or unnecessary data. The ICO also states that employers should conduct a DPIA. If the employer’s aim could be achieved by other, less privacy intrusive, means, it should not request this data.

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Can we ask employees if they have received a vaccine?

Employers & Workers cont

No. Under applicable legislation in the UK, the government has the power to prevent, control or mitigate the spread of the infection or contamination but this legislation contains a prohibition on employers 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.

That said, employers may make vaccination a condition of being permitted to work in certain environments, on health and safety grounds. This may include healthcare, social care and other high risk sectors, where an employer’s obligation to ensure staff do not pose a risk to patients or clients and vice versa may include an obligation to ensure such staff members are vaccinated against common infections / transmissible illnesses / biological hazards.

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 staff member to others and vice versa); and (ii) the health and needs of the staff member, to determine whether it is reasonable to impose such a condition (in the same way as it should do for any other mandatory vaccinations). Employers should note that 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, they run the risk of claims and unsanctioned media attention if they apply a blanket mandatory vaccination policy or punish employees who refuse to comply.

Currently, vaccines are only available from the NHS. If and when vaccines are available privately, employers could make vaccinations available to staff and actively promote vaccination. Employers who do so should plan ahead, have a clear, consistent communication strategy and actively engage with staff.
Can we exclude employees who have not had a vaccine from the workplace?

No, other than in very limited circumstances. In theory, employers may be able to exclude unvaccinated staff 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 employer considered that the risk to the staff member in question, to colleagues 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 employee from the relevant areas of the physical workplace.

However, there are a number of potential legal risks associated with excluding employees from the physical workplace (or otherwise treating them differently) on the grounds that they have not been vaccinated. As a general rule, treating employees differently on the grounds of their health will amount to disability discrimination and therefore expose the employer to potential discrimination claims (noting that it is as yet unclear whether non-vaccination status falls within the definition of a disability). A blanket policy could lead to indirect discrimination claims under the Equality Act 2010, e.g. on the basis that the policy places 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. Employers could reasonably expect challenge from staff and unwanted media attention were they to take a blanket approach of excluding unvaccinated staff from the workplace.

Can we test such individuals?

Yes, if strictly necessary. ICO guidance states that data protection law does not prevent employers from taking the necessary steps to keep staff and the public safe.

Where the individuals come into contact with employees or return to the office, the available lawful bases are compliance with health and safety obligations under employment law (Article 9(2)(b) UK GDPR; para.1, Sch.1 DPA 2018) and for reasons of public health (Art.9(2) UK GDPR; para.3, Sch.1 DPA 2018).

Where, however, the individuals do not come into contact with employees or return to the office, only the public health ground would be available.

The ICO stresses that the condition in the DPA 2018 will cover most of what employers need to do, as long as they are not collecting or sharing irrelevant or unnecessary data. The ICO also states that employers should conduct a DPIA.

Regarding testing generally, the ICO recommends that employers consider whether the tests meet your reasons for running a testing regime. Employers should consider how effective these measures are at providing accurate results. You need to be mindful of the latest government advice about the most effective and reliable tests for indicating that an employee may have contracted COVID-19. If your organisation is providing a service for testing employees, you must ensure that you are processing personal information lawfully, fairly and transparently. Before carrying out any tests, you must tell your staff what personal information you require, what it will be used for and who you will share it with.

Can we ask about any symptoms of such individuals?

Yes, ICO guidance previously stated that where necessary, the collection of additional data from individuals may be proportionate. Although the ICO’s updated guidance no longer addresses this point, asking individuals about their travel history is still possible. The ICO explains that the data minimisation principle is key – only collect and retain the minimum amount of information needed to fulfil your purpose.

Can we ask about the travel history of such individuals?

Yes, ICO guidance previously stated that, where necessary, the collection of additional data from individuals may be proportionate. Although the ICO’s updated guidance no longer addresses this point, asking individuals about their travel history is still possible. The ICO explains that the data minimisation principle is key – only collect and retain the minimum amount of information needed to fulfil your purpose.
Can we ask individuals if they have received a vaccine?

Yes. The employer’s purpose in requesting the individual’s vaccine status must still comply with data protection rules under the UK GDPR and Data Protection Act 2018. An individual’s vaccine status is health data and is considered to be special category data in the UK.

ICO guidance states that data protection law does not prevent employers from taking the necessary steps to keep staff and the public safe. Companies may ask about an individual’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 individual’s role in working in the office is in proximity to, or is shared with, another company’s employees).

However, there are a number of potential legal risks associated with excluding workers from the workplace or carrying out their role?

The ICO stresses that the condition in the DPA 2018 will cover most of what companies will need to consider in relation to gig / agency workers, as long as they are not collecting or sharing irrelevant or unnecessary data. The ICO also states that companies should conduct a DPIA in relation to such activities. If the company’s aim could be achieved by other, less privacy intrusive, means, it should not request this data.

This health data could be processed under Art 9(2)(b) UK GDPR and para.1, Sch.1 DPA 2018 to comply with employment and social protection law obligations (i.e. health & safety) or under Art 9(2)(b) UK GDPR and para.3, Sch.1 DPA 2018, where it is necessary for reasons of public interest in the area of public health.

Gig/agency workers may arrange to have a vaccine in their personal capacity, or through a work scheme if offered. Such staff members may volunteer the fact of their vaccination to a company. Companies should have due regard to the security of the data, and consider any duty of confidentiality owed to those individuals who have provided information about their vaccination status. Companies should focus on making sure that the use of the data is necessary and relevant.

Can we require individuals to have a vaccine?

No. Under applicable legislation in the UK, the government has the 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 authorities have the power to direct individuals to be vaccinated or to be tested to ensure staff do not pose a risk to themselves or clients and vice versa may include an obligation to ensure such staff members are vaccinated against common infections / transmissible illnesses / biological hazards.

Employers will need to consider objections carefully and individually; they run the risk of claims and unwanted media attention if they apply a blanket mandatory vaccination policy or punish employees who refuse to comply. Currently, vaccines are only available from the NHS. If and when vaccines are available privately, employers may make vaccination a condition of being permitted to work in certain environments, on health and safety grounds. This may include healthcare, social care and other sectors, where an employer’s obligation to ensure staff do not pose a risk to others or clients and vice versa may include an obligation to ensure such staff members are vaccinated against common infections / transmissible illnesses / biological hazards.

The ICO stresses that the condition in the DPA 2018 will cover most of what companies will need to do, as long as they are not collecting or sharing irrelevant or unnecessary data. The ICO also states that employers should conduct a DPIA. Other than established viral or antibody tests, you should consider alternative measures to monitor symptoms rather than collect health data.

The ICO has also considered the use of more intrusive technologies (such as thermal cameras) and has expressed that employers should give specific thought to the purpose and context of their use, and be able to make a use case for using it. The ICO recommends that employers consider whether other, less privacy intrusive, means are available to achieve the same results.

In the context of test results, you need to ensure you do not collect unnecessary or excessive information from visitors. The ICO recommends that employers consider which testing options are available to ensure that only necessary and proportionate results are being collected.

Can we require individuals to have a vaccine?

No, other than in very limited circumstances. In theory, employers may be able to exclude unvaccinated staff 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 employer considered that the risk to the staff member in question, to colleagues 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 employee from the relevant area of the physical workplace.

However, there are a number of potential legal risks associated with excluding workers from the workplace or carrying out their role if they have not been vaccinated. As a general rule, treating workers differently on the grounds of their health will amount to disability discrimination and therefore expose the employer to potential discrimination claims (noting that it is as yet unclear whether non-vaccination status falls within the definition of a disability). A blanket policy could lead to indirect discrimination claims under the Equality Act 2010, e.g. on the basis that the policy places those in certain age groups or with certain conditions at a disadvantage compared to 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 and therefore amount to a protected characteristic under the Equality Act 2010. Employers could reasonably expect challenge from staff and unwanted media attention were they to take a blanket approach of excluding unvaccinated staff from the workplace.

Can we exclude individuals who have not had a vaccine from the workplace or carrying out their role?

Yes. This is now a legal requirement for certain organisations to collect customer, visitor and staff contact details for contact tracing purposes. This requirement applies to restaurants, pubs and other venues in the tourism and hospitality sector. It also applies to close contact businesses such as barbers, tailors and beauticians. You should check the government guidelines for where you need to make a decision to do this. Government guidance has been published and varies for England (https://www.gov.uk/guidance/maintaining-records-of-staff-customers-and-visitors-to-support-nhs-test-and-trace), Northern Ireland (https://www.health-ni.gov.uk/sites/default/files/publications/health/hospitality-industry-guidance.pdf), Scotland (https://www.gov.scot/publications/coronavirus-covid-19-tourism-and-hospitality-sector-guidance/age/collating-visitor-contact-details) and Wales (https://gov.wales/keeping-records-staff-customers-and-visitors-test-trace-protect).
**Visitors cont**

Potentially, in limited circumstances in theory, employers may be able to exclude unvaccinated staff 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 employer considered the risk to the staff member in question, to colleagues 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 employee from the relevant areas of the physical workplace.

However, there are a number of potential legal risks associated with excluding visitors from the workplace (for otherwise treating them differently) on the grounds that they have not been vaccinated. As a general rule, treating visitors differently on the grounds of their health will amount to disability discrimination and therefore expose the employer to potential discrimination claims (noting that it is as yet unclear whether non-vaccination status falls within the definition of a disability). A blanket policy could lead to indirect discrimination claims under the Equality Act 2010, e.g. on the basis that the policy places 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 religious or belief and therefore amount to a protected characteristic under the Equality Act 2010. Employers could reasonably expect challenge from staff and unwanted media attention were they to take a blanket approach of excluding unvaccinated staff from the workplace.

**General cont**

Yes, it is now a legal requirement for certain organisations to collect customer, visitor and staff contact details for contact tracing purposes. This requirement applies to restaurants, pubs and other venues in the tourism and hospitality sector. It also applies to close contact businesses such as bars, takels or beauticians. You should check the government guidelines for where you operate to determine whether it is necessary for you to do this. Government guidance has been published and varies for England (https://www.gov.uk/guidance/maintaining-records-of-staff-customers-and-visitors-to-support-nhs-test-and-trace), Northern Ireland (https://www.health-ni.gov.uk/sites/default/files/publications/health/hostpitality-industry-guidance.pdf), Scotland (http://www.gov.scot/publications/coronavirus-covid-19-tourism-and-hospitality-sector-guidance/pages/collection-customer-contact-details/) and Wales (https://gov.wales/keeping-records-staff-customers-and-visitors-test-trace-protect/)

Can an employer keep a record of staff who are diagnosed as infected?

Yes. Current ICO guidance states that staff should be kept informed about cases in your organisation.

Can an employer notify other members of staff about an employee who has been infected by COVID-19?

Yes. Generally, the individual’s identity will not need to be disclosed and you should not provide more information than necessary. Note there is a duty of care owed to employees and an obligation to ensure their health and safety. The ICO states that compliance with data protection law does not prevent you from complying with these obligations.

Can an employer inform other members of staff about an employee that has died from COVID-19? What duty does an employer owe in this situation?

Yes. Where this is relevant to members of staff, including mobile workers, whose roles involve interacting with customers, you can notify your customers where this is necessary. It is unlikely that information about specific individuals will need to be disclosed. Where identification is not possible, the processing of health-related personal data can be carried out under Art 9(2)(e) UK GDPR and para.3, Sch 1 DPA 2018, where it is necessary for reasons of public interest in the area of public health.

Can an employer notify customers and visitors of an infected member of staff?

Yes. If it is necessary for the purpose of protecting the public health interest, you can inform customers and other third parties about the presence of a suspected or confirmed case of COVID-19. You must do this in a way that provides reassurance to customers and other affected parties and prevents panic or unjustified discrimination.

Can I share health data with the authorities for public health purposes?

Yes. If it is necessary for the purpose of protecting the public health interest, you can inform customers and other third parties about the presence of a suspected or confirmed case of COVID-19. You must do this in a way that provides reassurance to customers and other affected parties and prevents panic or unjustified discrimination.

**General**


The usual principles for testing employees will apply. Employers must have grounds for conducting the test (in practice, likely only to be justified for health and safety reasons). Where testing is used to enforce absence, employers should ensure employees understand the implications (particularly where this will be used to enforce absence or reduced duties and this may have implications for their pay). Generally, given the intrusive nature of testing, you are most likely required to carry out a DPA.

Testing should only be used where it provides significantly better evidence than other less intrusive means and this is a justified means to achieving the employer’s legitimate aim. If your reason is to protect the workforce on health and safety grounds, this may not be sufficient justification, depending on the wider circumstances.

Testing should be carried out by a reputable provider and based on reliable scientific evidence and should be focused solely on the relevant matters - here, that would mean testing for COVID-19 only.

You should not test all workers, whether randomly or not, if only employees carrying out a particular activity or in a particular location pose a risk. Employees in different jobs will pose different risks. Similarly, post incident testing, where there is a reasonable concern that the employee has COVID-19 is more likely to be justified than random testing.

In its guidance, the ICO explains that, other than established viral or antibody tests, you may choose to consider alternative measures to monitor symptoms related to COVID-19 or social distancing. These could include using CCTV to monitor behaviour, or temperature checks.

The employer should be prepared to provide additional information about the employee to high risk individuals so that they can take appropriate steps (in accordance with the employer’s obligations as regards health and safety and its broader duty of care).

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UK  Continued

What practical steps should an employer consider when re-opening an office?

Employers should refer to the most recent guidance issued by the UK government. Where working from home is not possible, workplaces are advised to make every effort to comply with the social distancing guidelines set out by the government.

As and when the restrictions are amended or lifted, employers will need to consider how to take steps to reopen workplaces taking into account appropriate government guidance and their duties to employees, including in respect of health and safety.

Based on the government’s current guidance, employers should consider the following as part of their reopening plans:

• ensuring that employees and other individuals keep 2 metres apart at all times (such measures could include rearranging office spaces and working in alternating shifts between working from home and working from the office);
• managing the cleaning and disinfecting of workplaces;
• managing the risk of spread through aeronaut systems;
• requirements for staff to wear protective clothing; and
• providing protective clothing and/or additional cleaning products, sanitiser gel and so on.

At this stage, testing of staff for COVID-19 is not mandatory but this may change as the UK government’s approach develops.

Yes, in specific circumstances. UK guidance draws a distinction between face masks and face coverings:

- Face masks are treated as personal protective equipment (PPE). UK guidance on use of PPE recommends the use of face masks for the health and social care sectors. The guidance can be found at: https://www.gov.uk/government/publications/wuhan-novel-coronavirus-infection-prevention-and-control/covid-19-personal-protective-equipment-ppe

- In contrast, a face covering is something which safely covers the nose and mouth, including a • In contrast, a face covering is something which safely covers the nose and mouth, including a reusable or single-use face covering or, alternatively, a scarf, bandana, religious garment or hand-made cloth covering (but these must securely fit round the side of the face). The UK government advises that there are some places when wearing a face covering (which it states are not classified as PPE) is required by law. The rules vary slightly across England, Northern Ireland, Scotland and Wales (further guidance for each nation can be found at https://www.gov.uk/government/publications/face-coverings-when-to-wear-one-and-how-to-make-your-own). As a general rule, these include public spaces such as transport hubs, shops, places of worship and so on.

- The UK government advises that, outside of these places, it may be beneficial to wear a face covering as a precautionary measure but this is optional and is not required by law. There are also exceptions for people who are not required to wear a face covering or for when a face covering can be removed (for example, if asked to do so by shop staff or relevant employees for identification).

Yes, an employer could implement a mandatory face mask (or face covering) requirement:

- For employees who work in an environment subject to a mandatory face mask / covering requirement, employers are able to rely on the underlying legal requirement. For example, face coverings must be worn by retail, leisure and hospitality staff working in any indoor area that is open to the public and where they’re likely to come into contact with a member of the public.

- Where mandatory face mask / covering requirements do not apply, employers will need to consider carefully the reason / basis on which they wish to impose such a requirement. Employers must comply with their existing health and safety obligations towards employees and customers and carry out a risk assessment to identify the measures necessary to prevent the transmission of COVID-19 in the workplace. This risk assessment may conclude that the use of face coverings in the workplace is necessary.

- Where an employee refuses to wear a face mask / covering without a legitimate reason this will likely amount to a refusal to follow the employer’s reasonable instruction and constitute grounds for disciplinary action. However, where such a refusal is related to a medical condition or a disability these factors should be taken into account, especially if enforcement of the requirement could amount to discrimination.

- In each case, employers must provide suitable PPE or face coverings to staff (noting that this may not include agency workers or contractors) and it is likely that the employer will have to bear the costs of providing such equipment. Employers must also ensure that employees are trained to use any PPE provided, which would include any respirator masks.

Does your country require individuals to wear face masks or face coverings? If not, can an employer require employees to wear face masks or coverings?

Yes.

While some countries may require face coverings to be worn in all settings, UK guidance advises that there are some places when wearing a face covering (which it states are not classified as PPE) is required by law. The rules vary slightly across England, Northern Ireland, Scotland and Wales (further guidance for each nation can be found at https://www.gov.uk/government/publications/face-coverings-when-to-wear-one-and-how-to-make-your-own). As a general rule, these include public spaces such as transport hubs, shops, places of worship and so on.

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