



# The COVID-19 vaccine in the workplace

The legal framework for employers in CEE

## TO OUR READERS

In this regional analysis from the Wolf Theiss Employment team, we look at the current Covid-19 vaccination rules by country. Our lawyers from 10 jurisdictions in CEE/SEE **answer employers' most common questions**.

The answers from our lawyers cover factual legal questions and include up-to-date information on employment law and data protection regulations, along with our legal analysis where relevant. All information is current as of the time of publication.

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## AUSTRIA

### 1. Is the employer permitted to mandate/require an employee to be vaccinated against COVID-19?

As of now, no, not in general. There is no mandatory vaccination requirement in Austria, so any compliance would be voluntary.

In the coming months, there will also be practical issues, as most employees will not have access to the vaccine. Currently COVID-19 vaccines in Austria are only available through official channels (health authorities) to individuals in certain age or risk categories and in certain professions.

If employees are unwilling to get vaccinated (if and when a vaccination is possible) employers might decide to terminate such employees or, under certain circumstances, transfer them to a different position.

The possibility to do so and the connected risks will have to be assessed on a case-to-case basis (the employer's interests and the employees' interests must be taken into account). In general, the risk of successful claims of employees against a termination or other measures based on their refusal to be vaccinated would depend significantly on the justification the employer can provide for requesting employees to be vaccinated. The employer's justification will likely be based on health and safety considerations, especially the duty of care towards the workforce and potentially customers, and business and operational factors. One aspect to be considered is whether vaccinations will provide an effective protection from transmission of COVID-19 to others as well.

### 2. If yes, is there a specific law or any guidance which the employer must follow?

N/A

### 3. If the employer is generally permitted to mandate/require an employee to be vaccinated against COVID-19, are there any exemptions which prohibit the employer from doing so?

N/A

### 4. Can an employee be disciplined for refusing to be vaccinated against COVID-19?

See answer to question 1.

### 5. Can the COVID-19 vaccination status of a job candidate be a condition for hiring employees?

As of now, this will likely be an important hiring condition in the future and employers will be able to base hiring decisions (also) on the vaccination status. Some legal ambiguity remains and the concrete circumstances, especially the justification for the employer's interest in this information (e.g. whether the vaccination is relevant for the work to be performed by the employee) will have to be taken into account.

### 6. Are employees required to disclose their COVID-19 vaccination status to the employer?

In most cases yes, if asked (see answer to question 7). However, this must be assessed on a case-to-case basis and the justification for the employer's interest in this information and the employees' interests must be taken into account.

### 7. Can the employer ask the employees to disclose their COVID-19 vaccination status and do employees need to respond?

Yes, in general, employers can ask employees whether they have been vaccinated, as the employer has a legitimate interest regarding this information in most cases, based on their duty of care towards the entire workforce and operational and organisational reasons. Based on such a justification, the employees would be obliged to answer truthfully. However, this must be assessed on a case-to-case basis and the justification for the employer's interest in this information (e.g. whether the vaccination is relevant for the work to be performed by the employee) and the employees' interests have to be taken into account.

### 8. Can the employer reward an employee (e.g. bonus payment, etc.) for voluntarily disclosing their COVID-19 vaccination status?

Most likely yes, the justification for the employer's interest in this information and the employees' interests must be taken into account.

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**9. Can the employer receive information about the employees' COVID-19 vaccination status from the clinician / health care organisation where employees were vaccinated?**

No.

**10. Can the employer offer and pay for the COVID-19 vaccination of employees under the condition that the employers will receive the information regarding the employees' vaccination status?**

Possibly in the future. As of now, all vaccinations are performed through health authorities free of charge.

**11. Can the employer keep records about employees who received/did not receive a COVID-19 vaccination?**

Most likely yes, with the freely given consent of the employees, and the justification for the employer's interest in keeping such records and the employees' interests must be taken into account. Data protection requirements must also be met.

**12. Can the employer obtain the COVID-19 vaccination status of an employee from a government database (or any other database) so that the employer can track the COVID-19 vaccination status of its employees?**

No.

**13. Can the employer obtain vaccinations for its employees, or are vaccinations solely provided by the state/municipality/other government organisation?**

As of now, vaccinations are solely provided by the health authorities.

**14. If employee vaccination status can be processed by the employer, and an employee is not willing to be vaccinated, is the employer entitled to continuously check the employee's health status by way of regular testing?**

As of now, the answer is in general no. However, this may depend on the employer's activities and restrictions for certain jobs (e.g. with inevitable close personal contact). For the future, this will also depend on the concrete circumstances and potential legal requirements. Additionally, employees in

certain jobs must already comply with statutory testing requirements, and there are temporary testing requirements for leaving certain areas with high infection numbers. If employees are affected by such regional testing requirements, they are in general obliged to comply if necessary to continue to perform their work. However, exceptions based on concrete circumstances may apply.

**15. Can the employer ask the employees to disclose their intention to be vaccinated? (willing to receive a vaccination/do not want to be vaccinated)?**

In most cases yes, as this question can be justified by the employer's need to plan future organisational measures etc. However, there is no precedent for this, and answering this question would likely be voluntary, and it would be difficult to determine "false" answers, as such intention can naturally change. If the employer could prove that an employee had intentionally provided false information, consequences would be possible.

## BULGARIA

**1. Is the employer permitted to mandate/require an employee to be vaccinated against COVID-19?**

In Bulgaria, COVID-19 vaccines are not part of the mandatory vaccination calendar of the country and are, at present, only voluntary. Hence, neither the health authorities under public health legislation nor the employer under labour legislation have the right to require employees to get vaccinated. The employer may recommend vaccination, but the decision remains at the discretion of the employee.

Special rules apply to employers in the healthcare sector. The latter are under statutory obligation to offer vaccination to employees who are at risk of exposure to "biological agents" (currently SARS-CoV-2 is part of the list of "biological agents") because of their work (e.g. certain health care workers or certain laboratory staff). Even in these cases, the employer cannot force the concerned employees to get vaccinated but

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only has the obligation to provide an option for vaccination.

**2. If yes, is there a specific law or any guidance which the employer must follow?**

There is no specific law or guidance in Bulgaria that would allow employers to request employees to get vaccinated.

In the case of employees who are at risk of exposure to "biological agents" because of their work – a special Ordinance Nr. 4/14.10.2002 for the protection of employees against the risk of exposure to "biological agents" ("**Ordinance**") is applicable. As per the Ordinance, the employer shall follow the procedure for offering vaccinations to employees who are part of the exposed groups.

**3. If the employer is generally permitted to mandate/require an employee to be vaccinated against COVID-19, are there any exemptions which prohibit the employer from doing so?**

N/A

**4. Can an employee be disciplined for refusing to be vaccinated against COVID-19?**

At present, employers cannot oblige employees to get vaccinated, and the refusal of employees could not constitute grounds for imposition of disciplinary sanctions or other negative consequences.

**5. Can the COVID-19 vaccination status of a job candidate be a condition for hiring employees?**

Currently, the Ordinance for the documents required for the conclusion of an employment agreement – which is the guiding act in the job hiring process – does not include documents or data regarding vaccination. Such may be requested only if explicitly required under EU or Bulgarian law for the particular position. As outlined, so far in Bulgaria there are no designated job positions for which vaccination will be required (even for those exposed to "biological agents", vaccination remains voluntary).

In the absence of a legal requirement, the introduction of a job hiring condition for the candidate to be vaccinated would be

considered without legal ground and therefore - discriminatory.

The introduction of a condition for a job hiring provision of information about the vaccination status of the candidate would create the risk of the candidate being in a position to challenge the hiring process, due to discriminatory criteria being used the ultimate hiring decision (i.e. the candidate's vaccination status) and not the skills and professional expertise of the candidate. This would trigger a higher burden of proof for the employer who would be required to justify the objectivity of the hiring process in the context of the imposed discriminatory criteria.

Moreover, from a data protection perspective, the employer should consider to what extent and based on what legal grounds (if any) from the GDPR it may substantiate the processing of health data of job applicants regarding their vaccination status. This would also appear burdensome under the GDPR and local data protection legislation – see question 7 below.

**6. Are employees required to disclose their COVID-19 vaccination status to the employer?**

Employees are not required to disclose their COVID-19 vaccination status; they may provide this information voluntarily.

**7. Can the employer ask the employees to disclose their COVID-19 vaccination status and do employees need to respond?**

In general – no, as long as COVID-19 vaccination is not mandatory under the law. Yet, employers might have an argument to request such information in the context of complying with their HSE obligations. This could be, for example, if the workplace or the job position poses an increased risk of infection (e.g. in production plants where employees still congregate in one workplace), or if such information may be justified by the Labour Medicine Office (the HSE counsel of local employers) with a separate HSE measures for vaccinated and non-vaccinated employees in the case of differentiated HSE risks, etc. However, in the anticipation of any guidance by the labour or the data protection authorities, such justifications should be assessed on a case-by-case basis with view of

the objective HSE risks at the particular workplace.

Employers are able to ask employees to provide information about their vaccination status on a voluntary basis. The processing of employees' vaccination status would be subject to compliance with GDPR and local data protection laws. Vaccination data is a special category of data (i.e. it represents health data) under the GDPR and its processing requires:

- a valid legal ground under Art. 9 of the GDPR – where for special categories of data "legitimate interest" is not an available legal ground; "processing in the context of employment" might not be an option as currently the labour law does not impose a requirement for vaccination or provision of such information, whilst processing based on the "consent" of the employees shall be carefully structured due to the inherent imbalance of power between the employer and the employee (e.g. in order for employee's consent to be freely given the employee should not be subject to any negative consequences as a result of disclosure of his/her vaccination status).
- processing of the vaccination status should also comply with the principles under Art. 5 of the GDPR, i.e. it shall be fair, proportionate and transparent. To this end, even in the presence of a valid legal ground under Art. 9, vaccination data should still be necessary and proportionate to the purpose for which it is collected, and only possible if these purposes cannot be achieved by other less intrusive means.

**8. Can the employer reward an employee (e.g. bonus payment, etc.) for voluntarily disclosing their COVID-19 vaccination status?**

Employers are generally free to offer voluntary payments and benefits to employees based on objective criteria. However, to offer a reward that is conditional on disclosure of health information by the employees could be found as an abusive practice and an attempt of the employer to circumvent the voluntary nature of the provision of such information (in other words it would not be considered to be provided based on the free consent of the employee).

**9. Can the employer receive information about the employees' COVID-19 vaccination status from the clinician / health care organisation where employees were vaccinated?**

Employers may only receive data for the health status of the employees with the explicit written consent of the employees. And again, subject to compliance with GDPR rules for obtaining and processing of such health data.

By exception, with respect to employees at risk of exposure to "biological agents", it is legally provided that the employer shall receive a copy of the vaccination passport of the employee containing information for the vaccinations of the employee.

**10. Can the employer offer and pay for the COVID-19 vaccination of employees under the condition that the employers will receive the information regarding the employees' vaccination status?**

Please refer to question 8 above.

**11. Can the employer keep records about employees who received/did not receive a COVID-19 vaccination?**

This depends on the particular case and whether there would be a valid legal ground (if any) for processing data for the vaccination status of the employees. Without a valid legal ground under Art. 9 of the GDPR, the employer would not be entitled to keep such records – please refer to question 8 above.

Employers have a statutory right to keep records for the vaccination status of employees who are at risk of exposure to "biological agents".

**12. Can the employer obtain the COVID-19 vaccination status of an employee from a government database (or any other database) so that the employer can track the COVID-19 vaccination status of its employees?**

No, at present there is no such government database that can be accessed by employers.



### 13. Can the employer obtain vaccinations for its employees, or are vaccinations solely provided by the state/municipality/other government organisation?

At present, vaccination is offered free of charge but only through public health channels in Bulgaria and based on the Government Vaccination Plan in a 5-phased process (where each phase covers different population groups – e.g. the first phase covers healthcare workers, the second phase includes social workers and teachers, etc.).

The third phase of the Vaccination Plan envisages priority vaccination for employees engaged in the provision and maintenance of services that are essential for the general public (such as the energy and telecom industries, communal services, etc.). In practice, however, the vague definition of "essential activities" under the Vaccination Plan allowed many companies, whose activities are not per se essential (such as companies in the IT industry, banking sector, classic and online media, etc.) to organise priority vaccination for their employees – i.e. to apply for priority vaccination with the health authorities.

As of 19 February 2021, the option for free vaccination through the so called "green corridors" is also available to all individuals who want to get vaccinated but do not fall under any of the phases under the Vaccination Plan. This mass vaccination campaign is carried out in parallel to the Vaccination Plan depending on the current vaccine supplies and upon prior registration at a designated vaccination e-platform.

### 14. If employee vaccination status can be processed by the employer, and an employee is not willing to be vaccinated, is the employer entitled to continuously check the employee's health status by way of regular testing?

The Bulgarian Data Protection Commission in 2020 issued an opinion that the employer is limited in the ability to undertake random group tests of employees. The Commission clarified that the employer can issue an order for group testing of its employees based on its legitimate interest to plan and ensure the continuance of the work process and protect the health of its employees. However, this

entitlement of the employer is limited – the employer should ensure a balance of its legitimate interest and the rights and freedoms of the employees as data subjects, and cannot implement group testing in a way that would be too intrusive for the employees (i.e. conducting the testing forcefully, neglecting some reasonable objections by the employees such as certain health considerations, announcement of the results of the employees, etc.). For that purpose, the employer should undertake and document every time an assessment on the balance of interests, including:

- what are the health risks arising from the business activity of the employer; and
- the likelihood of a faster spread of the disease if the group testing is not conducted.

The above balancing test should be done on a case-by-case basis and be properly documented by the employer to facilitate the evidencing process in case of inspection by the CPDP or a complaint by an employee.

### 15. Can the employer ask the employees to disclose their intention to be vaccinated? (willing to receive a vaccination/do not want to be vaccinated)?

No – see question 7 above.

## CROATIA

### 1. Is the employer permitted to mandate/require an employee to be vaccinated against COVID-19?

No, as long as COVID-19 vaccination is not mandatory under the law.

### 2. If yes, is there a specific law or any guidance which the employer must follow?

N/A

### 3. If the employer is generally permitted to mandate/require an employee to be vaccinated against COVID-19, are there any exemptions which prohibit the employer from doing so?

N/A

### 4. Can an employee be disciplined for refusing to be vaccinated against COVID-19?

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No, as long as COVID-19 vaccination is not mandatory under the law.

**5. Can the COVID-19 vaccination status of a job candidate be a condition for hiring employees?**

No, as long as COVID-19 vaccination is not mandatory under the law.

**6. Are employees required to disclose their COVID-19 vaccination status to the employer?**

No, as long as COVID-19 vaccination is not mandatory under the law, although there might be an exception for certain employees for whom vaccination is particularly important and recommended due to the type and nature of their work (such as possibly employees who work in health care and social care settings, etc.). However, since there is no available guideline or practice regarding this issue, we would recommend obtaining an official opinion from the Croatian competent authorities before implementing such a practice locally.

**7. Can the employer ask the employees to disclose their COVID-19 vaccination status and do employees need to respond?**

No. Under Croatian law, employers can ask the employees to disclose only information that is directly related to the employment relationship. The vaccination status would probably not fall within such a category of data, although there might be an exception for certain employees for whom vaccination is particularly important and recommended due to the type and nature of their work (such as possibly employees who work in health care and social care settings, etc.) and if this would be considered a justified practice as part of the fulfilment of the employer's obligation to secure health and safety at work.

Since there is no available guideline or practice regarding this issue, we would recommend obtaining an official opinion from the Croatian competent authorities before asking the employees to voluntarily disclose such information.

**8. Can the employer reward an employee (e.g. bonus payment, etc.) for voluntarily disclosing their COVID-19 vaccination status?**

Yes, as long as this would represent a symbolic one-off reward independent/separate from the salary and other payments under employment contracts. However, since there is no available guideline or practice regarding this issue, we would advise obtaining an official opinion from the Croatian competent authorities on its permissibility before implementing such a practice locally.

**9. Can the employer receive information about the employees' COVID-19 vaccination status from the clinician / health care organisation where employees were vaccinated?**

No, although there might be an exception if the employee has given his/her informed consent to the clinician for sharing such data with the employer.

However, considering that under Croatian law (i) employers can ask the employees to disclose only information that is directly related to the employment relationship and that (ii) there is no available guidance or practice whether the vaccination status would fall within such data, there is a risk that this might be viewed by the competent authorities as (indirect) collection of unauthorised data from employees, and as such, is against the law.

Therefore, before implementing such practice in Croatia, we would advise obtaining an official opinion from the Croatian competent authorities on its permissibility.

**10. Can the employer offer and pay for the COVID-19 vaccination of employees under the condition that the employers will receive the information regarding the employees' vaccination status?**

In theory, yes. However, the vaccinations are currently provided solely by the state institutions in accordance with the national vaccination plan.

**11. Can the employer keep records about employees who received/did not receive a COVID-19 vaccination?**

In general, no. Under Croatian law, COVID-19 vaccination data do not belong to the data (i) that must be included in the employee records kept by the employer, or (ii) that may

be included in such records as data that result in some sort of employee rights or benefits. Consequently, the employer should not keep and store such data, although there might be an exception in the case of an employee reward (e.g. bonus payment, etc.) for voluntarily disclosing their COVID-19 vaccination status which could possibly justify keeping such data until the actual payment of the reward.

However, since there is no available guideline or practice regarding this issue, we would recommend obtaining an official opinion from the Croatian competent authorities before implementing such practice locally.

**12. Can the employer obtain the COVID-19 vaccination status of an employee from a government database (or any other database) so that the employer can track the COVID-19 vaccination status of its employees?**

There is no public database in Croatia from which employers can obtain vaccine status information about their employees.

**13. Can the employer obtain vaccinations for its employees, or are vaccinations solely provided by the state/municipality/other government organisation?**

No. The vaccinations are currently provided solely by the state institutions in accordance with the national vaccination plan.

**14. If employee vaccination status can be processed by the employer, and an employee is not willing to be vaccinated, is the employer entitled to continuously check the employee's health status by way of regular testing?**

No. As long as the testing is not mandatory under the law, an employee's consent would be required.

An employee should not suffer adverse consequences for refusing to be tested.

**15. Can the employer ask the employees to disclose their intention to be vaccinated? (willing to receive a vaccination/do not want to be vaccinated)?**

No. For further details please see our response to question 7 above.

## HUNGARY

**1. Is the employer permitted to mandate/require an employee to be vaccinated against COVID-19?**

No legislation has been passed so far which would obligate anyone to get vaccinated, accordingly Hungarians can decide at their own discretion whether they apply for a COVID-19 vaccination.

Since COVID-19 vaccinations are voluntary by law in Hungary, the employer, on a general basis, cannot mandate/require an employee to be vaccinated against COVID-19.

However, there might be job positions where employers can lawfully require the vaccination as a precondition of further employment (performing the tasks) if, due to the nature of the position, the tasks cannot be performed without receiving the vaccination.

**2. If yes, is there a specific law or any guidance which the employer must follow?**

No, neither a specific law nor guidance has been issued yet.

**3. If the employer is generally permitted to mandate/require an employee to be vaccinated against COVID-19, are there any exemptions which prohibit the employer from doing so?**

Referring to the answer to question 1, the employer is generally not permitted to mandate/require an employee to be vaccinated against COVID-19.

**4. Can an employee be disciplined for refusing to be vaccinated against COVID-19?**

Based on the current legislation, the employer cannot instruct its employees to be vaccinated, accordingly, a disciplinary process cannot be initiated against them for this reason. However, with reference to question 1, there might be job duties which cannot be performed if the employee has not been vaccinated. In such cases, the employer may terminate the employment relationship by its notice for reasons related to the employee's inability to perform job duties.

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**5. Can the COVID-19 vaccination status of a job candidate be a condition for hiring employees?**

Generally, candidates cannot be questioned on their COVID-19 vaccination status. However, if the job duties are directly and strongly connected to the candidate's vaccination status, the purpose of such personal data processing is in line with the current data protection legislation, provided that he/she has given explicit consent to the processing.

**6. Are employees required to disclose their COVID-19 vaccination status to the employer?**

Based on the underlying legislation, employees are not required to disclose their COVID-19 vaccination status to the employer. However, based on an internal workplace safety evaluation, the employer could be entitled to ask employees regarding their vaccination status. Additionally, data privacy aspects should be reviewed.

**7. Can the employer ask the employees to disclose their COVID-19 vaccination status and do employees need to respond?**

The Hungarian National Authority for Data Protection and Freedom of Information ("Authority") has not given any guideline on this matter so far. However, the issuance of such a document is expected in the near future.

Based on our expectations, if the performance of the job duties are directly and strongly connected to the vaccination status and, without being vaccinated, the performance of the job position would not be possible, employers may be entitled to ask the employees to disclose their COVID-19 vaccination status. If this entitlement to ask employees about their status will be granted by the guideline, the purpose of such personal data processing would align with the data protection regulations, and the employees would not have any right to refuse responding pursuant to their obligation of cooperation.

**8. Can the employer reward an employee (e.g. bonus payment, etc.) for voluntarily disclosing their COVID-19 vaccination status?**

No, as in the case of voluntarily disclosure, the purpose of the data processing would not comply with the data protection legislation.

**9. Can the employer receive information about the employees' COVID-19 vaccination status from the clinician / health care organisation where employees were vaccinated?**

No, the employer cannot receive information about the employees' COVID-19 vaccination from a clinician / health care organisation, as the legal title is not granted by law at all.

**10. Can the employer offer and pay for the COVID-19 vaccination of employees under the condition that the employers will receive the information regarding the employees' vaccination status?**

As the vaccinations are solely provided by a state organisation (National Health Insurance Fund of Hungary), employers cannot offer and pay for the COVID-19 vaccination at all.

**11. Can the employer keep records about employees who received/did not receive a COVID-19 vaccination?**

With reference to question 7, until the issuance of any guideline by the Authority, any type of data processing related to the COVID-19 vaccination status of employees is not recommended.

**12. Can the employer obtain the COVID-19 vaccination status of an employee from a government database (or any other database) so that the employer can track the COVID-19 vaccination status of its employees?**

No, in line with question 9, employers cannot obtain such information and track the employees' COVID-19 vaccination status from a government database, as the legal title is not granted by law at all.

**13. Can the employer obtain vaccinations for its employees, or are vaccinations solely provided by the state/municipality/other government organisation?**

Referring to question 10, vaccinations are solely provided by the competent state organisation. Accordingly, employers are not in a position to obtain vaccinations for their employees.

**14. If employee vaccination status can be processed by the employer, and an employee is not willing to be vaccinated, is the employer entitled to continuously check the employee's health status by way of regular testing?**

In line with question 7, it is not advisable to process employees' vaccination status until the issuance of the Authority's specific guideline on such matter. However, there might be specific cases (e.g. employees' interaction with others cannot be avoided; for the performance of the employee's work duties a negative COVID test must be presented, for example if the employee works for a health service centre or is required to participate in business meetings abroad frequently), when the infected employees must be separated from the others to grant (i) the implementation of occupational safety and occupational health requirements; or (ii) the fulfilment of the work duties.

**15. Can the employer ask the employees to disclose their intention to be vaccinated? (willing to receive a vaccination/do not want to be vaccinated)?**

In line with question 7, it is not advisable to process employees' vaccination status or any related data until the issuance of the Authority's specific guideline on such matter. However as long as there is no detrimental consequence to the employee's disclosure, we assume that employees freely given informed consent can be a lawful basis for the data processing.

## POLAND

**1. Is the employer permitted to mandate/require an employee to be vaccinated against COVID-19?**

No, an employer has no statutory right to require employees to have the vaccination.

**2. If yes, is there a specific law or any guidance which the employer must follow?**

N/A

**3. If the employer is generally permitted to mandate/require an employee to be vaccinated against COVID-19, are there any**

**exemptions which prohibit the employer from doing so?**

N/A

**4. Can an employee be disciplined for refusing to be vaccinated against COVID-19?**

No, because vaccination is not mandatory.

**5. Can the COVID-19 vaccination status of a job candidate be a condition for hiring employees?**

No. The employer is not entitled to request information regarding COVID-19 vaccination status from a job candidate.

**6. Are employees required to disclose their COVID-19 vaccination status to the employer?**

No.

**7. Can the employer ask the employees to disclose their COVID-19 vaccination status and do employees need to respond?**

No.

**8. Can the employer reward an employee (e.g. bonus payment, etc.) for voluntarily disclosing their COVID-19 vaccination status?**

The information on COVID-19 vaccination status constitutes a special category of data. Under the Polish Labour Code, a special category of data can be processed by the employer based on the consent of the employee provided such data has been provided at the employee's own initiative. A reward for disclosing the COVID-19 vaccination status shows that the employee provides this information not from his/her own initiative but at the initiative of the employer, which is not allowed.

**9. Can the employer receive information about the employees' COVID-19 vaccination status from the clinician / health care organisation where employees were vaccinated?**

No.

**10. Can the employer offer and pay for the COVID-19 vaccination of employees under the condition that the employers will receive the information regarding the employees' vaccination status?**

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No. The reasoning is similar to question 8. Offering and paying for the employee's COVID-19 vaccination under the condition that the employer receives the information on the employee's vaccination status indicates that such data is not provided from the employee's own initiative.

**11. Can the employer keep records about employees who received/did not receive a COVID-19 vaccination?**

Yes, provided that the employer has defined a purpose for and chosen a legal basis for the processing of this special category of data.

**12. Can the employer obtain the COVID-19 vaccination status of an employee from a government database (or any other database) so that the employer can track the COVID-19 vaccination status of its employees?**

No.

**13. Can the employer obtain vaccinations for its employees, or are vaccinations solely provided by the state/municipality/other government organisation?**

Not currently. Due to the shortage of vaccinations across the European Union, vaccinations are solely provided by the state to priority groups defined by the government such as medical staff or older groups of individuals. However, in the future, once there is more vaccine widely available, vaccinations against COVID-19 will be available for employers as it is in the case of flu vaccinations.

**14. If employee vaccination status can be processed by the employer, and an employee is not willing to be vaccinated, is the employer entitled to continuously check the employee's health status by way of regular testing?**

N/A

**15. Can the employer ask the employees to disclose their intention to be vaccinated? (willing to receive a vaccination/do not want to be vaccinated)?**

No.

## ROMANIA

**1. Is the employer permitted to mandate/require an employee to be vaccinated against COVID-19?**

Within its responsibilities, the employer takes the necessary measures to prevent occupational risks and any negative impact on the health of employees. However, this does not allow an employer to impose vaccination on employees, as Romania does not have a law that would make vaccination (for COVID-19 or other diseases) mandatory.

Planning for vaccination in Romania may be done, among other options, via a national electronic platform. Where vaccination planning is made via the collective account of the employer (rather the exception though), such employer will schedule its employees for vaccination based on request of the employee or explicit consent of the employee and with the observance of all underlying obligations (information of the employee, etc.).

**2. If yes, is there a specific law or any guidance which the employer must follow?**

N/A

**3. If the employer is generally permitted to mandate/require an employee to be vaccinated against COVID-19, are there any exemptions which prohibit the employer from doing so?**

N/A

**4. Can an employee be disciplined for refusing to be vaccinated against COVID-19?**

Since vaccination is not mandatory in Romania for any category of employees in the private or public sector, exposing employees to negative consequences in the employee withholds consent to be vaccinated, measures such as e.g. disciplinary procedures are extremely debatable and risky.

Assuming that an employer would have the contractual right to require an employee to get vaccinated and such employee subsequently refuses the vaccine, the employee would be in breach of contract and this could, in a broad and progressive

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interpretation, enable the employer to start a disciplinary proceeding. However, most likely a court would rather impose civil/monetary damages on the employee, if damages can indeed be proven. Therefore, employers should approach any such decision with caution and only by taking into consideration all circumstances of the case.

The same "proceed with caution" recommendation would apply to the approach where the employer requires regular PCR tests of its employees instead of requiring proof of vaccination (please see answer to question 14 below).

**5. Can the COVID-19 vaccination status of a job candidate be a condition for hiring employees?**

No normative acts, governmental measures or clarifications were provided by the authorities in this regard. Since there is no law imposing vaccination, including vaccination in the list of prerequisites for obtaining a certain position is not recommended, as this can lead to discrimination-based claims.

Romanian law prohibits any difference, exclusion, restriction or preference based on race, nationality, ethnic origin, language, religion, social status, belief, gender, sexual orientation, age, disability, non-contagious chronic disease, HIV positive status, affiliation to a disadvantaged group or on any other similar criterion, aiming to or resulting in a restriction or prevention of the equal recognition, use or exercise of human rights and fundamental freedoms in the political, economic, social and cultural field or in any other fields of public life.

**6. Are employees required to disclose their COVID-19 vaccination status to the employer?**

No. There is no obligation provided by the Romanian law (i.e. data protection legislation, employment legislation) for the employee to inform the employer on his/her COVID-19 vaccination status.

**7. Can the employer ask the employees to disclose their COVID-19 vaccination status and do employees need to respond?**

No. However, the employer may ask its employees to provide information on their

COVID-19 vaccination status, by answering specific questions in a survey. Such survey must be filled in anonymously and participation must be voluntary.

**8. Can the employer reward an employee (e.g. bonus payment, etc.) for voluntarily disclosing their COVID-19 vaccination status?**

The rationale of a bonus is to reward professional success and commitment. Providing such reward for disclosing one's vaccination status is rather debatable from a morality perspective. However, as long as employees are not discriminated against and there are no negative consequences for the employees who are not vaccinated (nor in the process of being vaccinated), we see no major practical risks.

**9. Can the employer receive information about the employees' COVID-19 vaccination status from the clinician / health care organisation where employees were vaccinated?**

There are no legal provisions in place allowing clinics / vaccination centres to disclose vaccination status information to employers or other third parties. However, where planning is done via the collective account of the employer, the employer has certain access to information on whether or not the employees scheduled via the employer account have actually received the vaccine.

**10. Can the employer offer and pay for the COVID-19 vaccination of employees under the condition that the employers will receive the information regarding the employees' vaccination status?**

The vaccination is currently made available through the public health system, and all vaccines are administered for free.

**11. Can the employer keep records about employees who received/did not receive a COVID-19 vaccination?**

The employer cannot keep records regarding COVID-19 vaccination since there is no legal ground for the processing by the employer of this type of information in the medical history of the employee.

Depending on particular situations existing at each employer's working environment (e.g.

companies in the medical business), employers could additionally assess whether other grounds of processing may be used for such processing.

**12. Can the employer obtain the COVID-19 vaccination status of an employee from a government database (or any other database) so that the employer can track the COVID-19 vaccination status of its employees?**

According to the strategy on vaccination against COVID-19 in Romania, a module dedicated to vaccination against COVID-19 will be developed within the National Electronic Vaccination Register, which will constitute the electronic database on vaccination.

Since the data protection legislation applies equally to public institutions and since there is no legal ground for disclosure of such information to the employer, such information will not be available to employers. However, this may be subject to further developments.

**13. Can the employer obtain vaccinations for its employees, or are vaccinations solely provided by the state/municipality/other government organisation?**

Private companies are currently not permitted to administer COVID-19 vaccination, as the vaccination is currently made available through the public health system.

**14. If employee vaccination status can be processed by the employer, and an employee is not willing to be vaccinated, is the employer entitled to continuously check the employee's health status by way of regular testing?**

The employer does not have the possibility to introduce mandatory testing of employees.

However, if the employee explicitly consents to be tested, the employer can process the data regarding the COVID-19 test results based on the argument that processing is necessary for the purposes of preventive or occupational medicine, for the assessment of the working capacity of the employee, medical diagnosis, the provision of health or social care or treatment or the management of health or social care systems and services, according to data protection legislation.

**15. Can the employer ask the employees to disclose their intention to be vaccinated? (willing to receive a vaccination/do not want to be vaccinated)?**

No. Such information could be collected via an anonymous survey, where participation is voluntary.

However, the intention to be vaccinated could also be determined through vaccination planning / registering on the waiting list. As noted, where vaccination planning is made via the employer collective account (rather the exception than the rule in Romania), such employer will have access to a certain list of employees willing to be vaccinated. However, as employees can register for vaccination on an individual basis (i.e. personally or via a family doctor or via a family member/friend), the information available to the employer is certainly incomplete.

## SERBIA

**1. Is the employer permitted to mandate/require an employee to be vaccinated against COVID-19?**

No. Employers have no statutory right to require employees to have the vaccination.

**2. If yes, is there a specific law or any guidance which the employer must follow?**

N/A

**3. If the employer is generally permitted to mandate/require an employee to be vaccinated against COVID-19, are there any exemptions which prohibit the employer from doing so?**

N/A

**4. Can an employee be disciplined for refusing to be vaccinated against COVID-19?**

No, because vaccination is not mandatory.

**5. Can the COVID-19 vaccination status of a job candidate be a condition for hiring employees?**

No, because vaccination is not mandatory.

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**6. Are employees required to disclose their COVID-19 vaccination status to the employer?**

No.

**7. Can the employer ask the employees to disclose their COVID-19 vaccination status and do employees need to respond?**

No. Under Serbia's privacy laws, an employee's vaccination status will constitute health information which can only be collected with an individual's explicit consent – noting that it is highly questionable if the criteria of "freely given" explicit consent could be fulfilled in this case due to the nature of the employment relationship.

**8. Can the employer reward an employee (e.g. bonus payment, etc.) for voluntarily disclosing their COVID-19 vaccination status?**

Theoretically, yes. However, as an employee's vaccination status constitutes health information which can only be collected with an individual's explicit consent, it is highly questionable if the criteria of "freely given" explicit consent could be fulfilled in this case due to the nature of the employment relationship. Therefore, this approach would need to be managed sensitively, as it could potentially be negatively perceived by employees and/or from a PR perspective.

**9. Can the employer receive information about the employees' COVID-19 vaccination status from the clinician / health care organisation where employees were vaccinated?**

No.

**10. Can the employer offer and pay for the COVID-19 vaccination of employees under the condition that the employers will receive the information regarding the employees' vaccination status?**

No, as employees are entitled to receive a free (and unconditional) vaccination at a Government sponsored vaccination location. Please also see our response under question 8.

**11. Can the employer keep records about employees who received/did not receive a COVID-19 vaccination?**

Theoretically yes, provided that the employer defined a purpose and a legal basis for processing this special category data.

**12. Can the employer obtain the COVID-19 vaccination status of an employee from a government database (or any other database) so that the employer can track the COVID-19 vaccination status of its employees?**

No.

**13. Can the employer obtain vaccinations for its employees, or are vaccinations solely provided by the state/municipality/other government organisation?**

Not currently, as vaccination is performed free of charge, by the state authorities, at the Government sponsored locations.

**14. If employee vaccination status can be processed by the employer, and an employee is not willing to be vaccinated, is the employer entitled to continuously check the employee's health status by way of regular testing?**

No.

**15. Can the employer ask the employees to disclose their intention to be vaccinated? (willing to receive a vaccination/do not want to be vaccinated)?**

No (please see our response to question 8).

## SLOVAK REPUBLIC

**1. Is the employer permitted to mandate/require an employee to be vaccinated against COVID-19?**

Not currently. Under current applicable legislation, an employer cannot require employees to receive the vaccination. Vaccination can only be required by the state.

**2. If yes, is there a specific law or any guidance which the employer must follow?**

N/A

**3. If the employer is generally permitted to mandate/require an employee to be vaccinated against COVID-19, are there any**

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**exemptions which prohibit the employer from doing so?**

N/A

**4. Can an employee be disciplined for refusing to be vaccinated against COVID-19?**

Not currently, as the employer is not permitted to order vaccination, and the vaccination is currently voluntary in the Slovak Republic. Refusing to get vaccinated is not considered as a violation of work requirements. Therefore, we believe an employee cannot be disciplined for refusing to be vaccinated against COVID-19.

**5. Can the COVID-19 vaccination status of a job candidate be a condition for hiring employees?**

We believe that currently a candidate's vaccination status cannot be a condition for hiring, as such a condition by the employer might represent discriminatory behaviour when setting the hiring conditions. In addition, the employer is obliged to request from the candidates only such information which is related to the work to be performed. Requesting information in addition to this legal authorisation might represent a violation of the Labour Code.

**6. Are employees required to disclose their COVID-19 vaccination status to the employer?**

Currently, an employee is obliged to prove to the employer the negative result of either a RT-PCR test or antigen test ("COVID-19 test") for each 7/14/21 days depending on the district epidemic classification set by the COVID-AUTOMAT which divides districts in the Slovak Republic based on the local epidemic situation. However, there is an exemption from this requirement for employees who can provide the medical confirmation that they were vaccinated by a second dose of the vaccine against COVID-19 and at least 14 days have elapsed since this second dose of vaccination. For this purpose, the employer is entitled to inspect the medical confirmation of the COVID-19 vaccination status in order to check for this exemption.

The requirement to prove a negative COVID-19 test applies in the Slovak Republic until 28 April 2021, and its prolongation or

termination depends on the epidemic situation in the country.

**7. Can the employer ask the employees to disclose their COVID-19 vaccination status and do employees need to respond?**

Please see the answer to the question 6.

**8. Can the employer reward an employee (e.g. bonus payment, etc.) for voluntarily disclosing their COVID-19 vaccination status?**

Not currently.

**9. Can the employer receive information about the employees' COVID-19 vaccination status from the clinician / health care organisation where employees were vaccinated?**

Not currently.

**10. Can the employer offer and pay for the COVID-19 vaccination of employees under the condition that the employers will receive the information regarding the employees' vaccination status?**

COVID-19 vaccination is currently free of charge and is provided solely by the state based on pre-defined criteria.

**11. Can the employer keep records about employees who received/did not receive a COVID-19 vaccination?**

Not currently. We believe that the employer can only inspect the document proving that the employee was vaccinated for the purposes of allowing him/her to enter the workplace.

**12. Can the employer obtain the COVID-19 vaccination status of an employee from a government database (or any other database) so that the employer can track the COVID-19 vaccination status of its employees?**

Not currently.

**13. Can the employer obtain vaccinations for its employees, or are vaccinations solely provided by the state/municipality/other government organisation?**

Not currently. Vaccines are currently provided only through the official channels established by the state.

**14. If employee vaccination status can be processed by the employer, and an employee is not willing to be vaccinated, is the employer entitled to continuously check the employee's health status by way of regular testing?**

We believe that the employer cannot currently process employee vaccination status and can instead only inspect the document proving that the employee was vaccinated for the purposes of allowing him/her to enter the workplace.

As regards regular testing, the employer is currently mandated by law to check whether employees have a negative COVID-19 test result in compliance with current COVID-19 measures in order to assess whether to allow them to enter the workplace. Thus, the employer is currently entitled to check whether employee has a negative COVID-19 test result.

**15. Can the employer ask the employees to disclose their intention to be vaccinated? (willing to receive a vaccination/do not want to be vaccinated)?**

Not currently. We believe that the employer is currently not legally authorised to collect such data.

## SLOVENIA

**1. Is the employer permitted to mandate/require an employee to be vaccinated against COVID-19?**

No. Slovenian legislation does not provide for compulsory vaccination against COVID-19. Therefore, the employer cannot require its employees to be vaccinated.

**2. If yes, is there a specific law or any guidance which the employer must follow?**

N/A

**3. If the employer is generally permitted to mandate/require an employee to be vaccinated against COVID-19, are there any exemptions which prohibit the employer from doing so?**

N/A

**4. Can an employee be disciplined for refusing to be vaccinated against COVID-19?**

N/A

**5. Can the COVID-19 vaccination status of a job candidate be a condition for hiring employees?**

No, unless vaccination would be required for a particular work post in accordance with applicable law.

**6. Are employees required to disclose their COVID-19 vaccination status to the employer?**

No, unless otherwise required by the applicable legislation for specific job postings. As a rule, vaccination data can only be disclosed on a voluntary basis. In cases in which the law, from time to time, provides that certain persons must be regularly tested for COVID-19, the applicable rules may provide exemptions for persons who have been recently vaccinated.

**7. Can the employer ask the employees to disclose their COVID-19 vaccination status and do employees need to respond?**

As a rule, no. Vaccination data is a category of data concerning health, hence a special category of personal data under Art. 9 of the GDPR. Therefore, the employer can process vaccination data about its employees only if the processing is conducted on one of the legal grounds of Art. 9(2) GDPR, in particular point 9(2)(b) – obligations and rights under the employment and social security laws and 9(2)(i) – reasons of public interest in the area of public health. As a rule, consent as grounds under Art. 9(2)(a) GDPR is generally excluded, since it is recognised that due to hierarchy in relation between employer and employee, an employee cannot provide freely given, hence valid consent.

Pursuant to the Employment Relationship Act, an employer can only process personal data of employees, if processing is envisaged by the law or if necessary, for execution of employment-related rights and obligations. One of the fundamental obligations of employers is ensuring the health and safety of employees. However, from the perspective of employees' privacy, which must be observed by the employer, not every health and safety

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measure is justified, especially if it can be substituted with a less invasive measure.

In light of the above, the employer does not have the legal ground for collection of vaccination data of employees, since (i) under the currently applicable legislation, vaccination is not obligatory and (ii) it can be substituted with less invasive measures, demonstrating lack of infection with COVID-19 (e.g. testing, provided that vaccination is considered as a more invasive measure).

The above does not preclude the processing of vaccination data based on voluntary disclosures by employees.

**8. Can the employer reward an employee (e.g. bonus payment, etc.) for voluntarily disclosing their COVID-19 vaccination status?**

No. It is likely that such reward would correspond to a prohibited discrimination measure.

**9. Can the employer receive information about the employees' COVID-19 vaccination status from the clinician / health care organisation where employees were vaccinated?**

No. Please see question 7 above.

**10. Can the employer offer and pay for the COVID-19 vaccination of employees under the condition that the employers will receive the information regarding the employees' vaccination status?**

Yes, but subject to the employee's explicit, freely given, informed and specific consent. Such offer must be made on a strictly voluntary basis.

**11. Can the employer keep records about employees who received/did not receive a COVID-19 vaccination?**

Yes, if it has the valid legal ground for collection of the vaccination data.

**12. Can the employer obtain the COVID-19 vaccination status of an employee from a government database (or any other database) so that the employer can track the COVID-19 vaccination status of its employees?**

No. Please see question 7 above.

**13. Can the employer obtain vaccinations for its employees, or are vaccinations solely provided by the state/municipality/other government organisation?**

Currently, all vaccinations are provided solely by the state, following the principle of priority (elderly population, healthcare workers, etc.).

**14. If employee vaccination status can be processed by the employer, and an employee is not willing to be vaccinated, is the employer entitled to continuously check the employee's health status by way of regular testing?**

As a rule, employee vaccination status may not be processed by employers. Regardless of this, an employer can collect testing results, if the regular testing is determined (i) as a pre-condition for the employer to engage in business activities pursuant to applicable legislation or (ii) as a necessary health and safety measure in accordance with instructions of the employer's occupational health service provider.

**15. Can the employer ask the employees to disclose their intention to be vaccinated? (willing to receive a vaccination/do not want to be vaccinated)?**

Yes, but subject to the employee's explicit, freely given, informed and specific consent. Such request must ensure that responses are provided on a strictly voluntary basis.

## UKRAINE

**1. Is the employer permitted to mandate/require an employee to be vaccinated against COVID-19?**

No. An employer may only encourage its employees to get vaccinated against COVID-19. In order to become vaccinated, an employee would need to give his/her prior express consent and for those purposes he/she must be provided with the comprehensive information about vaccinations, the consequences of refusing to get vaccinated and possible post-vaccination complications by a certified medical institution. Please note that even with the

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employee's consent, COVID-19 vaccination may still not be possible if after the employee's medical examination, the COVID-19 vaccine appears to be medically contraindicated.

**2. If yes, is there a specific law or any guidance which the employer must follow?**

N/A

**3. If the employer is generally permitted to mandate/require an employee to be vaccinated against COVID-19, are there any exemptions which prohibit the employer from doing so?**

N/A

**4. Can an employee be disciplined for refusing to be vaccinated against COVID-19?**

At the time of publication, COVID-19 vaccination is not mandatory for any category of the population, therefore an employee may not be disciplined for refusing to get vaccinated. However, if such vaccination does become mandatory as prescribed by the Compulsory Vaccination Schedule from the state authorities, an employee could be dismissed/prevented from entering the workplace, if he/she falls under a designated category of employees who are required to receive mandatory vaccinations and refuses to do so.

**5. Can the COVID-19 vaccination status of a job candidate be a condition for hiring employees?**

No. Ukrainian law prohibits any employment-related discrimination, in particular, it prohibits direct or indirect restriction of an employee's rights based on his/her state of health.

**6. Are employees required to disclose their COVID-19 vaccination status to the employer?**

No.

**7. Can the employer ask the employees to disclose their COVID-19 vaccination status and do employees need to respond?**

The collection of health-related personal data (i.e. COVID-19 vaccination status) by an employer is prohibited by law, unless the employer receives express written consent

from an employee for the processing of such data. Employees do not need to respond to such requests from employers. Moreover, employees have a right to be informed about their lawful rights, the purpose and content of the collected data, potential data transfers to the third parties, etc.

**8. Can the employer reward an employee (e.g. bonus payment, etc.) for voluntarily disclosing their COVID-19 vaccination status?**

Such encouragement is not directly prohibited by law; however, the employer would still need to receive express written consent from an employee to process his/her health-related personal data (i.e. COVID-19 vaccination status).

**9. Can the employer receive information about the employees' COVID-19 vaccination status from the clinician / health care organisation where employees were vaccinated?**

No. Information regarding a person's COVID-19 vaccination status is treated as confidential and is protected from disclosure to third parties.

**10. Can the employer offer and pay for the COVID-19 vaccination of employees under the condition that the employers will receive the information regarding the employees' vaccination status?**

COVID-19 vaccination is currently funded by the government. There is no publicly available information as to whether vaccines would be available for purchase by private entities. If such option becomes available, employers would still need to receive express written consent from an employee to process his/her health-related personal data (i.e. COVID-19 vaccination status).

**11. Can the employer keep records about employees who received/did not receive a COVID-19 vaccination?**

Employers can keep records regarding the vaccination status of their employees under the condition of compliance with legislation that regulates the processing of personal data (please refer to our answer for question 7 above).

**12. Can the employer obtain the COVID-19 vaccination status of an employee from a**



**government database (or any other database) so that the employer can track the COVID-19 vaccination status of its employees?**

No. The Government Database only publicly displays the overall number of vaccinated individuals throughout Ukraine.

**13. Can the employer obtain vaccinations for its employees, or are vaccinations solely provided by the state/municipality/other government organisation?**

At the time of publication, vaccinations are solely provided by government organisations. There is no publicly available information as to whether vaccines would be available for purchase by private entities.

**14. If employee vaccination status can be processed by the employer, and an employee is not willing to be vaccinated, is the employer entitled to continuously check the employee's health status by way of regular testing?**

An employer cannot mandate/require an employee to get tested for COVID-19 when he/she is refusing to be vaccinated.

**15. Can the employer ask the employees to disclose their intention to be vaccinated? (willing to receive a vaccination/do not want to be vaccinated)?**

Such information may be collected under the condition of compliance with legislation that regulates the processing of personal data (please refer to our answer for question 7 above).

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