FIFTH-WAVE OF THE COVID-19 PANDEMIC: WHAT ARE THE NEW CHALLENGES FOR COMPANIES IN FRANCE?

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French Labor, Employment, and Workplace Safety Alert

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In the context of the current pandemic, the French government has updated the current measures in force so as to limit the further spread of COVID-19, and so, since 24 January 2022 it has been mandatory to hold a vaccination pass in certain circumstances.

The French Act n° 2022-46 dated 22 January 2022 implements these new measures, which are likely to have an impact on French companies.

ONLY EMPLOYEES WORKING IN ESTABLISHMENTS OPEN TO THE PUBLIC ARE REQUIRED TO HOLD A VACCINATION PASS IN ORDER TO ACCESS THEIR WORKPLACE

Since 24 January 2022, employees working in establishments open to the public who were previously required to present a health pass must now present a vaccination pass to access their workplace.

Employers must request the presentation of a valid vaccination pass for these employees, certifying:

- That COVID-19 vaccination is complete;
- That the employee has recovered from COVID-19 less than four months ago; or
- That the employee has a medical exemption from the vaccination.

The vaccination pass is different from the health pass, which allowed employees to enter the workplace with proof of a negative test (PCR or antigen) taken within 24 hours. Now, employees can no longer access their workplace with only proof of a negative test.

Venues, establishments, services or events open to the public where the presentation of a vaccination pass is required include those carrying out catering activities, leisure activities (cinema, museums, theatres, sports venues, etc.), professional events and seminars, shopping centres in certain circumstances and long-distance transport (airplanes, trains, buses, etc.).

However, if the professional activity takes place in areas not open to the public or outside of public opening hours, employees are not required to hold a vaccination pass. This is also the case for employees who carry out delivery activities or emergency responses, such as repairs or rescue.

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HOW CAN EMPLOYERS IMPLEMENT THE VACCINATION PASS IN ESTABLISHMENTS OPEN TO THE PUBLIC?

The Social and Economic Committee must be informed and consulted on the implementation of the vaccination pass where the general organisation of the company is affected.

Employers have to check the vaccination pass of employees accessing the workplace. To simplify the procedure, employers could provide a specific pass to those employees who have proof of being fully vaccinated, which would allow for a more efficient check at the workplace entrance.

However, those employees who are obliged to present the vaccination pass and who are not able to provide the necessary proof will have their employment contract suspended. Consequently, their remuneration will be suspended until their situation is rectified.

SPECIFIC ATTENTION TO THE IMPLEMENTATION OF PREVENTION MEASURES

As a reminder, French employers must take all necessary precautions to protect the health and safety of employees in the workplace.

In the context of the COVID-19 pandemic, companies must in particular:

- Carry out an assessment of the risks to employee health and safety with regards to the specific COVID-19 related exposure risks; and
- Implement organisational and preventative measures to limit the spread of the virus in accordance with the National Protocol to ensure employee health and safety at work (recently updated by the French Government on 25 January 2022).

In addition, as per French labour law, the French labour administration is able to fine French companies in cases of non-compliance with COVID-19 related prevention measures.

French companies can receive this fine after a formal notice, which can cost up to €500 per affected employee, up to a total amount of €50,000.

French companies that have implemented measures in accordance with the National Protocol (in particular preventative measures, physical distancing, ventilation, wearing of masks, etc.) will be able to demonstrate that they comply with their obligations in the event of a French labour inspection.

These provisions will continue to apply until a date to be determined by decree, which will be no later than 31 July 2022.

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Almost two years after the first lockdown, French companies have to continue to be particularly vigilant to the evolving health situation in order to adapt their organisational measures.

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