

Key Considerations & Issues on COVID-19 Vaccine Rollouts Across Southeast Asia



November 2021



Q&A | Focus on Employment

1. Can an employer require its employees to be vaccinated? Is it mandatory for certain industries?
2. Can employers refuse to hire applicants that have not yet been vaccinated and/or do not wish to be?
3. For workplaces with trade unions or other forms of collective representation, is an employer obliged to consult with them prior to implementing employee vaccinations?
4. Is information concerning an employee's vaccination considered "health information" or "sensitive data" under a data protection law (where applicable)?
5. If so, is such personal data subject to any restrictions on the collection and processing of "sensitive personal data"?
6. What are the legal requirements applicable to collecting, processing and transferring such personal data?
7. Are employers required to maintain a record of employees COVID-19 vaccination and report the governmental health authorities?
8. If vaccinations are compulsory, will employees be entitled to reimbursement for the costs of vaccination?
9. Can an employer provide inducements (such as bonuses, wellness programs, etc.) to those employees who undergo vaccination?
10. Can employers terminate employees who refuse to be vaccinated?
11. Can an employer require employees who cannot or will not agree to vaccination to refrain from coming to the workplace?
12. Are there any the government-imposed workplace restrictions and guidance in your jurisdiction?
13. In the event that an employee tests positive for COVID-19, what are the government measures or instructions that employers must follow?



9 Countries in South & Southeast Asia

Bangladesh
 Cambodia
 Indonesia
 Lao PDR
 Myanmar
 Philippines
 Singapore
 Thailand
 Vietnam



BANGLADESH



BANGLADESH

QUESTION	ANSWER
<p>1. Can an employer require its employees to be vaccinated? Is it mandatory for certain industries?</p>	<p>Employers cannot require their employees to be vaccinated under Bangladeshi laws. Also, it is not mandatory for any specific industry. The vaccination program is operated by the Bangladeshi government. People who are 18 years' of age or over can get vaccines by registering themselves through the Surokkha website. Vaccination is not available through private channels or clinics.</p>
<p>2. Can employers refuse to hire applicants that have not yet been vaccinated and/or do not wish to be?</p>	<p>No, employers cannot refuse to hire an applicant because of his or her not being vaccinated or unwillingness to undergo vaccination.</p>
<p>3. For workplaces with trade unions or other forms of collective representation, is an employer obliged to consult with them prior to implementing employee vaccinations?</p>	<p>There is no legal requirement for employers to consult with trade unions or collective bargaining agents for implementing employee vaccinations. As stated above, vaccinations are not yet available through private sources in Bangladesh.</p>
<p>4. Is information concerning an employee's vaccination considered "health information" or "sensitive data" under a data protection law (where applicable)?</p>	<p>The Government of Bangladesh has drafted certain rules called the Protection of Information and Privacy Rules 2019 ("Draft Rules") in which the term 'sensitive personal information' is defined which includes medical records and related personal data. However, we have heard of recent developments whereby the Draft Rules will not be published. Further, a new law will be implemented by the Government of Bangladesh. As of now, we understand that the new law will be similar to the Draft Rules. Therefore, to be on the safe side, any affected employee's vaccination-related information should be treated as sensitive personal information.</p>
<p>5. If so, is such personal data subject to any restrictions on the collection and processing of "sensitive personal data"?</p>	<p>Pursuant to the Draft Rules the sensitive personal information can be collected and processed if informed consent is obtained through a letter, fax or email or clearly written evidence.</p>
<p>6. What are the legal requirements applicable to collecting, processing and transferring such personal data?</p>	<p>The legal requirement in relation to collection, processing and transfer of the personal data is subject to written consent from the employee. Pursuant to these Draft Rules, a person needs to inform the other person of the following issues before obtaining any personal information.</p> <ul style="list-style-type: none"> ▪ What personal information will be collected; ▪ The purpose of obtaining such information; ▪ Classification of personal information; ▪ Persons or entities (local or international) to whom/which such information will or may be disclosed and measures that will be taken to protect such information; ▪ Time period of keeping such information; ▪ Right to request deletion of such information; ▪ Rules for handling grievances or 'consumer complaints procedures'; ▪ Details of the public sources, if applicable (if any information is obtained from any publicly available sources).
<p>7. Are employers required to maintain a record of employees COVID-19 vaccination and report the governmental health authorities?</p>	<p>No, the employers are not bound to maintain such records as well as they are not bound to report to the governmental health authorities relating to employees' COVID-19 vaccination. However, the employer can maintain a record of employees COVID-19 vaccination for their own use.</p>

QUESTION	ANSWER
<p>8. If vaccinations are compulsory, will employees be entitled to reimbursement for the costs of vaccination?</p>	<p>As stated above, there is no provision under Bangladeshi laws whereby employers can oblige employees to get vaccinated. Therefore, this is not applicable.</p>
<p>9. Can an employer provide inducements (such as bonuses, wellness programs, etc.) to those employees who undergo vaccination?</p>	<p>There is no restriction under Bangladeshi laws with regard to employers providing inducements for employees who undergo vaccination.</p>
<p>10. Can employers terminate employees who refuse to be vaccinated?</p>	<p>No, an employer cannot terminate its employees for refusing to be vaccinated.</p>
<p>11. Can an employer require employees who cannot or will not agree to vaccination to refrain from coming to the workplace?</p>	<p>Although there is no specific legal provision, such action by employers would be considered as a form of discrimination and thus strictly prohibited.</p>
<p>12. Are there any the government-imposed workplace restrictions and guidance in your jurisdiction?</p>	<p>As per the government’s instructions, every person in the workplace must wear a mask during the working period, wash their hands for at least 20 seconds before entering the work place using soap or hand sanitizer, repeat this at regular intervals, and refrain from sneezing or coughing without covering their nose and mouth.</p>
<p>13. In the event that an employee tests positive for COVID-19, what are the government measures or instructions that employers must follow?</p>	<p>The government of Bangladesh has periodically published various guidelines in relation to COVID-19. As per government measures, an employee who becomes infected with COVID-19 must inform his or her employer and must spend 14 days in quarantine. During this timeframe, he or she should seek support from medical experts.</p> <p>Separately, the employer is required to ensure that all other employees who have been in close contact with the COVID-19 infectee also need to self-quarantine to guard against possible or actual exposure to the virus. The employer must also take necessary steps such as:</p> <ul style="list-style-type: none"> ▪ promote workplace hygiene and organizing work schedules to reduce person-to-person contact, ensuring physical distance at the workplace or implementing remote work arrangements; ▪ properly disinfecting the workplace; ▪ maintaining good environmental hygiene and indoor ventilation; ▪ providing adequate facilities (e.g., soap, hand sanitizer etc.) and encouraging employers to practice workplace hygiene (e.g. frequent hand hygiene, avoid touching eyes/nose/mouth); ▪ promoting respiratory hygiene (e.g. providing face-masks to employers especially those at risk to minimize potential infection); ▪ directing employers to comply with quarantine measures, particularly following travel to high-risk areas or having had contact with someone who tested positive; and ▪ directing employers to stay at home or work from home if they have flu-like symptoms (e.g. fever, cough, etc.) regardless of travel or contact history.



BANGLADESH



CAMBODIA



CAMBODIA

QUESTION	ANSWER
<p>1. Can an employer require its employees to be vaccinated? Is it mandatory for certain industries?</p>	<p>In light of the community outbreak dated 20th February 2021, the Royal Government of Cambodia (“RGC”) issued Sub-Decree No. 37 dated 12 March 2021 on Health Measures to Prevent the Spread of COVID-19 and Other Severe and Dangerous Contagious Diseases (“Sub-decree 37”). Under Sub-decree 37, COVID-19 vaccination is undertaken on a voluntary basis. Vaccination will only be required for a certain group of people based upon their working conditions, and this will be determined by the Ministry of Health (“MOH”). Furthermore, the RGC issued Sub-Decree No. 66 on Obligations to Undergo Vaccination dated 11 April 2021 (“Sub-decree 66”). However, this Sub-decree 66 only obliges public officials, officials in the Legislative, Executive and Judicial Branches, and the military to undergo vaccination. This obligation is applicable to other individuals depending on their occupational situation as specified by the MOH. To-date no regulations addressing such specifications have been issued by the MOH.</p> <p>In addition, following the lifting of travel restrictions and lockdowns, the Ministry of Labour and Vocational Training (“MLVT”) issued Notification No. 022/21 on Returning to Work and Payment of Salary to Workers of Reopened Enterprises/Establishments after the Lockdowns End dated 8 May 2021 (“Notification 022”). Notification 022 clearly specifies that vaccination status, one way or the other, must not prohibit employees from returning to work after the end of the lockdown.</p> <p>Therefore, employers cannot require their employees to be vaccinated. Whether to undergo vaccination or not is entirely voluntary.</p> <p>Notwithstanding the above, Phnom Penh Municipality issued Instruction No. 027/21 on the Obligation to Show the COVID-19 Vaccination Card when Entering Academic Institutions, Markets, and Business Areas in Phnom Penh dated 5 October 2021 (“Instruction 027”). Instruction 027 prescribed that all persons aged 18 years or older must show their COVID-19 vaccination cards when entering or leaving academic institutions, state and private markets, restaurants and food courts, coffee shops and other businesses that have been allowed to reopen. Owners of these businesses must assign their employees to monitor and check to ensure compliance with the obligations above. For academic institutions, the management personnel must check the COVID-19 vaccination cards of the professors, teachers, and staff before permitting them to enter the institutions.</p>
<p>2. Can employers refuse to hire applicants that have not yet been vaccinated and/or do not wish to be?</p>	<p>The Labor Law prohibits discrimination in hiring based on race, ethnicity, sex, creed, religion, political opinion, birth, social origin, membership of a workers’ union or the exercise of union activities, but not a person’s status vaccination or similar. Further, the Criminal Code of Cambodia dated 30 November 2009 as amended on 27 February 2018 (“Criminal Code”) has criminalized certain discriminatory acts in the context of employment including the refusal to hire and terminate employment relationship based on ‘state of health’.</p>

QUESTION	ANSWER
	<p>In light of the above, there is no clear guidance on whether an employee’s vaccination status could be construed as ‘state of health’ under the Criminal Code. Also, under the current regulations as mentioned above, vaccination is on a voluntary basis. In this regard, refusal to hire an applicant on the grounds that he/she has yet to be vaccinated and/or unwilling to be vaccinated might expose the employer to high risks of alleged discrimination or claims to this effect. Therefore, to be prudent and for risk mitigation, we are of the view that the employer should not take employee vaccination status into account when making a decision to hire him/her.</p>
<p>3. For workplaces with trade unions or other forms of collective representation, is an employer obliged to consult with them prior to implementing employee vaccinations?</p>	<p>There is no mandatory legal requirement in relation to obtaining consent or consulting with shop stewards or trade unions prior to implementing employee vaccination. The consultation obligation prior to implementing certain health and safety practices is subject to the existing internal work rules, policies or collective bargaining agreement.</p> <p>Nevertheless, shop stewards have duties, among others, to ensure enforcement of provisions concerning occupational health and safety, and proposing to the employer measures that would contribute beneficially towards protecting and improving the health, safety and working conditions of employees in the enterprise, particularly in respect of work-related accidents or illnesses. Therefore, it is reasonable to form a view that the vaccination program which is related to employees’ health and safety should be done in conjunction with the consultation with shop steward. As trade unions have duties to represent their members in grievances, it is also recommended that trade union is consulted prior to implementing vaccination program. This consultation is also to ensure industrial harmony and avoid unnecessary disputes.</p>
<p>4. Is information concerning an employee’s vaccination considered “health information” or “sensitive data” under a data protection law (where applicable)?</p>	<p>There is no specific data protection law in Cambodia. Nevertheless, data protection provisions are spread across a patchwork of various pieces of legislation such as the Constitution and the Civil Code dated 8 December 2007 as amended by the Law on Implementation of the Civil Code dated 31 May 2011 (“Civil Code”), and the Criminal Code. For instance, Article 10 of the Civil Code provides that personal rights include the right to life, body, health, freedom, name, dignity, privacy and other rights relating to personal benefits or interests.</p> <p>However, the definition of personal rights is quite broad, and the laws do not specifically define and distinguish what data would be considered sensitive. The determination of personal rights categories rests with the Cambodian courts.</p> <p>In this regard, employees’ private information including information regarding vaccination could be deemed as within the domain of personal rights and protected under the law.</p>
<p>5. If so, is such personal data subject to any restrictions on the collection and processing of “sensitive personal data”?</p>	<p>As mentioned above, personal data is subject to protection under various pieces of legislation. Personal data may fall under the scope of personal rights stipulated in Article 10 of the Civil Code. Hence, the collection, storage and transfer of employee's data by the employer without proper written consent from the employee could be construed as breaching employee data privacy, and may expose the employer to both civil and criminal liabilities.</p>



CAMBODIA

QUESTION	ANSWER
<p>6. What are the legal requirements applicable to collecting, processing and transferring such personal data?</p>	<p>Please refer to the above.</p>
<p>7. Are employers required to maintain a record of employees COVID-19 vaccination and report the governmental health authorities?</p>	<p>Currently, there are no obligations for employers to maintain a record of employees' COVID-19 vaccination status and report this to the governmental health authorities. Nevertheless, employers may maintain such records for their own internal use.</p>
<p>8. If vaccinations are compulsory, will employees be entitled to reimbursement for the costs of vaccination?</p>	<p>Under Sub-decree 37, COVID-19 vaccination is undertaken on a voluntary basis. This vaccination is free of charge for Cambodian citizens.</p> <p>Furthermore, under Article 245 of the Labor Law, the employer is required to cover expenses for vaccination drives to guard against epidemics.</p> <p>Thus, if vaccinations are later charged at a certain cost, the employer is required to cover such expenses.</p>
<p>9. Can an employer provide inducements (such as bonuses, wellness programs, etc.) to those employees who undergo vaccination?</p>	<p>Currently, there is no statutory restriction regarding the provision of inducements to employees who undergo vaccination. It is possible that employers may provide inducements as a mean of encouraging employees to be vaccinated, unless a subsequently issued regulation/policy states otherwise. In any event, the employer must ensure that the vaccination is on a voluntary basis in accordance with Sub-decree 32.</p> <p>Nevertheless, as the COVID-19 situation evolves and with vaccinations for this disease still a new phenomenon, we are of the view that implementing any program related to COVID-19 should be carefully undertaken and employers should revisit regulations, contractual terms, and existing policies as well as subsequent regulations concerning COVID-19 vaccination to mitigate any risks, especially concerning alleged discrimination or claims thereof.</p>
<p>10. Can employers terminate employees who refuse to be vaccinated?</p>	<p>Under Sub-decree 37, COVID-19 vaccination is undertaken on a voluntary basis. Furthermore, based on Notification 022, vaccination status may not be used as a condition prohibiting (or otherwise) employees from returning to work. In the context of refusal to undergo vaccination, an employer could not dismiss employees with cause as this termination is not in line with the voluntary regime of such vaccination and there is no law which otherwise stipulates that failing to undergo vaccination would amount to serious misconduct. Termination of employees due to vaccination status could expose employers to liabilities such as having to pay full compensation to employees for termination without cause. There is also a risk of claims by the employees with respect to discrimination based on 'state of health' as indicated in question 2.</p>



CAMBODIA

QUESTION	ANSWER
<p>11. Can an employer require employees who cannot or will not agree to vaccination to refrain from coming to the workplace?</p>	<p>In accordance with Notification 022, and as vaccination must be on a voluntary basis, the employer cannot ban employees from the workplace who cannot or will not agree to vaccination. Banning employees from coming to the workplace is non-compliant with Notification 022 which explicitly prohibits vaccination status from being used to allow or refuse entry to the workplace, and this may affect existing terms and conditions of their employment contracts.</p> <p>Furthermore, as mentioned earlier, since the COVID-19 situation is evolving and vaccination for this is still a new concept. Implementing any program related to COVID-19 should be carefully undertaken and the employer should revisit regulations, contractual terms, existing policies, as well as subsequently issued regulations concerning COVID-19 vaccination to mitigate any risks, especially allegations of discrimination and/or forced resignation.</p>
<p>12. Are there any the government-imposed workplace restrictions and guidance in your jurisdiction?</p>	<p>The government recently lifted restrictions on almost all businesses. To-date, there are various COVID-19 preventative measures which must be implemented in factories/enterprises. For instance, the Notification on Further Reminders in Regard to COVID-19 Preventative Measures for Factories and Enterprises dated 19 March 2020, and dated 2 December 2020 recommends among others that employers:</p> <ul style="list-style-type: none"> ▪ establish “Occupational Health and Safety (“OSH”) Committees” or “COVID-19 Committees” or groups of employees in the workplace to regularly disseminate instructions to employees on appropriate hygiene measures to put in place, especially COVID-19 preventative measures on a daily or weekly basis; ▪ keep a record of persons entering and leaving the premises of the factory or enterprise, and maintain such records for any future inspection by the authorities; and ▪ implement preventative measures such as temperature checks, social distancing, distribution of masks etc. <p>Sub-decree 37 also prescribes detailed obligations that must be followed in relation to health measures by both individuals and enterprises. In particular, with respect to enterprises, employers must comply with the following measures:</p> <ul style="list-style-type: none"> ▪ ensure that proper cleaning and disinfection procedures are in place, conduct temperature checks on all employees, impose mask wearing and social distancing measures; ▪ inspect and instruct employees and other individuals who enter the workplace to follow health measures including personal hygiene measures for disinfection, temperature checks and mask wearing; ▪ prohibit access to the workplace by any person who fails to comply with personal hygiene measures or has a body temperature above 37.5 Celsius or who does not wear a mask; and ▪ arrange the workplace to ensure that employees or customers maintain physical distancing (i.e. 1.5 meters apart) when present in the workplace. The enterprise/establishment is not allowed to have excessive numbers of visitors present on its premises where social distancing measures cannot be adequately implemented.

QUESTION	ANSWER
<p>13. In the event that an employee tests positive for COVID-19, what are the government measures or instructions that employers must follow?</p>	<p>In supplementing Sub-Decree 37, Prakas 081 issued by the Ministry of Health dated 22 March 2021 on Mask Wearing and Social Distancing Obligations during the COVID-19 Community Outbreak (“Prakas 081”) sets out the types of individuals who are obliged to wear a mask, places where mask wearing is required and social distancing requirements. Under Prakas 081, individuals who are required to wear a mask include, among others, direct service providers, such as employees working in enterprises and other businesses. Prakas 081 reiterates the obligations of enterprises to ensure that mask wearing and social distancing on their premises are properly enforced.</p> <p>Any failure to follow these health and safety measures, including mask wearing and social distancing measures, may render employers subject to warnings issued by the competent authorities or health officials. In the event that any such failure continues, a transitional fine of KHR 2 to 10 million (approximately USD 500 to 2,500) may be imposed for each instance of non-compliance. The competent authorities may also impose other penalties, including suspension or revocation of the business license, certificate, permit, or order closure of the business.</p> <p>Pursuant to Joint Instruction No. 045/21 on the Criteria for Suspension and Reopening of Business/Production Activities By Administrative Measures for COVID-19 Prevention and Necessary Measures for Reopening dated 6 May 2021 (“Instruction 045”), in the event that there are employees who test positive for COVID-19, the employer must:</p> <ul style="list-style-type: none"> ▪ provide a list of names and necessary information on the total number of workers in the factory/enterprise, and in particular, employees who are/were directly exposed to COVID-19 infectees; ▪ provide footage from security cameras and related information to the joint technical team to assess and identify sources of infection, those in direct and indirect contact with any COVID-19 infectee(s) and those at risk of spreading infection; ▪ provide locations and cooperation in testing; ▪ provide wages and other benefits as determined by the MLVT; ▪ assign two members of administrative staff of factories/enterprises to make records of employees’ health status who are in quarantine, and submit these to the labor medical officers; ▪ responsible for administering rapid tests to its employees who are identified by the joint technical team as having had direct exposure to COVID-19 in addition to the initial test conducted by the medical officer; and ▪ operate with the MLVT to identify employees who need to undergo COVID-19 tests when the business reopens.



INDONESIA



INDONESIA

QUESTION	ANSWER
<p>1. Can an employer require its employees to be vaccinated? Is it mandatory for certain industries?</p>	<p>Pursuant to Law No. 36 of 2009 on Health as amended by Law No. 11 of 2020 on Job Creation (the “Health Law”), every person is entitled to self-assess their health service needs. Therefore, an employer cannot require its employees to be vaccinated, unless otherwise stated in the employment agreement, company regulations or collective labor agreement. If this is not the case, the employer must procure its employees’ consent to vaccination.</p> <p>There are no specific regulations that explicitly compel employees in certain industries to be vaccinated. However, the President’s Regulation No. 99 of 2020 concerning vaccine procurement and vaccination administration most recently amended by the President’s Regulation No. 50 of 2021 (“PR 99/2020”) provides further clarity on this. Among others it states that certain individuals as designated by the Ministry of Health must undergo vaccination or face penalties for refusing to do so such as:</p> <ul style="list-style-type: none"> a) Postponement or termination of the provision of social security benefits or social welfare allowances; b) Postponement or termination of government administrative services such as ID issuance or renewal, family card issuance or renewal and/or issuance/renewal of other documents/papers/permits that will need government assistance/approval; and/or c) Fines.
<p>2. Can employers refuse to hire applicants that have not yet been vaccinated and/or do not wish to be?</p>	<p>Law No. 13 of 2003 on Manpower as amended by Law No. 11 of 2020 on Job Creation (the “Manpower Law”) states that every employee is entitled to have equal opportunity without any discrimination to have a job. However, it may be possible for employers to put conditions in the acceptance letter that employment is subject to undergoing COVID-19 vaccination and this is unlikely to be considered discriminatory.</p>
<p>3. For workplaces with trade unions or other forms of collective representation, is an employer obliged to consult with them prior to implementing employee vaccinations?</p>	<p>No, unless otherwise stated under the relevant company regulations or collective labor agreement.</p>
<p>4. Is information concerning an employee’s vaccination considered “health information” or “sensitive data” under a data protection law (where applicable)?</p>	<p>In the context where an employer will receive information on whether an employee has (or has not) been vaccinated, we believe that such information will be deemed personal data of such an employee under Government Regulation No. 71 of 2019 on the Implementation of Electronic Systems and Transactions (“GR 71/2019”). Personal data refers to any data which can identify an individual either directly and indirectly through electronic and non-electronic systems.</p>
<p>5. If so, is such personal data subject to any restrictions on the collection and processing of “sensitive personal data”?</p>	<p>Indonesian laws currently do not distinguish between “personal data” and “sensitive personal data”. Therefore, the collection and processing of information by employers on whether an employee has undergone vaccination must adhere to the requirements on personal data collection and processing under GR 71/2019.</p>



INDONESIA

QUESTION	ANSWER
<p>6. What are the legal requirements applicable to collecting, processing and transferring such personal data?</p>	<p>Based on GR 71/2019, the processing of personal data shall be conducted as follows:</p> <ul style="list-style-type: none"> a) collection of personal data shall be conducted in a limited and specific manner, with a valid legal basis, fair, with the acknowledgment and consent of the personal data owner; b) processing of personal data shall be conducted in accordance with the purpose of use conveyed to the personal data owner when procuring his/her consent; c) processing of personal data shall be conducted in a manner that safeguards the rights of the personal data owner; d) processing of personal data shall be conducted accurately, completely, and in an up-to-date manner, taking the purpose of personal data processing into consideration; e) processing of personal data shall be conducted by securely protecting the personal data security from loss, misappropriation, illegal access and disclosure, as well as alteration or destruction of such personal data; f) processing of personal data shall be conducted by notifying the purpose of collection, processing activities, and failures (if any) in protecting personal data; and g) processing of personal data shall be destroyed and/or deleted unless subject to a retention period in accordance with needs based on laws and regulations. <p>Overseas personal data transfers of information located on an electronic system in Indonesia shall be conducted in line with Article 22 of the Regulation.</p>
<p>7. Are employers required to maintain a record of employees' COVID-19 vaccination status and report this to the governmental health authorities?</p>	<p>No, it is not mandatory.</p>
<p>8. If vaccinations are compulsory, will employees be entitled to reimbursement for the costs of vaccination?</p>	<p>Pursuant to the Minister of Health's Regulation No. 10 of 2021 on Vaccination Implementation for the Purpose of Corona Virus Disease 2019 (COVID-19) Pandemic Countermeasures as lastly amended by Minister of Health's Regulation No. 23 of 2021 ("MOH Reg. 10/2021"), vaccinations are conducted by the central government through (i) a state vaccination program (where vaccination costs will be borne by the government); or (ii) mutual cooperation vaccination (vaccination programs given by employers to employees, their family members and other related individuals of the employees. Vaccination costs will be borne by the legal/business entity). MOH Reg. 10/2021 stipulates that state or mutual cooperation vaccinations must be given free of charge to the recipient. Reimbursement will not be necessary.</p>
<p>9. Can an employer provide inducements (such as bonuses, wellness programs, etc.) to those employees who undergo vaccination?</p>	<p>It is legally possible for the company to give such incentives to the employees. Under the Manpower Law, this would be deemed as a welfare facility.</p>

QUESTION	ANSWER
<p>10. Can employers terminate employees who refuse to be vaccinated?</p>	<p>No. Pursuant to the Manpower Law, employment termination can only be performed on particular grounds or for specific reasons set out under the Manpower Law, the employment agreement, company regulations or a collective labor agreement.</p>
<p>11. Can an employer require employees who cannot or will not agree to vaccination to refrain from coming to the workplace?</p>	<p>Pursuant to Government Regulation No. 88 of 2019 on Occupational Health, these actions shall be deemed the implementation of disease prevention (potential health hazard identification, assessment and control) which can be legally conducted by the employer. This arrangement shall not affect the salary and benefits of the relevant employee, unless both parties agree otherwise.</p>
<p>12. Are there any government-imposed workplace restrictions and operating guidelines in your jurisdiction?</p>	<p>Yes, they are stipulated by the national governmental agencies (i.e. the Ministry of Health and/or the Ministry of Labor Affairs) or regional governmental agencies (i.e. governor and/or mayor regulations), which are being periodically updated based on the prevalence of COVID-19 cases and general situation.</p>
<p>13. In the event that an employee tests positive for COVID-19, what are the government measures or instructions that employers must follow?</p>	<p>According to Ministry of Health Decision No. HK.01.07/MENKES/328/2020 concerning Guidelines on Preventing and Managing COVID-19 in Offices and Industrial Workplaces to Support Business Sustainability During the Pandemic, if an employee tests positive for COVID-19, certain actions and precautions must be taken, such as:</p> <ul style="list-style-type: none"> ▪ The employee must self-quarantine by implementing PHBS, social distancing measures and undergo further RT PCR tests for two days in a row or he or she must be sent to a relevant hospital. ▪ An epidemiology investigation will be conducted. ▪ Contacts tracing within the workplace and testing will be conducted. ▪ The workplace/area must be cleaned and disinfected.



INDONESIA



LAO PDR



QUESTION	ANSWER
<p>1. Can an employer require its employees to be vaccinated? Is it mandatory for certain industries?</p>	<p>No specific regulatory guidelines on this point. Under prevailing Lao PDR labor and healthcare laws, an employer cannot unilaterally require an employee to be vaccinated unless: (1) this unilateral power was provided for in a mutual agreement signed by the employee (e.g. in the employment contract); or (2) this unilateral power was provided for in the employer’s internal regulations which were then approved by the Labor Management Authority (“LMA”).</p> <p>Under Article 119 of the Labor Law (No. 43/NA, 24 December 2013) (“Labor Law”), employers have a general obligation to ensure a healthy and safe workplace. An employer’s decision to require its employees to be vaccinated during an ongoing pandemic could be regarded as an “appropriate measure to ensure workplace health and safety”. But without specific regulations or governmental directives concerning this topic, it is unclear how the Lao PDR courts will rule on these conflicting principles.</p> <p>There is no distinction applying to certain industries. All private and public sector employers will be considered labor units, and labor units will be governed by the labor laws, and the labor laws are silent on power of employers to require their employees to be vaccinated, except in cases of consent of employees in their employment contract, or arguably as provided in the employer’s Internal Regulations.</p>
<p>2. Can employers refuse to hire applicants that have not yet been vaccinated and/or do not wish to be?</p>	<p>Under Article 141(9) of the Labor Law, employers are prohibited from any direct or indirect discrimination toward employees.</p> <p>However, the Government of the Lao PDR has not yet issued any regulations specific to COVID-19 on this topic.</p>
<p>3. For workplaces with trade unions or other forms of collective representation, is an employer obliged to consult with them prior to implementing employee vaccinations?</p>	<p>Unless an employee vaccination program is already contained in the employer’s internal regulations, the imposition of a workplace-wide vaccination program represents a change to the employment terms and conditions and must be agreed with the employee.</p>
<p>4. Is information concerning an employee’s vaccination considered “health information” or “sensitive data” under a data protection law (where applicable)?</p>	<p>Yes, under Article 33 of the Law on the Protection of Electronic Data (No.25 /NA, 12 May 2017) (“E-Data Protection Law”) information relating to an employee’s vaccination would likely fall under the category of “health data”.</p>
<p>5. If so, is such personal data subject to any restrictions on the collection and processing of “sensitive personal data”?</p>	<p>Yes. Article 33 of the E-Data Protection Law prohibits “data managers” (such as an employer) from collecting, using, or disseminating electronic data relating to health and medical information. However, Article II(3) of the Guidelines on the Implementation of the Law on Electronic Data Protection (No. 2126/MoPTC, 8 August 2018) (“E-Data Protection Guidelines”) provides that “health records” are a type of “specific data” under the E-Data Protection Law. Specific data can be collected and processed by individuals, legal entities, and organizations if consent is obtained from the data owner. Accordingly, an employer can only collect and process an employee’s health records/data if they receive permission to do so from that employee.</p>



QUESTION	ANSWER
<p>6. What are the legal requirements applicable to collecting, processing and transferring such personal data?</p>	<p>Health records/data are classified as “specific data” under the E-Data Protection Guidelines. If an employer wants to collect, process or transfer specific data relating to an employee’s health records/data, it must obtain that employee’s prior consent.</p>
<p>7. Are employers required to maintain a record of employees COVID-19 vaccination and report the governmental health authorities?</p>	<p>The Labor Law and COVID-19 specific instruction from the labor authorities are silent on the obligation of employers to record and report COVID-19 related outbreaks to the governmental health authorities. However, the Labor Law provides a general obligation on an employer to record and report labor accidents and occupational diseases to the labor authority (Article 125 of Labor Law). This obligation may arguably include any COVID-19 related outbreaks within the workforce and we recommend that employers report any significant COVID-19 outbreaks to the relevant authority in compliance with the general obligation under the Labor Law.</p>
<p>8. If vaccinations are compulsory, will employees be entitled to reimbursement for the costs of vaccination?</p>	<p>No information is currently available. However, under Article 119 of the Labor Law, employers have an obligation to implement appropriate measures to ensure workplace health and safety for employees, with the costs being absorbed by the employer, whether this extends to the cost of vaccinations remains unclear.</p>
<p>9. Can an employer provide inducements (such as bonuses, wellness programs, etc.) to those employees who undergo vaccination?</p>	<p>Lao PDR laws do not prohibit employers from granting incentives or inducements to employees.</p>
<p>10. Can employers terminate employees who refuse to be vaccinated?</p>	<p>An employer can terminate an employee that refuses to be vaccinated, but this may be deemed termination without sufficient reason and an “unjustified termination” under the Labor Law.</p> <p>Article 89 of the Labor Law provides that an employee that has been unjustifiably terminated can request: (i) reinstatement to their former position or other appropriate work, or (ii) compensation from the employer. In this case, the employer must pay severance at a rate of 15% of the employee’s last total salary, multiplied by the number of months worked for the employer.</p>
<p>11. Can an employer require employees who cannot or will not agree to vaccination to refrain from coming to the workplace?</p>	<p>No information is currently available. Such an action by the employer could be deemed as a form of discrimination against unvaccinated employees. Article 141(9) of the Labor Law prohibits employers from directly or indirectly discriminating against employees.</p> <p>However, employers also have a general obligation under Article 119 of the Labor Law to ensure a healthy and safe workplace and adopt appropriate measures to ensure its employees’ health and safety. As such, the general risk to other employees’ health may be argued to take priority over and outweigh any potential claims of discrimination.</p>



QUESTION	ANSWER
<p>12. Are there any the government-imposed workplace restrictions and guidance in your jurisdiction?</p>	<p>There have been numerous instructions and guidelines issued over the course of the COVID-19 outbreak by the Government authorities. The most recent Notice No 1402/PMO, dated 30 Oct 2021 provides for the continued closure of all workplaces with COVID-19 outbreaks, except for the workplaces that have obtained authorization from the COVID-19 Taskforce and factories that are required to remain open, such as medical equipment production factories, food producing factories.</p> <p>For workplaces that are permitted to operate business, the guidelines set out in the mentioned Notification must be followed, which include (i) arranging a rotation system for working from home, (ii) temperature checks must be performed on those employees who do come to the office, (iii) the employer must provide hand gel or soap, mask, and instruct employees to wear mask all the time at office, (iv) keep one meter social distance. For the factories that are authorized to open, their employees must be fully vaccinated fully and not reside in any designated red zones. If any factories having experience outbreaks they should provide accommodation to their workers in the factory venue in order to prevent the COVID-19 infection.</p>
<p>13. In the event that an employee tests positive for COVID-19, what are the government measures or instructions that employers must follow?</p>	<p>We are not aware of any specific procedure published by the Government authorities to this point.</p>



MYANMAR



MYANMAR

QUESTION	ANSWER
<p>1. Can an employer require its employees to be vaccinated? Is it mandatory for certain industries?</p>	<p>In Myanmar, there has been no mandatory policy announcement allowing employers to demand that their employees undergo vaccination. However, most employers encourage their employees to do so. The Ministry of Health and Sports (“MOHS”) implemented vaccination drives for government staff members starting from 27 January 2021. Vaccination for all citizens, willing to be vaccinated, started in mid-March 2021. The type of vaccine used in Myanmar for the first batch was Covishield, manufactured in India while Covaxine, manufactured in China, has been used to vaccinate some government officials. Since in the mid of 2021, private organizations and medical companies have been allowed to import vaccines and administer them to the public with the approval of the MOHS. The common types of vaccines imported and administered to the public are Sinopharm, Sinovac and some limited amounts of Covishield.</p>
<p>2. Can employers refuse to hire applicants that have not yet been vaccinated and/or do not wish to be?</p>	<p>There is no express legal provisions or notifications stipulating vaccination as a pre-condition of employment. During the recruitment process, an employer is prohibited from any act of discrimination based on factors such as: membership of a union/labor organization, nationality, religion, gender, or age. Otherwise, there are no legal provisions which expressly regulate vaccination as a critical component in the recruitment process.</p>
<p>3. For workplaces with trade unions or other forms of collective representation, is an employer obliged to consult with them prior to implementing employee vaccinations?</p>	<p>There is no requirement to consult with trade unions on the implementation of employee vaccinations. However, it is suggested that all employees be consulted in this regard.</p>
<p>4. Is information concerning an employee’s vaccination considered “health information” or “sensitive data” under a data protection law (where applicable)?</p>	<p>Myanmar does not have a specific Personal and Data Protection Law. However, the Electronic Transactions Law (“ETL”) restricts an individual from disclosing another’s personal data to any third party without the consent of that person. The term “personal data” is defined in the ETL as “any information which has been or could be used to identify a person”. There is no definition of “sensitive data” in Myanmar law. Given the lack of legal provisions, vaccination could be deemed as health information and in general practice would be considered sensitive personal data.</p>
<p>5. If so, is such personal data subject to any restrictions on the collection and processing of “sensitive personal data”?</p>	<p>The Shop and Establishment Law requires that the employer arrange and keep employees’ documents, lists, contracts, evidence, forms and samples to be inspected by the inspector. In our reasonable interpretation of Myanmar law, it is likely that the employer can arrange and keep personal records of employees such as name, age, gender, residential address, educational level, copy of NRC, occupational skills and health information/medical certificate (if applicable). Otherwise, Myanmar law does not specifically regulate the collection and processing of sensitive personal data.</p>



MYANMAR

QUESTION	ANSWER
<p>6. What are the legal requirements applicable to collecting, processing and transferring such personal data?</p>	<p>There are no specific legal provisions in this regard. However, in practice, the employer may request a certificate of vaccination and status from the employee and other health information as relevant and required given the nature of the business. As mentioned in No. 5 above, from our reasonable interpretation of Myanmar law, it is likely that the employer can arrange and retain personal records of employees which may include personal data and health information.</p>
<p>7. Are employers required to maintain a record of employees COVID-19 vaccination and report the governmental health authorities?</p>	<p>There are no specific guidelines on this.</p>
<p>8. If vaccinations are compulsory, will employees be entitled to reimbursement for the costs of vaccination?</p>	<p>There is no recent legislation in this regard. In practice, most employers bear the cost of vaccination (if applicable) on behalf of their employees.</p>
<p>9. Can an employer provide inducements (such as bonuses, wellness programs, etc.) to those employees who undergo vaccination?</p>	<p>There are no specific legal requirements in this regard.</p>
<p>10. Can employers terminate employees who refuse to be vaccinated?</p>	<p>There is no explicit provision with respect to the particulars of dismissing employees for refusing to be vaccinated unless vaccination forms a part of workplace policies as consented to by the employees and as approved by the relevant labor office. At this stage, it is not likely that the township labor offices will approve this kind of provision under an employment contract.</p>
<p>11. Can an employer require employees who cannot or will not agree to vaccination to refrain from coming to the workplace?</p>	<p>There are no specific legal provisions in this regard. It will be subject to the organization's internal workplace policies/guidelines.</p>
<p>12. Are there any the government-imposed workplace restrictions and guidelines in your jurisdiction?</p>	<p>The MOHS published instructions regarding COVID-19 prevention and control on 30 March 2020 (the “MOHS Instructions”) applicable to every employer and directing that:</p> <ul style="list-style-type: none"> ▪ If an employee has a fever, is coughing or has breathing problems, the employer is instructed to ask the employee to stay at home; ▪ If an employee is pregnant, the employer is instructed to ask the employee to stay at home; ▪ If an employee lives with someone in quarantine, the employer is instructed to ask the employee to stay at home; ▪ The employees are instructed to wash their hands thoroughly and wear masks; ▪ The workplace should be regularly sprayed and cleaned; ▪ The transportation provided by the companies (buses, cars) should be sprayed and cleaned; ▪ Employee work stations should be six feet apart from one other;



MYANMAR

QUESTION	ANSWER
	<ul style="list-style-type: none"> ▪ The biometric system (e.g. fingerprint scanners for ‘clock-in’ machines) should be deactivated; and ▪ Construction companies should arrange to have no more than 50 employees on a construction site at any one time. <p>In addition, based on the MOHS Instructions, should an employee be suffering from fever, cough, breathing problems or is pregnant, the employer has an obligation to ask its employees to self-isolate and/or work remotely (if possible as per the nature of the work). If the symptoms of the employee worsen, the employee should also be requested by the employer to undergo a COVID-19 test and if the result is positive, the employer must report this to the nearest health department as per the Prevention and Control of Communicable Diseases Law 1995 (the “PCCDL”).</p>
<p>13. In the event that an employee tests positive for COVID-19, what are the government measures or instructions that employers must follow?</p>	<p>According to the MOHS Instructions and the PCCDL employer entities operating in Myanmar must abide by certain reporting obligations. COVID-19 was also notified as a communicable or notifiable disease under Notification No. 19/2020 dated 28 February 2020, issued by the MOHS.</p> <p>Some of the salient features of the PCCDL are as follows:</p> <ul style="list-style-type: none"> ▪ The PCCDL regulates the reporting requirements for notifiable communicable diseases and requires the employer to undertake the responsibility of carrying out reporting measures, by notifying the nearest health department or hospital. ▪ All individuals must carry out environmental sanitation measures that include (a) in-door, out-door sanitation or inside the fence/outside the fence sanitation; (b) wells, ponds and drainage sanitation; (c) proper disposal of refuse and destruction thereof by incineration; (d) construction and use of sanitary latrines; and (e) other necessary environmental sanitation measures. ▪ All individuals must comply with the measures undertaken by the MOHS and the Department of Health (“DOH”) in respect of preventing the occurrence and spread of communicable diseases and the control thereof.



PHILIPPINES



PHILIPPINES

QUESTION	ANSWER
<p>1. Can an employer require its employees to be vaccinated? Is it mandatory for certain industries?</p>	<p>Vaccination in the Philippines is voluntary. However, employers are requested to encourage their employees to get vaccinated, in accordance with Labor Advisory No. 03, series of 2021 of the Department of Labor and Employment (“DOLE”). The vaccine cards shall not be considered as additional mandatory requirements for employment, educational, and government transactions.</p> <p>The Guidelines dated 13 October 2021 issued by the Interagency Task Force for the Management of Emerging Infectious Diseases (“IATF”) did not expressly allow employers require its employees to be vaccinated but it required the vaccination of employees as a condition for the establishment to be allowed to operate. The IATF allowed some industries to operate at a percentage of its capacity, provided that all the workers are fully vaccinated against COVID-19 and the minimum public health standards are maintained. These industries are dine-in services, personal care establishments, fitness studios, gyms, venues for non-contact exercise and sports, film and tv production. The DOLE has not issued a new resolution or advisory in relation to this IATF Guidelines.</p>
<p>2. Can employers refuse to hire applicants that have not yet been vaccinated and/or do not wish to be?</p>	<p>There is no specific law or regulation classifying hiring or non-hiring on account of the vaccination status as a discriminatory practice. The current Labor advisory prohibits discrimination against employees who refuse to be vaccinated but is silent as to whether it applies to job applicants.</p>
<p>3. For workplaces with trade unions or other forms of collective representation, is an employer obliged to consult with them prior to implementing employee vaccinations?</p>	<p>No specific regulation has been issued by the concerned agencies. For workplaces with unions, employers have to check the collective bargaining agreements for provisions that may govern this situation. Under the Labor Code, employees have the right to participate in policy and decision-making processes of the establishment where they are employed insofar as said processes will directly affect their rights, benefits and welfare.</p>
<p>4. Is information concerning an employee’s vaccination considered “health information” or “sensitive data” under a data protection law (where applicable)?</p>	<p>Yes, the Data Privacy Act (Republic Act No. 10173) provides that “Sensitive Personal Information” includes personal information about an individual’s health.</p>
<p>5. If so, is such personal data subject to any restrictions on the collection and processing of “sensitive personal data”?</p>	<p>Yes. Vaccination data is subject to restrictions on collection and processing applicable to such ‘Sensitive Personal Information.’</p> <p>Note that the provisions of the Data Privacy Act and its Implementing Rules and Regulations apply to the processing of personal data of a Philippine citizen or resident by any person in the government or private sector.</p> <p>The processing of vaccination status data, being Sensitive Personal Information, is generally “prohibited by law except in the cases provided under Section 13 of the Data Privacy Act (“DPA”).” [NPC Advisory Opinion No. 2018-007]</p>



PHILIPPINES

QUESTION	ANSWER
	<p>Section 13 of the DPA provides: “The processing of Sensitive Personal Information and Privileged Information are prohibited, except in the following cases:</p> <ul style="list-style-type: none"> a) The data subject has given his or her consent, specific to the purpose prior to the processing, or in the case of privileged information, all parties to the exchange have given their consent prior to processing; b) The processing of the same is provided for by existing laws and regulations: Provided, That such regulatory enactments guarantee the protection of the sensitive personal information and the privileged information: Provided, further, That the consent of the data subjects are not required by law or regulation permitting the processing of the sensitive personal information or the privileged information; c) The processing is necessary to protect the life and health of the data subject or another person, and the data subject is not legally or physically able to express his or her consent prior to the processing; d) The processing is necessary to achieve the lawful and noncommercial objectives of public organizations and their associations: Provided, That such processing is only confined and related to the bona fide members of these organizations or their associations: Provided, further, That the sensitive personal information are not transferred to third parties: Provided, finally, That consent of the data subject was obtained prior to processing; e) The processing is necessary for purposes of medical treatment, is carried out by a medical practitioner or a medical treatment institution, and an adequate level of protection of personal information is ensured; or f) The processing concerns such personal information as is necessary for the protection of lawful rights and interests of natural or legal persons in court proceedings, or the establishment, exercise or defense of legal claims, or when provided to government or public authority.[DPA, Section 13]
<p>6. What are the legal requirements applicable to collecting, processing and transferring such personal data?</p>	<p>The processing of personal data must comply with the Data Privacy Act and its implementing rules, and must adhere to the principles of transparency, legitimacy of purpose and proportionality. The processing of vaccination status data, being Sensitive Personal Information, is in general “prohibited by law except in the cases provided under Section 13 of the Data Privacy Act.” [NPC Advisory Opinion No. 2018-007]</p>
<p>7. Are employers required to maintain a record of employees COVID-19 vaccination and report the governmental health authorities?</p>	<p>Under the Occupational Health and Safety Standards, all employers shall submit to the Department of Labor and Employment (“DOLE”) all safety and health reports, and notifications such as but not limited to annual medical report (“AMR”), OSH committee report, employer’s work accident/injury report (WAIR), and annual work accident/injury exposure data report. The employers are encouraged to reflect the vaccination under the AMR and/or keep data/records on vaccination (i.e. nos. of employees vaccinated, adverse effects through its Occupational Safety and Health (“OSH”) Committees).</p>



PHILIPPINES

QUESTION	ANSWER
<p>8. If vaccinations are compulsory, will employees be entitled to reimbursement for the costs of vaccination?</p>	<p>DOLE Labor Advisory No. 03, series of 2021 provides that the no cost of vaccination in the workplace shall be charged against or passed on, directly or indirectly, to the employees. The employer will shoulder the cost of vaccination of employees. However, the Labor Advisory is silent on the employee’s entitlement to reimbursement for the costs of vaccination in the event that the employee underwent vaccination without the employer’s prior knowledge or approval.</p>
<p>9. Can an employer provide inducements (such as bonuses, wellness programs, etc.) to those employees who undergo vaccination?</p>	<p>There is no regulation stipulating that employers must provide additional benefits to encourage vaccination, though nothing prohibits this either. Employers are required to implement all necessary workplace safety and health programs at no cost to the employees. Offering one-off cash incentives to employees to take the vaccine, as part of a vaccination program, may be considered as one such workplace health and safety program. In Labor Advisory No. 08 series of 2021, the DOLE reiterated that an employer shall continue to urge its employees to avail of the employer’s own vaccination program, if any, or that of their respective local government units.</p>
<p>10. Can employers terminate employees who refuse to be vaccinated?</p>	<p>No. DOLE Labor Advisory No. 03, series of 2021 states that any employee who refuses or fails to be vaccinated must not be discriminated against in terms of tenure, promotion, training, pay, and other benefits, among others, or termination of employment. No vaccine-related work policy is allowed.</p>
<p>11. Can an employer require employees who cannot or will not agree to vaccination to refrain from coming to the workplace?</p>	<p>Yes, if the intention is to promote the health and safety of the employee, the employer may explore alternative work arrangements. The employee who is not vaccinated should not be discriminated against with regard to pay, tenure, training, promotions, bonuses, and other benefits. The employer should make sure that the arrangement is not considered discriminatory as this would be tantamount to constructive dismissal.</p>
<p>12. Are there any government-imposed workplace restrictions and guidance in your jurisdiction?</p>	<p>Yes. The number of employees allowed to work on site may vary depending on the alert level being implemented in the area having jurisdiction over the workplace.</p> <p>The DOLE and the Department of Trade and Industry (“DTI”) have jointly issued guidelines on the prevention and control of COVID-19 in the workplace. These guidelines include the proper use of masks, face shields, physical distancing, disinfection, ventilation, and mandatory awareness programs. The OSH Committees in the workplace are required to provide awareness programs and shall facilitate webinars, virtual lectures and trainings on COVID-19, its prevention and control, including best practices to be attended by all employees and management.</p> <p>The joint guidelines prescribes mandatory testing and the frequency of the test depending on the industry and type of work.</p>



PHILIPPINES

QUESTION	ANSWER
	<p>The joint guidelines also require large and medium private establishments (i.e. with total assets of above PhP15 Million) and establishments with multiple tenants are mandated to designate an isolation area of one room for every 200 employees (based on the number who are actually reporting per shift), which shall be other than the company clinic, and must be situated near the entrance/s or in a nearby facility, for employees needing further assessment due to elevated temperature, presence of flu-like symptoms, any yes answer to the Health Declaration, or exposure history to a COVID-19 case or probable case thereof. Isolation rooms may be outside the establishments, provided that they are within the control of the employer, i.e. the facility is readily available when necessary, provided further, that a temporary holding facility for employees and visitors with symptoms, or following further assessment required after responding to the health declaration form, shall be set up within the immediate vicinity of the workplace and/or building.</p>
<p>13. In the event that an employee tests positive for COVID-19, what are the government measures or instructions that employers must follow?</p>	<p>The employer must report COVID-19 positive employees, symptomatic employees, and their close contacts, to the local health office having jurisdiction over the workplace and the Barangay Health Emergency Team (BHERT) of their place of residence. The employer shall likewise submit a monthly Workplace COVID-19 Prevention and Control Compliance Report to the DOLE using the Work Accident/Illness Report (WAIR) COVID-19 form.</p> <p>If one confirmed case of COVID-19 is detected in the workplace, the facility shall be disinfected. The conduct of a comprehensive disinfection by specialists is recommended. Granular lockdowns may be implemented. A shorter lockdown period of less than 24 hours for disinfection (disinfection time of three (3) to four (4) hours) is allowed, provided that the safety of employees is ascertained as provided under the company policy and/or OSH program allowing safe entry of employees, provided further that, a certificate of return to work from the specialists/cleaners/disinfecting agents is secured.</p>



SINGAPORE



SINGAPORE

QUESTION	ANSWER
<p>1. Can an employer require its employees to be vaccinated? Is it mandatory for certain industries?</p>	<p>Vaccination programs for COVID-19 are voluntary in Singapore. Though employers can encourage their employees to be vaccinated, they cannot force their employees to undergo such vaccinations. As per the updated 'Advisory on COVID-19 vaccination at the workplace' issued by the Ministry of Manpower on 23 October 2021 ("Updated Advisory"), all employers may ask their employees as to their vaccination status for the purpose of organizing the workplace, assigning workers to certain areas. Employers may also require employees to produce proof of vaccination before reporting to the workplace.</p> <p>Vaccination is not mandatory for certain industries yet. The Singaporean government has urged employers to implement a 'vaccinate or regular test' ("VoRT") regime for their employees from 1 October 2021. VoRT is mandatory for certain sectors such as healthcare, elderly care, food and beverage establishments.</p>
<p>2. Can employers refuse to hire applicants that have not yet been vaccinated and/or do not wish to be?</p>	<p>There are no specific regulations which mandate COVID-19 vaccination as a condition for hiring new applicants. However, based on the 'FAQs on COVID-19 vaccinations at the workplace' available on the website of the Ministry of Manpower, employers may impose COVID-19 vaccination as a requirement for new hires for the purpose of organizing the workplace / planning deployment.</p> <p>Also, it is important to note that the Tripartite Guidelines on Fair Employment Practices ("TGFEP") state that employers should apply relevant and objective selection criteria consistently across all aspects of employment, including recruitment, training, promotion, postings and retrenchments, which should be related to the job requirements. The TGFEP also mandates that the employer should recruit and select employees on the basis of merit such as skills, experience or ability to perform the job, regardless of age, race, gender, religion, marital status, family responsibilities, or disability.</p>
<p>3. For workplaces with trade unions or other forms of collective representation, is an employer obliged to consult with them prior to implementing employee vaccinations?</p>	<p>There are no regulations or guidelines to-date, which requires an employer to obtain prior consent from the labor union prior to mandating employee vaccinations.</p>
<p>4. Is information concerning an employee's vaccination considered "health information" or "sensitive data" under a data protection law (where applicable)?</p>	<p>Yes, information relating to an employee's vaccination may be considered as "personal data" under the Personal Data Protection Act 2012 ("SPDPA").</p>



SINGAPORE

QUESTION	ANSWER
<p>5. If so, is such personal data subject to any restrictions on the collection and processing of “sensitive personal data”?</p>	<p>The SPDPA does not specifically define “sensitive personal data”.</p> <p>However, the Personal Data Protection Commission has in the past issued decisions and advisory guidelines mentioned that certain types of personal data would be more sensitive in nature, for example- identification numbers, financial data, insurance details or info on medical conditions.</p> <p>Also, the Advisory Guidelines on Key Concept in the Personal Data Protection Act states that an organization should <i>“implement robust policies and procedures for ensuring appropriate levels of security for personal data of carrying levels of sensitivity.”</i></p> <p>Therefore, the documents that contain vaccination details of any employee would be considered as sensitive personal data and should be processed and sent with due care.</p>
<p>6. What are the legal requirements applicable to collecting, processing and transferring such personal data?</p>	<p>The SPDPA requires an organization to obtain consent of the individual before collecting, using or disclosing his/her personal data for any purpose, unless such collection, use or disclosure of personal data falls within the exceptions listed in the Second, Third or Fourth Schedule of the SPDPA. The consent from an individual must be validly obtained and may be either expressly given or deemed to have been given in accordance with the provisions of the SPDPA.</p> <p>Furthermore, the SPDPA states that an organization may collect, use or disclose personal data about an individual only for purposes that a reasonable person would consider appropriate in the circumstances, and where applicable, the concerned individual has been notified.</p>
<p>7. Are employers required to maintain a record of employees COVID-19 vaccination and report the governmental health authorities?</p>	<p>Though it is not mandatory to maintain a record of employees’ COVID-19 vaccination certificate, the employer may retain a copy of employees’ vaccination certificates subject to requirements under the PDPA.</p>
<p>8. If vaccinations are compulsory, will employees be entitled to reimbursement for the costs of vaccination?</p>	<p>COVID-19 vaccination is cost-free for Singaporeans, permanent residents and long-term pass holders.</p>
<p>9. Can an employer provide inducements (such as bonuses, wellness programs, etc.) to those employees who undergo vaccination?</p>	<p>This would be subject to a clear agreement entered into between the employer and employee.</p>



SINGAPORE

QUESTION	ANSWER
<p>10. Can employers terminate employees who refuse to be vaccinated?</p>	<p>Yes, an employer may require its employees who cannot or will not agree to be vaccinated to refrain from entering the workplace. The employers are obliged to maintain a safe workplace under the Workplace Health and Safety Act, and implement safe management measures.</p> <p>As per the Updated Advisory, starting from 1 January 2022, only employees who are vaccinated, or have recovered from COVID-19 within 270 days, may return to the workplace. All unvaccinated employees will not be allowed to enter the workplace unless they have a negative Pre-Event Test (“PET”) result (valid for 24 hours), which should be conducted on the basis of the costs being borne by the employee. Employers may allow unvaccinated employees to continue working from home if their work can be performed this way.</p> <p>However, such working arrangements are subject to the employer’s decision (subject to Government Safe Management measures). For employees, whose work cannot be performed at home, the employers may- (a) allow them to continue in the existing job with PET at their own expense and time; (b) based on availability, redeploy them to suitable jobs that can be performed from home, at levels of remuneration commensurate with the responsibilities of such jobs; or (c) place them on no-pay or even terminate their employment (with notice) as a last resort, where such termination would not be considered as unfair dismissal.</p>
<p>11. Can an employer require employees who cannot or will not agree to vaccination to refrain from coming to the workplace?</p>	<p>Yes, an employer may require its employees who cannot or will not agree to be vaccinated to not come into the workplace, provided the employer continues to pay the employees their usual salaries. The employers are under an obligation to main a safe workplace under the Workplace Safety and Healthy Act, and implement safe management measures. To avoid exposure at the workplace, work-from-home is the default mode of working for employees whose jobs can be performed from home, and the employees must ensure to continue to do so for at least half of their working time.</p> <p>Also, employers must ensure that no more than half of their employees are at the workplace at any point in time. Employers must not organize or encourage social gatherings within or outside the workplace.</p> <p>Further, employees must wear masks at the workplace, maintain safe physical distances and observe good personal hygiene.</p>



SINGAPORE

QUESTION	ANSWER
<p>12. Are there any the government-imposed workplace restrictions and guidance in your jurisdiction?</p>	<p>Yes, the Ministry of Manpower has issued its ‘Updated advisory on COVID-19 vaccination at the workplace’.</p> <ul style="list-style-type: none"> ▪ Work-from-home remains the default- employers must ensure that employees whose job functions can be performed from home are required to work-from-home; ▪ Unvaccinated employees may not return to the workplace unless they have a negative Antigen Rapid Test (“ART”) administered via PET at Ministry of Health (“MOH”)-approved COVID-19 test providers 24 hours before the expected end of work <p>When at work, employees must:</p> <ol style="list-style-type: none"> i. Wear masks at all times, except during activities that require masks to be removed. ii. No social gatherings are permitted at the workplace. iii. The employer may permit employees to have different start times and allow flexible workplace hours, that will reduce congestion or gatherings of employees at common places. iv. No employee should work at more than one worksite. If cross-deployment cannot be avoided (e.g. due to the nature of the job), additional safeguards must be taken to minimize the risk of cross-infection. v. The number of persons at work-related events must be capped at 50 persons per event. vi. Attendees must maintain at least 1 meter safe distancing between each individual, as per the requirements at the workplace. vii. Meals should not be the main feature of an event, i.e. they should only be served if incidental to the workplace event. The food must be served individually with the participants seated while consuming. Participants should minimize the time that they are unmasked while eating. viii. Work-related events held at third-party venues will also be subject to any additional safe management policies set out by the owner of the premises.
<p>13. In the event that an employee tests positive for COVID-19, what are the government measures or instructions that employers must follow?</p>	<p>The MOH has implemented the following protocols:</p> <ol style="list-style-type: none"> i. If a person is unwell: visit a ‘Swab And Send Home’ clinic via private transportation for a doctor to assess him or her and advise on the next steps; ii. If a person is well but has nonetheless tested positive: self-isolate at home for 72 hours and repeat the ART. End isolation when the ART result is negative; or iii. If someone is identified by the MOH as having been in close contact with a COVID-19 case (health risk warning): On Day 1, take an ART and upload the results at go.gov.sg/agsubmit. Thereafter, observe a 7-day monitoring period, during which the affected individual can leave his or her place of residence (including for work reasons after testing negative via an ART self-test on the given day).



THAILAND



THAILAND

QUESTION	ANSWER
<p>1. Can an employer require its employees to be vaccinated? Is it mandatory for certain industries?</p>	<p>As vaccination against COVID-19 is not mandatory at this stage, an employer has no right to demand that employees be vaccinated and any such program (if available) should be based on mutual consent. Therefore, the employer cannot require its current employees to be vaccinated. However, it is possible to require vaccination as a pre-condition at the time of new employment.</p> <p>Apart from the above, under Section 34 of the Communicable Diseases Act B.E. 2558 (2015) (the “CDA”), a communicable disease control officer in charge of overseeing an area affected by an epidemic may issue a written order instructing any person at risk of being infected with a disease to undergo vaccination at a prescribed date, time and place in order to prevent further community spread or transmission of the disease. Any person who violates or fails to comply with the order of a communicable disease control officer may be fined by up to THB 20,000.</p> <p>Currently, it is not mandatory for certain types of businesses. The government encourages and suggests that private organizations follow and adhere to the Covid Free Guidelines where such businesses operate in designated dark red zone areas (those hardest hit by the pandemic). For example, those working in customer-facing food and beverage businesses (i.e. restaurants) must be vaccinated, with at least one dose or have been infected by COVID-19 no more than 3 months ago.</p>
<p>2. Can employers refuse to hire applicants that have not yet been vaccinated and/or do not wish to be?</p>	<p>The Labor Protection Act B.E. 2541 (1998) (the “LPA”) outlines the rights and obligations of employees and employers in an organization. No specific laws or regulations have been issued addressing any legal basis or restrictions on imposing vaccination as a condition of hire.</p> <p>Therefore, employers can require applicants to be vaccinated or require proof of vaccination as a hiring condition. In any case, the applicant has the right to ignore or refuse to answer this question or withhold proof as such information is considered sensitive personal data which would require explicit consent from affected individuals prior to the collection, processing or disclosure of such data under the Personal Data Protection Act (see also the effectiveness of the legal obligations below).</p>
<p>3. For workplaces with trade unions or other forms of collective representation, is an employer obliged to consult with them prior to implementing employee vaccinations?</p>	<p>To-date, no regulation requires an employer to obtain prior consent from the labor union prior to mandating employee vaccination, also bearing in mind the rights of the employees as raised above.</p>
<p>4. Is information concerning an employee’s vaccination considered “health information” or “sensitive data” under a data protection law (where applicable)?</p>	<p>Yes, information related to an employee’s vaccination would be considered sensitive data under Section 26 of the Personal Data Protection Act (the “PDPA”). However, the PDPA’s provisions will not become fully effective until 1 June 2022 as indicated by the Thai cabinet’s approval on 5 May 2021 concerning postponement of the PDPA’s entry into force.</p>



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QUESTION	ANSWER
<p>5. If so, is such personal data subject to any restrictions on the collection and processing of “sensitive personal data”?</p>	<p>Yes, the information of any employee who has or has not been vaccinated would be considered sensitive personal data. In this respect, the collection, processing or transfer of such data requires the employee’s express prior consent. Likewise, the employee must be duly notified in advance of the purpose of collecting and processing the data and his/her rights regarding this sensitive personal data. The purpose of use related to such sensitive data must be strictly limited to the purpose notified to the employees at the time it is requested.</p>
<p>6. What are the legal requirements applicable to collecting, processing and transferring such personal data?</p>	<p>The collection, use or disclosure of personal data by the personal data controller is subject to the data subject’s prior consent having been secured.</p> <p>In requesting consent, the employer (as the data controller) must inform the employee of the legal basis for the collection, use or disclosure of personal data, and the employee’s rights under the PDPA. The request must be presented in a manner which is clearly distinct and separate from other matters, in an easily understandable and straightforward form, using clear and plain language, and which does not deceive or mislead the data subject in regard to the relevant purposes.</p> <p>A request for consent may explicitly be made in written or electronic form.</p>
<p>7. Are employers required to maintain a record of employees COVID-19 vaccination and report the governmental health authorities?</p>	<p>There is no requirement to maintain a record of employees’ COVID-19 vaccination status and to report this to the governmental health authorities.</p>
<p>8. If vaccinations are compulsory, will employees be entitled to reimbursement for the costs of vaccination?</p>	<p>Currently, the vaccine is made available for free to Thai people or certain qualified groups of foreign nationals. However, the government’s vaccination program so far has been implemented on a voluntarily basis, not compulsorily. Getting COVID-19 vaccines requires registration through mobile applications made available by the Thai government such as Mor Prom (หมอพร้อม), Thai Ruam Jai (ไทยร่วมใจ). Nonetheless, there are optional vaccines which may be privately purchased, i.e. Sinopharm or Moderna. Employees are not entitled to reimbursement for the costs of such optional vaccines from employers at this stage. In any case, we have heard of a number of employers providing free optional vaccines to their employees to ensure their safety and expedite the resumption of normal office operations. Please note that such vaccination-related costs can be used as deductible expenses of the company (Revenue Department ruling No.0702/2065).</p>
<p>9. Can an employer provide inducements (such as bonuses, wellness programs, etc.) to those employees who undergo vaccination?</p>	<p>Vaccination is subject to the employee’s consent. In practice, an employer could provide a one-off inducement to encourage employees to receive the vaccine, provided that the employer does not deduct any existing benefits or welfare entitlements, in accordance with the Labor Relations Act B.E. 2518 (1975).</p>



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QUESTION	ANSWER
<p>10. Can employers terminate employees who refuse to be vaccinated?</p>	<p>In the absence of specific regulations or rulings allowing an employer to terminate an employee who has refused to undergo vaccination, it is not recommended to terminate an employee on such a basis as this would give rise to claims being filed for unfair dismissal.</p>
<p>11. Can an employer require employees who cannot or will not agree to vaccination to refrain from coming to the workplace?</p>	<p>Yes, an employer may require its employees not to attend the workplace and may excuse them from working, provided that the employer pays the employees' full salary or wages during such a period in the case that the employer has reasonable cause.</p> <p>Furthermore, in the event that the employer requires its employees to refrain from entering the workplace and does not pay its employees during the period of absence, the employer may be deemed to have terminated the employment agreement (Supreme Court Ruling No. 7393/2562) and this may trigger severance payments to affected employees.</p>
<p>12. Are there any the government-imposed workplace restrictions and guidance in your jurisdiction?</p>	<p>The Department of Disease Control under the Ministry of Public Health (“DDC”) has released the Manual for Disease Control and Prevention Measures - the Bubble and Seal policy on August 2021 (link) which was promoted by the government for usage and adherence by offices and factories in the dark red zones:</p> <ol style="list-style-type: none"> 1. Before allowing individuals to enter the company's premises, the employer should put a health screening/assessment point in place through which employees or visitors must go through; and 2. the company should implement elements of the Bubble and Seal Policy such as health screening, COVID-19 testing, or community isolation.
<p>13. In the event that an employee tests positive for COVID-19, what are the government measures or instructions that employers must follow?</p>	<p>Clause No. 12 of the DDC’s manual on the Bubble and Seal Policy lays out procedures to handle COVID-19 positive cases in the workplace. For example, where the business premises has less than 50 individuals working there, the company should have the following measures in place:</p> <ol style="list-style-type: none"> 1. Low level - COVID-19 cases amounting to less than 10% of all employees. Those with COVID-19 positive test results must self-quarantine and those exposed to potential infection must be subject to COVID-19 tests, rapid antigen (“ATK”) or RT-PCR tests; 2. Medium level - COVID-19 cases amounting to more than 10% of all employees. Those with COVID-19 positive test results must self-quarantine and those exposed to potential infection must be subject to COVID-19 tests, rapid antigen (“ATK”) or RT-PCR tests; or

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3. High level – Occurrence of any two of the following three types of incidents:

- COVID-19 positive test results for more than 10% of all employees;
- More than 100 COVID-19 positive cases; or
- Continuously having COVID-19 positive test results for more than 14 days in a 28 day period.

In such cases, the company must provide an isolation facility for employees that test positive for COVID-19.



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QUESTION	ANSWER
<p>1. Can an employer require its employees to be vaccinated? Is it mandatory for certain industries?</p>	<p>An employer can require its employees to be vaccinated if the industry is specifically subject to a government mandate. However, so far, we are not aware of any regulations having been issued by the Government and the Ministry of Health (“MOH”) which impose COVID-19 vaccination requirements on any specific industry or sector.</p> <p>The Government has however set out the priority order of vaccination. Under the Ministry of Health’s (“MOH”) Decision 4800/QD-BYT dated 12 October 2021 Providing Guidelines on Medical Procedures and Policies to implement Resolution No. 128/NQ-CP (“Decision 4800”). Under Decision 4800, priority is to be given to individuals aged 50 years or older, those with underlying medical conditions, pregnant women, and workers at industrial parks or complexes.</p> <p>Apart from the above, under Vietnamese regulations on occupational safety and hygiene, employers must maintain safe and sanitary conditions at the workplace and have the right to request that their employees comply with occupational safety and hygiene rules (including vaccination and other COVID-19 preventative measures) at the workplace.</p>
<p>2. Can employers refuse to hire applicants that have not yet been vaccinated and/or do not wish to be?</p>	<p>No information is currently available on this. However, Article 8 of the Labor Code 2019 prohibits any form of discrimination based on an employee’s health and/or disability status. It remains to be seen whether the Government of Vietnam will issue overriding provisions in the context of a state-backed COVID-19 vaccination campaign.</p>
<p>3. For workplaces with trade unions or other forms of collective representation, is an employer obliged to consult with them prior to implementing employee vaccinations?</p>	<p>Pursuant to Article 178.3 of the Labor Code 2019, employers are required to consult the opinions of organizations representing employees at the enterprise on issues related to the rights and interests of such organizations’ members. The law does not precisely specify what issues would be considered related to employees’ interests.</p> <p>However, given that an employer’s implementation of a vaccine mandate or offering financial incentives to undergo vaccination would possibly be deemed related to employees’ interests, the employers must consult the opinions of organizations representing its employees.</p>



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QUESTION	ANSWER
<p>4. Is information concerning an employee’s vaccination considered “health information” or “sensitive data” under a data protection law (where applicable)?</p>	<p>Yes, pursuant to Article 3.3 of Circular No. 25/2010/TT-BTTTT on the Collection, Use, Sharing, Security Assurance and Protection of Personal Information on Websites or Portals of State Agencies, health record data is considered “personal secrets”. The Draft Decree on Personal Data Protection introduced by the Ministry of Public Security dated 9 February 2021 (the “Draft PDPD”) distinguishes personal data on health status such as an employee’s vaccination status as sensitive personal data. The authority will likely impose tighter control and conditions over the process of using data considered personal health data. The collection and use of personal secrets must be consented to by the owner of such personal secrets unless otherwise provided by law. If a company fails to satisfy this requirement, it will be liable to administrative fines under various laws governing business areas that it operates in and can concurrently be sued by its employees.</p> <p>However, if the government authorities issue regulations requiring an employer to provide employee health information, such an employer can unilaterally disclose the relevant employee’s health records to the competent authorities without the employee’s consent.</p>
<p>5. If so, is such personal data subject to any restrictions on the collection and processing of “sensitive personal data”?</p>	<p>Generally, the processing and use of personal data must comply with the provisions of Article 22 of the Law on Information Technology No. 67/2006/QH11 of the National Assembly of Vietnam dated 29 June 2006.</p> <p>In particular:</p> <ul style="list-style-type: none"> ▪ The collection, processing and use of personal data is subject to consent being procured from the personal data owner; and ▪ Personal data is to be kept confidential and must not be shared with third parties, unless otherwise agreed to by the owner of such personal data. <p>According to the Cybersecurity Law, any entity that (i) provides services on telecommunication networks or the Internet, or value-added services via cyberspace in Vietnam; and (ii) collects, exploits, analyzes, processes data about personal information, data about the service users' relationships, or data created by service users in Vietnam, must store the data in Vietnam.</p> <p>The Draft PDPD distinguishes between basic personal data (for example: name, date of birth, address, email, etc.) and <i>sensitive</i> personal data (including, among others, personal data on health status). Personal data on health status is defined as the physical or mental health status of an individual that is collected or identified during registration for or the provision of medical services. The authority will likely impose tighter control and conditions over the usage of data that is personal health data. However, the timing on adoption of the Draft PDPD is not clearly scheduled however and consequently difficult to anticipate.</p>



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	<p>Additionally, under the Draft PDPD, a data processor must register the “process of data” in relation to sensitive data with the Personal Data Protection Committee – a committee to be established by the Government of Vietnam. During the registration process, the data processor must disclose some information such as what and whose data will be processed, the purpose of processing the data, measures to ensure data protection and the location of the data being processed.</p>
<p>6. What are the legal requirements applicable to collecting, processing and transferring such personal data?</p>	<p>The processing and use of employees’ personal data must comply with the provisions of Article 22 under the Law on Information Technology 2006. In particular:</p> <ul style="list-style-type: none"> ▪ The collection, processing and using of personal data is subject to the consent of the owner of such personal data; and ▪ Personal data must be kept confidential and must not be shared with third parties, unless so agreed by the owner of such personal data. <p>Information on health records is considered as “personal secrets”. The collection and use of personal secrets must be agreed to by the individual owning such personal secrets unless otherwise provided by law.</p> <p>Under the Draft PDPD, the processing and transferring of personal data outside of Vietnam will require prior approval from the Personal Data Protection Committee.</p>
<p>7. Are employers required to maintain a record of employees COVID-19 vaccination and report the governmental health authorities?</p>	<p>We have not seen any regulation that prohibits employer from maintaining such information. Therefore, the employer may maintain a record of those vaccinated for their own archival purposes. This requirement may change periodically depending on the COVID-19 situation and the local requirements of relevant provincial authorities. As a matter of practice, employers must maintain records of vaccination for internal management and reporting obligations if required by the authorities or per local requirements.</p>
<p>8. If vaccinations are compulsory, will employees be entitled to reimbursement for the costs of vaccination?</p>	<p>In accordance with Resolution No. 21/NQ-CP dated February 26, 2021, issued by the Government Regarding the Purchase and Use of COVID-19 vaccines and Decisions 3355/QD-BYT dated 8 July 2021, issued by the Ministry of Health regarding the plan to implement the COVID-19 vaccination campaign in 2021-2022, the costs of buying vaccines will be provided from:</p> <ul style="list-style-type: none"> ▪ the state budget; ▪ the COVID-19 vaccine fund; and ▪ aid, sponsorship, and support from domestic or foreign organizations and individuals and other legal sources. <p>The MOH confirmed on 24 August 2021 that vaccinations are free to all citizens and foreigners in Vietnam, and vaccination agencies are not permitted to charge for administering the vaccines.</p>



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QUESTION	ANSWER
<p>9. Can an employer provide inducements (such as bonuses, wellness programs, etc.) to those employees who undergo vaccination?</p>	<p>Yes, the employer may offer financial incentives to employees to undergo vaccination. However, vaccination will depend on the schedule of the government and employees' voluntary cooperation.</p>
<p>10. Can employers terminate employees who refuse to be vaccinated?</p>	<p>By law, an employee's refusal of vaccination or an employee's decision not to obtain a vaccine does not fall within circumstances where an employer is entitled to unilaterally terminate a labor contract. Therefore, employers cannot terminate labor contracts with their employees unless they obtain consent from their employees.</p> <p>However, Article 36.1(c) of the Labor Code 2019 allows employers to reduce the number of jobs if they, despite having taken all necessary measures, remain unable to remedy their commercial and operational viability due to a dangerous epidemic. Given the fact that COVID-19 was deemed a dangerous epidemic under the Government's Decision No. 173/QD-TTg, employers may be entitled to terminate certain employees (whether vaccinated or unvaccinated) provided that they have taken all necessary measures before such actions and provided advanced notice to the employees. However, employers should be very cautious as the laws do not outline any specifics as to what "all necessary measures" means or encompasses.</p> <p>Where an employee is illegally dismissed by an employer, he or she can submit a complaint to the employer, the chief inspector of the Department of Labor, War Invalids and Social Affairs or request a competent court to resolve the dispute.</p>
<p>11. Can an employer require employees who cannot or will not agree to vaccination to refrain from coming to the workplace?</p>	<p>No. The employee's consent would be required in this case.</p> <p>By law, at this stage, vaccination is completely voluntary and the work location has to be mutually agreed on by the parties. Therefore, employers could implement work-from-home/remote working arrangements for unvaccinated employees if both parties agree to supplement the relevant article concerning the workplace within the labor contract in compliance with Article 21.1(c) of the Labour Code 2019.</p>
<p>12. Are there any the government-imposed workplace restrictions and guidance in your jurisdiction?</p>	<p>The Government of Vietnam recently issued Resolution No. 128 dated 11 October 2021 on the new measures applicable from that date onward ("Resolution 128") based on the classification of risk areas (vaccination coverage, percentage of new cases etc.). The MOH issued Decision 4800 to provide guidance on the implementation of Resolution 128. Under these provisions, depending on the level of each area (i.e. 'high risk', 'medium risk' or 'new normal'), employers would be required to follow workplace requirements as issued by the local competent authority. Such local authorities (People's Committees) are required to provide specific regulations appropriate to the situation in the areas under their respective management.</p>



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<p>12. Are there any the government-imposed workplace restrictions and guidance in your jurisdiction?</p>	<p>In early November 2021, for example, the Department of Health of Ho Chi Minh City (“DOH HCM”) issued Official Letter No. 8095/SYT-NVY on vaccination and testing requirements with respect to employers and employees in Ho Chi Minh City (“HCMC”). Accordingly, production and business establishments based in HCMC must follow specific requirements on vaccination and testing:</p> <p>Vaccination Requirements:</p> <p>Employees at the workplace must satisfy <u>one</u> of the following conditions:</p> <ul style="list-style-type: none"> ▪ The employee has been fully vaccinated; ▪ The employee has received at least one dose of vaccination and intend to receive a second when the appropriate time comes to do so; or ▪ The employee has recovered from COVID-19 and has undergone the prescribed period of isolation and medical supervision. <p>Requirements on COVID-19 testing at the workplace:</p> <p>Employers must set up a <u>plan to subject its employees to random SARS-CoV-2 testing</u> who are at high risk of being infected with COVID-19 (“High-risk Employees”) under the guidance of the local health authorities to which such plans are to be submitted along with the Ho Chi Minh City Center for Disease Control (“HCDC”).</p> <p>In addition, employers must also ensure that all employees strictly comply with the “5K principles” which means “face mask” - “disinfection” - “distance” - “no gatherings” – “health declaration”.</p>
<p>13. In the event that an employee tests positive for COVID-19, what are the government measures or instructions that employers must follow?</p>	<p>Under Decision 4800, the relevant local authorities such as the provincial People’s Committees or Departments of Health must provide specific regulations appropriate to the situation in the area under their management. Most recently, the Department of Health of Ho Chi Minh City issued Official Letter No. 8095/SYT-NVY dated 1 November 2021 containing temporary guidance on the COVID-19 prevention and control plan at establishments, businesses and industrial parks.</p> <p>Upon detecting a person infected with COVID-19, production and business establishments in Ho Chi Minh City must follow the 4 following steps:</p> <ul style="list-style-type: none"> ▪ Step 1: Temporarily isolate the infected person in an isolation room or isolation area of the unit and immediately contact the local health authority for support; ▪ Step 2: Assess the health status of the infected person;

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- Step 3: Enter the infected person’s information into a database developed by the HCMC Department of Health;
- Step 4: Suspend operations in the area where the infected person works to clean and disinfect it, test for all F1s (according to the magnitude of the outbreak), conduct investigations to determine the magnitude and nature of the outbreak and monitor F1 depending on the situation.

Finally, establishments, businesses and industrial parks must assign a medical team or contract with a medical unit (public or private) to organize implementation and monitoring of the health care plan. Other provinces have not updated their guidance and/or procedures yet.



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A black and white photograph of several people in business attire huddling together with their hands stacked in the center. The image is partially obscured by a dark green diagonal overlay on the right side.

**Any questions?
Contact the team!**

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