

COVID-19 Vaccination of Employees in Ukraine: Q&A



Labor and Data Protection

1.

Can employers require from their employees and/or their family members to be vaccinated?

No, Ukrainian laws do not oblige employees to get vaccinated, except for some special categories such as e.g. medical staff, food catering etc. However, the list of vaccinations mandatory for such employees does not include COVID-19 vaccines yet.

2.

What if employees refuse to get vaccinated? May the employer restrict the access of not vaccinated employees to workplace premises?

The employer may not restrict the access of not vaccinated employees to workplace unless vaccination is required under the law (please see the above answer, still not applicable to COVID-19 vaccines).

However, if the employer is eager to apply additional safety measures, it is possible to agree on the following options with the employee:

- remote work (via electronic means of communication) or home-based work (e.g. manual work);
- unpaid leave (till the end of quarantine or for 15 calendar days per year after the end of the quarantine);
- paid basic and additional annual leaves (if any days left).

3.

Are employers obliged to organize vaccination campaigns for their employees? If not, do they have the right to do it?

There is no such requirement on the legislative level. Still, employers are allowed to organize vaccination campaigns for their employees and family members if they have relevant opportunities. There is a separate phone line established by the Ministry of Healthcare of Ukraine for employers with more than 50 employees willing to get vaccinated via which the employer may apply for vaccination organization.

If there are less than 50 employees who wish to get vaccinated, the employees may enroll themselves in vaccination lists via „Diya“ app or via a separate phone line.

Turning to the organization of vaccination campaign please remember that, even being well-intentioned, this process shall comply with all data protection rules under Ukrainian law, including on collection and transfer of personal data of employees and their relatives.

4.

Are there any legislative remedies against discrimination of the non-vaccinated employees?

There are no specific anti-discrimination rules related to COVID-19 in Ukraine. However, the Labor Code of Ukraine forbids any discrimination at the workplace, including on the basis of the health condition.

The rules for processing of any discrimination claim may be established by the employers on their local level in the internal labor regulations or internal anti-discriminatory policies (e.g. regarding relevant hotline, internal investigation procedures, etc.).

The employee may also file a suit with the court against the employer or its officials/employees within general court procedure (there are no special proceedings). It must be admitted though that discrimination-related employment disputes are not very common in Ukraine. Therefore, there is still no relevant court practice.

It is important to note that discrimination of non-vaccinated employees can be manifested in unlawful personal data processing, such as publishing the list of non-vaccinated employees (in any manner) or discussing such employees during any meetings (with direct or indirect indication of such employees). It is considered as a violation of Ukrainian data protection legislation leading to responsibility and reputational risks for the employers.

5.

Are employers entitled to get the information regarding vaccination status of their employees? Are employees obliged to inform their employers about vaccination status? If yes, can employers create a database of employees vaccinated and not vaccinated?

Not in case of COVID-19 vaccination, which is so far voluntary in Ukraine. However, employees are entitled to inform employers about their vaccination status on their own initiative. Further, the employers can include such personal data into their internal databases. To do this, the employers shall strictly follow all personal data protection rules considering that health data is “sensitive” data. In particular, the employers shall find a due legal basis for processing of such personal data – explicit consent will be feasible. There are specific rules on consent under Ukrainian law, in particular consent shall be freely given and no measures can be taken against the employees to make them give information on vaccination details. If there is cross-border transfers of personal data it’s necessary to follow specific rules too.

As an alternative, the employers can collect completely anonymized data, which are not considered as personal data. Should COVID-19 vaccination be mandatory in full or for some categories of employees the above shall be revised. It is also expected that in such a case the processing of personal data on vaccination will be regulated under specific legislation of Ukraine.

3.

Are there any ways to encourage employees to get vaccinated or punish them for refusal?

The laws do not preclude the employers from introducing any pecuniary or non-pecuniary incentives for the employees who get vaccinated. However, such provisions may be recognized as discriminatory against those employees who still refuse to be vaccinated.

We would not recommend applying disciplinary measures to employees who refuse to be vaccinated (reprimand/warning), unless required by law (please see the answer to question No.1).

7.

Can the employer dismiss employees for refusal to get vaccinated?

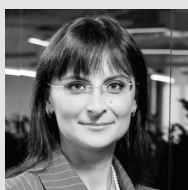
No, the Labor Code of Ukraine provides for a limited list of dismissal grounds that does not include dismissal due to refusal to be vaccinated (against COVID-19 or any other illness).

Though Ukrainian laws allow including additional grounds for dismissal into labor contracts¹ with specific categories of employees, we do not recommend doing so, as such provisions may be recognized as discriminatory or such that worsen an employee's standing as compared to legislative rules (unless the vaccination is mandatory for such categories under the law).

1. Labor contract is a special form of labor agreement that may be concluded e.g. with CEOs of companies or management boards of JSCs.

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