



Coronavirus Update

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COVID-19 vaccines: What multinational employers need to know

Please note: For the latest updates on COVID-19 vaccines and vaccine rollout plans, please visit the [World Health Organization \(WHO\)](#) and national regulatory agencies. The below information is designed to guide businesses to known, credible resources covering COVID-19 and does not constitute medical advice. Employers should review their obligations with their local employment counsel to ensure compliance with national and local legislation.

News that the first COVID-19 vaccines have been distributed has opened a set of complex legal issues for multinational employers eager to go back to business as usual. Set against the backdrop that all employers have an obligation to provide healthy and safe workplaces – while employees have an obligation to take care of themselves – questions have arisen about how employers can ensure access to vaccines for their employees and whether employers can mandate COVID-19 vaccinations for their employees.

Although widespread use of vaccines will take time, there are many items that employers need to consider now. Governments and global health organizations are still in the process of preordering the vaccines and developing vaccination plans. At least initially, as many governments have contracted with pharmaceutical companies for the procurement of vaccines, it is expected that governments will control access and prioritization, leaving little room for employer-sponsored vaccination programs.

Current status of global vaccine approval and distribution

The vaccines that are leading global candidates with proven efficacy rates are the University of Oxford and AstraZeneca's AZD1222 vaccine, Moderna's mRNA-1273 vaccine, Pfizer-BioNTech's BNT162 vaccine, Sputnik V vaccine and CoronaVac vaccine. At the time of publication, most of countries worldwide have already approved at least one of the leading vaccines and other countries have already started distributing it.

Vaccine development, approval, sales and distribution is subject to national and international political dynamics as well as private sector forces. There is national competition underway and a desire in many countries to create their own intellectual property and use their own home-based pharmaceutical companies. At the same time, intergovernmental initiatives, such as COVAX, are seeking to ensure equitable access for everyone around the world to COVID-19 diagnostics, treatments and vaccines. COVAX, which was spearheaded by the WHO, the European Commission, and France, aims to make 2 billion doses available to at-risk individuals and essential workers in lower-income countries and countries without bilateral deals with manufacturers by the end of 2021.

At this stage, the purchasing and distribution of vaccine doses is controlled by national governments, social health systems or government agencies. In countries that lack social health systems, distribution may be contracted out to private vendors. Distribution of vaccines is currently being accomplished in phases as more vaccines become available and based on prioritization of at-risk populations:

Phase 1: Limited COVID-19 vaccine doses available will have a distribution focus on initial prioritized populations including healthcare personnel, non-healthcare essential workers, those with high risk medical conditions and those 65 years plus, including those living in long-term care facilities.

Phase 2: Greater number of vaccine doses shifts the distribution focus to ensuring access to vaccines for remaining prioritized populations, as well as expanding into critical infrastructure populations. A broader distribution network will be required.

Phase 3: Sufficient supply of vaccine doses for the entire population is available. Best estimates are that Phase 3 will arrive, barring any unforeseen distribution or supply chain delays, at some point in 2021.

Immediate considerations for global employers

Distribution of protein-based vaccines, such as the Pfizer-BioNTech and Moderna vaccines, have a challenging cold storage and shipping needs, thus limiting locations where they can be administered. This requires reliance on current state and local public health infrastructures, versus workplace or health plan administration. The Pfizer-BioNTech and Moderna vaccines will also require two injections versus one, creating additional complexity. As COVID-19 vaccines become more widely available, governments may partner with businesses to ensure the effective distribution of the vaccine. For example, the Philippines government recently issued guidelines on the administration of COVID-19 vaccines in the workplaces so long as no cost is passed on to the employees and a non-mandatory vaccination policy is established to avoid any discrimination against employees who refuse to get vaccinated. Employers in other countries may seek the support of appropriate government agencies in the procurement, storage, transport, deployment and administration of COVID-19 vaccines.

Despite the uncertainty about the timing and availability of the vaccines to all groups, as well the many unknowns related to long-term side effects of the new vaccines, it is not too early for multinational employers to start evaluating their options by planning for an internal vaccination policy to ensure the safety of their workplace. Sufficient vaccine availability for employer-based access or distribution programs is still uncertain, and discussions surrounding insurance coverage, payment and employer policies are currently too varied for a trend to be deciphered.

However, pending regulatory guidance on the topic in most countries around the world, we can look at the framework typically enacted for mandatory flu vaccination programs. While a mandatory vaccination policy has not been considered by any country at this point, some countries passed legislation to encourage vaccination. The United Arab Emirates government, for example, has recently announced that as of 28 March 2021, employees working in certain tourism, hospitality and other customer-facing roles industries will be required to take COVID-19 tests every two weeks if they have not been vaccinated against the virus. We expect that once the initial wave of government-sponsored vaccination programs has been completed, much of the focus for the future will be on employer-sponsored vaccine programs. Employers assessing the feasibility of a vaccination policy should first determine the following:

- If a mandatory vaccine program is compliant with local legislation
- If a vaccination program is necessary or if other alternatives, such as maintaining the ability to work from home or introducing a mandatory mask-wearing policy, can be continued
- If a mandatory vaccination program may be limited to essential employees, high-risk areas or work sites
- If a voluntary or incentive-based vaccination policy should be considered

As employers consider COVID-19 vaccination policies, employers should ensure full compliance with local laws and take the following into consideration.

Religious or non-religious beliefs

Individuals may have a religious, cultural or philosophical belief system that would prohibit them from being vaccinated in general or from using a specific vaccine because of its components. This category can be quite broad, which would make it difficult to require evidence to support this type of objection. In addition, employers should keep in mind that, depending on where they are located, some legislation protects employees from discrimination for any form of belief.

Medical conditions and disabilities

Workers or jobseekers might refuse a vaccine because they have preexisting conditions, are pregnant, or have disabilities that may trigger potential adverse effects if vaccinated. Such workers may have discrimination claims in most countries around the world against an employer who would not hire them, give them an incentive, or would fire them if they refuse to take the vaccine.

Adverse effects

Workers who suffer a side effect from taking a vaccine may have a work injury liability claim against the employer if they have been mandated to take the vaccine. Insurers will need to contemplate whether their policies cover such cases.

Human rights

Laws in most countries would make it difficult for employers to enforce a mandatory vaccination plan unless expressly mandated (with exceptions) by the government where the company is located. For instance, in the European Union (EU), Article 3 of the EU Charter of Fundamental Rights would be violated by any employer attempt to mandate vaccination as that power is reserved for governments only.

Pay and leave policy

Employers considering an internal vaccination policy may want to communicate to their employees if they are going to cover the vaccines' costs not fully funded by government health programs or health insurance. In addition, employers may want to clarify if employees will be compensated for the time off to receive a vaccination.

Data protection

Information on individuals who have been vaccinated and have refused should be considered as sensitive data and handled in accordance with local privacy laws.

Education campaign

A campaign on the efficacy and safety of vaccines may be helpful to encourage employees to get vaccinated to ensure a healthy and safe workplace.

Employee representatives

Implementation of any vaccine policy will likely require notification and consultation with employee representatives or works councils. Employers should engage in dialogue with employee representatives to determine the scope of any intended policy.

Consent

Employers may be tempted to utilize consent to ensure maximum vaccination rates among their employee population. However, employers should understand that the employer/employee relationship is inherently power imbalanced, and consent may not cover an employer from later issues/challenges as consent may be considered forced, especially in any mandatory program.

Risk assessment

Employers might want to do a risk assessment of their workplaces and practices when preparing their internal vaccination policy. For instance, one infection could have more significant adverse consequences in a nursing home than in other places of employment. In addition, different policies may be needed when employees are required to travel to high-risk areas as part of their job obligations.

What's next

The roles and responsibilities of employers regarding COVID-19 vaccinations are still unclear. Many countries have not yet administered a vaccine and uncertainty remains around the long-term efficacy and availability of COVID-19 vaccines. There are still many questions that will remain unanswered until governments offer more direction to employers. At this stage, employers should continue monitoring any updates in their jurisdictions closely and prepare a legal risk assessment of the impact of a vaccination plan to ensure that potential liabilities are addressed by clear internal policies.

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