

## France: new law designed to combat the COVID-19 epidemic more effectively

- Law No. 2021-1040 of 5 August 2021 on health crisis management covers two main measures: the extension of the health pass (*'passe sanitaire'*) and the compulsory vaccination for certain categories of people working in the health sector.
- Failure by the employer to comply with the obligation to monitor compliance with the vaccination requirement is punishable by a fine of 1500 EUR.

On 26 July 2021 the French Parliament has adopted a new law, published on the *Journal Officiel* on 6 August 2021, extending the use of its 'health pass' to access a range of venues, activities and for travel and introducing mandatory vaccination in healthcare settings.

The decree n°2021-1059 of 7 August 2021, modifying the decree n°2021-699 of 1 June 2021 prescribing the general measures necessary for the management of the exit from the health crisis, taken by the government for the application of this law, was published in the *Journal-Officiel* of 8 August 2021.

Here a summary of the main provisions:

### 1. Extending use of health pass



Since 31 May 2021, with Law n° 2021-689, France has introduced a 'health pass' obligation, which consists of making access to certain places conditional on the presentation of proof of the person's state of health (vaccination certificate, result of a virological screening test with a negative result for COVID-19, or certificate of recovery from COVID-19).

The obligation to show a *pass sanitaire* is now extended also for access to public places, shopping centres and transports. The pass is compulsory for adolescents between 12 and 17 years of age from 30 September 2021 and for staff working in these establishments from 30 August 2021.

It is important for employers to consider that from 30 August 2021, any employee who is required to justify his health status in order to carry out professional duties, even if he does not carry out a directly regulated activity, will have to present a health pass. For example, an employee required to travel using long-distance public transport; or an employee required to visit clients whose activity is regulated will require a health pass.

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If the employee does not present the supporting documents, certificates or results which these provisions, employer require him to present and if he does not choose to use conventional rest days or paid holidays with the agreement of his employer, the latter shall notify him of the suspension of his employment contract on the same day by any means. This suspension, which is accompanied by the interruption of the payment of remuneration, ends as soon as the employee produces the required proofs.

The Constitutional Council censured the original provisions of the law referred to, as contrary to the principle of equality, the new ground for early termination of the fixed-term contract and the assignment contract of an employee holding a temporary employment contract who did not present the supporting documents, certificates or results required to obtain the "health pass".

These health pass provisions will expire on 15 November 2021.

## 2. *Mandatory vaccination for healthcare workers*



Unless there is a recognised medical contraindication, all those who carry out their activity in certain establishments (health establishments, medical centres, establishments for the elderly or disabled, etc.) and all health professionals (doctors, dental surgeons, midwives, pharmacists, nurses etc.) must be vaccinated against Covid-19

A person covered by the vaccination obligation can demonstrate s/he is compliant with:

- a certificate of vaccination status;
- a certificate of recovery from COVID-19;
- a medical certificate declaring a contraindication to vaccination.

When the employer finds that an employee can no longer carry out his activity in application of the law, he shall prevent him without delay of the consequences, should the situation is not regularized. Failing to do so, his employment contract shall be suspended, with the interruption of payment of remuneration.

In this specific case, during this suspension the employee retains the benefit of the supplementary social protection guarantees to which he has subscribed. It shall not be considered as a period of actual work for the determination of the duration of paid holidays or for the legal or contractual rights acquired by the employee by virtue of his seniority.

Employers shall be responsible for monitoring compliance with the above obligation by the persons under their responsibility.

Failure by the employer to comply with the obligation to monitor compliance with the vaccination requirement is punishable by a fine of EUR 1500. If such a violation is reported more than three times within a period of 30 days, it is punishable by one year's imprisonment and a fine of EUR 9,000.

## 3. *Consulting the Social and Economic Committee*

In companies with at least 50 employees, the employer must inform the Social and Economic Committee (CSE), without delay and by any means, of the monitoring measures it intends to implement relating to:

- the health pass;
- checks required for employees subject to compulsory vaccination.

The CSE's opinion may be given after the employer has implemented these measures, at the latest within a period of one month from when the employer communicated the measures.

On 9 August 2021, a new decree permitted people who are vulnerable to Covid-19 to resume their professional activity in the workplace through putting in place protective measures such as individual office or risk limitation. The decree maintains a system of partial activity and derogatory work stoppage for vulnerable people working in a position likely to be exposed to high viral densities, or those who are severely immunocompromised or who have a medical contraindication to vaccination, based on a certificate of isolation. These provisions come into force on 15 September 2021.

Following the publication of law no. 2021-1040 of 5 August 2021 on health crisis management and its implementing decrees, the Ministry of Labour has published on its website a "*question and answer document on the obligation to be vaccinated or to hold a health pass for certain professions*". This document contains more than 40 questions dealing with the following five topics:

- scope of the health pass requirement in the workplace;
- scope of the obligation to vaccinate in the workplace;
- conditions of application of the vaccination obligation and the health pass in companies;
- management of the employment contract;
- consequences for the employment relationship of a refusal to present the required documents.

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#### ARTICLE INFO

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