

One year in

An update on COVID-19 and labor laws in
Europe and Asia

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Speakers



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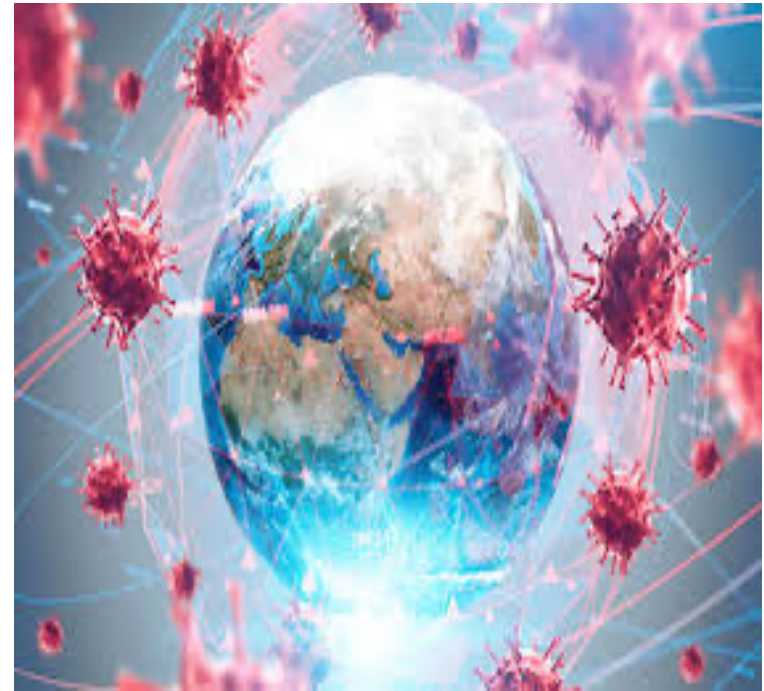
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One year in

An update on COVID-19 and labor laws in Europe and Asia

Today's discussion

- Setting the stage: updates from the US
- Updates from Europe and Asia on:
 - Vaccinations and return to work
 - Testing requirements for employees
 - Government support programs and schemes
 - Restrictions on dismissals



Setting the stage: updates from the US

US: Vaccine regime

- State driven
- Priority given to first responders, health care workers, teachers, immune compromised, elderly
- Employers cannot get vaccines at this point

US: Vaccinations and return to work

Can an employer mandate employee vaccinations?

- Yes, EEOC (Technical Assistance 12/16/2020) has suggested that employers can mandate vaccines
- Risks with mandating vaccines:
 - Currently, vaccines in US have received only Emergency Use Authorization and not the more rigorous FDA license
 - If health issue arises from employer-mandated vaccine, workers compensation could be implicated and there could be employer liability issues
 - Culture and employee relations concerns

US: Vaccinations and return to work (continued)

Can an employer require employees to confirm vaccination status?



- Yes, generally, employers are permitted to ask employees about whether they have received a COVID-19 vaccination
- Must identify a legitimate business reason underlying the request (e.g. policy mandating vaccine for workplace safety)
- Must ensure the policy does not conflict with any other contractual arrangements in place (e.g. collective bargaining agreement)

US: Vaccinations and return to work (continued)

What proof can employers require of employee vaccination?

- Yes, employers can ask for proof of vaccination (e.g. vaccination certificate or passport)
- HIPAA
- Concerns including protected health information, as well as disclosure of information that could create the basis for a discrimination or disability claim
- Consistency in requesting proof



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US: Vaccinations and return to work (continued)

Can an employee refuse vaccination and under what circumstances?

- Yes, employees may refuse to be vaccinated despite company policy for protected reasons
 - Disability (ADA)
 - Due to religious beliefs (Title VIII)
 - Other state or local laws
- Employers should also consider objections for other reasons
- Follow up questions should be job-related or necessitated by business requirements

US: Testing requirements for employees

Can employers require COVID-19 testing?

- Generally, yes, if there is a legitimate business need for the test (e.g. safety of other employees/individuals on premises)
- Employers must ensure tests are accurate and reliable, and testing policies must be implemented uniformly
- Informed consent is required
- Consider contractual obligations (e.g. collective bargaining agreements/union representation)

US: Questionnaires, temperature tests and on-site testing

- Questionnaires as to whether an employee has been diagnosed or tested for COVID-19 or whether they have symptoms are permitted (EEOC)
- Temperature testing implemented early on
 - Quick and easy, but not particularly useful screening tool
 - EEOC has said this is a medical examination under ADA but is permitted
- On-site screening program
 - Regularly tested 2-3x per week
 - Cost/administration
 - At home tests



US: Restrictions related to dismissals

What recourse do employers have for individuals who refuse vaccination and/or testing?

- Generally, employer can refuse to allow employee to return to work unless the employee is refusing vaccination and/or testing based on protected basis
- If protected basis:
 - Does the non-vaccinated individual pose a direct threat to others?
 - Can reasonable accommodation be made?
- Further: consider whether employee qualifies for FMLA or other protected leave status (e.g. state laws)
 - Employees should not be terminated while on protected leave
- Culture and employee relations considerations, protocol violations

US: Government support programs and schemes

- Constantly evolving landscape
- Patchwork approach, mostly tax and benefits driven
 - Employee retention tax credit
 - Deferral of employee payroll provisions
 - Stimulus checks
 - Requiring medical plans to cover testing costs
 - Paid sick leave under Families First Coronavirus Response Act
 - Increased unemployment benefits
 - Delayed taxation of distribution from retirement plans



Updates from Europe and Asia

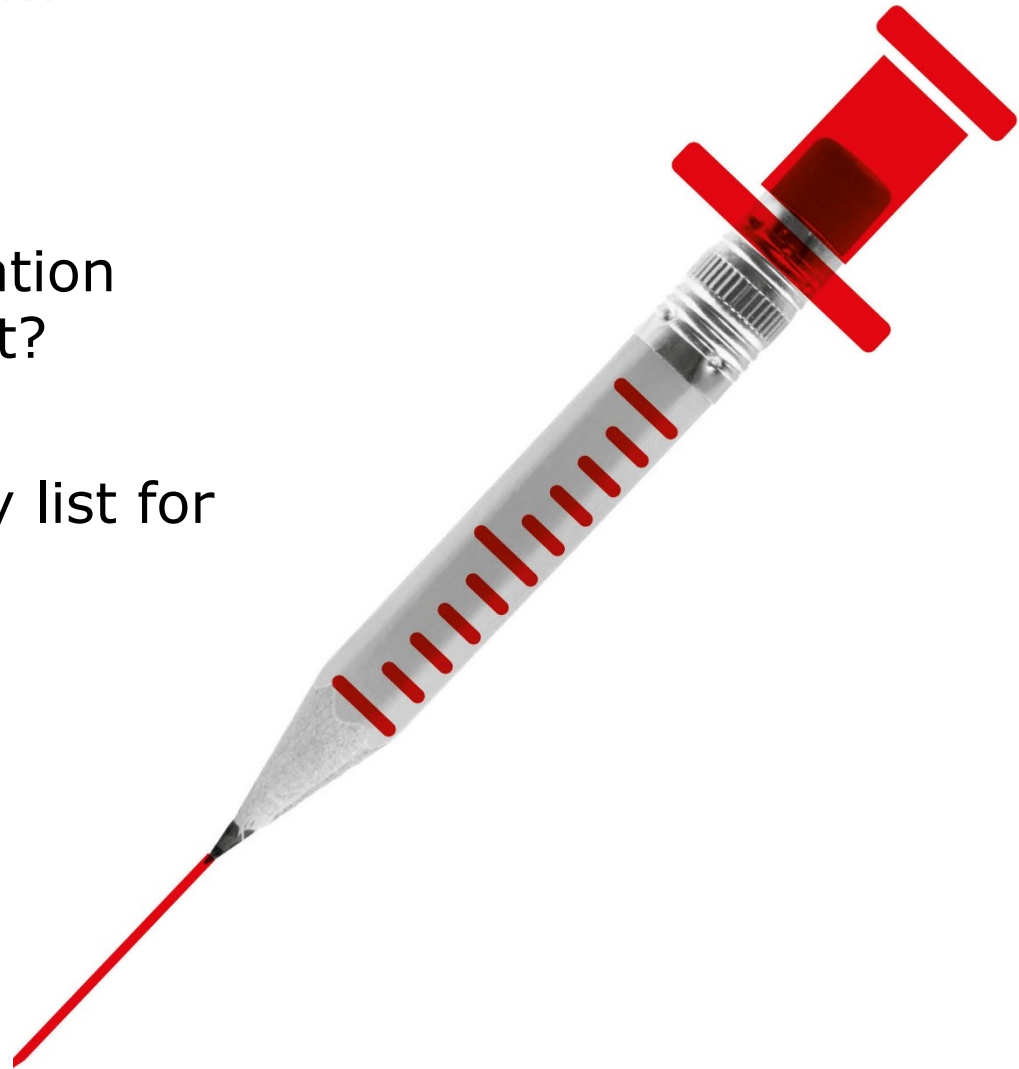
Vaccinations and return to work



Updates from Europe and Asia

Vaccinations and return to work

- Is a government vaccination program being rolled out?
- If so, what is the priority list for distribution?



Updates from Europe and Asia

Vaccinations and return to work

- Can businesses mandate vaccination?
 - For employees?
 - For visitors/contractors?
- Can employees be disciplined or dismissed for refusing to be vaccinated?



Testing requirements for employees



Updates from Europe and Asia

Testing requirements for employees

- Can employers require employees to undertake temperature tests?
- Can employers require employees to undergo testing to determine whether they are COVID-19 positive, including asymptomatic testing?



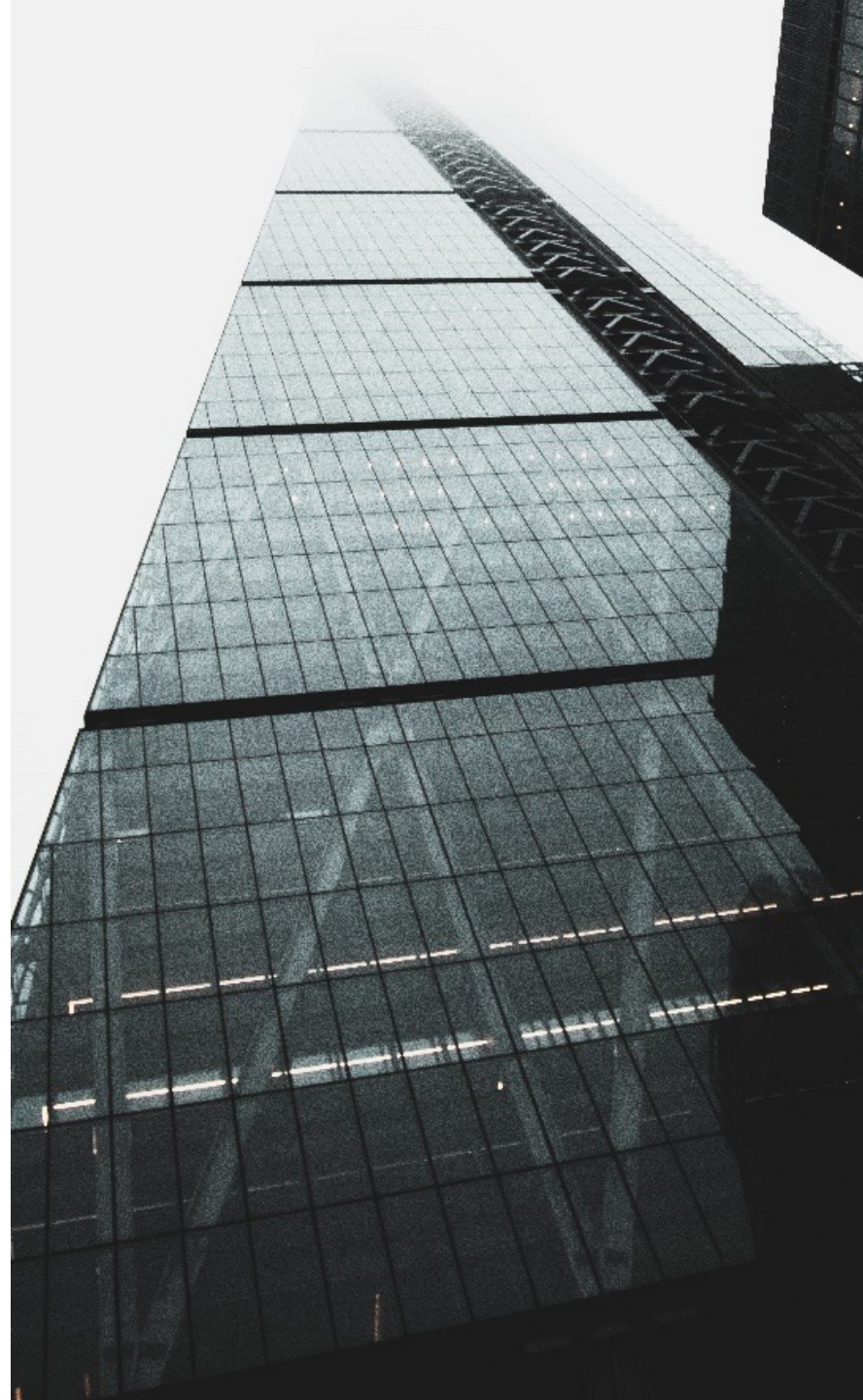
**Has your organization
implemented a testing
program?**

Government support programs and schemes

Updates from Europe and Asia

Government support programs and schemes

- Is there any state support for short-time working or temporary lay off?



Restrictions on dismissals

Updates from Europe and Asia

Restrictions on dismissals

- If we are benefitting from any COVID-19 state aid, are there any restrictions on dismissing employees?



Questions?



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