

# COMPLIANCE IN TIMES OF COVID

## CAN I DOCUMENT THE COVID-19 VACCINATION STATUS OF MY EMPLOYEES?

**YES.** As an employer, you have the obligation to provide a conducive atmosphere for the health and safety of every employee under Section 118 of the Labour Act 2003 (Act 651).

Hence, when being asked if they have taken COVID-19 vaccination, employees must disclose this information to you. The documentation of employees' vaccine status is allowed provided that the employer has a valid and legitimate reason for the request e.g., public health and safety [Section 25 (3) (d) & Section 63 (d) ]

The Data Protection Act, 2012 (Act 843) however requires you as the employer to solely collect the necessary data to achieve the purpose stated above and to limit the number of people who have access to these data.

## CAN MY COMPANY BE LIABLE IF AN EMPLOYEE EXPOSES OTHERS TO COVID-19?

**YES.** You, as the employer, are potentially liable since you have to ensure that the workers are free from risk of personal injury or damage to their health during and in the course of their employment or while lawfully on within the employer's premises ( Section 9 c of Labour Act). You must take all the necessary steps to ensure the workers' protection when being informed that an employee is experiencing symptoms (testing, new schedules with shifts etc.)

## CAN AN EMPLOYEE ABSENT HIMSELF FOR FEAR OF BEING INFECTED WITH COVID-19?

**YES.** Section 10 (a) of the Labour Act states that an employee has the right to work in a satisfactory, safe and healthy conditions, hence if (s)he has reasonable reason to believe that there is an imminent and serious danger to his their health, (s)he can remove her/himself from the situation after reporting to her/his their immediate supervisor. The employer has then no right to dismiss, terminate or withhold any remuneration of the worker in such situations.

## CAN I FORCE MY EMPLOYEE TO TAKE THE VACCINE TO ENSURE A SAFE & HEALTHY WORKING ENVIRONMENT AS COMMENDE BY THE LABOUR ACT SECTION 118?

**NO.** Unless the State decides to enact a specific legislation about Covid vaccination (as it is the case for the yellow fever for example you cannot force an employee to get vaccinated. You need to balance with your obligations as an employer (make sure that everyone follows Covid-19 protocols etc.) and the freedom of choice of your employee.



## **CAN I BE LIABLE FOR AN INJURY THAT HAPPENED WHILE MY EMPLOYEE IS WORKING FROM HOME?**

**YES.** The workspace at home can now be seen as an extension of the traditional workspace. Employers are still supposed to ensure a safety and healthy environment (section 118 Labour Act) and are now facing an all new range of risks if the employee injures him/herself at home during the working hours in the space that both employer and employee has agreed to designate as the office space. Hence to limit liability, working from home policies have to be implemented (providing a list of do's and don'ts, security check list before allowing WFH etc.). Revisiting your contract with your insurance company is also a necessity to ensure that they will be willing to cover injuries/ accidents that have happened in the WFH setting.

## **CAN I DEDUCT THE EXTRA COST ASSOCIATED WITH MY WFH POLICY (PAYMENT OF CREDIT/DATA FOR EMPLOYEE, COMPUTER ETC.) FROM MY TAXES?**

**YES** but carefully. The abuse of the allowance system has led to the tax authorities saying that all allowances (fuel, clothing etc.) should be consolidated with the employees' wages for tax purposes. However, under section 19(1) expenses that are wholly, exclusively and necessarily incurred in the generation of the income are deductible expenses. A reimbursable policy as opposed to an allowance is more likely not to be taxed. It can be regarded as a deductible expense by the employer whereas it is likely to attract an income tax deduction if paid as an allowance to the employee.

