

November 17 2021

# Overview of vaccination and PCR testing policies in workplaces

Gün + Partners | Employment & Immigration - Turkey

> [Official guidance](#)

> [Comment](#)

As covid-19 vaccines have become widely available worldwide, vaccination and polymerase chain reaction (PCR) testing policies in workplaces have become an important topic for employers and employees. Although there has not yet been any legislative action, the Ministry of Labour and Social Security has issued a general letter to guide employers on the possible vaccination and PCR testing policies that could be adopted, which has left questions as to whether employers can require employees to be vaccinated or undertake regular PCR testing under occupational health and safety obligations.

## Official guidance

Under the Code of Obligations, employers must take occupational health and safety measures and protect their employees' physical and mental health and integrity. Similarly, employers are required under the Occupational Health and Safety Act to ensure the occupational health and safety of all employees. Therefore, employers are obliged to ensure covid-19-safe working environments to the greatest possible extent.

The steps that employers can take may vary depending on the nature of each workplace. However, there are several guidelines that have been published by governmental authorities during the pandemic that employers can use to ensure at least a minimum level of protection. These guidelines mainly focus on:

- emergency planning;
- cleaning and hygiene rules;
- personal protective equipment; and
- advice on travels and meetings.

According to the Constitution, intervening in a person's physical integrity is not permitted, unless it is medically necessary or under other legal regulations. Covid-19 vaccination is not mandatory under the applicable laws and the Ministry of Health announced that it is currently applicable on only a voluntary basis. Therefore, employers clearly cannot mandate employee vaccination.

On 2 September 2021, the Ministry of Labour and Social Security issued a general letter regarding the vaccination and PCR testing policies that employers can implement in the workplace. The letter states that employers must:

- inform all employees about the protective and preventive measures against the potential health and safety risks at the workplace and separately inform the employees who are not fully vaccinated in writing; and
- inform the unvaccinated employees who are still not vaccinated after having received the above information about the potential results of receiving a definite covid-19 diagnosis due to non-vaccination, in accordance with employment and social security legislation.

As of 6 September 2021, employers have also been entitled to require their unvaccinated employees to have PCR testing once a week, the results of which must be recorded by the employer. According to the general letter, mandatory PCR testing is regulated as a voluntary mechanism at the employer's discretion, as each workplace operates differently. For example, an employer may not find it necessary to introduce mandatory PCR testing for employees who are working remotely, whereas it would be necessary in a crowded workplace which requires physical attendance under occupational health and safety obligations.

As well as the general letter of the Ministry of Labour and Social Security, the Ministry of Internal Affairs has issued a circular that ordered mandatory PCR testing for unvaccinated persons:

- attending collective activities such as concerts, movies and theatres; and
- travelling by plane, bus, train or other means of public transport, except for private vehicles.

In this regard, business managers and event organisers must request persons who wish to participate in the above activities or take the above transport to provide:

- details of their vaccination status or medical history (for the scientifically acknowledged immunity period corresponding with covid-19); or
- a negative PCR test result which was taken no more than 48 hours prior to attending an event or travelling.<sup>(1)</sup>

## Comment

Under the current guidelines and the stance against covid-19 vaccination, the majority of Turkish academics have taken the view that an employee's refusal to be vaccinated against covid-19 would not constitute just cause for termination, and the principle of termination as a last resort must be considered should the employee refuse to be vaccinated. However, where employees refuse to be tested and provide their PCR test results, withholding such information can be construed as valid grounds for termination, depending on the circumstances. Therefore, employers are recommended to obtain a written statement from the employees and resort to alternative solutions as regards the nature of their work and the workplace. These alternative solutions could encourage employees to take the vaccine, work remotely or



BERIL YAYLA  
SAPAN



ASENA AYTUĞ  
KESER



KARDELEN  
ÖZDEN

take annual leave, thereby isolating the employee from the vaccinated employees.

The fact that these arrangements have been introduced by general letters and circulars has been highly criticised; the need for a legislative act still stands, in order to clarify the questions and ambiguities in practice.

*For further information on this topic please contact [Beril Yayla Sapan](#), [Asena Aytuğ Keser](#) or [Kardelen Özden](#) at [Gün + Partners](#) by telephone (+90 212 354 00 00) or email ([beril.yayla@gun.av.tr](mailto:beril.yayla@gun.av.tr), [asena.keser@gun.av.tr](mailto:asena.keser@gun.av.tr) or [kardelen.ozden@gun.av.tr](mailto:kardelen.ozden@gun.av.tr)). The [Gün + Partners](#) website can be accessed at [www.gun.av.tr](http://www.gun.av.tr).*

#### **Endnotes**

(1) Further information is available [here](#).