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New workplace obligations starting 15 January 2022

Version française | Deutsche Version

Amid an epidemiological situation considered 'very worrying' by the Luxembourg Ministry of Health, bill of law no. 7924 further amending the law of 17 July 2020 on measures to combat the COVID-19 pandemic was voted on and passed by the Chamber of Deputies on 16 December 2021.

Alongside the reinforcement of specific CovidCheck obligations for facilities open to the public, gatherings, protests and events, as well as certain sectors, a number of significant impacts affecting how all companies in Luxembourg function will flow from this law (the “Law”). Soon to be published in the Mémorial, the Law introduces new measures that will apply from 15 January 2022 and imposes a ‘3G’ CovidCheck regime at work.

In principle, the following main measures should apply as of 15 January 2022:

- All employees, public servants and self-employed persons will need to be able to show a certificate bearing a valid QR code at their workplace.[1] According to the Law, this may be any of the following:
  - a vaccination certificate,
  - a valid certificate of recovery,
  - a negative COVID-19 test result[2] (a PCR test no more than 48 hours old or a rapid antigen test no more than 24 hours old),
  - a medical certificate of exemption from vaccination against COVID-19 and a negative COVID-19 test result (a PCR test no more than 48 hours old, a rapid antigen test no more than 24 hours old or a self-test taken on the spot).

- According to the Law, in the event of refusal or failure to show a valid certificate, the employee will ‘not be permitted to enter the workplace’ (pas le droit d’accéder à son lieu de travail).

- Employers will be responsible for monitoring compliance with this obligation (a task they may delegate to external service providers or designated employees), and will have to verify the identity of certificate holders.

- Employers would, in principle, be permitted to perform this monitoring at any time, without obliging employees, public servants and self-employed persons to show their certificates upon arrival at their
workplace and on each entry.

- To facilitate monitoring, employers will be allowed to compile a list of the names and certificate validity periods of the vaccinated and recovered employees who have voluntarily consented to being put on the list. Access to such lists should be restricted and the lists should, in principle, be destroyed after 28 February 2022.

- Subject to employer authorisation, employees who do not comply with the obligation to show a valid certificate will have the option of taking their statutory or contractual recreational leave. If the employer does not authorise this or if the employee does not wish to take leave, they will automatically lose their remuneration for the hours not worked.

- Under no circumstances can failure to show a valid certificate constitute grounds for dismissal or disciplinary action. Employment contract termination in such a scenario will be null and void. For such cases, the Law provides for a specific judicial procedure by which the dismissed employee can apply to the President of the Labour Court (Président du Tribunal du Travail) for an urgent ruling to declare the dismissal null and void and to order that the employment contract be maintained.

- The Labour and Mines Inspectorate (Inspection du Travail et des Mines) will be responsible for monitoring the compliance of employees with these obligations. The Law provides for the following sanctions:
  - a fine of EUR 500 to EUR 1,000 in the event of the employee's failure to comply,
  - a fine of up to EUR 4,000 if the employer fails to comply with its own monitoring obligation.

According to the Law, the above measures will apply from 15 January 2022 to 28 February 2022.

[1] For the purposes of the Law, the term ‘workplace’ (lieu de travail) does not include teleworking locations.

Disclaimer: In order to quickly provide employers with practical information allowing them to comply with their obligations by 15 January 2022, this content was prepared on the basis of bill no. 7924 as commented, debated and voted on in the Chamber of Deputies on 16 December 2021. Readers should note that the final version of the Law is not official as of the time of this publication, and that the Law ultimately published may contain additional nuance that should be taken into account.
This publication is intended to provide information on recent developments and does not cover every aspect of the topics with which it deals. It was not designed to provide legal or other advice and it does not substitute for the consultation with legal counsel before any actual undertakings.

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