

Key Considerations & Issues on COVID-19 Vaccine Rollouts Across Southeast Asia



June 2021



Q&A TOP 10 | Focus on Employment



1. Can an employer require its employees to be vaccinated?
2. Can employers refuse to hire applicants that have not yet been vaccinated and/or do not wish to be?
3. For workplaces with trade unions or other forms of collective representation, is an employer obliged to consult with them prior to implementing employee vaccinations?
4. Is information concerning an employee's vaccination considered "health information" or "sensitive data" under a data protection law (where applicable)?
5. If so, is such personal data subject to any restrictions on the collection and processing of "sensitive personal data"?
6. What are the legal requirements applicable to collecting, processing and transferring such personal data?
7. If vaccinations are compulsory, will employees be entitled to reimbursement for the costs of vaccination?
8. Can an employer provide inducements (such as bonuses, wellness programs, etc.) to those employees who undergo vaccination?
9. Can employers terminate employees who refuse to be vaccinated?
10. Can an employer require employees who cannot or will not agree to vaccination to refrain from coming to the workplace?



9 Countries in South & Southeast Asia

Bangladesh
 Cambodia
 Indonesia
 Lao PDR
 Myanmar
 Philippines
 Singapore
 Thailand
 Vietnam



BANGLADESH



BANGLADESH

QUESTION	ANSWER
<p>1. Can an employer require its employees to be vaccinated?</p>	<p>No, employers under Bangladesh laws cannot require their employees to get vaccinated. The vaccination program is operated by the Bangladeshi government and only certain individuals such as health-workers, veterans or people over 40 years' of age are eligible for vaccination. Vaccination is not available through private sources.</p>
<p>2. Can employers refuse to hire applicants that have not yet been vaccinated and/or do not wish to be?</p>	<p>No, employers cannot refuse to hire an applicant because of his or her not being vaccinated or unwillingness to undergo vaccination.</p>
<p>3. For workplaces with trade unions or other forms of collective representation, is an employer obliged to consult with them prior to implementing employee vaccinations?</p>	<p>There is no legal requirement on employers to consult with trade unions or collective bargaining agents for implementing employee vaccinations. As stated above, vaccinations are not yet available through private sources in Bangladesh.</p>
<p>4. Is information concerning an employee's vaccination considered "health information" or "sensitive data" under a data protection law (where applicable)?</p>	<p>The Government of Bangladesh has drafted certain rules called the Protection of Information and Privacy Rules 2019 ("Draft Rules"), though they are not yet in force. This Draft Rules define the term 'sensitive personal information' which includes medical records and a person's related data. Therefore, to be on the safe side, the employee's vaccination-related information should be considered as sensitive personal information.</p>
<p>5. If so, is such personal data subject to any restrictions on the collection and processing of "sensitive personal data"?</p>	<p>Pursuant to the Draft Rules the sensitive personal information can be collected and processed if informed consent is obtained through a letter, fax or email or clearly written evidence.</p>
<p>6. What are the legal requirements applicable to collecting, processing and transferring such personal data?</p>	<p>The legal requirement in relation to collection, processing and transfer of the personal data is subject to written consent from the employee. Pursuant to these Draft Rules, a person needs to inform the other person of the following issues before obtaining any personal information.</p> <ul style="list-style-type: none"> ▪ What personal information will be collected; ▪ The purpose of obtaining such information; ▪ Classification of personal information; ▪ Persons or entities (local or international) to whom/which such information will or may be disclosed and measures that will be taken to protect such information; ▪ Time period of keeping such information; ▪ Right to request deletion of such information; ▪ Rules for handling grievances or 'consumer complaints procedures'; ▪ Details of the public sources, if applicable (if any information is obtained from any publicly available sources).
<p>7. If vaccinations are compulsory, will employees be entitled to reimbursement for the costs of vaccination?</p>	<p>As stated above, there is no provision under Bangladeshi laws whereby employers can oblige employees to get vaccinated. Therefore, this is not applicable.</p>

QUESTION	ANSWER
<p>8. Can an employer provide inducements (such as bonuses, wellness programs, etc.) to those employees who undergo vaccination?</p>	<p>There is no restriction under Bangladeshi laws with regard to employers providing inducements for employees who undergo vaccination.</p>
<p>9. Can employers terminate employees who refuse to be vaccinated?</p>	<p>No, an employer cannot terminate its employees for refusing to be vaccinated.</p>
<p>10. Can an employer require employees who cannot or will not agree to vaccination to refrain from coming to the workplace?</p>	<p>Although there is no specific legal provision, such action by employers would be considered as a form of discrimination and thus strictly prohibited.</p>





CAMBODIA



CAMBODIA

QUESTION	ANSWER
<p>1. Can an employer require its employees to be vaccinated?</p>	<p>In light of the community outbreak dated 20th February 2021, the Royal Government of Cambodia (“RGC”) issued Sub-Decree No. 37 dated 12 March 2021 on Health Measures to Prevent the Spread of COVID-19 and Other Severe and Dangerous Contagious Diseases (“Sub-decree 37”). Under Sub-decree 37, COVID-19 vaccination is undertaken on a voluntary basis. Vaccination will only be required for a certain group of people based upon their working conditions, and this will be determined by the Ministry of Health (“MOH”). Furthermore, the RGC recently issued a sub-decree that obliges public officials in the Legislative, Executive and Judicial Branches (as well as other persons specified by the MOH) to undergo vaccinations.</p> <p>In addition, following the lifting of travel restrictions and lockdowns, the Ministry of Labour and Vocational Training (“MLVT”) issued Notification No. 022/21 on Returning to Work and Payment of Salary to Workers of Reopened Enterprises/Establishments after the Lockdowns End dated 8 May 2021 (“Notification 022”). Notification 022 clearly specifies that vaccination status, one way or the other, must not prohibit employees from returning to work after the end of the lockdown.</p> <p>Therefore, employers cannot require their employees to be vaccinated. Whether to undergo vaccination or not is entirely voluntary.</p>
<p>2. Can employers refuse to hire applicants that have not yet been vaccinated and/or do not wish to be?</p>	<p>The Labor Law prohibits discrimination in hiring based on race, ethnicity, sex, creed, religion, political opinion, birth, social origin, membership of a workers’ union or the exercise of union activities, but not a person’s status vaccination or similar. Further, the Criminal Code of Cambodia dated 30 November 2009 as amended on 27 February 2018 (“Criminal Code”) has criminalized certain discriminatory acts in the context of employment including the refusal to hire and terminate employment relationship based on ‘state of health’.</p> <p>However, the scope and extent of this is subject to interpretation by a competent Cambodian court.</p> <p>In light of the above, there is no clear guidance on whether an employee’s vaccination status could be construed as ‘state of health’ under the Criminal Code. Also, under the current regulations as mentioned above, vaccination is on a voluntary basis. In this regard, refusal to hire an applicant on the grounds that he/she has yet to be vaccinated and/or unwilling to be vaccinated might expose the employer to high risks of alleged discrimination or claims to this effect. Therefore, to be prudent and for risk mitigation, we are of the view that the employer should not take employee vaccination status into account when making a decision to hire him/her.</p>



CAMBODIA

QUESTION	ANSWER
<p>3. For workplaces with trade unions or other forms of collective representation, is an employer obliged to consult with them prior to implementing employee vaccinations?</p>	<p>There is no mandatory legal requirement in relation to obtaining consent or consulting with shop stewards or trade unions prior to implementing employee vaccination. The consultation obligation prior to implementing certain health and safety practices is subject to the existing internal work rules, policies or collective bargaining agreement.</p> <p>Nevertheless, shop stewards have duties, among others, to ensure enforcement of provisions concerning occupational health and safety, and proposing to the employer measures that would contribute beneficially towards protecting and improving the health, safety and working conditions of employees in the enterprise, particularly in respect of work-related accidents or illnesses. Therefore, it is reasonable to form a view that the vaccination program which is related to employees' health and safety should be done in conjunction with the consultation with shop steward. As trade unions have duties to represent their members in grievances, it is also recommended that trade union is consulted prior to implementing vaccination program. This consultation is also to ensure industrial harmony and avoid unnecessary disputes.</p>
<p>4. Is information concerning an employee's vaccination considered "health information" or "sensitive data" under a data protection law (where applicable)?</p>	<p>There is no specific data protection law in Cambodia. Nevertheless, data protection provisions are spread across a patchwork of various pieces of legislation such as the Constitution and the Civil Code dated 8 December 2007 as amended by the Law on Implementation of the Civil Code dated 31 May 2011 ("Civil Code"), and the Criminal Code.</p> <p>For instance, Article 10 of the Civil Code provides that personal rights include the right to life, body, health, freedom, name, dignity, privacy and other rights relating to personal benefits or interests.</p> <p>However, the definition of personal rights is quite broad, and the laws do not specifically define and distinguish what data would be considered sensitive. The determination of personal rights categories rests with the Cambodian courts.</p> <p>In this regard, employees' private information including information regarding vaccination could be deemed as within the domain of personal rights and protected under the law.</p>
<p>5. If so, is such personal data subject to any restrictions on the collection and processing of "sensitive personal data"?</p>	<p>As mentioned above, personal data is subject to protection under various pieces of legislation. Personal data may fall under the scope of personal rights stipulated in Article 10 of the Civil Code. Hence, the collection, storage and transfer of employee's data by the employer without proper written consent from the employee could be construed as breaching employee data privacy, and may expose the employer to both civil and criminal liabilities.</p>
<p>6. What are the legal requirements applicable to collecting, processing and transferring such personal data?</p>	<p>Please refer to the above.</p>



CAMBODIA

QUESTION	ANSWER
<p>7. If vaccinations are compulsory, will employees be entitled to reimbursement for the costs of vaccination?</p>	<p>Under Sub-decree 37, COVID-19 vaccination is undertaken on a voluntary basis. This vaccination is free of charge for Cambodian citizens.</p> <p>Furthermore, under Article 245 of the Labor Law, the employer is required to cover expenses for vaccination drives to guard against epidemics.</p> <p>Thus, if vaccinations are later charged at a certain cost, the employer is required to cover such expenses.</p>
<p>8. Can an employer provide inducements (such as bonuses, wellness programs, etc.) to those employees who undergo vaccination?</p>	<p>Currently, there is no statutory restriction regarding the provision of inducements to employees who undergo vaccination. It is possible that employers may provide inducements as a mean of encouraging employees to be vaccinated, unless a subsequently issued regulation/policy states otherwise. In any event, the employer must ensure that the vaccination is on a voluntary basis in accordance with Sub-decree 32.</p> <p>Nevertheless, as the COVID-19 situation evolves and with vaccinations for this disease still a new phenomenon, we are of the view that implementing any program related to COVID-19 should be carefully undertaken and employers should revisit regulations, contractual terms, and existing policies as well as subsequent regulations concerning COVID-19 vaccination to mitigate any risks, especially concerning alleged discrimination or claims thereof.</p>
<p>9. Can employers terminate employees who refuse to be vaccinated?</p>	<p>Under Sub-decree 37, COVID-19 vaccination is undertaken on a voluntary basis. Furthermore, based on Notification 022, vaccination status may not be used as a condition prohibiting (or otherwise) employees from returning to work. In the context of refusal to undergo vaccination, an employer could not dismiss employees with cause as this termination is not in line with the voluntary regime of such vaccination and there is no law which otherwise stipulates that failing to undergo vaccination would amount to serious misconduct. Termination of employees due to vaccination status could expose employers to liabilities such as having to pay full compensation to employees for termination without cause. There is also a risk of claims by the employees with respect to discrimination based on 'state of health' as indicated in question 2.</p>
<p>10. Can an employer require employees who cannot or will not agree to vaccination to refrain from coming to the workplace?</p>	<p>In accordance with Notification 022, and as vaccination must be on a voluntary basis, the employer cannot ban employees from the workplace who cannot or will not agree to vaccination. Banning employees from coming to the workplace is non-compliant with Notification 022 which explicitly prohibits vaccination status from being used to allow or refuse entry to the workplace, and this may affect existing terms and conditions of their employment contracts.</p> <p>Furthermore, as mentioned earlier, since the COVID-19 situation is evolving and vaccination for this is still a new concept. Implementing any program related to COVID-19 should be carefully undertaken and the employer should revisit regulations, contractual terms, existing policies, as well as subsequently issued regulations concerning COVID-19 vaccination to mitigate any risks, especially allegations of discrimination and/or forced resignation.</p>



INDONESIA



INDONESIA

QUESTION	ANSWER
<p>1. Can an employer require its employees to be vaccinated?</p>	<p>Pursuant to Law No. 36 of 2009 on Health as amended by Law No. 11 of 2020 on Job Creation (the “Health Law”), every person is entitled to self-assess their health service needs. Therefore, an employer cannot require its employees to be vaccinated, unless otherwise stated in the employment agreement, company regulations or collective labor agreement. If this is not the case, the employer must procure its employees’ consent to vaccination.</p>
<p>2. Can employers refuse to hire applicants that have not yet been vaccinated and/or do not wish to be?</p>	<p>Law No. 13 of 2003 on Manpower as amended by Law No. 11 of 2020 on Job Creation (the “Manpower Law”) states that every employee is entitled to have equal opportunity without any discrimination to have a job. However, it may be possible for employers to put conditions in the acceptance letter that employment is subject to undergoing COVID-19 vaccination and this is unlikely to be considered discriminatory.</p>
<p>3. For workplaces with trade unions or other forms of collective representation, is an employer obliged to consult with them prior to implementing employee vaccinations?</p>	<p>No, unless otherwise stated under the relevant company regulations or collective labor agreement.</p>
<p>4. Is information concerning an employee’s vaccination considered “health information” or “sensitive data” under a data protection law (where applicable)?</p>	<p>In the context where an employer will receive information on whether an employee has (or has not) been vaccinated, we believe that such information will be deemed personal data of such an employee under Government Regulation No. 71 of 2019 on the Implementation of Electronic Systems and Transactions (“GR 71/2019”). Personal data refers to any data which can identify an individual either directly and indirectly through electronic and non-electronic systems.</p>
<p>5. If so, is such personal data subject to any restrictions on the collection and processing of “sensitive personal data”?</p>	<p>Indonesian laws currently do not distinguish between “personal data” and “sensitive personal data”. Therefore, the collection and processing of information by employers on whether an employee has undergone vaccination must adhere to the requirements on personal data collection and processing under GR 71/2019.</p>



INDONESIA

QUESTION	ANSWER
<p>6. What are the legal requirements applicable to collecting, processing and transferring such personal data?</p>	<p>Based on GR 71/2019, the processing of personal data shall be conducted as follows:</p> <ul style="list-style-type: none"> a) collection of personal data shall be conducted in a limited and specific manner, with a valid legal basis, fair, with the acknowledgment and consent of the personal data owner; b) processing of personal data shall be conducted in accordance with the purpose of use conveyed to the personal data owner when procuring his/her consent; c) processing of personal data shall be conducted in a manner that safeguards the rights of the personal data owner; d) processing of personal data shall be conducted accurately, completely, and in an up-to-date manner, taking the purpose of personal data processing into consideration; e) processing of personal data shall be conducted by securely protecting the personal data security from loss, misappropriation, illegal access and disclosure, as well as alteration or destruction of such personal data; f) processing of personal data shall be conducted by notifying the purpose of collection, processing activities, and failures (if any) in protecting personal data; and g) processing of personal data shall be destroyed and/or deleted unless subject to a retention period in accordance with needs based on laws and regulations. <p>Overseas personal data transfers of information located on an electronic system in Indonesia shall be conducted in line with Article 22 of the Regulation.</p>
<p>7. If vaccinations are compulsory, will employees be entitled to reimbursement for the costs of vaccination?</p>	<p>Pursuant to the Minister of Health’s Regulation No. 10 of 2021 on Vaccination Implementation for the Purpose of Corona Virus Disease 2019 (COVID-19) Pandemic Countermeasures (“MOH Reg. 10/2021”), vaccinations are conducted by the central government through (i) a state vaccination program (where vaccination costs will be borne by the government); or (ii) mutual cooperation vaccination (vaccination programs given by employers to employees, their family members and other related individuals of the employees. Vaccination costs will be borne by the legal/business entity). MOH Reg. 10/2021 stipulates that state or mutual cooperation vaccinations must be given free of charge to the recipient. Reimbursement will not be necessary.</p>
<p>8. Can an employer provide inducements (such as bonuses, wellness programs, etc.) to those employees who undergo vaccination?</p>	<p>It is legally possible for the company to give such incentives to the employees. Under the Manpower Law, this would be deemed as a welfare facility.</p>
<p>9. Can employers terminate employees who refuse to be vaccinated?</p>	<p>No. Pursuant to the Manpower Law, employment termination can only be performed on particular grounds or for specific reasons set out under the Manpower Law, the employment agreement, company regulations or a collective labor agreement.</p>

QUESTION	ANSWER
10. Can an employer require employees who cannot or will not agree to vaccination to refrain from coming to the workplace?	Pursuant to Government Regulation No. 88 of 2019 on Occupational Health, these actions shall be deemed the implementation of disease prevention (potential health hazard identification, assessment and control) which can be legally conducted by the employer. This arrangement shall not affect the salary and benefits of the relevant employee, unless both parties agree otherwise.



INDONESIA



LAO PDR



QUESTION	ANSWER
<p>1. Can an employer require its employees to be vaccinated?</p>	<p>No specific regulatory guidelines on this point. Under prevailing Lao PDR labor and healthcare laws, an employer cannot unilaterally require an employee to be vaccinated unless: (1) this unilateral power was provided for in a mutual agreement signed by the employee (e.g. in the employment contract); or (2) this unilateral power was provided for in the employer’s internal regulations which were then approved by the Labor Management Authority (“LMA”).</p> <p>Under Article 119 of the Labor Law (No. 43/NA, 24 December 2013) (“Labor Law”), employers have a general obligation to ensure a healthy and safe workplace. An employer’s decision to require its employees to be vaccinated during an ongoing pandemic could be regarded as an “appropriate measure to ensure workplace health and safety”. But without specific regulations or governmental directives concerning this topic, it is unclear how the Lao PDR courts will rule on these conflicting principles.</p>
<p>2. Can employers refuse to hire applicants that have not yet been vaccinated and/or do not wish to be?</p>	<p>Under Article 141(9) of the Labor Law, employers are prohibited from any direct or indirect discrimination toward employees.</p> <p>However, the Government of the Lao PDR has not yet issued any regulations specific to COVID-19 on this topic.</p>
<p>3. For workplaces with trade unions or other forms of collective representation, is an employer obliged to consult with them prior to implementing employee vaccinations?</p>	<p>Unless an employee vaccination program is already contained in the employer’s internal regulations, the imposition of a workplace-wide vaccination program represents a change to the employment terms and conditions and must be agreed with the employee.</p>
<p>4. Is information concerning an employee’s vaccination considered “health information” or “sensitive data” under a data protection law (where applicable)?</p>	<p>Yes, under Article 33 of the Law on the Protection of Electronic Data (No.25 /NA, 12 May 2017) (“E-Data Protection Law”) information relating to an employee’s vaccination would likely fall under the category of “health data”.</p>
<p>5. If so, is such personal data subject to any restrictions on the collection and processing of “sensitive personal data”?</p>	<p>Yes. Article 33 of the E-Data Protection Law prohibits “data managers” (such as an employer) from collecting, using, or disseminating electronic data relating to health and medical information. However, Article II(3) of the Guidelines on the Implementation of the Law on Electronic Data Protection (No. 2126/MoPTC, 8 August 2018) (“E-Data Protection Guidelines”) provides that “health records” are a type of “specific data” under the E-Data Protection Law. Specific data can be collected and processed by individuals, legal entities, and organizations if consent is obtained from the data owner. Accordingly, an employer can only collect and process an employee’s health records/data if they receive permission to do so from that employee.</p>
<p>6. What are the legal requirements applicable to collecting, processing and transferring such personal data?</p>	<p>Health records/data are classified as “specific data” under the E-Data Protection Guidelines. If an employer wants to collect, process or transfer specific data relating to an employee’s health records/data, it must obtain that employee’s prior consent.</p>



QUESTION	ANSWER
<p>7. If vaccinations are compulsory, will employees be entitled to reimbursement for the costs of vaccination?</p>	<p>No information is currently available. However, under Article 119 of the Labor Law, employers have an obligation to implement appropriate measures to ensure workplace health and safety for employees, with the costs being absorbed by the employer, whether this extends to the cost of vaccinations remains unclear.</p>
<p>8. Can an employer provide inducements (such as bonuses, wellness programs, etc.) to those employees who undergo vaccination?</p>	<p>Lao PDR laws do not prohibit employers from granting incentives or inducements to employees.</p>
<p>9. Can employers terminate employees who refuse to be vaccinated?</p>	<p>An employer can terminate an employee that refuses to be vaccinated, but this may be deemed termination without sufficient reason and an “unjustified termination” under the Labor Law.</p> <p>Article 89 of the Labor Law provides that an employee that has been unjustifiably terminated can request: (i) reinstatement to their former position or other appropriate work, or (ii) compensation from the employer. In this case, the employer must pay severance at a rate of 15% of the employee’s last total salary, multiplied by the number of months worked for the employer.</p>
<p>10. Can an employer require employees who cannot or will not agree to vaccination to refrain from coming to the workplace?</p>	<p>No information is currently available. Such an action by the employer could be deemed as a form of discrimination against unvaccinated employees. Article 141(9) of the Labor Law prohibits employers from directly or indirectly discriminating against employees.</p> <p>However, employers also have a general obligation under Article 119 of the Labor Law to ensure a healthy and safe workplace and adopt appropriate measures to ensure its employees’ health and safety. As such, the general risk to other employees’ health may be argued to take priority over and outweigh any potential claims of discrimination.</p>



MYANMAR



MYANMAR

QUESTION	ANSWER
<p>1. Can an employer require its employees to be vaccinated?</p>	<p>In Myanmar, there has been no mandatory policy announcement issued allowing employers to demand that its employees undergo vaccination. However, most employers encourage their employees to do so. The Ministry of Health and Sports implemented vaccination drives for government staff members starting from 27 January 2021. An announcement was posted on notice boards of certain Covid-19 command and control centers that all citizens aged 65 or older could report to in order to be vaccinated from mid-March 2021 to 23 April 2021. In practice, all citizens regardless of age can be vaccinated at a Covid-19 control center, the Myanmar Convention Centre and most township ward administration offices. The type of vaccine used in Myanmar for the first batch was Covishield, manufactured in India. We also aware that Covaxine, manufactured in China, has used to vaccinate some government officials. There has been no official announcement as to the numbers of vaccine dosages that have been imported and used thus far.</p>
<p>2. Can employers refuse to hire applicants that have not yet been vaccinated and/or do not wish to be?</p>	<p>There is no express legal provisions or notifications stipulating vaccination as a prerequisite to being hired. During the recruitment process, an employer is prohibited from any act of discrimination based on factors such as: Membership of a union/labor organization, nationality, religion, gender, and age. Otherwise, there are no legal provisions which expressly regulate vaccination as a critical component of hiring requirements.</p>
<p>3. For workplaces with trade unions or other forms of collective representation, is an employer obliged to consult with them prior to implementing employee vaccinations?</p>	<p>There is no requirement to consult with trade unions on the implementation of employee vaccinations. However, it is suggested that all employees be consulted in this regard.</p>
<p>4. Is information concerning an employee’s vaccination considered “health information” or “sensitive data” under a data protection law (where applicable)?</p>	<p>Myanmar does not have a specific Personal and Data Protection Law. However, the Electronic Transactions Law (“ETL”) restricts an individual from disclosing another’s personal data to any third party without the consent of that person. The term “personal data” is defined in the ETL as “any information which has been or could be used to identify a person”. There is no definition of “sensitive data” in Myanmar law. Given the lack of legal provisions, vaccination could be considered as health information and in general practice would be sensitive data of a person.</p>
<p>5. If so, is such personal data subject to any restrictions on the collection and processing of “sensitive personal data”?</p>	<p>Myanmar labor law does not specifically regulate pre-employment check-ups other than for employees working in dangerous workplaces. However, in practice, an employer may request employee health information/medical certificates as per the nature of the business. The Shop and Establishment Law requires that the employer arrange and keep the respective documents, lists, contracts, evidence, forms and samples to be inspected by the inspector. In our reasonable interpretation of Myanmar law, it is likely that the employer can arrange and keep personal records of employees such as name, age, gender, residence address, educational level, copy of NRC, occupational skills and health information/medical certificate (if applicable). Otherwise, Myanmar law does not specifically regulate employee data collection.</p>



MYANMAR

QUESTION	ANSWER
<p>6. What are the legal requirements applicable to collecting, processing and transferring such personal data?</p>	<p>There are no specific legal provisions in this regard. However, in practice, the employer may request a certificate of vaccination and status from the employee and other health information as relevant and required given the nature of the business. The Shops and Establishments Law requires that the employer arrange and keep the respective data, lists, contracts, evidence, forms and samples to be inspected by the authority or inspector. From our reasonable interpretation of Myanmar law, it is likely that the employer can arrange and retain personal records of employees including personal data and health information.</p>
<p>7. If vaccinations are compulsory, will employees be entitled to reimbursement for the costs of vaccination?</p>	<p>There is no recent legislation in this regard. Currently, the government is making arrangements to vaccinate all people who are willing to do so, aged 18 years or older.</p>
<p>8. Can an employer provide inducements (such as bonuses, wellness programs, etc.) to those employees who undergo vaccination?</p>	<p>No specific legal requirements in this regard.</p>
<p>9. Can employers terminate employees who refuse to be vaccinated?</p>	<p>There is no explicit provision with respect to the particulars of dismissing employees for refusing to be vaccinated unless vaccination forms a part of workplace policies as consented to by the employees and as approved by the relevant labour office.</p>
<p>10. Can an employer require employees who cannot or will not agree to vaccination to refrain from coming to the workplace?</p>	<p>There is no specific legal provisions in this regard. It will be subject to the internal workplace policies/guidelines. However, the employer must pay full salary for the suspension of its employee from coming into the workplace as the result of refusing vaccination.</p>



PHILIPPINES



PHILIPPINES

QUESTION	ANSWER
<p>1. Can an employer require its employees to be vaccinated?</p>	<p>Vaccination in the Philippines is voluntary. However, employers are requested to encourage their employees to get vaccinated, in accordance with Labor Advisory No. 03, series of 2021 of the Department of Labor and Employment (“DOLE”).</p>
<p>2. Can employers refuse to hire applicants that have not yet been vaccinated and/or do not wish to be?</p>	<p>There is no specific law or regulation classifying hiring or non-hiring on account of the vaccination status as a discriminatory practice. The current Labor advisory prohibits discrimination against employees who refuse to be vaccinated but is silent as to whether it applies to job applicants.</p>
<p>3. For workplaces with trade unions or other forms of collective representation, is an employer obliged to consult with them prior to implementing employee vaccinations?</p>	<p>No specific regulation has been issued by the concerned agencies. For workplaces with unions, employers have to check the collective bargaining agreements for provisions that may govern this situation. Under the Labor Code, employees have the right to participate in policy and decision-making processes of the establishment where they are employed insofar as said processes will directly affect their rights, benefits and welfare.</p>
<p>4. Is information concerning an employee’s vaccination considered “health information” or “sensitive data” under a data protection law (where applicable)?</p>	<p>Yes, the Data Privacy Act (Republic Act No. 10173) provides that “Sensitive Personal Information” includes personal information about an individual’s health.</p>
<p>5. If so, is such personal data subject to any restrictions on the collection and processing of “sensitive personal data”?</p>	<p>Yes. Vaccination data is subject to restrictions on collection and processing applicable to such ‘Sensitive Personal Information.’</p> <p>Note that the provisions of the Data Privacy Act and its Implementing Rules and Regulations apply to the processing of personal data of a Philippine citizen or resident by any person in the government or private sector.</p> <p>The processing of vaccination status data, being Sensitive Personal Information, is generally “prohibited by law except in the cases provided under Section 13 of the Data Privacy Act (“DPA”).” [NPC Advisory Opinion No. 2018-007]</p> <p>Section 13 of the DPA provides: “The processing of Sensitive Personal Information and Privileged Information are prohibited, except in the following cases:</p> <ol style="list-style-type: none"> a) The data subject has given his or her consent, specific to the purpose prior to the processing, or in the case of privileged information, all parties to the exchange have given their consent prior to processing; b) The processing of the same is provided for by existing laws and regulations: Provided, That such regulatory enactments guarantee the protection of the sensitive personal information and the privileged information: Provided, further, That the consent of the data subjects are not required by law or regulation permitting the processing of the sensitive personal information or the privileged information;



PHILIPPINES

QUESTION	ANSWER
	<p>c) The processing is necessary to protect the life and health of the data subject or another person, and the data subject is not legally or physically able to express his or her consent prior to the processing;</p> <p>d) The processing is necessary to achieve the lawful and noncommercial objectives of public organizations and their associations: Provided, That such processing is only confined and related to the bona fide members of these organizations or their associations: Provided, further, That the sensitive personal information are not transferred to third parties: Provided, finally, That consent of the data subject was obtained prior to processing;</p> <p>e) The processing is necessary for purposes of medical treatment, is carried out by a medical practitioner or a medical treatment institution, and an adequate level of protection of personal information is ensured; or</p> <p>f) The processing concerns such personal information as is necessary for the protection of lawful rights and interests of natural or legal persons in court proceedings, or the establishment, exercise or defense of legal claims, or when provided to government or public authority.[DPA, Section 13]</p>
<p>6. What are the legal requirements applicable to collecting, processing and transferring such personal data?</p>	<p>The processing of personal data must comply with the Data Privacy Act and its implementing rules, and must adhere to the principles of transparency, legitimacy of purpose and proportionality.</p> <p>The processing of vaccination status data, being Sensitive Personal Information, is in general “prohibited by law except in the cases provided under Section 13 of the Data Privacy Act.” [NPC Advisory Opinion No. 2018-007]</p>
<p>7. If vaccinations are compulsory, will employees be entitled to reimbursement for the costs of vaccination?</p>	<p>DOLE Labor Advisory No. 03, series of 2021 provides that the no cost of vaccination in the workplace shall be charged against or passed on, directly or indirectly, to the employees. The employer will shoulder the cost of vaccination of employees. However, the Labor Advisory is silent on the employee’s entitlement to reimbursement for the costs of vaccination in the event that the employee underwent vaccination without the employer’s prior knowledge or approval.</p>
<p>8. Can an employer provide inducements (such as bonuses, wellness programs, etc.) to those employees who undergo vaccination?</p>	<p>There is no regulation stipulating that employers must provide additional benefits to encourage vaccination, though nothing prohibits this either. Employers are required to implement all necessary workplace safety and health programs at no cost to the employees. Offering one-off cash incentives to employees to take the vaccine, as part of a vaccination program, may be considered as one such workplace health and safety program. In Labor Advisory No. 08 series of 2021, the DOLE reiterated that an employer shall continue to urge its employees to avail of the employer’s own vaccination program, if any, or that of their respective local government units.</p>
<p>9. Can employers terminate employees who refuse to be vaccinated?</p>	<p>No. DOLE Labor Advisory No. 03, series of 2021 states that any employee who refuses or fails to be vaccinated must not be discriminated against in terms of tenure, promotion, training, pay, and other benefits, among others, or termination of employment. No vaccine-related work policy is allowed.</p>
<p>10. Can an employer require employees who cannot or will not agree to vaccination to refrain from coming to the workplace?</p>	<p>Yes, if the intention is to promote the health and safety of the employee, the employer may explore alternative work arrangements. The employee who is not vaccinated should not be discriminated against with regard to pay, tenure, training, promotions, bonuses, and other benefits. The employer should make sure that the arrangement is not considered discriminatory as this would be tantamount to constructive dismissal.</p>



SINGAPORE



SINGAPORE

QUESTION	ANSWER
<p>1. Can an employer require its employees to be vaccinated?</p>	<p>Vaccination programs for COVID-19 are voluntary in Singapore. Though employers can encourage their employees to be vaccinated, they cannot force their employees to undergo such vaccinations.</p>
<p>2. Can employers refuse to hire applicants that have not yet been vaccinated and/or do not wish to be?</p>	<p>There are no specific regulations which mandate COVID-19 vaccination as a condition for hiring new applicants.</p> <p>Also, in the absence of any specific regulations from the Ministry of Manpower, employers should be very careful when specifying COVID-19 vaccination as a requirement as it could be considered discriminatory by potential applicants. The Tripartite Guidelines on Fair Employment Practices (“TGFEP”) state that employers should apply relevant and objective selection criteria consistently for all aspects of employment, including recruitment, training, promotion, postings and retrenchments, which should be related to the job requirements. The TGFEP also mandates that the employer should recruit and select employees on the basis of merit such as skills, experience or ability to perform the job and regardless of age, race, gender, religion, marital status, family responsibilities, or disability.</p> <p>Therefore, it would also depend on the particular job as to whether COVID-19 vaccination is reasonable and lawful. However, the Ministry of Health and Ministry of Manpower in Singapore has not yet issued specific guidelines/regulations to this effect</p>
<p>3. For workplaces with trade unions or other forms of collective representation, is an employer obliged to consult with them prior to implementing employee vaccinations?</p>	<p>There are no regulations or guidelines to-date, which requires an employer to obtain prior consent from the labor union prior to mandating employee vaccinations.</p>
<p>4. Is information concerning an employee’s vaccination considered “health information” or “sensitive data” under a data protection law (where applicable)?</p>	<p>Yes, information relating to an employee’s vaccination may be considered as “personal data” under the Personal Data Protection Act 2012 (“SPDPA”).</p>
<p>5. If so, is such personal data subject to any restrictions on the collection and processing of “sensitive personal data”?</p>	<p>The SPDPA does not specifically define “sensitive personal data”. However, the Personal Data Protection Commission has in the past issued decisions and advisory guidelines mentioned that certain types of personal data would be more sensitive in nature, for example- identification numbers, financial data, insurance details or info on medical conditions. Also, the Advisory Guidelines on Key Concept in the Personal Data Protection Act states that an organization should “<i>implement robust policies and procedures for ensuring appropriate levels of security for personal data of carrying levels of sensitivity.</i>” Therefore, the documents that contain vaccination details of any employee would be considered as sensitive personal data and should be processed and sent with due care.</p>



SINGAPORE

QUESTION	ANSWER
<p>6. What are the legal requirements applicable to collecting, processing and transferring such personal data?</p>	<p>The SPDPA requires an organization to obtain consent of the individual before collecting, using or disclosing his/her personal data for any purpose, unless such collection, use or disclosure of personal data falls within the exceptions listed in the Second, Third or Fourth Schedule of the SPDPA. The consent from an individual must be validly obtained and may be either expressly given or deemed to have been given in accordance with the provisions of the SPDPA.</p> <p>Furthermore, the SPDPA states that an organization may collect, use or disclose personal data about an individual only for purposes that a reasonable person would consider appropriate in the circumstances, and where applicable, the concerned individual has been notified.</p>
<p>7. If vaccinations are compulsory, will employees be entitled to reimbursement for the costs of vaccination?</p>	<p>COVID-19 vaccination is cost-free for Singaporeans, permanent residents and long-term pass holders.</p>
<p>8. Can an employer provide inducements (such as bonuses, wellness programs, etc.) to those employees who undergo vaccination?</p>	<p>This would be subject to a clear agreement entered into between the employer and employee.</p>
<p>9. Can employers terminate employees who refuse to be vaccinated?</p>	<p>Since COVID-19 vaccination is voluntary in Singapore, employees can refuse to be vaccinated. However, where the employer has a reasonable and lawful basis for requiring the employees to be vaccinated, and the employee still refuses to comply, the employer may terminate the employment if such refusal can be interpreted as misconduct. The employer should inform the employee of the act of misconduct, and conduct an inquiry before deciding whether to dismiss an employee or to take other forms of disciplinary action. The employee should be given an opportunity to present his/her case and the inquiry should be conducted impartially in an evenhanded and unbiased manner.</p> <p>Also, the employer should be very careful when terminating employment due to refusal to undergo vaccination as this could be deemed discrimination from an employee's perspective.</p>
<p>10. Can an employer require employees who cannot or will not agree to vaccination to refrain from coming to the workplace?</p>	<p>Yes, an employer may require its employees who cannot or will not agree to be vaccinated to not come into the workplace, provided the employer continues to pay the employees their usual salaries. The employers are under an obligation to main a safe workplace under the Workplace Safety and Healthy Act, and implement safe management measures. To avoid exposure at the workplace, work-from-home is the default mode of working for employees whose jobs can be performed from home, and the employees must ensure to continue to do so for at least half of their working time. Also, employers must ensure that no more than half of their employees are at the workplace at any point in time. Employers must not organize or encourage social gatherings within or outside the workplace. Further, employees must wear masks at the workplace, maintain safe physical distances and observe good personal hygiene.</p>



THAILAND



THAILAND

QUESTION	ANSWER
<p>1. Can an employer require its employees to be vaccinated?</p>	<p>As vaccination against COVID-19 is not mandatory at this stage, an employer has no right to demand that employees be vaccinated and any program of vaccination (if available) should be based on mutual consent. However, under Section 34 of the Communicable Diseases Act B.E. 2558 (2015) (the “CDA”), a communicable disease control officer in charge of overseeing an epidemic area may issue a written order instructing any person at risk of being infected with a disease to undergo vaccination at a prescribed date, time and place in order to prevent further community spread or transmission of the disease. Any person who violates or fails to comply with the order of a communicable disease control officer may be fined by up to THB 20,000.</p>
<p>2. Can employers refuse to hire applicants that have not yet been vaccinated and/or do not wish to be?</p>	<p>The Labor Protection Act B.E. 2541 (1998) (the “LPA”) outlines the rights and obligations of employees and employers in an organization. No specific laws or regulations have been issued addressing any legal basis or restrictions on imposing vaccination as a condition of hire.</p>
<p>3. For workplaces with trade unions or other forms of collective representation, is an employer obliged to consult with them prior to implementing employee vaccinations?</p>	<p>To-date, no regulation requires an employer to obtain prior consent from the labor union prior to mandating employee vaccination.</p>
<p>4. Is information concerning an employee’s vaccination considered “health information” or “sensitive data” under a data protection law (where applicable)?</p>	<p>Yes, information related to an employee’s vaccination would be considered sensitive data under Section 26 of the Personal Data Protection Act (the “PDPA”). However, the PDPA’s provisions will not become fully effective until 1 June 2022 as indicated by the Thai cabinet’s approval on 5 May 2021 concerning postponement of the PDPA’s entry into force.</p>
<p>5. If so, is such personal data subject to any restrictions on the collection and processing of “sensitive personal data”?</p>	<p>Yes, the information of any employee who has or has not been vaccinated would be considered sensitive personal data. In this respect, the collection, processing or transfer of such data requires the employee’s express prior consent. Likewise, the employee must be duly notified in advance of the purpose of collecting and processing the data and his/her rights regarding this sensitive personal data. The purpose of use related to such sensitive data must be strictly limited to the purpose notified to the employees at the time it is requested.</p>
<p>6. What are the legal requirements applicable to collecting, processing and transferring such personal data?</p>	<p>The collection, use or disclosure of personal data by the personal data controller is subject to the data subject’s prior consent having been secured.</p> <p>In requesting consent, the employer (as the data controller) must inform the employee of the purpose the legal basis for the collection, use or disclosure of personal data, and the employee’s rights under the PDPA. The request must be presented in a manner which is clearly distinct and separate from other matters, in an easily understandable and straightforward form, using clear and plain language, and does not deceive or mislead the data subject in regard to the relevant purposes.</p> <p>A request for consent may be explicitly made in written or electronic form.</p>



THAILAND

QUESTION	ANSWER
<p>7. If vaccinations are compulsory, will employees be entitled to reimbursement for the costs of vaccination?</p>	<p>As there are no specific regulations on this issue, it is unclear whether employees will be entitled to reimbursement for the cost of vaccination and paid leave. Currently, the Ministry of Labor in Thailand is conducting the potential acceptance of a COVID-19 survey from employees under Sections 33, 39 and 40 of the Social Security Act B.E. 2497 (1954) in order to plan the vaccination rollout and distribution in Thailand. However, it is still unclear as to when and where employees will be able to receive the vaccine. If the government were to impose vaccination, it would likely either provide vaccinations free-of-charge or direct that employers be responsible for the costs of vaccination. Furthermore, the time spent to undergo vaccination should logically be considered as paid leave. This is subject to future announcements by the government however.</p>
<p>8. Can an employer provide inducements (such as bonuses, wellness programs, etc.) to those employees who undergo vaccination?</p>	<p>Vaccination is subject to the employee's consent.</p> <p>In practice, an employer could provide a one-off inducement to encourage employees to receive the vaccine, provided that the employer does not deduct any existing benefits or welfare, in accordance with the Labor Relation Act B.E. 2518 (1975).</p>
<p>9. Can employers terminate employees who refuse to be vaccinated?</p>	<p>In the absence of specific regulations or rulings allowing an employer to terminate an employee who has refused to be vaccinated, it is not recommend to terminate an employee on such a basis.</p>
<p>10. Can an employer require employees who cannot or will not agree to vaccination to refrain from coming to the workplace?</p>	<p>Yes, an employer may require its employees not to attend the workplace and may excuse them from working, provided that the employer pays the employees' full salary or wages during such a period. In addition, on 29 April 2021, the Centre for the Administration of the Situation due to the Outbreak of the Communicable Disease Coronavirus 2019 (COVID-19) has encouraged employers to set work from home policies of at least 14 days in order to reduce rates of infection.</p> <p>In the event that the employer requires its employees not to come to the workplace and does not pay the employees during the period of absence, the employer may be considered to hold the intention of terminating the employment agreement according to Supreme Court Ruling No. 7393/2562 and this may trigger severance payments to eligible employees</p>



VIETNAM




VIETNAM

QUESTION	ANSWER
<p>1. Can an employer require its employees to be vaccinated?</p>	<p>Under current regulations, an employer cannot require its employees to be vaccinated, unless the industry or sector is specifically subject to a government mandate.</p> <p>Vietnam commenced its initial COVID-19 vaccination program on 8 March 2021. In accordance the Government’s Resolution No. 21/NQ-CP dated 26 February 2021 on the Purchase and Use of COVID-19 vaccines, (“Resolution No. 21/NQ-CP”), 150 million doses will be purchased and periodically imported subject to situational needs and allocated to specific areas as directed by separate decisions of the Ministry of Health.</p> <p>According to Official letter No. 4163/BYT-DP dated 21 May 2021, as of 19 May 2021, COVID-19 vaccine doses (primarily AstraZeneca) have been administered to frontline workers and medical staff in in 63 provinces and cites free-of-charge. Vietnam is additionally expecting 31 million vaccine doses developed by the US firm Pfizer in the second half of 2021.</p> <p>Currently, four Vietnamese vaccine candidates are under development, produced by Nagogen Pharmaceutical Biotechnology JSC (“Nanocovax”), the Institute of Vaccines and Medical Biologicals (“IVAC”), Vaccine and Biological Production Company No. 1 (“Vabiotech”) and the Center for Research and Production of Vaccines and Biologicals (“Polyvac”). The Nanocovax vaccine candidate has completed two stages of trials and is now in the process of going through the final trial. The final trial, involving 10,000 people in Vietnam is expected to be completed in August or September 2021.</p>
<p>2. Can employers refuse to hire applicants that have not yet been vaccinated and/or do not wish to be?</p>	<p>No information is currently available on this. However, Article 8 of the Labor Code No. 45/2019/QH14 (the “Labor Code 2019”) prohibits any form of discrimination based on the employee’s health and/or disability status. It remains to be seen whether the Government of Vietnam will issue overriding provisions in the context of a state-backed COVID-19 vaccination campaign.</p>
<p>3. For workplaces with trade unions or other forms of collective representation, is an employer obliged to consult with them prior to implementing employee vaccinations?</p>	<p>Strictly speaking, the Labor Code 2019 does not insist on consultations with the organization representing employees at the grassroots level (now comprising trade unions or employee organizations) prior to rolling out a vaccination campaign in the workplace. This requirement could nevertheless be imposed by the Vietnamese Government in the name of preventing any further spread of COVID-19. However, we are not aware of any COVID-19 vaccination-related regulations issued by the Vietnamese Government thus far.</p> <p>In the absence of specific regulations, it is highly recommended that the opinion of the Department of Labor, Invalids and Social Affairs be sought before implementing any health or medical campaign, including vaccination programs (assuming that private employers could pursue their own in-house vaccination programs in Vietnam).</p>



VIETNAM

QUESTION	ANSWER
<p>4. Is information concerning an employee’s vaccination considered “health information” or “sensitive data” under a data protection law (where applicable)?</p>	<p>Article 3.3 of Circular No. 25/2010/TT-BTTTT deals with the collection, use, sharing, security assurance and protection of personal information on websites or online portals of state agencies. However, such a Circular only applies to personal data collected and processed by state agencies.</p>
<p>5. If so, is such personal data subject to any restrictions on the collection and processing of “sensitive personal data”?</p>	<p>Under the current legal framework, there is no comprehensive privacy and personal data protection legislation in Vietnam. Although the Civil Code generally protects personal information, Vietnamese laws currently do not distinguish between “personal data” and “sensitive personal data”.</p> <p>The Vietnamese Ministry of Public Security recently published the long-awaited draft Decree on Personal Data Protection (“Draft Decree”) for public consultation. The timing for adoption of the Draft Decree is not clearly scheduled however and therefore difficult to anticipate. The Draft Decree defines, for the first time in Vietnam, the term ‘sensitive personal data’, which includes, among others, political and religious beliefs, ethnicity or race, healthcare status, genetic information, biometric data, gender and/or sexual orientation, and criminal record.</p>
<p>6. What are the legal requirements applicable to collecting, processing and transferring such personal data?</p>	<p>The processing and use of employees’ personal data must comply with the provisions of Article 22 of the Law on Information Technology No. 67/2006/QH11 of the National Assembly of Vietnam dated 29 June 2006. In particular:</p> <ul style="list-style-type: none"> ▪ The collection, processing and use of personal data is subject to consent being obtained from the personal data owner; and ▪ Personal data is to be kept confidential and must not be shared with third parties, unless otherwise agreed to by the owner of such personal data.
<p>7. If vaccinations are compulsory, will employees be entitled to reimbursement for the costs of vaccination?</p>	<p>In February 2021, the National Steering Committee announced that all Vietnamese citizens would get the vaccine for free. However, under the Government’s Resolution No. 21/NQ-CP dated 26 February 2021 on the purchase and use of COVID-19 vaccines, free vaccinations only apply to individuals in identified priority groups at this stage.</p>
<p>8. Can an employer provide inducements (such as bonuses, wellness programs, etc.) to those employees who undergo vaccination?</p>	<p>There are no laws or regulations currently in force that cover such matters.</p>
<p>9. Can employers terminate employees who refuse to be vaccinated?</p>	<p>Under current Vietnamese laws, an employer cannot demand that its employees be vaccinated, unless the industry is specifically subject to a government mandate dictating otherwise.</p> <p>An employee’s refusal to be vaccinated is not a valid reason for the employer to unilaterally terminate the labor contract under Article 36 of the Labor Code 2019.</p>
<p>10. Can an employer require employees who cannot or will not agree to vaccination to refrain from coming to the workplace?</p>	<p>There is no regulation currently in force expressly allowing employers to do this.</p>

A black and white photograph showing the hands of several people in business attire stacked on top of each other in a circle, symbolizing teamwork and collaboration. The hands are of various skin tones and are wearing different styles of suits and shirts. One person's wrist is visible with a metal watch.

**Any questions?
Contact the team!**

**KEY CONTACT
& AUTHORS**



MARION CARLES-SALMON

*Head of Regional Employment & Labour Practice
Regional Senior Legal Adviser
marion.carlessalmon@dfd.com*



SHAHWAR NIZAM

*Partner, Managing Director
Bangladesh*



KRAISORN RUEANGKUL

Partner, Thailand



ANDI ZULFIKAR

*Partner (Mataram Partners),
Indonesia*



CRISTINA SURALVO

*Partner (Ocampo & Suralvo
Law Offices), Philippines*



KAREN OCAMPO

*Partner (Ocampo & Suralvo
Law Offices), Philippines*



RAKSA CHAN

*Senior Consultant,
Cambodia*



**STANDRÉ
BEZUIDENHOUT**

Senior Associate, Lao PDR



NAR WAH

Senior Legal Adviser, Myanmar



DEBY TRIDATA

Legal Adviser, Indonesia



**NGUYEN THI
THANH HUYEN**

Legal Adviser, Vietnam



MYA MYINTZU

Legal Adviser, Myanmar



BHAWNA BAKSHI

Legal Adviser, Singapore

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