

LATAM has also been hit hard by COVID-19 and in early 2021 some countries started administering the first doses of vaccines. The news that a COVID-vaccine is finally becoming a reality presents organizations with the possibility of returning to business as normal. While governments and health organizations are still planning their vaccination programs, with regulatory approvals still pending in most countries, there is uncertainty about the timing, viability and availability of a vaccine. Nevertheless, it is important that LATAM employers are prepared for the possibility of utilizing the vaccine to protect their workforces, promote business continuity, and mitigate health and safety risks of a return to the office.

5 Key Considerations for LATAM Employers

- 1 The availability of national health programs providing the vaccine;
- 2 The ability to require vaccination of employees and third parties;
- 3 The permissibility of requiring proof of vaccination of employees;
- 4 How to practically implement vaccination policies;
- 5 Potential risks and liabilities.

This is a quickly evolving area. Here's how we can provide timely support:



Partner with you to analyze the legal considerations surrounding demanding vaccination of the workforce;

Provide multijurisdictional vaccination analysis matrixes for the region (or globally) from a single point of contact;



Draft related policies, notices, and employee consents;

Monitor any new relevant federal, state and local guidance, and be certain to modify policies and protocols as applicable guidance is issued.



Regional Outlook (FAQ)**1**

Are there national health programs under which the population are or will be given COVID-19 vaccines and how are these advancing in each country?

National health programs are common in the LATAM region and the pandemic has been no exception. The majority of governments in the region have assumed the responsibility of providing COVID-19 vaccinations to the general population. As with other nations across the globe, vaccinations are administered based on priorities where health care workers, the elderly and individuals with health issues are first on the list.

2

Have any government authorities issued any guidelines on the administration of COVID-19 vaccines in the workplace?

Since the governments have assumed responsibility for the administration of the vaccines, few guidelines have been issued with respect to vaccines in the workplace. As the LATAM countries begin to open up more, we expect more such guidelines.

3

Do employers in the private sector have access to vaccines for their employees? How is this regulated and is there any liability for the employers?

In most countries, employers do not have access to vaccines for their employees since vaccines are purchased and administered by the government; the private sector does not have access to vaccines for their employees. There are some exceptions to this. For example, in Colombia, the Ministry of Health has established certain criteria for private parties to acquire, import, apply, coordinate and/or donate vaccines for employees, contractors or their families. However, before providing vaccines to employees in Colombia, we strongly recommend formalizing the terms and conditions of the private vaccination plans in writing, including waivers regarding potential risks. Similarly, in Peru, private companies may directly purchase any vaccine already approved by the Health Ministry. However, distribution plans and guidelines have not yet been finalized so we are awaiting further regulations on this matter.

4 Are mandatory vaccination policies in the workplace permissible?

In the LATAM region, for the most part, it is not permissible to mandate vaccines as a requirement to return to the workplace at this point in time. However, this might change in the future at least in certain countries. In Brazil, for example, mandatory vaccination in the workplace is still under discussion, and there is precedent that would support policies mandating vaccination as a condition for returning to the employer's work premises. In Venezuela, the law authorizes the Ministry of Health to make vaccinations mandatory, but this has not happened yet.

5 Can employers prevent employees from returning to the workplace if they have not been vaccinated?

The answer across LATAM varies, and could evolve and change in the future. Though this might be subject to discussion, it could be said that currently employers in Chile, Mexico and Venezuela cannot prevent employees from returning to the workplace based on their vaccination status. This could be considered unlawful discrimination, and employers in these countries should focus on incentivizing vaccination. However, this could evolve and change in the future, especially as availability of vaccines or the vaccination programs advance and it becomes clear that certain sectors of the population may be fully vaccinated. In other countries and always subject to interpretation and perhaps certain risks, like Argentina, Brazil and Peru, it is more likely that at this point in time employers could prevent unvaccinated employees from returning to work. In Argentina and Peru, for example, this could be implemented as a preventive measure to reduce contagion and ensure a safe workplace -- not as a disciplinary sanction for not getting vaccinated. In Colombia, employers cannot require vaccination but this is an aspect to be considered upon designing return to work schemes, which would also include provisions for individuals who refused vaccination.

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