

Our Evaluations on the New Statement of Ministry of Labour and Social Security about Unvaccinated Employees

The Ministry of Labour and Social Security (“Ministry”) made an announcement on its website on September 3, 2021. According to this announcement, the Ministry sent the letter dated 2/9/2021 to the 81 Provincial Governorships. These letters include information about the PCR test that employers will request from their employees; and the employers’ briefing duties towards their employees about Covid-19 risks and measures.

According to these letters,

The Ministry reminds that the employers are obliged to inform all their employees about the protective and preventive measures against the health and safety risks that may be encountered in the workplace. In addition, the Ministry also reminds that the employers are requested to inform their employees, whose COVID-19 vaccine has not been completed, in writing. Also, employers should inform their employees, whose vaccination has not been completed, about the possible consequences of a diagnosis of COVID-19 in terms of labour and social security legislation. As of September 6, 2021, employees whose vaccination has not been completed may be required to have a mandatory PCR test once a week by the workplace/employer. The test results will be recorded at the workplace for necessary procedures.

In this respect:

1. Firstly, pursuant to the Occupational Health and Safety Law dated 6331, the employees must be informed about the protective and preventive measures against the health and safety risks that may be encountered in the workplace. Educations and briefings, which were already made before the COVID-19 pandemic, must be updated and renewed swiftly in light of the COVID-19 pandemic.
2. Workplace doctors (or the representative employees if the company is not required to appoint workplace doctors) must request to see the employees’ vaccination cards and determine the unvaccinated employees. Since such information is classified as health data and, in turn, sensitive personal data, they must be requested by workplace doctors if the company is obliged to employ one. It is important to comply with this rule in view of the law on the protection of personal data.

3. According to the Ministry's letters, the employees whose vaccination has not been completed must be informed additionally in writing. Based on the term "whose vaccination has not been completed", it is understood that the employees with one dose of COVID-19 vaccination shall be regarded as unvaccinated employees. It was stated that these information letters are related to the risks that employees whose vaccination has not been completed may be encountered at the workplace and the respective preventative measures. In this respect, the employers can also benefit from the Ministry of Health's following phrases in their information letters: "Clinical studies show that COVID-19 vaccines' protective effect against the disease is high.", "When the data in hand are examined, it is seen that the unvaccinated people are hospitalised and put into intensive care units much more often than the vaccinated people.", "To prevent interpersonal transmission of the disease and ensure social immunity, a high percentage of the population must be vaccinated." Again, according to this information, it can be stated that, apart from risking their own health, unvaccinated employees also risk the other employees' and third parties' health and lives.

4. After being informed about the risks and precautions, the employees who are not vaccinated (or have not completed their vaccination) should be informed by the employer of the possible consequences of a definitive diagnosis of COVID-19 in terms of labour and social security legislation. In this information, the following warnings can be made: if an employee is diagnosed with COVID-19, he/she will not be taken to the workplace within the scope of health and safety measures, and he/she may experience a loss of wages during this period; if the absence exceeds the period in subparagraph 25/1/b of the Law No. 4857, the employment contract may be terminated by the employer for just cause; or if the employer comes to the workplace despite being aware that he/she is sick, the employment contract may be terminated by the employer for just cause as per subparagraph 25/II/1.

5. According to the Ministry's letter, the employer will be able to require the employees who are not vaccinated against COVID-19 to have a PCR test once a week as of September 6, 2021. The test results will be recorded at the workplace in order to take necessary actions. There is no obligation to cover the costs of these tests by the employer. Employees who do not have a PCR test, although requested by the employer, may not be allowed to conduct work by the employer. In such a case, the workers cannot be entitled to the wages of that day since the employer has no fault in not performing the work.

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