


VACCINE – LEGAL & PRACTICAL IMPLICATIONS	
Current as of Dec. 21, 2020	Contributor(s):  <ul style="list-style-type: none"> <li>  Name: Mercedes Balado Bevilacqua Title/job position: Name and managing Partner; Email address: mercedes.balado@baladolaw.com.ar </li> </ul>
<i>Access to Vaccine</i>	
1. Is there a priority list for the distribution of the COVID-19 vaccine? (include summary list)	The Government has announced that once the vaccine arrives, the following citizens will have priority regarding its application: i) Health care personnel; ii) Security and armed forces personnel; iii) Professors; iv) People over the age of 60; v) People between 18 and 60 years old that have previous illnesses.
<i>Cost of Vaccine</i>	
2. Will the vaccine be paid for by the applicable jurisdiction?	Currently, no information is available.
<i>Requirement of Vaccine</i>	
3. Is there a general requirement for individuals to be vaccinated after the COVID-19 vaccine is available?	No, there are no general requirements. Once the vaccine is available, priority groups will be vaccinated first.
4. Is the vaccine mandated in certain industries after it becomes available?	The vaccine against COVID-19 has not yet been included in the National Vaccination Program (“NVP”) and, therefore, for the moment, it is not mandatory for Argentine citizens in any industry.
<i>Employer Mandated Vaccinations</i>	
5. Can an employer require current employees to be vaccinated?	No. For the moment, employers cannot require or force employees to be COVID vaccinated.

	<p>However, due employer's duty of safety (that includes not only the obligation to take all measures necessary to protect employees' physical health but also those related to their mental and psychological health, and to provide a healthy workplace) employers may have the right to prevent employees who do not want to be vaccinated from attending the workplace, ever since the employees' right to privacy has as a limit the exposure to third parties at stake of infection. However, note that so far there is no ruling upon the matter.</p> <p>If the vaccine against COVID-19 is included in the NVP and, therefore, it is mandatory to be vaccinated, the employer is allowed to impose disciplinary measures to those employees who refuse to take the vaccine, based on the employer's duty of safety and the public health engaged.</p>
6. If so, is there legal protection to be excused from being vaccinated (e.g., religious accommodation/disability accommodation)?	Currently, no information is available.
<i>Applicants for Employment (Pre-Hire Stage)</i>	
7. Can an employer require applicants to be vaccinated as a condition of hire?	No. For the moment, employers cannot require applicants to be vaccinated as a condition of hire. It may be considered a discriminatory act and the candidate may file a claim before the Court of Justice. In this sense, if it is discovered that a candidate is not hired only for that reason, he/she may claim unlawful discrimination on such grounds.
8. Can employers ask applicants if they have been vaccinated?	Not for the moment. Please see answer 7 above.
9. Can employers refuse to hire applicants that are unwilling to	Not for the moment. Please see answer 7 above.

be vaccinated or have not yet been vaccinated?	
10. Is there legal protection for applicants to be excused from being vaccinated (e.g. religious accommodation/disability accommodation)?	Currently, no information is available.
<i>Wage and Hour</i>	
11. If vaccinations are required, are employees entitled to reimbursement for the cost of the vaccination?	<p><i>[Please indicate whether the time the employee spends receiving the vaccination is considered “compensable time” for which the employee must be paid]</i></p> <p>The National Government has announced that the COVID-19 vaccine will have no cost once it is available. However, no legislation has been issued regarding this matter.</p> <p>In case the employee is vaccinated during working hours, such hours are considered compensable time and the employer must pay them, and the employee must provide proof of COVID-19 vaccination.</p>
<i>Other Legal Risks in Mandating</i>	
12. Are there any other legal risks to consider in requiring employee vaccinations? (Please list)	<p>The risk is that the employee considers that the employer is performing a discriminatory act and may file a claim before the Court of Justice, requiring an award of compensation for the damage suffered.</p> <p>In addition, he/she may consider himself/herself constructively dismissed and claim the payment of the corresponding severance compensation plus applicable fines which is currently double until January 25, 2021.</p>
<i>Employee Benefits</i>	

13. Can an employer provide inducements under its employee benefits plans (e.g., wellness programs) for those who are vaccinated?	<p>Employers cannot force employees to be vaccinated. If the vaccine is included in the NVP and, therefore, it is mandatory to be vaccinated, the employer has no reason to give additional benefits to induce its employees to be vaccinated.</p> <p>In this sense, Argentinean legislation states that employers are allowed to treat employees differently and give benefits as long as the reason for the treatment is based on objective criteria, such as productivity. In case the employer decides to provide benefits only to those employees that have been vaccinated against COVID-19, those employees that have not been vaccinated might consider him/herself constructively dismissed and claim severance compensation for dismissal without cause (which is currently double until January 25, 2021) plus applicable fines.</p>
14. Can an employer provide a bonus to employees who get vaccinated?	Please see answer 13 above.
<i>Unionized Settings</i>	
15. For workplaces in which collective representation arrangements apply, is an employer obligated to bargain with the union, or meet with the Works Council, prior to mandating employee vaccinations?	Currently, no information is available.
<i>Privacy</i>	
16. Is the fact that an employee has, or has not, been vaccinated	Yes. Law No. 25,326 -Personal Data Protection Law- establishes that personal data revealing information concerning health –among others- is considered as sensitive data.

“health information” or “sensitive personal data” under your country’s data protection law (Y/N)?	
17. If so, is this health information subject to the restrictions on processing applicable to “special categories of personal data” or “sensitive personal data”?	Yes. Law No. 25,326 states that the creation of files, information banks or records that store sensitive data is prohibited. Nevertheless, this kind of information can only be collected or treated when the law authorizes so or due to general interest reasons. They may also be treated for statistical or scientific purposes when their owners cannot be identified.
18. If no, is that information nonetheless protected by applicable data protection law (Y/N)?	Not applicable.
<i>Record-Keeping Requirement</i>	
19. Is an employer required to maintain a record of an employee’s COVID-19 vaccination?	No. Employers are not required to record employees’ vaccination.
20. If so, what are (if any) the specific record keeping requirements related to vaccinations?	Not applicable.
<i>Reporting Requirements</i>	

21. If an employee is vaccinated at the employer's directive, is the employer required to notify the governmental health authorities of employee's vaccination?	Not applicable.
22. Can employers ask applicants if they have been vaccinated?	Not for the moment. Please see answer 7 above.
23. Can employers refuse to hire applicants that are unwilling to be vaccinated or have not yet been vaccinated?	Not for the moment. Please see answer 7 above.
<b>TELEWORKING WHERE AN EMPLOYEE CANNOT OR WILL NOT BE VACCINATED</b>	
24. Can an employer unilaterally implement a teleworking (work from home) arrangement if an employee cannot or will not agree to be vaccinated?	No. Employees' consent in writing is required when implementing home office modality (According to Law 27,555 –Home Office Regime Law-). However, please bear in mind that this Law will not become effective immediately since it will come into force after 90 days as of the Mandatory, Social and Preventive Isolation ("the Isolation") ends.
25. If telework is not an option, can an employer require employees who cannot or will not agree to vaccinate to not come into the workplace?	Please see answer 5 above.

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