



ARTICLE

HEALTH PASS IN FRANCE

Employment and Social Security Law | 29/07/21 | Diane Reboursier



Health pass in France

Whilst France is facing with a new Covid surge (189 per 100,000 people as of today in France) due to the rise of the Delta variant, a new bill has been passed in less than a week in France.

French government clearly stated that the main purpose of the law is to encourage people to get vaccinated. For the time being, this strategy seems to have paid off, despite the political tensions and protests: millions of people have booked appointments for vaccination since the announcement of President Macron on July 12.

Although this law is not yet fully enacted, since the French Constitutional Court shall issue a decision on the bill on August 5, it will have consequences on business in France in many sectors.

What does it change in France?

Since July 21, a so-called health pass is already mandatory in France to access to any cultural or leisure venues accommodating 50 people or more (such as swimming pools, theaters, amusement parks, sports halls or museums).

Last Monday, the French Parliament approved a new bill which authorizes the Prime Minister to issue decrees requiring a health pass in various places such as restaurants, bars or for domestic travel. This new set of rules will be in principle applicable until November 15, depending on the virus situation. If need be, Parliament will have to vote again to extend these regulations.

Three categories of people will be concerned, by steps:

- public at large for specific activities,
- employees of establishments performing said activities and
- people working in hospitals, clinics, etc.

A decree will outline how to handle vaccination documents from other countries since there is still an issue for non-EU countries.

Outside healthcare, which activities will be concerned and when?

Decrees will be taken as regards access of the public to specific venues and will be applicable likely at the beginning of August, once the French Constitutional Court will issue its ruling on the new law.

The activities concerned will be the following:

- Leisure activities
- Restaurants, bars (not applicable to takeaway and staff canteens)
- Fairs, seminars and trade shows
- Health establishments (in particular hospitals, clinics and retirement homes)
- Longdistance domestic travels (plane, train, or bus).
- Shopping centers and departments stores but only upon a specific decision of the local prefect, based on the seriousness of the contamination risks. A decree will determine a threshold, likely in number of m² of the store. Moreover, access to essential goods and services shall be guaranteed, considering means of transport.

These new regulations will initially apply only to adult clients (over 18); the youngsters (as from 12 years old) will be concerned as from September 30.

People must prove that they are either:



- fully vaccinated,
- tested negative over the last 48 hours or
- have recovered from the covid virus since less than 6 months.

In case of a breach, individuals will be subject to a fine of EUR 135 euros. In case of three breaches within one month, the sanctions are a fine of EUR 3,750 and 6-months' imprisonment.

Then, as from August 30, the health pass will be applicable to employees working within these premises, such as employees of restaurants or bars, "*when the seriousness of the contamination risks justifies it*".

What to do if an employee does not provide his/her health pass?

If an employee fails to submit to his/her employer the health pass, s/he can first, with the agreement of his/her employer, take paid vacation.

Otherwise, s/he will be immediately notified by the employer his/her suspension from work, without pay. The suspension will cease when the employee provides the health pass.

If the employee fails to provide the health pass during 3 business days, the employer shall summon him/her to an interview in order to discuss with him/her the possibility to assign him/her to a position not requiring a health pass, which is likely to be difficult in practice.

French government had initially introduced in the law the possibility to dismiss an employee with a specific procedure if the employee was not showing his health pass but given the pressure of public opinion, these provisions have been suppressed by the Senate. The Ministry of Labor has nevertheless stated that it would be possible to dismiss an employee in case of refusal, but it is difficult to apprehend how jurisdictions will react.

As an exception, fixed-term contracts can be terminated before their term if the employee fails to provide the health pass. In such a case, the dismissal procedure shall be complied with.

Who will be subject to mandatory vaccination?

The new law also makes vaccination against Covid-19 mandatory for healthcare professionals at large since it includes all persons working in hospitals, clinics, retirements homes, etc. and private actioners (psychologists, psychotherapists, osteopaths...) except if the workers are only performing occasional tasks within the premises.

They would need to be vaccinated before September 15. Otherwise, they will be suspended from work without pay. As a temporary exception, until October 14, they will be authorized to work if they have at least got one dose of vaccine and provide a PCR test.

Healthcare professionals will not have to be vaccinated if they have a medical contra indication or if they have a certificate demonstrating that they had recovered from covid since less than 6 months.

What does it change for companies?

First, and also depending on the wording of the decrees to be issued, companies shall determine whether they fall within the scope of the health pass.

Indeed, if this is not the case, it is illegal to request employees to be vaccinated or show a negative test. This would indeed constitute an infringement to the employees' private life. Moreover, the person requiring such documents will be liable to EUR 45,000 fine and imprisonment for 1 year.

If the employer is subject to control its clients and workers and does not implement the checks, it will be first "warned" in case of a control by the administration. If no measures are taken to comply with the regulations, the administration can order an administrative closure, up to 7 days. If there are more than 3 breaches within 45 days, the operator of the business will be liable to a EUR 9,000 fine and up to 1-year imprisonment.

When the vaccination – and not only the health pass – is required, the employer failing to check the vaccination certificate can be able to a fine of EUR 1,500. If there are more than 3 breaches over 30 days, the applicable sanctions are a EUR 9,000 fine and up to 1-year imprisonment.



It would be therefore extremely important to implement the control and, if a client or an employee refuses to comply with the measures, to refuse access to the premises.

It shall also be noted that in companies with more than 50 employees, the company shall immediately inform “by any means” the Works’ Council (“*Comité Social and Economique*”) as regards the methods used to control the health pass. The Works Council shall then be formally informed and consulted with, i.e. render an opinion, either positive or negative, as regards these measures within 1 month. As an exception to the principle set forth by the Labor Code, the Works Council can render its opinion after the employer has started to implement the measures.

Lastly, employees benefit from a paid leave of absence to attend medical appointments for vaccination against covid-19
