



Cabinet Adam-Caumeil
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Legal regulation concerning health and vaccination in the workplace

Practice group employment law



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Meaning of the term

France: the sanitary pass (<i>pass sanitaire</i>)	Germany: 3-G-rule (<i>3-G-Regel</i>)
Showing proof of a person's health in digital or paper form	Showing proof of a person's health in digital or paper form
<ul style="list-style-type: none">- complete vaccination- negative test result- complete recovery	<ul style="list-style-type: none">- complete vaccination (<i>geimpft</i>)- negative test result (<i>getestet</i>)- complete recovery (<i>genesen</i>)

Scope and period of application

Sanitary pass

- initially until 15 November
- for bars, restaurants, department stores, long-distance travel by public transport
- in the health sector

3-G-rule

- initially until 24 November
- in the health sector
- in indoor gastronomy and accommodation
- for indoor events, festivals and sporting activities
- in the use of physical services

What applies to employees working in establishments within the scope of the pass sanitaire or the 3-G rule?

Pass sanitaire

- applicable to persons and employees who intervene in these places, establishments, services or events.

3-G-Rule

- applicable to persons who intervene in the health sector
- no nationwide uniform regulation for other employees within the scope of the 3-G-rule

Distinction between the health sector and establishments of other types

France

- Compulsory vaccination for all health care employees and employees who are in contact with vulnerable persons (e.g. firefighters, paramedics, caregivers)
- The employee or employer quality is irrelevant

Germany

- There is no obligation to vaccinate
- Duty to respect the 3-G-rule. Only in the health sector can the employer inquire about the employee's health status. (§23a IfSG, DSGVO).
- Otherwise, the employer has no right to ask the employee about health data.

Duties of the employer

France

- Duty to monitor compliance with the vaccination obligation (Article 5 of the Act of 5 August)
- prohibit the employee from working in the event of non-compliance.
- Control of the pass sanitaire of the persons who wish to have access to his establishment.

Germany

- Occupational health and safety ordinance on the pandemic (applies to all types of companies):

Measures to reduce contact in the workplace, duty to offer a test for employees in the workplace at least twice a week at his own expense

Disciplinary measures and sanctions for the employee in case of violation of the vaccination obligation in France

- the employer issues a work ban, which is followed by days of leave.
- During this time, the employment contract is suspended.
- The employee retains all the privileges of social protection.
- If the employee does not comply with the work ban: Art. 3136-1 *code de la Santé Publique* imprisonment up to 6 months and a 10000 € fine.

Disciplinary measures and sanctions for the employee if he or she does not produce a valid pass sanitaire

- the employment contract is suspended for a period of up to two months without continued payment of wages.
- After that, the employer must find a solution with the employee (e.g. modify the employee's activity (télétravail) so that no pass sanitaire has to be presented).
- with regard to permanent employment contracts: Legislator has explicitly ruled out the existence of a reason for dismissal.

Disciplinary measures and sanctions for the employer in France

- Violation of the duty to control with regard to compulsory vaccination = administrative offence of the fifth degree (*contravention de 5e classe*)
- In case of more than three violations in 30 days: penalty of up to one year imprisonment and fine of up to 8000 €
- Violation of the obligation to control the pass sanitaire: reminder, closure for 7 days, in case of repetition penalty up to one year imprisonment and up to 9000 € fine.

Sanctions in case of employer's violation of the Occupational Health and Safety Ordinance in Germany

- The Occupational Health and Safety Act provides for a maximum fine of 30.000 €.

specially in Germany: Continued payment of salary in the case of quarantine ordered by the government

- state compensation under the Infection Protection Act (Infektionsschutzgesetz, IfSG) if employees suffer a loss of earnings due to quarantine ordered by the authorities
- From 1 November 2021: no compensation for unvaccinated employees who could reasonably have been vaccinated.
- Problem:
 - Shifting the compensation payment to the employee: continued payment of wages according to § 616 BGB?

**Bürgerliches Gesetzbuch (BGB)
§ 616 Vorübergehende Verhinderung**

- Der zur Dienstleistung Verpflichtete wird des Anspruchs auf die Vergütung nicht dadurch verlustig, dass er für eine verhältnismäßig nicht erhebliche Zeit durch einen in seiner Person liegenden Grund ohne sein Verschulden an der Dienstleistung verhindert wird. Er muss sich jedoch den Betrag anrechnen lassen, welcher ihm für die Zeit der Verhinderung aus einer auf Grund gesetzlicher Verpflichtung bestehenden Kranken- oder Unfallversicherung zukommt.

**German Civil Code (BGB)
§ 616 Temporary prevention**

- The person obliged to perform the service does not lose his entitlement to remuneration if he is prevented from performing the service for a relatively insignificant period of time for reasons for which he is not responsible. However, he/she shall be entitled to the amount to which he/she is entitled for the period of prevention under a sickness or accident insurance scheme based on a statutory obligation.



- Problems:

- What is a "relatively non-significant period of time"?
- Does refusal of vaccination constitute "fault"?
- What effects does this regulation have on the employer's right to ask questions regarding health data?

Thank you for your attention