EMPLOYMENT | COVID-19 Vaccine Rollout in Brazil

Although the rollout of the COVID-19 vaccines may be more important to certain employers (such as those in health care), employers in all industries should monitor the development of the Government’s vaccine roll-out program, as the vaccine concerns public health. In this Legal Update, we answer some of the questions that employers may have.

1) When will the vaccines be available?

Although Brazil’s National Health Surveillance Agency (Anvisa) has not authorized the use of any COVID-19 vaccine in national territory yet, the authorization is likely to happen by mid-January.

The Brazilian Government has already presented a National Vaccination Operationalization Plan, and Brazil’s Minister of Health has recently stated that COVID-19 vaccination shall start between January 20 and February 10.

States and municipalities also have the legal right to operationalize vaccination in their jurisdiction. Public authorities from some states across the country (such as São Paulo, Rio de Janeiro and Minas Gerais) have already procured an adequate supply of COVID-19 vaccines to cover their population. Vaccination in these places shall start once Anvisa authorizes the use of a COVID-19 vaccine in the national territory.

2) How will employers get access to the vaccine?

Pursuant to the guidelines established by Brazil’s Ministry of Health, COVID-19 vaccines will be primarily distributed to the population through the National Public Health System (SUS). After SUS conducts a first phase of vaccination, private clinics and private hospitals will be able to obtain
COVID-19 vaccines and then sell them to other entities, such as employers.

3) Do employers have a right to require employees to be vaccinated?

Yes. Pursuant to Brazil’s Labor Code (CLT), the employer is responsible for the health and safety of the workplace and, therefore, is entitled to adopt all reasonable measures to secure that employees are healthy and safe during their activities.

Additionally, Brazil’s Federal Supreme Court (STF) has recently issued a decision through which the Government can require mandatory vaccination of the population and impose penalties for those who refuse to get vaccinated, prioritizing the collective interest over the private interest of each citizen.

However, it is important to note that the Court has also protected the individual’s subjective right to freedom of conscience by not authorizing the use of coercive force by the Government to make an individual receive the vaccine.

4) Can employers require employees to disclose or to produce proof of whether they have been vaccinated?

Yes. Employers that require vaccination may also require a proof of vaccination. However, it is essential to remember that personal data relating to the health of an individual constitutes sensitive data.1 Thereby, its collection, treatment and storage must obey the parameters set forth by LGPD.

5) What if an employee does not want to be vaccinated?

Although it is not legal to physically force people to take the vaccine, employers have a right to require employees to be vaccinated or impose reasonable disciplinary measures to those who refuse.

Employees who refuse to be vaccinated without a reasonable justification (e.g., any proven allergy to the vaccine’s components or preexisting condition that endangers the employee if vaccinated) will be subject to the application of gradual disciplinary measures by the employer (written admonition, suspension and termination for cause).

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1Pursuant to Article 5, item II of Law n. º 13,709/2018 (the “General Data Protection Law” or “LGPD”)