

# Practical INSTRUCTIONS

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SEPTEMBER 1, 2021

## GREEN PASS AND PARTIAL ACTIVITY FOR VULNERABLE PEOPLE

A [new health protocol](#) was published on August 9th, in accordance with the law of August 5th, 2021 (n°2021-1040) on health crisis management and its application decree (n°2021-1059).

Here is a review of the main rules for companies (excluding specificities related to entities in the social and medico-social sector).

### GREEN PASS OBLIGATION

**Starting from August 30th 2021 ( or September 30th for minors) and until November 15th, 2021**, the green pass becomes mandatory, with some exceptions, for people working in places where the green pass is already required for the public.

### THE EMPLOYER'S ROLE IN MONITORING THE GREEN PASS

**If the green pass is required for the performance of the employee's duties**, the employer in charge of the workplace is obliged to check that employees hold it.

Due to medical confidentiality, the employer cannot demand to know the employee's vaccination status. **He only has to ask the employee's QR code, in paper or digital format.** It being specified that the proof documents making up the green pass and having a QR code are constituted by :

- proof of full vaccination status,
- the result of an RT-PCR screening test, an antigenic test or a self-test carried out under the supervision of a health professional and not older than 72 hours,
- or a recovery from covid-19 infection certificate, at least 11 days old and less than 6 months old.

Furthermore, in the presence of a medical certificate of contraindication to vaccination, the employee is exempted from any presentation of the green pass (this certificate will soon be added as the 4th case to prove the green pass).

**Please note: you cannot keep the QR code, but you can keep the result of the check in compliance with the General Data Protection Regulation.**

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A register must be kept indicating the persons and departments authorised to check documents, and the days and times of checking.

To avoid any pitfalls, **it is advisable to inform the employees concerned by this new obligation** (by posting a notice, for example).

**In addition, before taking any decision, it is advisable to ensure that the employee's role actually requires the possession of the green pass ( for example, in cafés and restaurants, the green pass is in general required, but it is not required for deliveries or employees carrying out their functions in areas not accessible to the public).**

**When recruiting**, in order to avoid discrimination on the basis of health status and in view of medical confidentiality, the new recruit must present his or her supporting documents when taking up his or her functions. However, the employer should also inform the selected candidate of this obligation.

## • WHAT IF AN EMPLOYEE REFUSES TO PRESENT HIS OR HER CERTIFICATE?

By mutual agreement, the parties may agree to take some days of leave. Otherwise, the employer may, on the same day, notify the employee of the suspension of his or her employment contract, with a break in the payment of the related remuneration.

This period of suspension is not treated as actual working time by law and does not generate new paid leave entitlements.

**After three unworked days, the employer is obliged to invite the employee to an interview in order to examine the situation and to look for a solution (for example, assignment of a temporary function which not require the green pass or teleworking).** The employer's obligation concerns the holding of the interview. There is no obligation to relocate the employee in another function if no solution has been found; this interview has to be taken in a place where the green pass is not required and possibly by videoconference.

There are no formal requirements, but in order to avoid any disputes, is advisable to summon the employee by any means allowing to provide certain date of the information (registered post...). It is also recommended to draw up a report summarising any adaptations that may have been agreed.

## ORCOM'S OPINION

Although the law provides that the suspension of the employment contract may be notified by any means, we strongly recommend that it be done in writing so that it can be dated. Our labour law department team remain at your disposal for any assistance in drafting letters (notification of suspension, invitation to interview, etc.).

Please note: The end date of the employment contract's suspension has not yet been determined. However, as soon as the employee presents a valid Green pass, the suspension must end. Therefore, this suspension should, as we are writing this lines, stop at the end of the state of health emergency, currently set at November 15th, 2021.

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## • IS TERMINATION OF THE EMPLOYMENT CONTRACT POSSIBLE?

An important and long-awaited clarification was that the creation of a ground for dismissal for lack of the green pass and the possibility of early termination of a fixed-term employment contract due to lack of the green pass have been dropped from the law's final version. It may, however, be questioned whether dismissal could not be considered in a situation of persistent deadlock, when the absence is lasting, disrupts the company and requires the permanent replacement of the employee.

## THE ROLE OF THE CSE IN COMPANIES SUBJECT TO THE GREEN PASS CONTROL

In companies with 50 employees or more, the law allows the employer to consult the social and economic committee (CSE) after the controls have been put in place. However, as soon as the measures are implemented, the employer must inform the CSE. The staff representatives must then be consulted and give their opinion within a maximum of 1 month of being informed by the employer.

For companies with a smaller workforce, it is nevertheless recommended to involve staff representatives in determining the monitoring arrangements.

## NEW PARTIAL ACTIVITY TERMS AND CONDITIONS FOR PEOPLE DEFINED VULNERABLE

The resumption of work in-person for people defined vulnerable to Covid-19 can be organised, provided that additional protective measures are applied, which must be recorded in the occupational risk assessment document (individual office, no job sharing or through disinfection, adaptation of arrival and departure times, etc.)

A decree remains to be published. However, according to a government press release, as of September 15th, 2021 among employees who cannot perform their duties remotely, those who have sent their employer a new quarantine certificate (after august 2021) and fall into one of these three situations may be placed on partial activity because of their vulnerability to Covid-19 :

- proof of contraindication to vaccination by means of a medical certificate;
- suffering from severe immunodeficiency;
- be assigned to a job for which the employer cannot implement enhanced protective measures and which is likely to expose the employee to high viral densities (e.g. front-line hospital services).

Our labour law department teams remain at your disposal for any further information.