

COVID-19: Suspension of the employment contract for some employees without health pass

Updated as of August 25, 2021

The Health Crisis Management Law No. 2021-1040 of August 5, 2021 entered into force on August 6, 2021. Some of its provisions make working as an employee conditional on the presentation of a vaccination certificate or a certificate of negative test result for COVID-19.

The lack of certificate is likely to entail the suspension of the employment contract.

As from August 30, 2021, employees working in certain business sectors will have the obligation to present a COVID-19 vaccination certificate or a COVID-19 negative test certificate (“Health Pass”).

The sites where this obligation will apply are:

- Leisure venues;
- Commercial catering businesses and drinking establishments;
- Venues for professional trade shows, fairs and seminars.

As such, employers will have to check that their employees have been vaccinated or have in their possession a COVID-19 negative test certificate.

Whenever an employee who is subject to this obligation does not present such a document, he/she may, in agreement with his/her employer, choose to use paid vacation days or so-called “RRT days” (i.e., additional rest days resulting from the reduction in working time).

Failing this, the employer must notify the employee on the same day, by any means, of the suspension of his/her employment contract until the employee is able to present a proof of negative

COVID-19 test result or a vaccination certificate.

This suspension will entail the interruption of the payment of the remuneration during the relevant period.

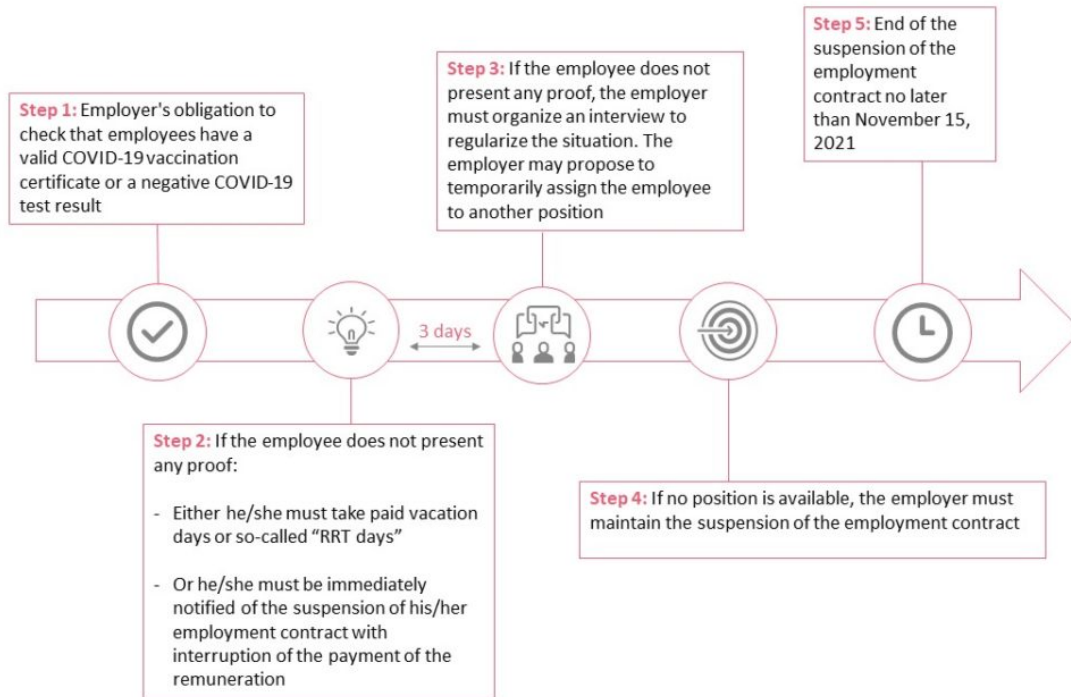
If the employment contract remains suspended for a period equivalent to more than three worked days, the employer will have to summon the employee to an interview in order to examine with him/her the possible means to regularize the situation. It will be possible to temporarily assign the employee to another position that is not subject to the obligation to present a proof of negative COVID-19 test result or a vaccination certificate. In other words, if possible, the employee should be offered a temporary position where he/she is not in contact with the public.

If no position is available for the employee, the employment contract will continue to be suspended for all employees with a permanent employment contract until November 15, 2021, or earlier if the employee provides a proof of negative COVID-19 test result or a vaccination certificate.

The Law does not provide for the possibility of dismissing an employee with a permanent employment contract who does not present the Health Pass.

Finally, in companies with at least 50 employees, the employer will have to inform without delay and by any means the social and economic committee of the measures taken to check the employees' proof of negative COVID-19 test result or vaccination certificate.

These provisions are applicable until November 15, 2021.



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