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## Tracking Employee Vaccinations Globally: Can You Obtain The COVID-19 Vaccination Status Of Your Employees Everywhere?

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### Issue 2: 10 in 10

Employers are exploring methods to better ensure the safety of their employees against the COVID-19 pandemic and the continued risk the pandemic poses to return to work initiatives.

One potential method is to track the vaccination status of employees around the globe so that employers can better understand the percentage of their employee population that has been vaccinated – a potentially key data point in any return to work initiative.

As with mandatory vaccinations, the key question remains – can employers require their employees to disclose their vaccination status or otherwise obtain employee vaccination status? The answer to this question varies throughout the world.

In the U.S., the answer is quite simple – since U.S. employers can require employees to receive the COVID-19 vaccine, they can require their employees to disclose their vaccination status. While employee sentiment and public opinion may limit an employer's willingness to mandate that employees disclose their vaccination status, there is little legal basis that would hinder an employer's plan to do so. As an alternative, U.S. employers may consider a program where employees voluntarily consent to the disclosure of their vaccination status.

On the other hand, employers in the U.S. who plan to incentivize, but not require employees to disclose their vaccination status, face hurdles. Questions remain about whether financial incentives potentially run afoul of discrimination laws and protections for employees with disabilities. The safest legal course of action may be to encourage employees to voluntarily disclose their vaccination status without incentive.

Outside of the U.S., the picture is quite different. Generally speaking in most regions of the world, employers likely are either required to obtain an employee's express and voluntary consent to the disclosure of the employee's vaccination status or are prohibited from obtaining an



employee’s vaccination status even if an employee may be willing to voluntarily disclose such information.

For example, in Denmark, Finland and Norway, country regulators and courts are likely to strictly interpret the privacy provisions of the General Data Protection Regulation (GDPR) and country-specific privacy laws to prohibit employers from asking their employees to voluntarily disclose their vaccination status under any scenario.

In other E.U. jurisdictions, such as Belgium, Germany and The Netherlands, country regulators and courts are likely to strictly interpret the privacy provisions of GDPR and other country-specific privacy laws to prohibit employers from asking employees to voluntarily disclose their vaccination status. These jurisdictions may, however, permit the voluntary disclosure of an employee’s vaccination status if the vaccine is administered by an employer-sponsored clinic or an employer occupational health clinician.

In Australia, Asia, the Middle East and Latin America, employers should generally be able to request an employee to voluntarily disclose their vaccination status so long as the consent is express and truly voluntary.

Like the U.S., many countries may technically permit the use of incentives to obtain an employee’s voluntary consent to disclose vaccination status. For various reasons, any incentive program would need to be managed sensitively. It could dilute the argument that consent has been truly voluntary where consent is required and could raise public relations concerns.

Tracking employee vaccination status is difficult but achievable in most countries. As a result, employers are implementing vaccination tracking programs to have a better understanding of when and where return to work initiatives will be safest to implement.

Stay tuned for further global developments on this emerging compliance issue. In the meantime, the K&S Global Human Capital & Compliance team stands by ready to assist multi-national companies to create a global approach to these issues, recognizing the balance between jurisdictional legal variation and the employee relations concerns.

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