
FAQ: Covid-Check at work

Update 01/2022

On December 16, 2021, the Chamber of Deputies adopted the introduction of Covid-Check in companies from mid-January 2022. It should be recalled that this is a decision of parliament based on a proposal of the government. The implementation as such was not the subject of negotiations between the social partners.

These negotiations only concerned the practical details of the implementation. In the context of these negotiations, the OGBL obtained that the new law contains much more precisions than the first law on the optional Covid-Check, which was a source of legal insecurity, and avoided that this public health instrument could lead to situations of extreme precariousness for some employees. The Covid-Check cannot be a reason for dismissal nor lead to an interruption of the affiliation to social security.

When will the 3G Covid-Check in companies be mandatory?

The law of December 24, 2021, makes the Covid-Check (3G) scheme in the workplace compulsory from January 15, 2022. The validity of this law is currently limited to February 28, 2022.

What is meant by 3G Covid-Check?

From January 15, 2022 every employee is obliged to present:

- ▶ either a valid vaccination certificate according to the Luxembourg provisions,
- ▶ or a recovery certificate (valid between the 11th and 180th day after the date of the positive PCR test result),
- ▶ or a negative test certificate (PCR test valid for 48 hours or certified rapid antigen test valid for 24 hours),
- ▶ or a certificate of contraindication to vaccination against Covid-19.

Do I also need to present a negative test?

Persons with a valid vaccination certificate or a valid certificate of recovery are not required to present a negative test in addition.

However, if you have a certificate of contraindication to vaccination, you must also submit

- ▶ a certified negative NAAT (PCR) test or a certified negative SARS-CoV-2 rapid antigen test, or
- ▶ a negative result from a self-diagnostic test for SARS-CoV-2 performed on site.

In this regard, the Government has put in place a mechanism to make unlimited tests available to these individuals.

What about tests performed outside the Grand Duchy?

These are allowed, but the certificate must contain a valid QR code. The persons concerned can check the validity of their test in Luxembourg by installing the official application «CovidCheck.lu».

Does this mean that Covid-Check will be enforced across all sectors of the economy?

Yes, all companies in the private and public sector must apply it, regardless of whether there is contact with other persons or not. The employer or another person designated by the employer is obliged to ensure that all employees in the workplace have a valid certificate. The Covid-Check obviously does not apply if the employee is teleworking.

What about external persons?

The employer can decide that access to the whole or a part of his company by external persons, as well as by any third party, is subject to the obligation to present one of the certificates listed above.



Is the employer allowed to keep a list of vaccinated or recovered employees?

Yes, the employer may keep a list of its vaccinated or reinstated employees to facilitate audits, but the list must be voluntary and can only contain the names of the employees and the length of time their certificate is valid. It must be destroyed at the end of the law, i.e. February 28, 2022.

The employer may delegate the keeping of this list either to one or more of its employees or to one or more external service providers. Only the employer and the person(s) responsible for maintaining the list may access its contents.

Is the employer entitled to verify the identity of certificate holders?

Yes, in order to prevent falsification or misuse of the certificates concerned, the employer may verify the identity of the holders of the certificates concerned, if necessary by comparing it with that shown on an identity document. The employer may delegate this verification either to one or more of its employees or to one or more external service providers.

Are there any consequences if I refuse to be registered on such a list?

No, failure to be registered on the list has no impact on the employment relationship. However, the employee will have to undergo a status check every time he/she starts work. Moreover, the employee who is registered on the list can request its removal at any time and without any justification.

What happens if an employee refuses to submit to the Covid-Check?

An employee who refuses or is unable to present one of these certificates is not allowed to enter the workplace. She/he may then request to take legal or contractual recreation days.

If the employer does not agree or if the employee does not wish to use the legal or contractual recreation days, he/she automatically loses the part of his/her remuneration corresponding to the hours not worked («unpaid dispensation»).

What are the consequences of a period of unpaid dispensation?

Contrary to unpaid leave (“congé sans solde”), this unpaid dispensation is

- ▶ neutralized with regard to the calculation of the unemployment benefit and the compensatory allowance for reclassification,

- ▶ assimilated to a period of actual work for the determination of the duration of paid leave,
- ▶ counted for the determination of the legal or conventional rights acquired by the employee in respect of his/her seniority.

The right to health care benefits is maintained and this period also counts as an effective period of affiliation to social security within the limit of the 64-hour threshold (a month is only recognized as a period of insurance if one works at least 64 hours per month)

If this threshold is not reached because of unpaid hours, the employer and employee shares of the pension insurance contributions for the missing hours to reach this threshold are paid by the employer. Afterwards, the employer can deduct the corresponding amount from future salaries to recover the employee's share of the contributions paid during a maximum of 6 months.

In other words: if, for example, an employee does not work for a whole month because of such a period of non-payment, the employer pays the employer's and employee's share of the pension insurance contributions for 64 hours, i.e. 2 x 8% at the hourly rate that would have been payable if the person had worked normally.

The employer is entitled to recover the employee's share paid for a maximum of 6 months from future salary payments.

In this way, the employee preserves his/her rights related to compulsory affiliation to social security, such as family allowances.

Finally, it should be noted that the period of unpaid dispensation is not to be considered as a disciplinary sanction.

Can the employer dismiss a person for not presenting a valid certificate?

No, the failure to present a valid certificate and the resulting absence from work are not grounds for dismissal or disciplinary action.

In the event of termination of the employment contract in violation of these provisions, the employee may request, within 15 days, that the president of the labor court declare the dismissal null and void and order the continuation of his/her employment contract.

In this case, we strongly recommend that you contact our Information, Advice and Assistance Service (SICA) to ensure proper follow-up.



Can the employee work short-time instead of receiving an unpaid dispensation?

No, employees who cannot present one of the required certificates cannot be eligible for short-time work benefits.

What about employees who only have the first dose of the vaccine?

These employees, while waiting for their 2nd dose, will be able to be tested free of charge as of January 14, 2022. To this end, since December 16, 2021, they will be given a series of 20 codes when they receive their first dose of vaccine. These codes will allow them to perform 20 free certified antigenic self-tests in one of the five testing centers managed by the Luxembourg army until they have obtained a complete vaccination scheme and this until February 28, 2022. Appointments can be made since 10 January 2022 via www.covidtesting.lu.