

3G mandatory at work

The unions were committed to finding a compromise to safeguard livelihoods and give legal security to all employees

In October 2021, the Government had introduced the voluntary CovidCheck within companies without prior discussions with the social partners. As the implementation of this 3G is entirely based on the employer's will, the government had simply transferred all its responsibilities to the employers without even considering the rights and livelihoods of the employees. This is why the LCGB and the other unions opposed this law.

Following the recent acceleration of infections, the Government decided to introduce 2G for leisure activities and a mandatory 3G at work as the only way to combat the pandemic. As the Government strongly voiced its commitment for the mandatory 3G at work, the LCGB and the other unions insisted on negotiating jointly the legal and practical arrangements accompanying the mandatory 3G at work, valid as of January 15th, 2022.

During 2 constructive negotiation meetings between social partners, the following concessions were made by the Government:

No layoffs

As demanded by the LCGB, the failure to present a valid CovidCheck certificate and the resulting absence cannot be used as a reason to lay off an employee.

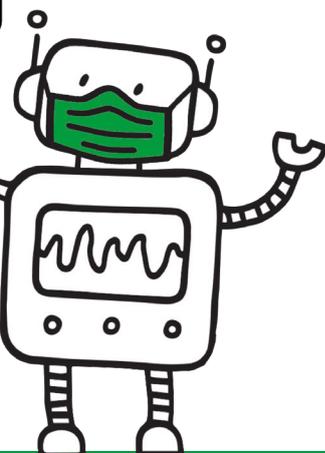
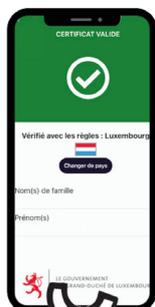
Application of the CovidCheck

The CovidCheck is to be checked by the employer or a person (or external service provider) appointed for this purpose. The employer is responsible for checking the identity of the employee and a onetime check at the beginning of the workday is sufficient.

An exemption clause for the General Data Protection Regulation (GDPR) will allow companies to establish a list of vaccinated and cured employees before January 15th, 2022. These will not have to be CovidChecked daily:

- each employee can voluntarily provide this information to the employer;
- the list must contain the name of the employee and the period of validity of the vaccination or cure certificate;
- the employee may at any time request the removal of his/her personal information from this list without having to provide a justification;
- all lists are to be destroyed by February 28th, 2022.

For tested employees, it is sufficient to have a valid test certificate at the beginning of the workday. Access to work is guaranteed for the whole day even if the certificate expires during the day.



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Sanctions

In case of non-compliance with 3G, the employee is not allowed to access the workplace:

- first, the employee may use vacation days but only with the employer's consent;
- without taking vacation days, the employee will not be paid for the time not worked. The unpaid periods are assimilated to periods of actual work, so that the mandatory affiliation to social security, pension rights, the duration of paid leave and seniority are not affected;
- the use of short-time work for these employees is legally prohibited.

Tests

As the Government refuses to reintroduce free self-testing for all, a LCGB demand, a compromise has been found for anyone waiting for their 2nd vaccination by means of 5 vouchers per week for free certified rapid antigen tests. This means that these employees do not have to pay for the tests to go to work. In this context, the Government will also strengthen the testing capacities.

Various dispositions

The missions of the Inspectorate of Labour and Mines (ITM) are extended to allow the control of the 3G application by both the employer and employee. Penalties for the employee range from 500-1.000€ and those for the employer from 5.000-6.000€.

Company canteens are subject to the 2G rule and access is exclusively reserved to vaccinated and cured persons.

As for the access of customers or visitors to an establishment or internal meetings, the employer is free to decide whether to impose 3G or simply apply barrier measures (wearing a mask, disinfecting hands and respecting physical distance).

The status of people who cannot be vaccinated for medical reasons still needs to be clarified. In order to ensure that these people are not penalised by the introduction of 3G at the workplace and 2G for leisure activities, the government is looking into the possibilities of creating a specific status for vulnerable people.

The CovidCheck schemes already applicable at work will remain in force until the introduction of compulsory CovidCheck.

The use of telework remains subject to the regulatory framework negotiated between social partners. Except for jobs that do not allow telework, each employee can telework in agreement with his or her employer or in accordance with a specific scheme laid down in a collective agreement or, where appropriate, negotiated between the employer and the staff delegation.

Conclusion

Throughout the health crisis, the LCGB has had 2 priorities: the protection of health and the safeguarding of the livelihoods of all employees and their families. The LCGB is further committed to encouraging employees to get vaccinated.

In the context of the mandatory 3G at work, the result of the negotiations is for the LCGB a compromise that safeguards the existence and gives legal security to every employee. However, the LCGB continues to recommend that both vaccinated and unvaccinated people continue to observe barrier measures and to test themselves regularly, especially when visiting vulnerable people.



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