

China Insight



What the Employers should/can do on COVID-19 vaccination?

Dear Sir or Madam,

The Chinese government announced that the entire population can take vaccination for COVID-19 free of charge. Please find below our update on what employers should/can do concerning COVID-19 vaccination.

Kind regards,
CMS, China

As announced by the Chinese government, the entire population can take vaccination for COVID-19 free of charge. According to the current policies, in China, vaccination will be implemented in two stages. People who have high risks of being exposed to COVID-19 because of their work positions (“High-Risk Group”) will receive the vaccine first. Then, subject to the supply of the vaccine, the vaccination will be gradually available to the remaining population, probably after the Chinese New Year. Such High-Risk Group covers the following nine groups of people:

- (1) first-line port customs officers engaging in inspection and quarantine of cold chain importations;
- (2) staff engaging in work related to loading and unloading, handling and transportation at ports;
- (3) staff engaging in work related to international and domestic transportation;
- (4) staff working at border ports having high risk of being exposed to overseas outbreaks of COVID-19;
- (5) medical and health staff;
- (6) government, public security, armed police, firefighting and community officers;
- (7) staff engaging in work related to delivery, water, electricity, heating, coal and gas;
- (8) staff engaging in work related to transportation, logistics, old age caring, sanitation and funeral;
- (9) individuals who need to go abroad for the purpose of work or study.

Except for individuals who need to go abroad for the purpose of work or study, the other people of the High-Risk Group get vaccination as organized by their employers or organs/institutes which they work for.

What should the employers do for the employees on vaccination?

According to PRC law, all the employers in China are obliged to cooperate with the prevention and controlling measures regarding COVID-19 formulated and published by the Chinese government. Legally speaking, implementing the COVID-19 vaccination plan is one of the measures.

Currently, vaccination is subject to overall planning and supervision of the central government and implemented by the local governments, which set up specific vaccination points in different areas. In the first stage, competent local authorities such as the Marketing Supervisory Bureau and Civil Affairs Bureau decide the vaccination planning and notify the companies in relevant industries with staff of the High-Risk Group about the vaccination schedule. The companies receiving the notification from the authorities are obliged to organize their employees to go to take vaccination. I.e. employers should carry out registration for their employees who belong to the High-Risk Group, give each employee a written notification and consent letter provided by the government, duly collect and submit the information to the authority, and then organize the employees uniformly to go to the designated points for vaccination according to the schedule.

What can the employers do for the employees on vaccination?

Until now, the COVID-19 vaccine is not listed by law as one of the vaccines which must be taken in China. Therefore, taking COVID-19 vaccine is not compulsory yet but voluntary. Legally speaking, employers cannot force the employees to take the vaccine. I.e. for vaccination, each employee must expressly agree with it by signing a notification and consent letter in writing. Therefore, taking into consideration the safety of their employees and workplaces, what the employers can do is to encourage as many employees as possible to take the vaccine.

During the process of organizing the employees to take vaccination, the way how the employer communicates with the employees about vaccination is very important. Whether the attitude of the employer is encouraging or not will directly influence the employee to agree with the vaccination. The employer may explain to the employees about the importance of taking vaccination and potential consequences of not taking the vaccine, if any (please refer to below). Please note that during the communication, potential side-effects of vaccination should not be explained by the employer but be subject to the authoritative interpretation of the professional institutes. Moreover, if the employer is willing to provide more support to the employees for vaccination, such as arranging transportation or allowing employees to take special leave during the vaccination period if any of them feels uncomfortable or has side-effects, it may be easier for employees to accept vaccination.

After the vaccination, employers can follow up the vaccination status of their employees by collecting and recording relevant information, for instance, the date of vaccination, the name of the institution where the employees receive vaccination and the health condition of the employees after vaccinations and helping the employees schedule the second vaccination etc.

What can the employer do if any employee refuses vaccination?

If, after the explanation of the employer, some employees insist on not receiving vaccination without proper reason, legally speaking, the employer shall not impose labor disciplinary punishment on them except if relevant labor disciplinary rules provided in the company internal rules and regulations can be applied to such case or the employer sets up labor disciplinary rules for such case in advance by following statutory collective consultation procedures. However, even without labor discipline rules, the employer may still unilaterally change the work position of the employee if he/she refuses vaccination without proper reason and in the opinion of the employer, the employee' continuous work at his/her work position may be exposed to high risks of COVID-19 and may affect the safety of the entire work place, but legally speaking, the employer shall not unilaterally reduce the salaries of the employee without his/her consent for the change of his/her work position. Please note that if the employer will consider taking actions on employees who refuse vaccination, the employer may wish to explain such consequence to the employees in advance.

Conclusion

Until now, widespread vaccination has been the strongest weapon against COVID-19 and the Chinese government advocates that all people who need to take vaccine should take it. At the current stage, as required by the government, employers are obliged to organize their employees to take vaccination. However, until now vaccination in China is not compulsory, therefore for the interests of the employers, they may wish to take measures to encourage as many employees as possible to take the vaccine. If any employee refuses vaccination without proper reason, the employer may take actions by changing his/her work position to safeguard the workplace safety. However, no labor disciplines shall be imposed on employees refusing vaccination without proper reason except if relevant internal rules and regulations of the employer are applicable to such case.

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