

### **Dear Readers,**

In the June issue of HR Perspectives, we focus on returns to the office. We discuss the employer's essential rights and duties to ensure the work process is organised in such a way as to secure the safety of not only employees but also visitors in the office. We address the most common questions and doubts regarding this matter.

We write, in particular, about employee vaccination and processing the vaccination data. The latter is allowed on the condition that the employer demonstrates a specific purpose for obtaining such information from the employee.

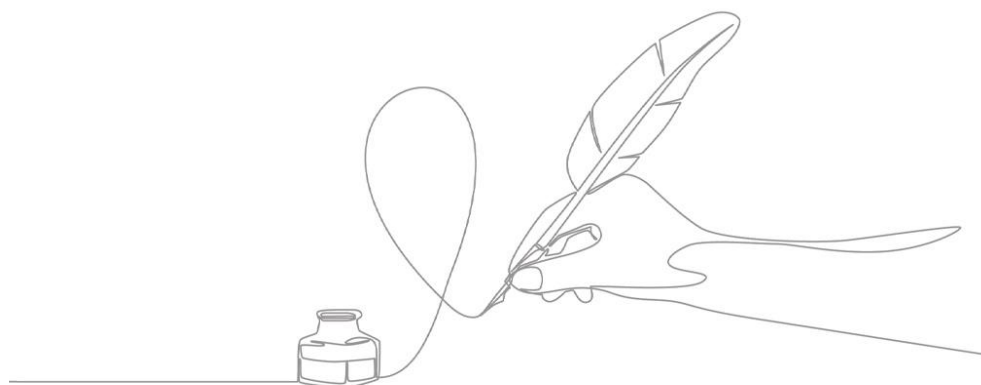
Further along, we discuss at length the grounds for such data processing and point out possible consequences of employee refusal to vaccinate.

Finally, we bring to your attention the draft Directive on pay transparency and pay equality for men and women within the European Union.

**Enjoy your reading!**

**Sławomir Paruch**

**Robert Stępień**



### Office returns procedure

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When organising returns to the office, employers should introduce safety procedures against coronavirus spread. They should be aligned with the guidelines of the State Sanitary Inspection (GIS) and the National Labour Inspectorate (PIP), including the guidelines on how to act in the workplace or in case of potential contact with an infected person. The employer should get all employees to know such instructions and have it confirmed in writing by employees. Providing appropriate training is also a good idea.

According to the safety regulations in the workplace, employees should cover their mouth and nose (including employees in open spaces) if there is more than 1 person in the room. However, the employer can decide to waive this obligation. Moreover, employers are still obliged to provide personal protective equipment (i.e. disposable gloves or hand disinfectant), as well as to keep a distance of at least 1.5 m between workstations. We recommend that internal meetings and conferences be held online (even if all participants are in the same office). The employer should also establish rules for the use of kitchens and public areas. A practical solution that may prove useful is the introduction of rotating work shifts where employees are divided into teams working exclusively within their own sphere.

We also recommend that a procedure be put in place to deal with suspected infection cases. This may include informing employees that they are required to:

- assess their health on a daily basis, in particular for the presence of symptoms indicating potential coronavirus infection,
- not to come to the office if they are experiencing symptoms indicating potential coronavirus infection,
- inform their employer of a possible infection.

### Can an employee be required to get vaccinated? Can vaccination data be processed?

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As people return to their offices, questions arise as to whether employers can expect employees to be vaccinated. The answer is yes. The employer, in carrying out its duty to ensure health and safety in the workplace is obliged to use all available means to eliminate the risk, including the latest developments of science and technology. Undoubtedly, SARS- CoV-2 vaccine is such a scientific development.

The employer cannot, of course, oblige the employee to be vaccinated (the employee always has the right to refuse), but they can base the admission to some jobs on the condition of being vaccinated. These include jobs where, according to the risk assessment, there is a significant risk of coronavirus infection. When there is no other option to ensure health and safety in the workplace than to get vaccinated and the employee refuses to do so, the employer has the right to refuse to allow the employee to work, transfer the employee to a different job position with no infection risk or, as a last resort, to terminate their employment contract for reasons not related to the employee.

An increasing number of employers are also asking us whether and if so, to what extent, it is possible to process vaccination data of individual employees.

The processing of such data is permissible. It stems from the fact that ensuring health and safety in the workplace is the employer's ultimate duty. By verifying which employees are vaccinated in order to organise work in such a way as to reduce the risk of infection, the employer is fulfilling this duty. Looking after employee's life and health may in certain cases justify the employer's request for employee vaccination data.

The legal basis for requesting vaccination data would be Article 9(2)(b) RODO, as far as the processing is necessary for the fulfilment of the said duty to ensure health and safety at work.

### **Pay transparency - pay equality**

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In March 2021 the European Commission presented a draft directive aimed at ensuring EU-wide pay transparency and equal pay for men and women.

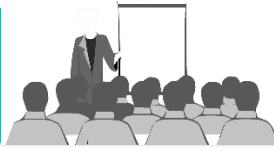
Under the Directive, the employer will be required to inform the candidate about the initial level or range of pay before the candidate takes up employment with the company. This information should be provided in advance and in such a way that the candidate does not have to ask the employer about it (e.g. in the job advertisement or during the interview). The idea is to ensure that employees have all the information they need to enter into fair and balanced pay negotiations upon establishing the employment relationship.

Employers should also publish information on pay levels. Such information allows employees to put questions and, in case of doubt, to ask their employer for clarification. In turn, the employer is obliged to respond to such queries and explain the reasons for the existing conditions. If the gender pay gap cannot be justified by gender-neutral factors, the employer is obliged to remedy the situation.

The Directive also shifts the burden of proof in the event of a court case – it is the employer who would have to prove that the principle of pay equality has not been breached. The employee would not be required to prove the existence of discrimination.

The Directive also obliges the Member States to set out sanctions and penalties for repeated breaches of the rights and duties regarding the principle of equal pay for men and women for equal work or work of equal value. Such penalties could include, for instance, the revocation of public benefits or the exclusion, for a certain period, from any further award of financial or credit inducements.

The Directive is currently under discussion in the European Council and the next stage will be the first reading in the European Parliament.



### HR Signal webinar: Protection of whistleblowers in relations with trade unions

Date: 8 July 2021, 11:00 - 11:45, online.

Panelists: Karolina Kanclerz and Robert Stępień.

Please apply here: [perspektywyhr@pcslegal.pl](mailto:perspektywyhr@pcslegal.pl) | More: [here](#).

### Webinar: On Relationships with Trade Unions: How to effectively verify the number of trade union members?

Date: 15 July 2021, 11:00 - 11:45, online.

Panelists: Sławomir Paruch and Robert Stępień.

Please apply here: [perspektywyhr@pcslegal.pl](mailto:perspektywyhr@pcslegal.pl) | More: [here](#).



### Publication: A guide to HR compliance

We invite you to read our latest publication: A Guide to HR Compliance published jointly with *Dziennik Gazeta Prawna*.

The publication discusses such issues as:

- HR compliance benefits,
- whistleblowers and an effective whistleblowing system,
- HR compliance in relations with trade unions,
- 2021 compliance procedures,
- COVID-19 company policy
- workplace bullying and discrimination during remote working.

Authors: Karolina Kanclerz, Bartosz Tomanek, Agnieszka Nicińska and Michał Bodziony.

More: [here](#).



### Publication: Employment of Non-nationals

We invite you to read our latest publication: Employment of Non-nationals published together with *Dziennik Gazeta Prawna*.

The publication discusses such issues as:

- employment formalities,
- non-nationals entitled to work without a work permit,
- declaration on entrusting work,
- seasonal work permit,
- uniform temporary residence and work permit,
- special arrangements due to COVID-19,
- rules for the United Kingdom citizens.

Authors: Karolina Schiffter, Tomasz Rogala and Kinga Polewka, Marcin Snarski and Maciej Sielicki.

More: [here](#).