

# Across Latin America, COVID-19 Vaccine Mandates Vary

By Leah Shepherd

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**C**ountries throughout Latin America have been re-examining and revising their laws as the COVID-19 pandemic continues to pose a threat to public health.

It's important for employers to stay compliant with all the laws affecting vaccine mandates as the situation continues to change and more employees return to the workplace.

"The legislative trend throughout the pandemic has been toward granting employers greater abilities to protect their workforces, which we think will continue with employer vaccine mandates," said Dan Waldman, an attorney with Seyfarth in New York City.

## Laws Vary Widely

Each country has different rules for employers regarding safety protocols, vaccine mandates and travel restrictions. HR leaders for multinational companies need to carefully review the laws in every country and stay updated with any changes.

"There's no single answer on vaccine mandates across Latin America. Standards are divided and constantly changing," Waldman said.

In Costa Rica, all government workers must be vaccinated, and private employers may require their employees to be vaccinated.

Before firing or disciplining unvaccinated workers, employers in Costa Rica must:

- Communicate the vaccine mandate to employees and raise awareness about the importance of the vaccine.
- Have a mechanism to verify compliance with the requirement.
- Issue a warning to employees who have not complied with the mandate, allowing time for them to become vaccinated or provide medical proof justifying their refusal.

In Brazil, Justice Maria Cristina Peduzzi, president of the Superior Labor Court, recently stated that employees who refuse to be vaccinated may be terminated for cause, since the collective interest and public health prevail over individual interests, according to a report from the law firm Littler. This law is being challenged in the courts.

"Requiring proof of vaccination, rather than negative COVID-19 tests, is safer and more effective, as many cities have implemented the vaccine passport," said Marília Nascimento Minicucci, an attorney with Littler in Sao Paulo. "Furthermore, in Sao Paulo, we have a municipal decree, which recommends that all establishments in the city request proof of COVID-19 vaccination from anyone who wishes or needs to enter their facilities."

Employers in Brazil cannot offer rewards, such as a monetary bonus, to employees for getting vaccinated.

Minicucci recommended that employers make sure all employees receive clear communications about the timeline for the vaccine mandate and the consequences for not complying. "Begin with warnings, escalate to suspensions and culminate in a termination for cause; properly documenting each step of the way, reducing the chances of loss in a future labor lawsuit," she said.

In Mexico, employers cannot require their employees to get a COVID-19 vaccine, but they can request that employees voluntarily share information about their vaccination status. Employers in Mexico cannot fire or discipline workers for not getting the vaccine.

Likewise, in Argentina and Colombia, private employers can't mandate vaccination.

### FEATURED RESOURCE CENTER

COVID-19 Vaccination Resources ([www.shrm.org/hr-today/news/hr-news/Pages/COVID-19-Vaccination-Resources.aspx](http://www.shrm.org/hr-today/news/hr-news/Pages/COVID-19-Vaccination-Resources.aspx))

### Sensitive Health Information

Keep in mind that, for legal purposes, requiring vaccination is not the same as requiring information showing proof of vaccination. "A common mistake employers should avoid is requiring employees' vaccination information without previously having obtained consent to collect and process the proof of vaccination," Waldman said.

In most countries, the information about a person's vaccination status is considered sensitive health information, subject to privacy protection laws.

"Failure to comply with the disclosure, collection and process rules of vaccine information may lead to claims of data privacy breach," Waldman noted.

Most countries allow employees to get an exemption from the vaccine requirement if they provide proof of a medical condition that warrants it. In that situation, an employer could allow that individual to work from home. It's a good idea also to check whether a particular country allows religious exemptions to the COVID-19 vaccine mandate.

Even in countries that permit a vaccine mandate, employers should proceed carefully because it's an emotionally and politically fraught topic in many places. It has the potential to cause interpersonal conflicts at the workplace and disruptions to workflow.

The safety and health of the whole workforce is a key concern, particularly because many companies in Latin America have been relying more on in-person work in recent months.

"As in many countries around the world, the trend in Latin America is to gradually return to in-person work at the office, and likewise there are also hybrid schemes in place," Waldman said.

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