



Labornet No. 1332

COVID-19 Prevention - Legal Uncertainty Takes a Toll on People's Lives | LABOR AND EMPLOYMENT LAW NEWS - LATEST DEVELOPMENTS

Dear All,

COVID-19 Prevention - **Legal Uncertainty Costs Lives.** Measures taken in The Canary Islands - Imminent resolution to warn the population that the pandemic is not over yet. **Exceptional case - the extraordinary imminent risk to health - GENERAL PREVENTION MEASURES**

The Government of The Canary Islands passed a legal resolution on June 6, 2022.

- In The Canary Islands about 82% of the population has been fully vaccinated within the expected time-frame, thus achieving the so-called herd immunity to help stop the spread of the virus and promote a definitive return to the New Normal.
- A key to achieving this milestone has been people's **willingness to get vaccinated, which will result in even higher levels of immunity** in the short term.
- Thanks to mass vaccination, the pandemic has been managed effectively, combatting **the two crises that this virus has caused: a public health crisis and an economic crisis, both of which should be handled with appropriate measures to foster recovery and overcome their devastating effects, striking the right balance.**
- However, given the virulence and behavior of this pathogen, **the population cannot lower their guard, mainly because there is not enough scientific knowledge about this unprecedented disease.**

- The transmission of new strains is so fast and widespread that the number of confirmed cases increases with the subsequent toll on the public health sector.
- The Omicron variant spreads more easily than earlier variants of the virus that cause COVID-19, including the Delta variant, and continues to be on the rise in almost all autonomous communities, including The Canary Islands, as shown in the documents by the Department of Health about the delta variant: "SARS-CoV-2 variants of concern (VOC) and interest (VOI) for public health in Spain" (5th update, August 6, 2021) and "Update of the epidemiological situation of the SARS-CoV-2 variants of concern (VOC) and interest (VOI) in public health in Spain" (updated on August 30, 2021), recommending increasing the vaccination rate so that more people can get fully vaccinated in the shortest possible time.
- This is just an example of what was initially recommended given the complexity of this unprecedented global public health crisis.
- There is no doubt the COVID-19 pandemic has been caused by a highly transmissible virus; General Public Health Act No. 14/1986, on April 25, particularly its Section 26, authorizes the regional public health authorities to impose prevention measures, as appropriate, **in case of imminent and extraordinary danger to public health, including lockdown** and any other relevant well-grounded decisions, whose effective term will be set on a case-by-case basis, regardless of any subsequent term extension that may be ordered based on the imminent and extraordinary danger;
- In addition, Act No. 2/2021, on March 29, stipulated emergency prevention actions to deal with the public health crisis caused by COVID-19, whereby the regional authorities may **take any prevention measures until state government authorities declare the end of the public health crisis caused by COVID-19 (Section 2.3)**.
- The Supreme Court ruling No. 719/2021, on May 24, legal argument #4, addresses the right to life and the right to health protection.
- There is an objective element - the existence of a communicable disease - to "monitor and trace" infected people, i.e. "those who are or have come into close contact with someone diagnosed with COVID-19", identifying suspected or confirmed cases or close contacts, which are counted in units of one, ten, one hundred or one thousand, and the place or places where they are located.
- Again, there is an exceptional situation - an imminent and extraordinary threat to health - and the authorities can take any specific actions that they see fit based on the public health situation.
- In other words, under public health law some fundamental rights may be curtailed provided the conditions set forth therein are duly met and expressly

specified, explaining that there is a serious threat to public health as a result of a communicable disease that should be prevented in order to preserve the right to health and life, indicating space and a time-frame, and the appropriate and reasonable measures that should be taken.

II. The Government of The Canary Islands, like any other autonomous communities, has been acting according to its statutory authority to address public health matters - based on the powers conferred under state law for autonomous governments- to protect the civil society, provide adequate health care and take any other measures to deal with the pandemic.

- The law and other rules and regulations are just a part, as important as they are, of the many solutions that can be found to handle the pandemic. Undoubtedly, the law is the most effective tool, strictly speaking, to regulate behavior, by providing legal certainty to relations.

- Consequently, having a law that establishes high alert for public health is a practical, effective tool at all levels for controlling and managing the COVID-19 pandemic in The Canary Islands.

- There is a rebuttable presumption (in Latin, *praesumptio iuris tantum*), i.e. an assumption that is taken to be true unless someone comes forward to contest it and prove otherwise, for the evolution of the epidemiological indicators and public health situation checked by state and sectoral public health authorities.

- Therefore, the law must provide the highest level of certainty and predictability for the decisions to be taken by the public health authorities, dispelling the public's fear or anxiety. Legal uncertainty costs lives.

- Given the long-lasting public health crisis caused by the COVID-19 pandemic, and pursuant to the powers granted under the law, the institutions of the Autonomous Community of The Canary Islands should develop a clear and effective legal system whereby the authorities can take effective actions, immediate prevention measures to ensure certainty, predictability and security.

- During the public health crisis caused by COVID-19, as the pandemic progresses, The Canary Islands will not return to normal but rather will be on high alert based on the epidemiological developments, and its legal system should be prepared to deal with this serious situation.

- III. According to the Royal Decree Law No. 17/1977, on March 4, about the right to strike and collective labor disputes in a state of emergency due to a public health crisis caused by COVID-19, "when faced with a serious threat, catastrophe or public disaster", freedom of movement may be limited.

- Special public health measures may be taken to prevent the spread of the virus, such as policies on workplace health and safety, animal health with effects on humans, food health, environmental health and epidemiological surveillance, in order to ensure the right to health protection that is recognized to all individuals in The Canary Islands.
- This is the legal system of high alert for public health matters and measures to control and manage the COVID-19 pandemic established in The Canary Islands.
- "Coordinated response actions to control the transmission of COVID-19", at each high alert level, implement a legal system of high alert for public health matters and measures to control and manage the COVID-19 pandemic, within the framework of Special Public Health Measures for emergency prevention to address the health crisis caused by COVID-19 in The Canary Islands.

IV. Prevention Protocol - Duty of collaboration, prevention and protection. During the current public health crisis caused by the COVID-19 pandemic, all individuals in the territory of the Autonomous Community of The Canary Islands should go about their daily activities **following the prevention protocols in place to avoid any unnecessary risks to themselves or any third parties and prevent the spread of the virus.**

- All individuals in the territory of the Autonomous Community of The Canary Islands must take the necessary measures to prevent the spread of the virus, including isolation or quarantine, as ordered by health care professionals, as well as any risk exposure. This duty of prevention and protection shall also apply to individuals who do business.
- Those who have any of the COVID-19 symptoms established by the public health authority should stay home, and report it to their health care insurance provider and follow the steps indicated.
- The safety and health measures established by the public health authorities for COVID-19 preventions must be respected.

GENERAL PREVENTIVE ACTIONS. Any individual who do business must ensure that relevant prevention and safety measures are taken, including cleaning and disinfecting surfaces, social distancing and limited indoor capacity for establishments, premises, facilities, activities or locations.

- Posters at building entrance or strategic areas will be displayed to remind employees of the prevention and safety measures in place, masking and social distancing. In addition, **the limited indoor capacity should be clearly informed to the public and employees, to ensure compliance with protocols and procedures to observe indoor capacity limits to keep adequate social distancing.** Indoor capacity limits will take into account parking spaces for employees and customers.

- This law contains some recommendations to avoid infection, **specific measures for cleaning and disinfecting surfaces**, indoor capacity limits and social distancing, **prevention measures** for specific establishments, activities and places.
- General measures of prevention and safety, surface cleaning and disinfection.
- Priority will be given to outdoor activities.
- Adequate ventilation of indoor spaces will be ensured during and between events.
- Frequent hand washing with soap and water or alcohol-based hand sanitizer and disposable tissue, by customers and workers, ensuring supply availability and replenishment.
- Available dispensers of alcohol-based hand sanitizers or disinfecting products, duly authorized and registered by the public health authorities, for the public in readily accessible and visible places and in strategic areas or at the entrance, always in good condition for use.
- Mask mandate or recommendation.
- Masks should cover nose and mouth completely, and fit snugly, leaving no gaps, to prevent infections transmitted by respiratory droplets.
- Social distancing when entering or leaving the premises, and avoid crowds indoors or outdoors. Staggered shifts.
- In general, social distancing means staying at least 1.5 meters apart in all premises open to the public, indoors or outdoors, together with other recommended protection measures, respiratory etiquette and masking, as provided by law.
- Limited indoor capacity at shops is intended to ensure compliance with social distancing recommendations. When social distancing is not possible, limit access to only one individual at a time.
- Social distancing requirements do not apply to members of the same household. For the purposes of this law, “members of the same household” means those who live together under the same roof.
- It is highly recommended to avoid crowded indoor spaces, where people are close to each other without proper ventilation.
- Smoking and the use of inhalers or vaping devices, water pipes, hookahs, shishas or similar smoking pipes are not allowed in public spaces, indoors or outdoors, when social distancing of 2 meters cannot be adequately kept, in at least 5-square

meter spaces, e.g. at schools, health care centers, stores, premises and playgrounds where smoking is not allowed.

- Eating and drinking are not allowed indoors or outdoors when it is not possible to guarantee social distancing of 2 meters, except among members of the same household.

Isolation and Quarantine

1. The individuals involved shall have the following personal responsibilities:

- a) Isolation: any individual infected with SARS-CoV-2 will remain isolated, without going out or coming into contact with other people.
- b) Quarantine: during isolation or quarantine, people must stay home. Ensure essential goods or services for livelihood (food, cleaning products and health care assistance).
- c) Sports: Sports activities or events must comply with the protocols of their respective sports federation ensuring safety measures and social distancing for COVID-19 prevention, information and clinical documentation.
- d) Any refusal to get tested will be documented in writing and may mean that, under the prevailing epidemiological circumstances or based on the overloaded health care services, the job or activity requiring a negative test result may be canceled or other restrictions or personalized obligations may be imposed under the terms of this law.
- e) Contact tracing: Contact Tracing personnel assigned by the public health authorities, and administration and management staff at health care centers are allowed to access personal data in medical records for epidemiological reasons and subject to personal data protection rules, in accordance with Section 16 of Act No. 41/2002, on November 14, basically regulating patient data and rights and duties about information and clinical records, and any other superseding law. L2. As a general rule access to patients' personal data should be kept separate from their medical records, but as an exception for the purposes of contact tracing, access to personal data of suspected or confirmed cases of Covid-19 is presumed to be allowed under the terms of this Act.
- f) General Data Protection Regulations, given the current public health emergency
- g) Data may be disclosed using safe telematic devices to ensure compliance with the Organic Law on Data Protection, and, in particular, the authorities and civil servants involved in the enforcement of these measures must observe the respective responsibilities about personal data processing in accordance with the

data protection regulations and, in particular, subject to the provisions of Section 5 of the General Data Protection Regulation, whereby personal data should be used fairly, lawfully and transparently, for specified, explicit purposes, in a way that is adequate, relevant and limited to only what is necessary, accurate and, where necessary, kept up to date, for no longer than is necessary, handled in a way that ensures appropriate security and confidentiality.

I. (a) The State in The Canary Islands has authority to create a Legal System of Public Health Alert during the COVID-19 PANDEMIC.

At each different alert level, the SYSTEM imposes different COVID-19 public health crisis management stages at the territory according to the progression of risk indicators.

At each alert level, the adequate legal system under this Act shall be enforced to prevent the spread of the virus and preserve the health care system.

The different levels of public health alert are set according to risk assessment and epidemiological conditions, health care system capacity and public health indicators within the framework of the Interterritorial Council of the National Health System, and those that may be eventually established by the regional public health authority, setting maximum thresholds based on the criteria used and the application of the different alert levels.

Risk assessment will be conducted in each territory considering its specificities, the characteristics and vulnerability of the population exposed to Covid-19 and the possibility of taking prevention and control measures in such territory. Indicators should always be interpreted dynamically considering trend and rate of change.

Source: <http://www.gobiernodecanarias.org/boc/2022/113/001.html>

APPLICABLE MEASURES AT DIFFERENT ALERT LEVELS FOR PUBLIC HEALTH PROTECTION Annex I

SPECIFIC MEASURES FOR CLEANING AND DISINFECTING, LIMITED CAPACITY AND SOCIAL DISTANCING Annex II

Please do not hesitate to contact us for further information.

Best regards,

Natalia de Diego