

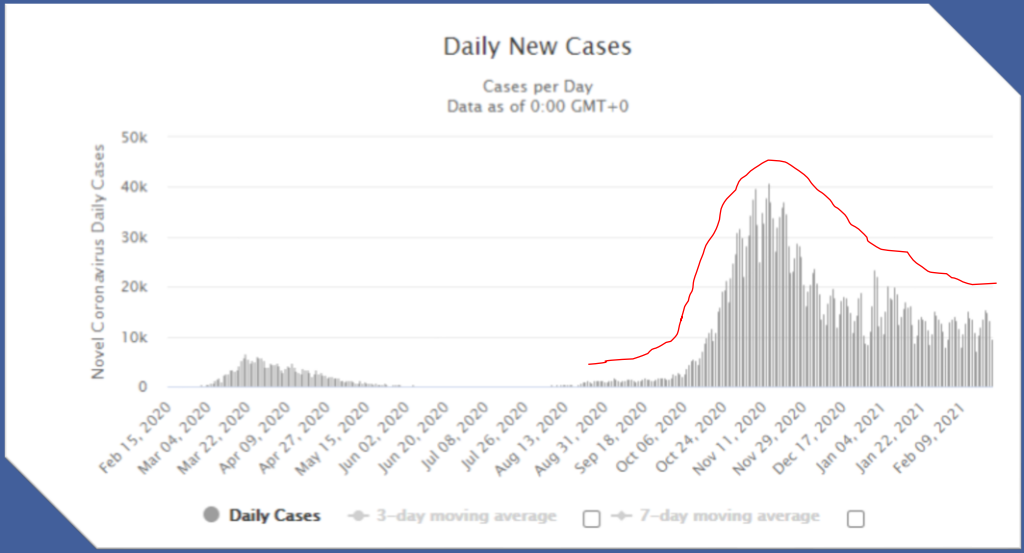
Dr Roselyn Borg
Mr Angelito Sciberras

1



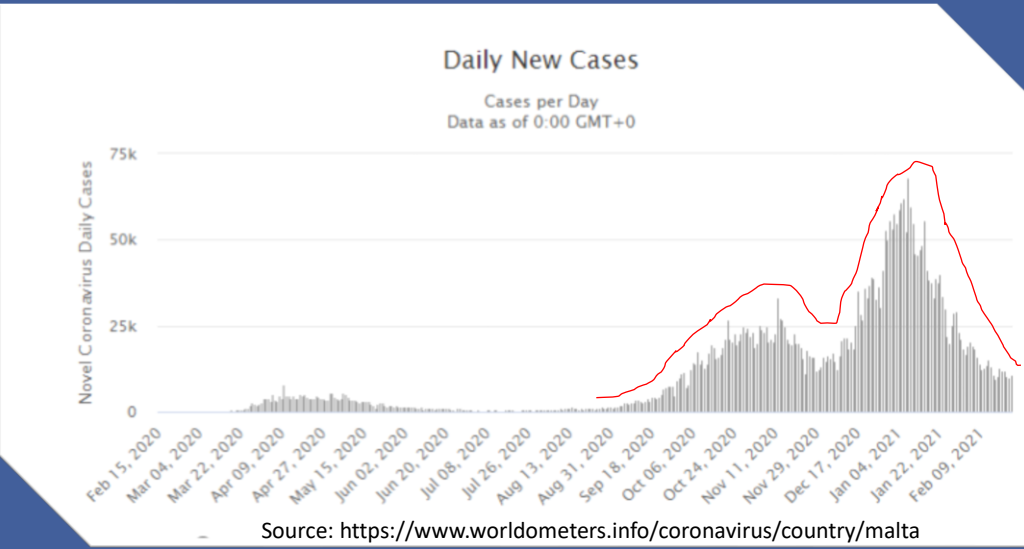
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COVID-19 Cases in Italy



3

COVID-19 Cases in United Kingdom

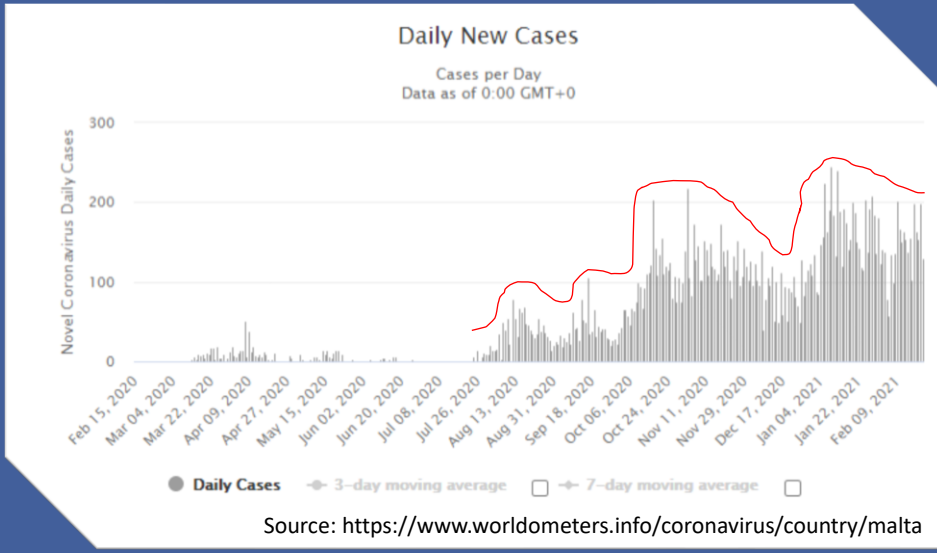


Source: <https://www.worldometers.info/coronavirus/country/malta>



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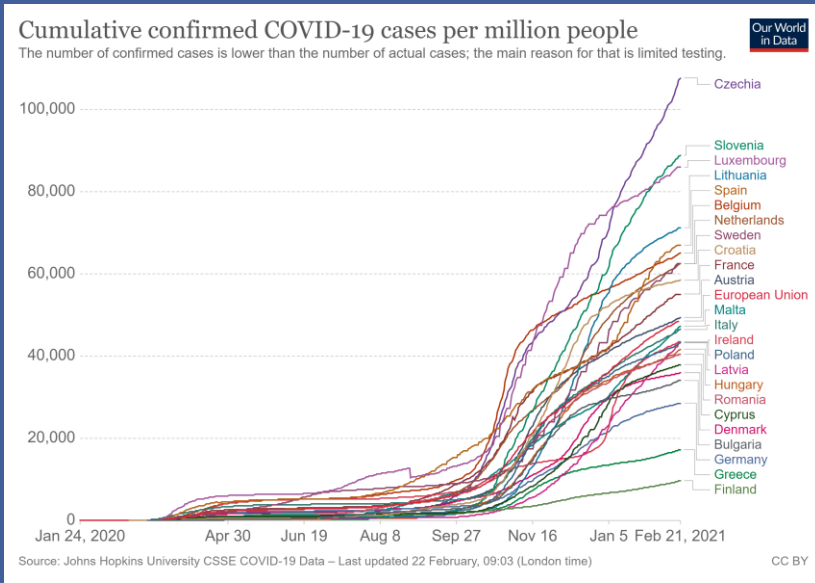
COVID-19 Cases in Malta



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Compared to EU Countries



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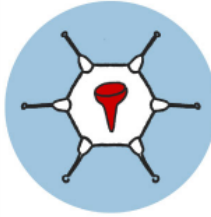
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COVID-19 Vaccines



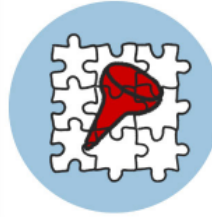
mRNA VACCINE

Used by: Pfizer, Moderna
Doses: 2



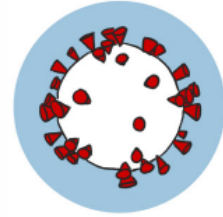
VECTOR VACCINES

Used by: AstraZeneca,
Janssen, Sputnik
Doses: 1-2



PROTEIN SUBUNIT VACCINE

Used by: Novavax, Sanofi
Doses: 1-2



WHOLE, KILLED VACCINES

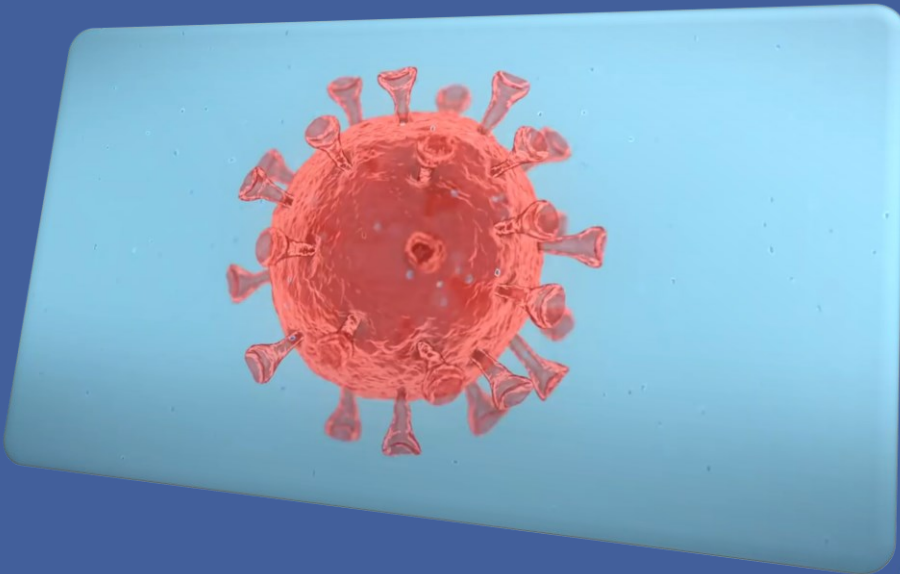
Used by: Sinovac
Doses: 1



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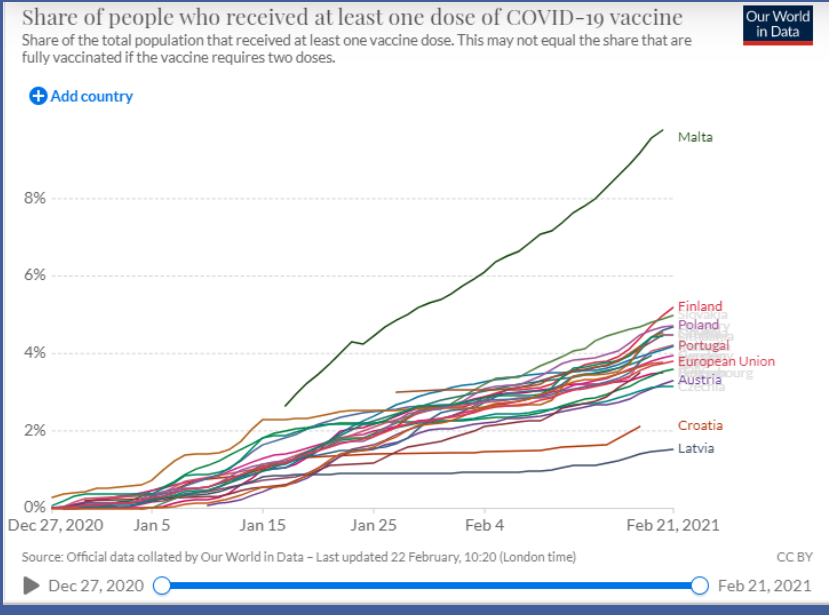
COVID-19 Vaccines



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Vaccines



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100% protected?

Just four get coronavirus after two shots of COVID vaccine

This happened before full immunity was reached

National Health COVID-19 Pharmaceuticals

February 19, 2021 | Claire Farrugia | 10

7 min read

The vaccine conveys full immunity about 10 days after the second dose. Photo: MCSA



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COVID-19 Vaccination in Malta

- COVID-19 vaccination in Malta began during the Christmas period
- Vaccine recipients are being called upon directly via a letter from the public health authorities for a scheduled appointment to receive their vaccine
- It is predicted by the authorities that the entire population is set to receive the vaccine sometime around June 2021
- As things stand, **vaccination is not legally mandatory** and one may choose not to attend their appointment



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Vaccination - potential risks & issues

- Certain persons cannot receive the vaccine for medical reasons
- Private vaccination is not an option at the moment, but each persons is called up by the authorities in due time
- Mandatory vaccination:
 - may promote a negative public image and harm business
 - obliging employees to vaccinate themselves may result in a breach of contract and a subsequent constructive dismissal claim
 - the long-term effects of vaccines are still to be seen – if negative effects apply, the employer may be subject to a damages lawsuit



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Vaccination - potential risks & issues

- Issues of indirect discrimination may come to light, such as in cases of:
 - Age discrimination (due to government roll-out criteria)
 - Disability – if one is exempted from vaccination due to physical reasons, others may allege mental health issues (such as anxiety)
 - Religion – certain religious groups may be opposed to vaccination due to certain vaccine components which are forbidden according to their belief
- Issues of the violation to one's right to privacy – can this however be balanced against a legitimate aim of the state (in the name of public health)?



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Employers & Vaccination

- Since vaccination is not legally required, can employers oblige employees to get vaccinated?
- If yes, can exceptions be made to persons who cannot receive the vaccine (ex. due to medical conditions)? How will these situations be handled?
- If no, can exceptions be made for certain employees who might need to get vaccinated in certain cases, for example if they must travel for work to countries where vaccination is mandatory?
- Can mandatory vaccination be justified under the employer's legal responsibility to ensure the health and safety of the entire workforce?



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Employers & Vaccination

- Can you ask persons whether they have been vaccinated at recruitment stage? If they answer in the negative, can you enter into reasons why this is so? What if it's because they have a disability/illness?
- Are workplace vaccination waivers an option?
- To what extent may preventing non-vaccinated employees from entering the workplace apply?
- Can disciplinary action be taken?
- Can you dismiss on this basis?



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Employers & Vaccination

- What happens with time-off/absence in cases where:
 - An employee needs to attend their vaccination appointment?
 - An employee is ill due to (normal) vaccination side-effects
- What happens in a case where an employee refuses to get vaccinated (specifically when there is a requirement to do so) and he subsequently contracts COVID-19?
- Are Vaccination Policies an option?
- What are the data privacy implications of retaining records relating to employee vaccination (or the lack thereof)?



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Sickness Absence

- Sickness absence is generally a very complex and sensitive issue for employers to handle
- Sickness absence may be:
 - Short- or long-term
 - In relation to illnesses
 - A consequence of issues such as pregnancy, disabilities etc.
- In general, sickness absence may also be given due to issues relating to mental health, not simply physical health



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Sickness Absence/Sick Leave Policies

- Employees must be informed of the terms and conditions relating to the incapacity to work due to ill health
- A policy should highlight the employees' entitlements and whether the company provides additional entitlements
- Uniform standards of attendance will give information to employees to avoid disciplinary actions or dismissal



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Sickness Absence/Sick Leave Policies

Content

- Sick leave notification
- Evidence of incapacity to work
- Contractual terms relating to sick pay
- Company doctor
- Return-to-work interviews
- Reasonable adjustments
- Potential disciplinary action
- Management training



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Sickness Absence/Sick Leave Policies

Management Training

- Managers should be thoroughly aware of the policy content
- Managers should also be professionally trained on how to deal with complex sickness absence issues where they deal with, ex:
 - Pregnancy
 - Disability
 - Mental health issues
- Managers should also have a point of contact with a medical professional (ex. a GP) – the employer should **never** act as a medical professional



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Sickness Absence/Sick Leave Policies *Records & Communication*

- Keeping up-to-date records and medical evidence is vital to reveal patterns of absence (although there may exist data privacy issues on this)
- All records should be kept confidential
- Employers should regularly contact employees on SL for updates (within reasonable limits)



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Preventive Measures

- An investment should be made towards creating a healthy workplace for the good health of employees, and prevent absences relating to ill-health
- Employees should be educated with regard to their own health and well-being – collectively or on a one-to-one basis
- Stress management, tips on healthy eating and exercise should be part of the agenda
- Working closely with employees puts managers in a better position to identify and assess the problem, and find out ways to provide support to avoid sickness absence



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Reasonable Accommodation

“necessary alterations not imposing a disproportionate or unjustifiable burden, where needed in a particular case, to ensure to persons with disability the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms”

Equal Opportunities (Persons with Disability) Act



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Christopher Zammit Dimech vs. Cherry Ltd

- Zammit suffered from a heart condition, and he required serious operations, and was therefore allowed a work-from-home period
- He was eventually told to start a phased return to the office or resign and work freelance – he was told to manage this transition himself
- Zammit worked well from home, however the company complained of lacking staff interaction and plans to start new projects
- Employee felt safer working from home (due to his condition) and did not wish to return, and he was dismissed on the basis of abandonment of employment



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Christopher Zammit Dimech vs. Cherry Ltd

- The Tribunal noted that his condition constituted a “disability” under the Equal Opportunities Act
- The law obliges employers to provide “**reasonable accommodation**” – telework was considered to be one such accommodation
- This arrangement posed no significant prejudice or detriment on the employer
- Furthermore, teleworkers must be treated equally as with other employees



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Discipline & Dismissal

- Employers may consider dismissal if the employee is no longer capable of carrying out their duties or if the employee is taking unauthorised sick leave, or is abusing of it
- Relevant procedures, warnings or cautions in accordance with your Sickness Absence Policy are to be issued prior to dismissal
- Procedure must be followed strictly as disciplinary issues involving illness and incapacity to work are extremely delicate and hard to handle



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Discipline & Dismissal - Considerations

- The nature of the employee's illness and the job
- The duration of the illness and potential return-to-work date
- The employee's length of service
- The treatment of other employees in the same / similar circumstances
- The need for the employer's business to cover the employee's work
- Whether alternative arrangements/employment may be considered
- Whether the illness / injury resulted from the conduct of the employer.



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Olga Polak vs. United Car Rental and Leasing

- Polak was employed with United Car Rental and Leasing, and she had a medical condition for which she had to seek treatment abroad
- She presented medical certificates, however her employer insisted on knowing what the medical treatment was for
- When she requested additional sick leave to go abroad for treatment again, her employer dismissed her on disciplinary grounds
- The Tribunal found for the employee, on the basis that the employer acted insensitively towards her and violated her right to privacy



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Quarantine Leave

*leave to be granted to the employee **without loss of wages** in such cases where the employee is **legally obliged to abide by a quarantine order** confining the employee to a certain area or to certain premises as determined by the Superintendent of Public Health under the Public Health Act or by any public authority under any other law*



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Quarantine Leave

- Can employees ask to go on QL without an official quarantine order?
- What if the employer refuses to allow QL (**NB without an official order**) but the employee still insists on self-isolation?
 - Telework
 - Vacation leave
 - Unpaid leave
 - Disciplinary action (abandonment of work/insubordination)
 - **NOT** sick leave
- What about cases where an employee was in contact with a positive case but the test is days away?



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Quarantine Leave

- Can employers order employees to go on QL without an official quarantine order?
- Can an employee on QL work from home? If so, is it considered to be QL?
- If an employee is to be on quarantine due to irresponsible behaviour / being in a situation where quarantine was a likely consequence, does QL still need to be paid?
- If an employee is to be on quarantine due to irresponsible behaviour / being in a situation where quarantine was a likely consequence, does QL still need to be paid?



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Quarantine Leave

- Can QL be taken more than once?
- Once QL is over, can the employer force the employee to stay away from the workplace any further as an added precaution?
- Can the employer impose forced leave in this case?
- Can the employee challenge such a forced leave imposition?



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Quarantine Leave

- Employers may choose to follow the law to the letter and only provide QL when the employee is actually under a quarantine order
- However you must be **realistic** – think about the devastating consequences a positive case may have on your workforce, especially if cluster / bubble guidance is not being followed



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QL or SL?

- What happens in cases where an employee is on quarantine leave and then tests positive for COVID-19?
- Whilst no answer has been given at the official level, it seems that consistent guidance from the DIER and established practice show that once a person contracts the virus, they are to be put on **sick leave**
- However, exceptions may be made where an employee is asymptomatic and can work from home – sick leave is only to be given if the employee is **incapable** of working



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