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# Preparing for the COVID-19 vaccination: guide for employers

As the UK's COVID-19 vaccination rollout continues, employers should prepare for its impact on the wider population and their workforce.

*More information is available in our [vaccination FAQs](#).*

## UK rollout

In December 2020 the NHS began administering a coronavirus vaccine made by Pfizer-BioNTech, followed by the Oxford AstraZeneca vaccine. A third vaccine, from Moderna, was also approved, and other vaccines are in the pipeline including imminent approval of a single-dose vaccine from Janssen (owned by Johnson & Johnson) and Novavax.

On 11 January 2021 the Department of Health and Social Care published a [delivery plan](#) setting out its strategy and targets with three phases:

- By mid-February: Offer the vaccine to the top four priority groups (around 15 million people in the UK), including residents in care homes for older adults and their carers, over 80s and frontline health and social care workers, over 75s, over 70s and clinically extremely vulnerable individuals.
- By mid-April: Offer the vaccine to the remaining priority groups (around 17 million people in the UK), including the over 50s, over 60s and those younger people who are under 65 but at risk.
- By 31 July: Offer the vaccine to all remaining adults in the UK, (another 21 million people).
- As of 12 April 2021 more than 32 million people in the UK had received at least one dose of a COVID-19 vaccine, and almost seven million have had a second dose, despite the predicted dip in vaccine supply in April. All adults should still be offered a first dose by the end of July 2021.

The Joint Committee on Vaccination and Immunisation (JCVI) has now issued its [final](#)

statement on phase 2 of the vaccine rollout, confirming that phase 2 is age-based, starting with the oldest adults and proceeding in the following order:

- all those aged 40 to 49 years
- all those aged 30 to 39 years
- all those aged 18 to 29 years.

Employers should remember that the vaccine is just one measure of protection and the extent to which the virus will further mutate is still unknown. Employers still need to question whether bringing employees into the workplace is essential and consider measures such as ventilation, handwashing, social distancing and the use of PPE and so on as part of their health and safety measures once legal restrictions comes to an end. Employers should stay up to date with the latest plans and advice on the government website and adjust their plans accordingly.

## **Managing vaccinated employees**

In the UK, generally, vaccination has not been mandatory and this has not changed for COVID-19. Given that, for public health reasons and to protect themselves and others from disease, it's desirable to have as many people vaccinated against COVID-19 as possible, employers should encourage staff to be vaccinated and publicise the benefits to improve take up of the vaccine when individuals are offered it through the NHS.

As COVID-19 vaccination increases throughout the UK, employers must plan the implications for their staff, visitors and workplace as a whole, covering: communication to encourage take up; risk assessment; and vaccine policy. Employers will also need to consider their contractual terms and data protection, disciplinary, grievance and dismissal policies. The key points to consider are outlined below.

### **Encouraging vaccination**

The Health and Safety at Work Act 1974 obliges employers to take reasonable steps to reduce any workplace risks; this duty gives employers justification for encouraging their employees to be vaccinated to protect themselves and everyone else at the workplace. COVID-19 is also a reportable disease under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (known as RIDDOR) which strengthens employers' encouragement that employees should agree to vaccination.

Most people will welcome the opportunity to be vaccinated against COVID-19, but there will be a minority who will be reluctant or refuse to have the vaccine. The reasons could be many and varied, including individuals who can't have the vaccine (for example, on medical grounds), those who can have the vaccine but refuse (for example, on religious or spiritual grounds) and those who can have it but have concerns and are uncertain (for

example, due to a fear of vaccinations generally). While it is primarily the role of the government and health service to combat vaccine hesitancy, employers play a vital role in helping promote a persuasive case for COVID-19 vaccinations as they are gatekeepers for the health and safety of employees.

The wisest approach for employers to begin planning for the wider rollout of the vaccine is to encourage staff to be vaccinated and publicise the benefits to improve take up of the vaccine when offered through the NHS. Engagement by organisations through good communication will help employees make informed decisions regarding their vaccination. Explaining and encouraging employees with impartial, factual information will keep them informed about the workplace impact and risks of COVID-19.

It is advisable to retain copies of any communications employers have produced to encourage vaccination, in case any pro-vaccine employees complain that the employer has taken inadequate steps to comply with their health and safety duties.

## **Ways to communicate encouragement**

- Run an awareness campaign, drawing on NHS information. There is an [NHS COVID Behaviour Change Unit](#) helping present a more powerful and persuasive case for vaccination.
- Offer employees consistent, accessible and factual safety data which promotes the genuine achievement of science in producing an effective vaccine.
- Ensure line managers are aware of policy and organisational approach.
- Consider counteracting misinformation and conspiracy theory spread through social media. The education programme may promote the merits of vaccines in general, and the COVID vaccines specifically.

If an employee voices concerns about being vaccinated, then individual discussions with a trusted staff member may help to allay fears and obtain their consent but employees should not be unduly pressurised into agreeing. Employers are far more likely to achieve a fully vaccinated workforce if they use open and honest two-way communication and listen to any concerns that individuals may have.

## **Adopting a vaccination policy**

Developing (or updating) a policy on vaccination allows employers to outline the organisation's stance on vaccination and explain the role of and expectations on managers, HR and employees.

Vaccination policies should take into account the legal aspects, for example, with respect to discrimination claims, as well as providing information on data protection and health and safety duties. A policy can potentially be objectively justified as a means of achieving the legitimate aim of staff health and safety. Vaccination policies may be a proportionate

way of achieving those aims, although this will depend upon the way in which they are operated and the impact on the individual employee.

A vaccination policy can be part of the overall COVID-19 secure steps towards maximising the number of employees who can attend work safely. However, it is part of the overall matrix and not a substitute for other measures.

Organisations should follow a voluntary approach when setting out its aims and objectives in a policy. As well as the legal and financial risks of adopting a mandatory approach, engaging employees with a voluntary approach will build trust and encourage employees to appreciate the benefits for themselves and others. The policy can help explain the benefits of vaccination and how employees can contribute to wider public health by protecting themselves and other employees and wider community by being vaccinated.

## **Risk assessments**

Existing COVID-19 risk assessments must be updated to refer to being vaccinated. Employers should encourage employees to get vaccinated once their age group becomes entitled to it. Risk assessments must also include alternative safety measures to receiving the vaccine (for example the continued use of PPE).

Other aspects to be explored when carrying out risk assessment include:

- Updating risk assessments to reflect the availability of the vaccine to different age groups.
- Special measures for any clinically extremely vulnerable staff and potential health and safety, discrimination or other claims resulting from vaccination or failure to vaccinate.
- Review of other COVID-19 secure measures and reasonable alternatives to or additions to vaccination such as continued working from home, social distancing, use of PPE, handwashing and so on. This consideration should include people unable to have the vaccine, those who are pregnant, trying to conceive or those with an allergic response.
- The potential for individual employees to refuse a vaccination and additional measures the employer can put in place if any staff refuse vaccination.

Future government and NHS proposals for subsequent annual vaccination will necessitate further planning by employers. For additional information on employers' plans see the [FAQ: What plans should employers make surrounding COVID-19 vaccinations?](#)

It's also worth remembering that the government's guidance changes on relatively short notice, so employers should review vaccine advice regularly and, to protect themselves,

keep a copy of the advice relied upon in case the original electronic advice disappears.

## **Clinically extremely vulnerable (CEV) people**

Vaccination may alter an employer's approach for some clinically highly vulnerable staff once they have had both doses. Having the vaccine means these workers can better protect themselves and after both doses may be able to return to the workplace (if it's essential that they return to the workplace), following an individual risk assessment. Clinically extremely vulnerable (CEV) people no longer have to shield after 1 April but should continue to work from home where possible and follow additional precautions such as social distancing measures. Although CEV people who are unable to work from home can attend work from 1 April, a government letter sent to all of them also advises them to minimise the number of social interactions and follow advice relating to ventilation etc. The government advises it is still important for these people to follow the additional precautions 'to keep themselves as protected as possible'.

## **Planning for different groups of employees**

### **Employees who can't have the vaccine**

Some individuals may be advised not to have the vaccine due to a medical condition, while others may be allergic or have trypanophobia (a fear of needles). These people could be protected by the disability provisions within the Equality Act 2010 if they refuse the vaccine.

It is possible that some allergic reactions could be protected as a disability but this should not be an issue if employees refuse the vaccine due to an allergy. Following the initial roll-out, the [MHRA has advised](#) that individuals with a history of anaphylaxis to food, an identified drug or vaccine, or an insect sting can still receive any COVID-19 vaccine, as long as they are not known to be allergic to any component of the vaccine. The policy for recipients of the current Pfizer COVID-19 vaccines is that the person should wait for a minimum of 15 minutes before leaving the vaccination site and especially before driving. All vaccination sites should have equipment for managing an anaphylactic reaction.

For employees with a genuine medical reason that prevents vaccination, employers should take other steps with regards to health and safety, for example reinforcing their COVID-19 secure working environment, facilitating remote working where possible, or considering a different role. In some cases, medical advice may need to be taken with the employee's consent.

### **Employees who may be hesitant**

'Vaccine hesitancy' is the term used to describe either a delay in taking vaccines, or a

refusal to have them. It is a complex area with much scientific research considering the reasons behind it and the approaches to take.

There are NHS toolkits for healthcare workers and public health experts dealing with hesitancy. Encouraging people with a deeply established anti-vax stance to receive a vaccination is difficult. How best to manage this is a complex aspect of behavioural science and really falls to the state rather than individual employers. However, employers may find some of the overall research helpful in managing employees who are hesitant. Encouragement, engagement and education are key.

External medical advisors engaged to answer any questions and provide reassurance to employees may help. Trusted members of senior management may also be able to deliver the message as trust is a key aspect. False stories on social media need to be countered with evidenced-based messages. Social norms also influence behaviour so bringing attention to national media reports showing how many people have been vaccinated each day helps the feeling of a collective effort.

Employers should listen to any concerns employees have around vaccination with empathy and understanding, as with the many issues that people have been facing due to the pandemic (like illness, fear and anxiety, childcare issues and so on) – this is a period that needs very careful and sensitive management.

Line managers will likely be the first port of call for most employee concerns – hopefully the relationship they have with their team will be based on trust and the kind of environment that enables honest conversation. Managers also need to be briefed on the organisation's vaccination policy and any awareness campaign around vaccinations, possible questions and concerns they could face from employees about the vaccine, and how to deal with them/refer to HR if necessary.

## **Pregnant or breastfeeding employees**

Advice for those who are pregnant, breastfeeding or planning to get pregnant has changed since the vaccination programme started. There's no evidence the COVID-19 vaccines are unsafe, but more evidence is needed. The JCVI has now advised that pregnant women should be offered the COVID-19 vaccine at the same time as the rest of the population, based on their age and clinical risk group. The advice still states that pregnant women should discuss the risks and benefits of vaccination with their clinician, including the latest evidence on safety and which vaccines they should receive.

Breastfeeding women can have the COVID-19 vaccine.

Women do not need to avoid pregnancy after vaccination. However, those who avoid vaccination because they are planning a pregnancy may be able to use this to assert sex discrimination if they are then treated less favourably or are later dismissed due to this

refusal.

## **Ethnic minority groups**

There has been some evidence that hesitancy about the vaccine has been disproportionately higher in ethnic minority groups. The government's scientific group for emergencies (SAGE) has warned of a risk that vaccine uptake could be lower among certain ethnic minority groups.

The additional effort to identify and encourage ethnic minority patients to take up COVID-19 vaccination is primarily down to the government and the NHS. Employers should not identify employees based on ethnicity and stereotype them based on their ethnicity as this would potentially be discriminatory treatment. Employers should distribute information equally to all employees. There is an NHS anti-disinformation drive and a national equalities board dealing with the disproportionate impact of the virus on ethnic minority communities.

Employers should consider any cases of hesitancy individually, offering support and directing to NHS and government advice where possible.

## **Employees who refuse the vaccine**

Employees may refuse vaccines for many reasons, ranging from concerns about potential allergy, a phobia of needles or misplaced concerns about fertility. There is also misinformation around vaccines including disbelief about the rigorousness of the approval process, which could lead to concerns or refusal.

Whatever reason an employee has for refusing to be vaccinated, employers must consider each case individually, taking into account the issues outlined below. Some of the concerns people may have could reflect deeply held views or feelings of apprehension, and these are taking place against a backdrop of heightened levels of fear and anxiety due to the pandemic and the challenging circumstances many are experiencing.

## **Refusal due to philosophical belief**

Some employees have an anti-vaccination belief. They could argue this is a protected philosophical belief under the Equality Act 2010. For example, an employee who believes in natural medicine only could try to establish that this belief is genuinely held and worthy of respect, which could lead to a claim that would need to be evaluated by a tribunal if progressed. An employer could argue that an anti-vax belief is not a philosophical belief protected by the Equality Act, because there is an inadequately coherent belief system behind it. Whilst there are legal subtleties surrounding whether the 'anti-vax' movement would attract Equality Act protection there is at the very least a risk that this type of belief

could be protected and lead to compensation.

Similar claims may arise from vegans who may also be protected under the Equality Act if a vaccine includes animal products. The COVID-19 vaccines do not contain any products derived from animals so this should be made clear to employees.

Employers should discuss someone's concerns and objections and take them seriously, by listening to their reasons for refusing vaccination and, if necessary, exploring other COVID-19 secure ways of working.

### **Refusal due to religious belief**

Some employees may refuse to be vaccinated on the basis of their religious beliefs. Religious beliefs do not have to be shared by everybody within that religion. For example, the belief of some Christians that a cross should be worn as a symbol of your faith does not have to be held by everyone. Therefore, an anti-vaccination belief could be held by some people of a certain faith and potentially be protected, even though others of the same faith are in favour of vaccination. Employers will have to take each case on its merits and listen to an employee's reasons for refusing vaccination and if necessary explore other COVID-19 secure ways of working.

Although pork gelatine is historically used in some vaccines, which could lead to refusal on the grounds of religious belief for people of Muslim, Jewish or Hindu faith, the COVID-19 vaccines being used in the UK do not use pork gelatine. In fact, the UK COVID-19 vaccine rollout is endorsed by the British Islamic Medical Association, Hindu Council UK, and the Board of Deputies of British Jews. Full information on the ingredients of the Oxford-Astrazeneca, Pfizer-BioNTech, Moderna and other vaccines can be found on their websites and patient information leaflets. This information can be used to discuss any objections based on religious beliefs.

Other religious groups with an objection to vaccines include religions that rely on faith healing including some Christian churches. Some Amish may be reluctant to vaccinate. Employers should listen to any reasons for refusing vaccination and, where needed, consider other COVID-19 secure ways of working.

### **Options if staff refuse vaccination**

If staff refuse vaccination employers should seriously consider the employee's reasons and any concerns they may have, and look to implement alternative solutions, while relevant. This could include continued working from home if possible, social distancing within the workplace, screens, the use of PPE and so on. The employer may be willing to consider changing the employee's work responsibilities or role if this could enable them to work remotely or in a safer working environment.



Ultimately, if their return to the workplace could pose a threat to the wider workforce's health and safety, employers may consider not allowing unvaccinated employees to return to the workplace. This entails a legal risk for the employer. Indirectly pressurising employees to be vaccinated (such as with disciplinary action) are likely to result in claims and will be less successful, ultimately, than the encouragement approach of sharing educational factual information.

In some sectors though, such as health and care work, vaccination is of even greater importance so employers may consider a dismissal process as a last resort, especially if they are unable to find alternative work for individuals who refuse vaccination and other efforts at encouraging employees to be vaccinated are unsuccessful.

## Making vaccination mandatory

An announcement is expected from the government shortly that COVID-19 vaccination will be made compulsory for those working in care homes in England with elderly and vulnerable people. A further review will decide whether this policy will be extended to other parts of the adult and social care sectors, including extending the policy to all hospital staff. It appears that workers who can prove they are medically exempt will not be required to have the vaccination and that care workers are likely to have 16 weeks to decide to take up the offer of vaccination.

In addition to the care home development, some employers in other sectors are choosing to make vaccination mandatory for their workforce. For example, Pimlico (formerly Pimlico Plumbers) is introducing a 'no job, no job' policy and engaging only new starters who have been vaccinated against COVID-19 and offering to pay for all staff to have the vaccination once it becomes privately available.

There are a number of issues to consider with regards to mandatory vaccination, which are discussed below. Mandatory vaccination is an intrusion on an employee's body and may discriminate on the basis of disability, or religious or philosophical belief. Employers cannot forcibly vaccinate employees or potential employees, unless they work in a sector (such as care homes) where a legal requirement is introduced. As we await further government guidance on this it is important to bear in mind how the law stands at the moment:

- Enforced vaccination would be a criminal offence against the person and an unlawful injury leading to claims such as assault and battery.
- The Public Health (Control of Disease) Act 1984 specifically states that members of the public should not be compelled to undergo any mandatory medical treatment, including vaccinations.
- As the government are about to insist on compulsory vaccination, there is a potential human rights issues as Article 8 of the European Convention on Human

Rights protects people from being interfered with physically or psychologically (which includes mandatory vaccination).

On the other hand:

- COVID-19 is a reportable disease under RIDDOR and having the vaccination can be a means of protection of other staff or, for example, patients in a health or social care setting.
- The Health and Safety at Work Act 1974 requires the employer to take all reasonably practicable steps to reduce workplace risks to their lowest practicable level.
- All employers have well established duties of care to protect employees in both contract and tort law.

The new legal development is the nature of the requirement for vaccination, through the Health and Social Care legislation requiring care homes to assess the risk of, and prevent, detect and control the spread of infections. The Code of Practice on Infection Prevention and Control will also be amended. By way of comparison, some NHS frontline healthcare workers have previously been required or recommended to have vaccines including for example hepatitis B and flu for certain healthcare workers but this is applied through workplace health and safety and occupational health policies.

Vaccination requires an individual's informed and voluntary consent and cannot be forced. If employees refuse vaccination, to discharge their health and safety duty, the employer may need to consider other steps that can be taken to protect them. An employer could consider potential disciplinary proceedings for failure to follow a reasonable instruction in certain settings (such as health or care) where an employees' refusal has serious consequences but this approach is not without risk (as outlined below). Any employers considering this approach should follow the government guidance once this emerges and seek specific legal advice if necessary.

### **Care homes: overview of new requirement**

The government intends to make COVID-19 vaccination compulsory for those working in care homes in England (this will not apply in Scotland, Wales and NI at the present time). The policy may later extend to other parts of the health and adult and social care sectors.

Subject to further details it appears that:

- Workers who can prove they are medically exempt will not have to have the vaccination.
- Care workers are likely to have 16 weeks to decide to take up the offer of vaccination.
- Those who are not medically exempt will no longer be able to be employed in an English care home setting.

The mandatory policy is likely to be introduced by the autumn once most second

vaccinations are completed. The further consultation on mandatory vaccination for all health service workers is ongoing. You can read the [CIPD's response to the care home consultation](#) on the CIPD policy consultation responses page. The government will provide more detailed guidance on mandatory vaccination in due course.

## **Preparing for mandatory vaccination**

To prepare for mandatory vaccination employers should encourage as many employees to be vaccinated as possible and introduce a vaccination policy (if they do not already have one). As well as encouraging staff and having a vaccination policy as referred to above, the other steps to consider include the following.

### *Warning staff*

Employers should warn all staff that vaccination is likely to be a condition of employment. Employers can consider insisting upon vaccination before new employees starts or make it a contractual term to accept the vaccine when it is offered or when it becomes compulsory.

### *Employment contracts*

Some employers might include clauses related to vaccination in employment contracts for new employees. Existing employees can be asked to agree to a compulsory vaccination clause as a variation to their contracts of employment. Some existing employment contracts already have medical clauses that may extend to vaccination.

However, even if employees agree to vaccination in their original employment contract or a subsequent variation of it, employers still cannot physically enforce this as an individual's informed consent is always required for any medical intervention.

Employers enforcing a change without employees' agreement would be in breach of contract and employees could resign and claim constructive unfair dismissal. It is easier to introduce an immunisation clause into new starters' contracts, although it would be prudent to discuss this with any recruits.

### *Incentives*

Employers can consider vouchers, extra pay or time off after the vaccination appointment. Although offering incentives to encourage vaccine take-up is unlikely to be common in the UK any incentives should not discriminate against employees with protected characteristics (such as age, disability or belief) who have reasons for not having the vaccination. Employers need to be able to justify offering incentives only to those who have been vaccinated as a proportionate means of meeting legitimate health and safety aims.

### *International travel*

If any employees have to travel for work especially to amber and red countries, then the vaccine is a necessary job requirement. Employers are likely to have a fair reason for disciplining any such employee who fails to follow the employer's reasonable instruction to have the vaccine.

### *Exempt staff*

An employers' vaccination strategy must include exceptions for employees who cannot accept the vaccine due to medical or possibly belief reasons. Alternatives for any minority of employees who have a good reason to avoid vaccination include workplace testing and other COVID-secure measures. Employers should assess any equality-based risk of successful claims from those in any protected group.

### **Dismissal for refusal to be vaccinated**

For the position concerning staff who refuse, failure to follow an employer's reasonable instructions can lead to disciplinary processes and dismissal. The current legal approach would normally involve consideration of alternative roles before potential procedures towards dismissal although alternative roles will not be available for many employers.

Whether an instruction to have a COVID-19 vaccine is reasonable has not been tested in the tribunals and courts. As there is at least a risk of unfair dismissal, discrimination and other claims, employers should consider their position very carefully before moving towards disciplinary processes and dismissal. Being a test case as one of the first employers to dismiss on the grounds of vaccine refusal is likely to be time consuming and potentially expensive.

Whether the employer is entitled to dismiss is not straightforward. The key issue is if refusal to be vaccinated is an unreasonable failure to comply with a reasonable management request. The question of what is unreasonable depends on the particular circumstances of the employee.

Every employment contract contains an implied term that employees must follow their employer's reasonable instructions. Whether an instruction to be immunised is reasonable depends upon the facts of each case, for example the nature of the role, the numbers of clinically vulnerable colleagues, the size and layout and people contact in the workplace.

For example, employers in a nursing home may already be able to issue a reasonable instruction to employees to be vaccinated because refusal could put vulnerable people at risk. Once vaccinations become mandatory in that sector relevant employers are clearly in a stronger position. Employers in another sector such as accountancy, where it has been shown that work can be done effectively from home, may be in a weaker position and an instruction to be vaccinated may not be deemed reasonable.

An unreasonable refusal by the employee may justify disciplinary action. The employee is under an implied duty to act in the best interests of the employer and colleagues and to take care of their health and safety. This arguably includes reasonable precautions not to infect customers or other employees.

The most likely justification for dismissal resulting from refusal would be some other substantial reason (SOSR) or the employee's conduct in refusing to obey. For example, in a hospital an employer could argue vaccine refusal is too high a risk to vulnerable patients or the employee themselves and is a substantial reason to discipline and then dismiss the employee. Employers should always give employees time to decide and follow a fair disciplinary and dismissal process before dismissing unvaccinated staff.

As well as establishing the potentially fair reason, the entire dismissal process also has to be fair. This must include the usual written, meeting and appeal stages, with the employee being given the opportunity to be accompanied and to set out their rationale for their opposition to vaccination.

An employer can only attempt to defeat an unfair dismissal claim if it can show that the employee unreasonably refused to be vaccinated. Each case will be considered on its own facts, including consideration of other ways in which the employee could continue to work safely without vaccination. If an employee's vaccine refusal is related to a disability or a religious or philosophical belief the employee may have a direct or indirect discrimination claim as well as a constructive unfair dismissal, breach of trust and confidence and other claims.

The best course of action is for employers to reassure rather than overtly persuade, leading by example and engaging with staff about safety, outlining the benefits of vaccination with the latest information, delivered in a culturally sensitive way.

More information on how employers in sectors where vaccination may be made mandatory should prepare is available in our [vaccination FAQs](#).

## **Future considerations**

### **Planning for a return to the workplace**

Employers can begin to plan for what a return to the workplace (for those employees who have been working from home) but should follow current government guidance before making any concrete plans. This is especially true following Professor Jonathan Van-Tam's warning that people who have received their vaccination must still obey social-distancing rules.

### **Testing**

Since early April everyone in England can get free twice-weekly COVID rapid lateral flow tests available from pharmacies, workplaces and test centres and can also be ordered for home delivery. The employer coronavirus testing scheme means that employers with more than 10 employees who register by 12 April can also access lateral flow tests. The kits will be available up until at least 30 June. For more information on free lateral flow tests see our [FAQs on testing](#).

## **Asking employees (and potential employees) if they have had the vaccine**

Employers can ask if employees have or have not been vaccinated but should have a good reason for needing to know, for example the safety of other employees. This information is sensitive personal health data and employers need to comply with the data protection rules.

If employees refuse to answer, problems can arise. Asking about vaccination is probably a reasonable management instruction which means that employers can discipline employees who refuse to answer, but lawyers have different opinions on this and on taking disciplinary action against employees who haven't been immunised. Each case will depend on its own facts; for example employers should be able to justify asking health care professionals if they have been vaccinated, as they are much more likely to be exposed to COVID-19 and pass it to others. But employers with staff who have limited contact with other people at all will find it harder to justify.

Employees who have been vaccinated could show their vaccination record card as proof.

The government has announced that COVID-status certification will not be required in law as a condition of entry for visitors to any setting but they are encouraging and supporting businesses and large events to use the [NHS COVID Pass](#) in high risk settings. The government will work with organisations where people are likely to be in close proximity to others outside their household to encourage the use of this. If sufficient measures are not taken to limit infection, the government has said it will consider mandating certification in certain venues at a later date.

For more information on employers' strategies see our FAQ [What do employers need to know about vaccine certification \(certificates or passports\)?](#)

Asking candidates during recruitment if they have had the vaccine may be justified in certain sectors and job roles where there is a particular health and safety exposure. However, generally, medical information is sensitive data that may be deemed inappropriate to ask in interview as employers should avoid asking prospective employees health-related questions. Whilst it may be inappropriate to ask prospective employees about their testing and vaccination status, employers can justify processing any data relating to vaccination or testing of *existing* employees provided it is relevant to the role and is in line with the data protection requirements below.

## Data protection and privacy

Medical information that an employee has received a vaccine will constitute special category data so employers who choose to keep records should do so in accordance with GDPR and the Data Protection Act 2018.

Under this legislation processing of personal data concerning health constitutes a special category and is prohibited, unless vaccination records are necessary and proportionate. Employers could ask employees to notify of their vaccination as this processing of health data is potentially justified as necessary to comply with employment law, the employer's health and safety duties and for reasons of public interest in health.

However, as the government is saying that social distancing must continue even among those who have been vaccinated it is arguable that there is a weaker reason to collect this data. If vaccination data is gathered, like testing data, it will count as a 'special category' under data protection law because it is medical information and must be processed fairly and lawfully. Data protection law is widely misunderstood and does not prevent employers from taking steps to keep staff and the public safe. All that is required is responsible, careful and justified handling of personal data.

Employers should have a policy document and data risk assessment covering the processing to ensure compliance with key data protection principles including transparency, data minimisation and security requirements. Only necessary data should be kept – never collect personal data that isn't needed. Employers should consider and document the risk to employees and any alternatives to obtaining and processing the data that have been considered. Employee Privacy Policies should be reviewed and updated.

Example:

A employer with meat processing premises has a workforce who are nearly all unable to work from home. The employer implements ventilation, social distancing where possible, regular cleaning, and wearing face coverings. It asks staff about whether they have been vaccinated, and as many younger staff have not it asks all staff to complete a short weekly questionnaire about their symptoms.

From a data protection point of view this involves processing personal data which must be processed lawfully, fairly and transparently. The employer should:

- Undertake a Data Protection Impact Assessment.
- Identify a lawful basis for the processing. This is probably 'legitimate interests' because health is special category data and a special condition needed for processing which is the company's health and safety obligations.

- Consider if there are less intrusive means of complying with the employer's obligations, for example the employer should document why social distancing, face coverings etc are insufficient and why the data about both vaccination and symptoms is needed to protect staff.
- Be clear, open and honest with staff about why personal data is needed and how it will be used.
- Explain how the information would be held securely, how long it will be kept and who it will be shared with.

Whilst symptoms data, vaccination and testing records may be kept on an employee's files obviously this information should not be shared with staff or third parties. If an employee tests positive however then this is a notifiable disease and NHS Test and trace must be informed; this is justified under data protection law as a public health concern. Other staff can be told about possible or confirmed COVID-19 cases on an anonymous basis with no more information than is necessary.

### **Offering vaccination (like flu vaccination) as a benefit**

In the future employers may be prepared to privately purchase and offer COVID-19 vaccination as a workplace benefit, similar to flu vaccinations. If the cost is under £50, this will not be a taxable benefit. Employers who have offered the flu vaccine are not obliged to offer the COVID-19 vaccine. Employers may consider offering both vaccines, but budgeting for it is not yet possible as there are too many unknowns. For example, an annual COVID-19 jab may be offered by the NHS as part of a dual vaccination programme with yearly jabs to protect against both flu and coronavirus.

### **Other issues**

- An employer's vaccination policy is likely to be weakened if unvaccinated agency staff, contractors, visitors and other third parties are allowed into the workplace. Employers will need to consider whether visitors are encouraged to have been vaccinated too and how this is communicated to staff.
- Once travel restrictions are lifted, employers will need to consider vaccinating employees who travel for work in the same way they may need other vaccinations.
- Employers with international offices will need to consider how a vaccination policy will be applied where other vaccination rollout programmes are in operation.
- Differences of opinion are likely to arise both remotely and in the workplace with pro-vaccine staff and those more sceptical and refusing to have the vaccine. Employers should proactively intervene in such disputes and take steps to avoid potential conflict.



Until everyone has been vaccinated and the effects monitored, other measures including social distancing must continue for the foreseeable future.

Employers should keep up to date with [latest advice from the UK government](#) and maintain open and honest communication with employees.

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