

Can an employer require an employee to take a COVID-19 vaccination?

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There is no legal provision that permits an employer to require an employee to take one of the COVID-19 vaccines. However, one employer has already publicly announced that he intends to make vaccination against COVID-19 a condition of employment and it is likely that other employers may wish to follow his example. Therefore, what is the legal position in this area? In short, compulsory vaccination is a legal minefield and employers will need to be very careful how they approach the matter, so they do not breach any strict rules or guidelines.

Under section 2 of the Health and Safety at Work Act 1974 (HSWA 1974) an employer must take all reasonably practicable steps to reduce workplace risks to their lowest practicable level. Additionally, under section 7 of the HSWA 1974, an employee has a duty to cooperate as necessary with the employer to enable it to comply with any statutory requirements including reducing workplace risks.

Moreover, employees will want to be reassured that they are working in a safe environment. However, this is unlikely to extend to employees being legally required to take the vaccine in all business sectors and we will have to wait for further guidance from the Government on what measures an employer may be required to take. The meaning of “reasonableness” is likely to depend on the business sector of the employer and the services it provides. In relation to the education sector, the teaching unions are urging their members to take the vaccine unless there are medical reasons not to do so and are pressing the Government for education staff to be vaccinated as soon as possible. It is clearly in the interests of schools and colleges, teaching staff and pupils that teaching staff receive the vaccine.

Therefore, it is likely that to request staff to take the vaccine is a reasonable management instruction in accordance with the Health and Safety at Work Act 1974. The exception to this would be if there are medical reasons why an individual should not take the vaccine or the teacher is pregnant. The current government advice is the vaccine is not advised for pregnant women. Therefore, education establishments should not operate a blanket policy and must take into consideration the reasons why an employee objects to taking the vaccine before considering taking any further action otherwise employers may be putting themselves at risk of potential discrimination claims.

Tread carefully before setting rules...

On the face of it, an employer’s requirement for an employee to have a COVID vaccine appears a ‘reasonable instruction’ in order to keep other work colleagues safe in the work place. However, the position is far more complex and raises numerous legal issues which will need to take into account the requirements of the employer and the individual circumstances of the employee.

As the vaccine rolls out across the age groups, employers will need to keep abreast of the Government public health guidance in relation to the pandemic and start to develop their own COVID-19 pandemic policies to take into account the implications of the vaccine in the workplace. Whilst the arrival of the vaccine is a huge relief for everyone, the vaccine should be seen as the next chapter in the pandemic story and sadly not the end.



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