

Mandatory Vaccine Update

As you will be aware, 3rd February marked a pivotal date in the Government's 'no jab, no job' policy. This date is the last day for staff to have their first vaccine in order to make the requirement of full vaccination status by 1st April 2022.

It is unclear what the position is now. Whilst the Health Secretary has indicated a change of stance, this is subject to an emergency 2-week consultation which may or may not change the legislation. The smart money is on there being that change, but there is resistance to it in some quarters, not least because if a more aggressive strain of COVID were to emerge there is a view that the NHS would once more be vulnerable.

So, what can you do given that the key dates are upon us but the status of the policy is unclear? Well, the Department of Health is suggesting that the immediate process is put on ice, so not to make any decisions over the future employment of staff. This has to be right, because doing anything else is likely to amount to unfair dismissal. However, this still leaves uncertainty in the longer term, though you can hardly be criticised for following guidance and suspending the process as recommended.

There are however broader issues at play. Some of you may already have dismissed staff, in which case we would strongly recommend that you contact them and advise that owing to the shifting sands of Government policy, you will be reviewing that decision in line with any changes to the legislation. This could be too late for some, as they may have found other jobs. Others are bound to ask about compensation, having been dismissed without cause. If you are in this situation, we would suggest you take legal advice. Given however that this is a flaw of policy and foresight, the case should be made that extra funding is given to make up the shortfall arising if you are to compensate. This is, after all, not a problem of your making!

Beyond this it needs to be recognised that a good deal of harm may have been inadvertently caused to broader employment relationships. Some unvaccinated staff may have wanted to keep their status to themselves, only for this to be exposed against their will. Other staff may resent or fear working with unvaccinated members of their team. It is a mess and needs to be addressed through empathy and compassion.

The first step would be to talk to those who were threatened with losing their job to explain the change in stance and to make clear that the Practice has only ever been following legal guidance. This is best followed up by a letter along the lines attached at Letter 1. This is important, as it reaffirms your commitment to staff who might be legally protected in objecting to the vaccine, or harbour resentment in the way the situation has been managed. You will see that the same letter makes clear that you will not tolerate unfavourable treatment from other members of staff against those who have chosen not to be vaccinated.

For those who are vaccinated but might be worried about their own wellbeing working alongside those who are not, reassurance should be given on a case by case basis. They should also be reminded of their obligations to other staff. Letter 2 refers.

Should either letter spark a significant response, please take additional legal advice.

Finally, there are those who ultimately agreed reluctantly to have the jab and hold you responsible for that decision. The situation with those is more complicated, albeit you will again make clear that you were only following government guidance. It is difficult to see how you can be held liable for doing so, but if you are met with a threat of legal action on this basis, take legal advice and seek indemnity from the Department of Health. Again, you are in this situation only because of flawed Government policy.

Disclaimer

This guidance note is a commentary on the general situation and does not constitute formal legal advice. Any reliance upon it is therefore at the user's sole risk for which Porter Dodson LLP, its partners and/or staff accept no liability whatsoever in the absence of specific legal advice under a formal solicitor/client retainer to provide advice specific to the user's circumstances.

LETTER 1

Dear []

Update Regarding Mandatory Vaccination Status

As you will be aware, we had anticipated the full implementation of regulations making it a mandatory requirement of your employment for you to have the two doses of the COVID vaccine by 1st April 2022. Owing to the period required between vaccines, it was anticipated that staff would have their first vaccine by 3rd February at the latest.

The Government is now reconsidering its position and engaging in a two-week consultation period. It is unclear what the result will be, though the signs are that there will be some delay to this requirement if it is not revoked altogether.

As a member of staff who is not fully vaccinated, we need to inform you that in accordance with updated guidance, we will not be taking action to enforce the regulatory requirements imposed upon us until we have clarity. You are a valued member of staff who we would prefer not to lose, so hope that there will be a new policy enabling you to be retained.

I will be informing other staff of this position. You will appreciate that members of staff have different views of the vaccine, with some potentially being alarmed by the change of policy. If any of your colleagues harbour such concerns, I will be asking them to raise them at management level. I will also be making clear that you are entitled to your views around the vaccine, as are they, and accordingly no member of staff should treat any other inappropriately or detrimentally for the views that they hold. Should you encounter any such behaviour, please let me know so that appropriate action can be taken. To be clear, we will not tolerate such behaviour aimed at any member of our team.

If the Government puts any further requirements or restrictions in place upon us in respect of the vaccination status of staff, we will let you know. I hope you will see this as a positive development and appreciate that the steps taken to date by the Practice arise solely from our regulatory obligations as a registered provider of healthcare services.

Should you have any queries relating to this matter, please do not hesitate to contact me.

Yours sincerely,

LETTER 2

Dear []

Update Regarding Mandatory Vaccination Status

As you will be aware, we had anticipated the full implementation of regulations making it a mandatory requirement of patient-facing staff to have the two doses of the COVID vaccine by 1st April 2022.

The Government is now reconsidering its position and is engaging in a two-week consultation period. It is unclear what the result will be, though the signs are that there will be some delay to this requirement if it is not revoked altogether.

It is appreciated that members of staff have different views of the vaccine, and that the implications of this apparent change of policy may be of concern to some. If this is the case, then I would ask you to discuss your concerns with me so that we can attempt to resolve those concerns for you. The change of approach would of itself appear to be reassuring, as clearly an assessment has been made by government over the risk of COVID spread between all sectors of the workforce.

As we respect the differing views of individuals on this topic, it follows that no member of staff should be treated inappropriately or detrimentally in respect of their vaccine status or the reasons for their stance on the subject. Should you encounter any such behaviour, please let me know so that appropriate action can be taken. To be clear, we will not tolerate such behaviour aimed at any member of our team.

If the Government puts any further requirements or restrictions in place upon us in respect of the vaccination status of staff, we will let you know.

Should you have any queries relating to this matter, please do not hesitate to contact me.

Yours sincerely,