

Can I refuse the coronavirus vaccine?

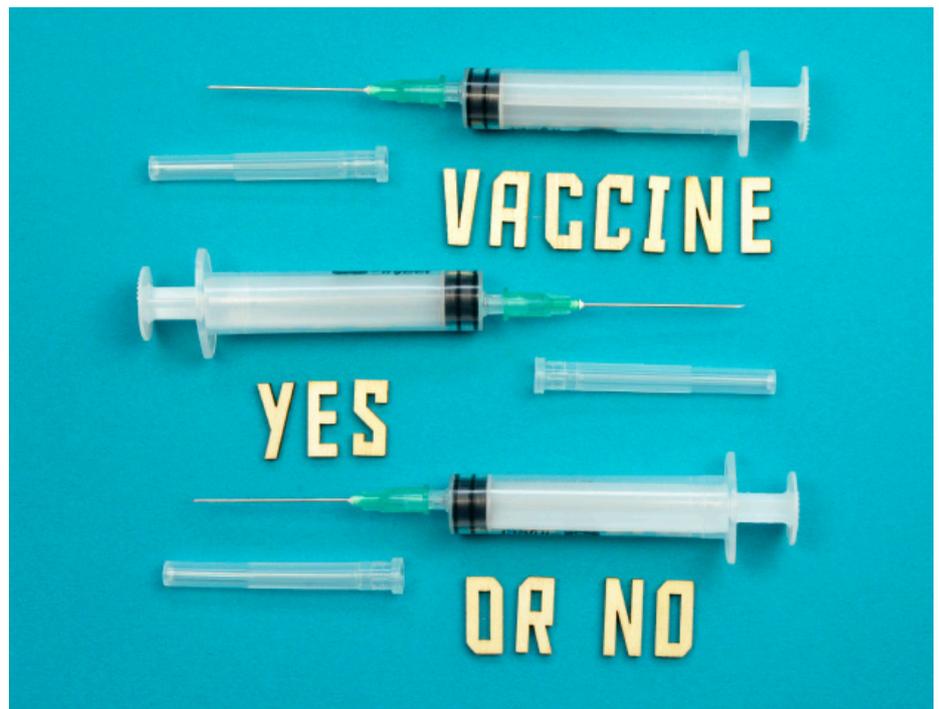
Solicitor **Sarah Buxton** considers the implications for dental nurses

On 2 December 2020, the UK approved the Pfizer/BioNTech Vaccine for Coronavirus.¹ With the roll-out of this vaccine expected in the next upcoming months, this brings a variety of issues in relation to whether this vaccine is mandatory.

The current UK legislation, The Public Health (Control of Disease) Act 1984 prohibits powers on mandatory medical treatment including vaccines. Although this cannot be made mandatory, it is recommended. Due to the nature of Dentistry and the General Dental Council immunisation requirements, there is a likelihood an employer may try to enforce this vaccine on their employees. This could create a variety of legal issues for the employer should the employee refuse, which are explored below.

Whether an employee is vaccinated or not forms part of personal data, which could give rise to GDPR concerns and how that information is held. Whether or not a person is vaccinated should be treated confidentially on this basis. This could also cause issues where an employer may refuse an offer of employment on the basis that they do not have the vaccine.

Vaccination without consent gives medical ethics and human rights law implications. Consent for medical procedure is required regardless of what is being undertaken, which means this applies to



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vaccinations. These situations are unlikely to arise in an employment situation, therefore consent must be obtained. It is advisable that if you are paying for it as an employer you have a robust consent form in place.

There is a possibility that employees may be able to argue constructive unfair dismissal if an employer were to attempt to force them to have the vaccine and/or treated the employee differently/or at a detriment because they refused to provide their consent to a) confirm whether they have had the vaccination b) refuse to have the vaccination. Constructive dismissal occurs where the employee resigns and can show they were entitled to do so by reason of the employer's conduct. This means that the employer's conduct is serious enough to breach the employee's contract. For an unfair dismissal claim, an employee can be awarded up to £88,519. Attempting to force a vaccination on an employer could be seen as misconduct for

the purposes of this claim.

A further area of key concern would be discrimination. Any persons have the right to refuse vaccination, and this refusal could be on the grounds of medical and/or their belief or for religious reasons, giving rise to a discrimination claim. If the employee brought a claim to the Employment Tribunal in these circumstances the compensation which is awarded is unlimited. It depends on what the Judge believes to be fair and equitable.

In conclusion, a vaccine cannot be forced by law, and an employer must be very careful to consider the implications that would arise from any attempt to do so. Before forcing or asking your employees to have the vaccination, please do ensure you take legal advice.

Reference

1. Regulatory approval of Pfizer/BioNTech vaccine for COVID-19 - GOV.UK (www.gov.uk)