

# Can you force staff to have the covid vaccination?

Sarah Buxton considers the legal issues surrounding vaccination.

Legal

With the implementation of the covid vaccination and the news that dental practices and staff are being prioritised for it, employers may now wonder whether they can force their staff to have the covid vaccination.

As the current guidance and legislation stands, the vaccine is not compulsory. The Public Health (Control of Disease) Act 1984 explicitly states that regulations cannot require a person to undertake medical treatment, which extends to vaccinations. The GDC has explicitly stated that it does not consider the vaccine mandatory at present.

In this case, the best way to ensure that staff members take the vaccine is by gaining their consent. Employers can encourage staff to take the vaccine through training on the benefits and being available to answer any questions or concerns. You may wish to discuss the vaccination with staff and understand why they do not wish to have it and consider whether you are able to dispel any concerns or rumours.

## Risks of contractual obligation

By forcing staff to take the vaccine, employers may put themselves at risk of potential indirect discrimination on the grounds of disability, pregnancy, religion or belief. If, by requiring staff to take the vaccine, this places a particular group at a disadvantage and therefore



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disadvantages the employee, they may bring a claim in an employment tribunal. For a discrimination claim, the amount of compensation in the tribunal is unlimited. For this reason, employers must be very careful not to be seen to be discriminating against their employees.

One common concern that has arisen amongst employees in terms of the vaccine is the potential that it can have an impact on fertility. For this reason, it is more likely to be young females who do not wish to have the vaccine. There is therefore a risk that, by requiring staff to have the vaccine, this would put the particular group of young females at risk and therefore potentially disadvantage those employees.

It is clear that the covid vaccinations and the pandemic are causing a large amount of mental health issues. If you are put on notice that your employee is potentially suffering with mental health issues, it is advisable to help and support your employees. There is also a risk that this could be considered a disability which could cause further issues by requiring employees to have the vaccine.

To defend a claim of indirect discrimination, the employer must be

able to show that forcing the vaccine is a proportionate means of achieving a legitimate aim. The issue with this defence, as it currently stands, is that the GDC has stated that the vaccine is not mandatory and dental practices have generally been considered safe places throughout the pandemic due to the use of PPE and standard operating procedures.

It is essential to consider whether instructing an employee to take the vaccine could be considered as a "reasonable management instruction" which could result in a dismissal where disobeyed.

At present, as the vaccine is not considered mandatory and dental practices are considered generally safe places due to the high level of health and safety protocols, it may be difficult for the employer to show that requiring employees to have the vaccine is a reasonable management instruction. For this reason, I would err on the side of caution until the situation is clearer.

It is recommended that you continue to follow government guidance on health and safety within the practice and continue to wear the correct level of PPE, despite whether you have had the vaccine or not.