

Can SE20 businesses insist that employees are vaccinated?

- COVID vaccines are here, but not everyone wants one.
- Employers should tread carefully when considering a vaccination policy in the workplace.
- There is a multitude of legal risks, from discrimination to data protection, to take account of.

The well-publicised roll-out of COVID-19 vaccines is gathering pace. While it is initially reserved for the high-risk categories and frontline health and care workers, it will not be long before millions of other people of working age are invited for a jab. It raises key questions for employers regarding their stance on the vaccine. Maria Kurek from The HR Dept South London discusses some of the issues.

Maria begins: “The first question on many employers’ lips will be ‘When can my employees get vaccinated?’. It is probably the simplest to answer as the government has given an expected timeline of everyone aged 18 and over being offered the vaccine by the Autumn of 2021.

“From there the questions are not quite so straightforward to answer: ‘Can I ask that employees get vaccinated? What are my options if an employee refuses a vaccination?’

“Whether you could ask that employees get vaccinated would really depend on if it was a reasonable request to make in the context of your business. There’s an obvious difference between asking a care home worker to get vaccinated, compared to someone who works by themselves remotely, for instance.

“Doing any more than asking (best done by a non-contractual policy which outlines the benefits of vaccination and why your business is recommending it), exposes you to a number of risks.

“The employment law risks are significant. One of the protected characteristics of the Equality Act is religion or philosophical belief. A person who does not believe in vaccinations or a person whose religion bans the use of certain substances found in the vaccine may claim protection under this. In December the Vatican has said it is acceptable for Catholics to have the vaccine, but other faiths may not accept it. Those who are pregnant or suffer from severe allergies would likely be prevented from having the vaccination on medical grounds. So it is a complex area.

“That being said, if a company has carried out a risk assessment and the request is a reasonable way to achieve the aim of minimising the risk in the first place you could potentially dismiss. You would, however, have to ensure a dismissal process was followed properly - and taken on its own merits. Obviously looking at alternative roles or working from home before dismissal would be sensible. There is no case law to which to refer.

“Other legal areas into which an employer-led vaccination initiative could stray include data protection and workplace disputes between pro- and anti-vax employees.”

“What on the face of it may seem a reasonable health and safety precaution in embracing the vaccine is full of nuance. Education and persuasion and a thorough examination of options will generally be a better starting point than confrontation; but professional advice is essential.”

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