

Compulsory Covid-19 vaccinations for care home workers

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Following consultation issued in April 2021, the Government has announced its decision to press ahead with compulsory Covid-19 vaccinations for those working within CQC-regulated care homes. New legislation is being prepared to facilitate this, which, if Parliamentary approval is given, will allow for a 16-week “grace-period” for care home workers to be fully vaccinated (i.e. receive two doses of one of a Covid-19 vaccine).

Who will be covered?

The proposal goes significantly beyond those employed directly by care homes – it will cover agency workers, volunteers and anyone coming into the care home to do other work – such as healthcare workers, beauticians, tradespeople and CQC inspectors – unless one of the exemptions apply (see below). It will also go beyond the original proposal during consultation of applying to care homes with at least one resident over the age of 65; all CQC-regulated care homes in England which provide accommodation for persons requiring nursing or personal care will now be in scope, regardless of the age demographic of their residents.

The background to the consultation and its focus on care homes followed advice from the Scientific Advisory Group for Emergencies (SAGE) Social Care Working Group on the particular impact on care homes of the pandemic due to the combination of the closed environment and the increased risks of severe outcomes from Covid-19. Concern has also been raised that, although the majority of the care workforce have been vaccinated, there remain pockets of lower vaccination intake, such as in London.

However, in the Government’s [response to the consultation](#), it is made clear that the proposal of compulsory Covid-19 vaccines in care homes is “the first instance”; further consultation is to be launched to cover expanding the proposals wider still to extend to other health and social care settings (including the NHS), and to the number of vaccinations in scope (for example, whether a flu vaccine should be required).

Exemptions

Exemptions are proposed to apply to:

- Those who have medical exemptions (more on this below);
- Residents;
- Friends and family of residents who are visiting;
- Those entering to assist in an emergency, or to provide urgent maintenance work; and
- Those under 18.

When assessing whether a medical exemption will apply, the current proposal is that this should be determined by reference to the [COVID-19: the green book, chapter 14a](#). This contains very few medical exemptions – largely related to those who have had an allergic reaction to a previous dose of the vaccine, or any of the vaccine components. There may also be timing issues for when a vaccine should be taken by some individuals with other medical conditions. However, it does not include any medical exemption for those who are

pregnant or breastfeeding. It also does not include any medical exemption for those who assert that their mental health would be affected by a requirement to be vaccinated – such as those who are needle-phobic.

Of note is that there are also no proposed exemptions for those who object to vaccinations for religious reasons; this was raised during the consultation process but the Government has rejected this, concluding that to do so would cause difficulties in implementation and undermine what the proposal is trying to achieve.

Information and encouragement

Compulsory vaccination is an emotive topic in an already difficult environment. The pandemic has shown clear disagreements between those who feel that society should take steps to protect its most vulnerable, and those who believe that personal freedoms are paramount. Given the serious health implications of Covid-19 already experienced within the care sector, a blanket vaccination-refusal simply because someone believes it is their right to object may carry little sympathy. However, even amongst those who believe some steps are warranted, there are disagreements about the extent or reasonableness of those steps. This is particularly the case with this proposal, given the impact that it could have on an individual's livelihood and career. The proposal is likely to cause considerable concern for some workers who want to continue to work within the care sector but have significant concerns, fears or beliefs which mean they are opposed to vaccination in general, or to this vaccination in particular.

For the care sector already facing recruitment challenges, compulsory vaccinations are likely to increase these challenges – potentially making roles within care homes unattractive to new recruits who are vaccine-opposed. Concerns have been raised that existing workers will “vote with their feet”, with the GMB union commenting that based on a survey of around 1,000 carers, over a third would quit if compulsory vaccinations were introduced. In the intervening period before any legislation is introduced, best practice would still therefore be for employers to try to capture the hearts and minds of the workforce by encouraging workers to seek vaccination, and provide them with the facts to attempt to address any misunderstandings or misconceptions (see our previous [Covid-19 vaccinations – FAQs](#), published in February of this year before the compulsory vaccination consultation).

Practical steps to consider

Care homes will also need to take steps to understand the impact that these proposals will have on their own particular workforce so that plans can be made to address any potential staffing or resourcing issues. For those reliant on agency workers, this would also include consideration of where the responsibility will lie for checking and maintaining vaccination-status records (albeit that the forthcoming legislation may be prescriptive about this). Care homes are likely to need to review internal policies to ensure that these address common issues that are likely to arise such as:

- how time off for vaccination appointments will be dealt with;
- what sick pay arrangements will be in place for adverse vaccine reactions;
- whether adverse vaccine reaction absences will count for the purposes of absence management procedures;
- how any delays in being able to secure (or attend) a vaccine appointment will be dealt with (including any impact on pay);
- how data relating to vaccination-status and any medical exemptions will be used and secured; and
- what process will be followed for those who refuse to be vaccinated without an applicable medical exemption.

Care homes will also need to review their recruitment process for new starters to ensure employment contracts and offer letters appropriately deal with vaccination requirements and status.

Although the proposals currently relate to two doses of the vaccination, employers will need to ensure that they remain up to date with legal requirements - such as whether requirements extend to annual or booster vaccinations, and/or to vaccines for other medical conditions such as flu.

Potential risk areas

As set out above, the current proposed exemptions to the requirement for compulsory Covid-19 vaccinations do not extend to objections on the grounds of religion or belief. If the proposals go ahead, employers may find themselves on the receiving end of grievances (or claims of discrimination) from affected employees. Whilst ultimately an employer is highly likely to have objective justification for requiring vaccinations in care home settings, dealing with internal complaints or claims will impact both on management time, and employee relations. An early provision of factual information about the benefits of vaccination may also help to reduce the number of complaints which are not based on religious grounds but rather due to an employee's fears about vaccination.

Employers may also face unfair dismissal claims from those who resign as a result, or who are ultimately dismissed. Defences available to employers are likely to depend on precisely how the proposed legislation is drafted – for example, the wording may be drafted with an express statutory prohibition on employers allowing unvaccinated workers (without a medical exemption) to work on care home sites after the grace period (as is currently indicated). This would give employers a clear potentially fair reason for dismissal (statutory restriction and/or some other substantial reason), albeit that consideration would have to be given to potential redeployment, if available, together with a fair procedure followed. If the drafting is more “aspirational” in nature to try to reduce the numbers of unvaccinated workers but without an absolute prohibition, or a wider range of exemptions are introduced, employers would be faced with a much harder balancing act attempting to deal with different competing interests.

Should you wish to discuss the implications of the Government's proposal on your workforce, please feel free to contact [Jacqui Atkinson](mailto:jacqui.atkinson@brownejacobson.com), our Head of Employment Healthcare or [Helen Badger](mailto:helen.badger@brownejacobson.com), Employment Partner.

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