

Covid-19: Government's U-Turn for mandatory vaccination for health and social care workers following consultation

Since 11 November 2021, workers in regulated care homes in England have been required to be vaccinated against Covid-19, unless they are exempt in accordance with the Health and Social Care Act 2008.

18 March 2022

From 15 March, mandatory vaccination will no longer be a condition of deployment across all health and social care.

Since 11 November 2021, workers in regulated care homes in England have been required to be vaccinated against Covid-19, unless they are exempt in accordance with the Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) Regulations 2021 and the Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) (No.2) Regulations (collectively referred to as ("the Regulations")). Following changed clinical guidance as a result of the most recent variant, Omicron, in February, the government launched a consultation seeking views on the possible revocation of mandatory vaccination. The responses to the consultation overwhelmingly favoured revocation of the Regulations, particularly in light of the considerable recruitment challenges the health and social care sectors are currently experiencing.

How does this affect the health and social care sectors?

Whilst the government's view is that it is no longer proportionate to require the vaccination through legislation, it considers that workers in health and social care sectors have a professional duty to be vaccinated against Covid-19. As such, employers in the health and care sectors will need to strike a careful balance between the rights of health and social care staff and the care provided to service users, particularly those who are considered as high-risk.

The care home sector remains desperately understaffed and whilst many employers may welcome the change, hoping it will have a beneficial effect on workforce numbers, they will need to consider whether they should reverse their no-jab, no-entry policy. This will require a balancing act between managing their health and safety obligations on one hand, and the potential human rights or equalities issues that may arise with a mandatory vaccination policy on the other.

Government figures suggested that 40,000 care staff had not been vaccinated by the deadline of 11 November 2021. Whilst it is unclear how many of these lost their jobs because of medical exemptions or redeployment to other roles, it may be that the health and social care sector struggles to encourage them back as individuals wonder whether there could yet be another U-turn.

The removal of requirements for mandatory vaccination will hopefully see an increase in numbers of people returning to the care industry, benefiting both them and the people they care for. However, Covid-19 has not gone away and the government has said throughout the pandemic it will always follow the latest clinical and scientific evidence. So if we see another dramatic change in the virus, it may well be that the policy is reviewed again. As such, employers must be alert to the ongoing threat that Covid-19 continues to pose when reviewing its employment policies and procedures.

Ka Man Shing

Associate

KaMan.Shing@brownejacobson.com

+44 (0)330 045 2862

Related expertise

Health and life sciences

Social care