

Brachers

With you all the way



Coronavirus
Vaccine

COVID-19 vaccine enforcement – what are the rules?

Thursday 4 February 2020

Presented by:
Colin Smith and Catherine Daw
Brachers LLP

In partnership with:

DIVERSITY HR
Recruiting HR and Training Professionals





Welcome

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DIVERSITY **HR**
Recruiting HR and Training Professionals



A black and white photograph of a man in a suit standing at a podium in a modern office. He is pointing towards a large white arrow graphic that points from the left side of the frame towards the center. The office has wood-paneled walls and glass partitions. In the background, two other people are seated at a table, engaged in a meeting.

Today's Presenters

Brachers
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Catherine Daw

Partner,
Head of Employment



“ She understands the business goal and is able to effectively translate law for all to understand. ”

“ I found Catherine Daw at Brachers to be a first-class employment lawyer, her knowledgeable advice was clear and her pragmatic style greatly appreciated. ”

Colin Smith

Partner, Employment



“

Responsive and understands the client’s model and requirements.

”

“

He is extremely knowledgeable and very easy to work with. His no-nonsense and pragmatic approach enables sometimes complicated matters to be understood, with associated risks, quickly and easily.

”

Interacting with us

- Hands Up



- Questions



- Polls



Today's Session

- 1 Hour
- 40 minutes presentation and polls
- 20 minutes Q&A

Today's Session

Can I make my employees get vaccinated?

Can I dismiss employees who will not get vaccinated?

Can I make employees take COVID tests?

Can I require my customers be vaccinated?

Poll 1:

***Are you considering
requiring employees
to get vaccinated?***



Can I make an employee take the vaccine?

- No
- It is illegal to impose medical treatment on anyone
- Government does not have the power to compel taking the vaccine as the law stands

Poll 2:

***Are you considering
dismissing employees
who refuse?***



Can I dismiss/refuse to employ?

- Maybe
- It depends
- Nobody knows
- Going to be very difficult to set a one size fits all rule with legal certainty

Can I refuse to employ/dismiss?

Discrimination law

- Disability discrimination
- Philosophical belief/religious discrimination
- Age discrimination
- Sex and pregnancy

Can I refuse to employ/dismiss?

Disability Discrimination

- Indirect Discrimination Risk
- Provision, criterion or practice
- S15 – Discrimination arising from risk
- Reasonable adjustments duty

Can I refuse to employ/dismiss?

Philosophical belief

- Not just anti-vaxers
- Objection to medical treatments?
- Objection to animal products?

Can I refuse to employ/dismiss?

Age discrimination

- Indirect age discrimination risk
- Depends upon national roll out timing and strategy
- Depends on when you look to insist.

Can I refuse to employ/dismiss?

Sex/pregnancy discrimination

- Vaccine not currently recommended for pregnant, breastfeeding or planning to get pregnant.

Can I refuse to employ/dismiss?

Unfair Dismissal

- Is it a reasonable management instruction to insist on vaccination?
- Is it fair to dismiss if they refuse?
- Case by case

Can I refuse to employ/dismiss?

Other Issues

- Data Protection
- Health & Safety Law
- What if the vaccines do turn out to have side effects?

The logic/rationale for vaccination?

- Who does it protect?
- Impact the vaccine has on transmission to others could be key.
- Is a vaccinated employee still contagious?
- Recent results on one vaccine type say yes but less so.
- But only one vaccine type and very preliminary results at present.

Practical Issues

- No current control over getting the vaccine
- No current established way of proving you have had it other than full medical records
- Not currently clear what the lifespan of the vaccine is.
- What requirement would you set to renew?

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Poll 3:

***Are you considering
requiring employees
to get vaccinated?***



Poll 4:

What is your current testing position?



Poll 5:

***Are you considering
requiring customers
to be vaccinated?***



Can I make employees take COVID tests?

- Cannot make them take a test.
- Contractual right/power?
- Can you dismiss if they refuse to participate in a testing program? – Reasons for refusal
- Data Protection aspects - [Testing | ICO](#)
- Health and Safety justification?

Can I make employees take COVID tests?

- Private testing government guidance:

[Coronavirus \(COVID-19\) testing: guidance for employers and third-party healthcare providers - GOV.UK \(www.gov.uk\)](#)

- What test type?
- Test and trace interaction
- TUC position
- Our clients/Us



Customer Vaccinations - What are businesses saying they will do?

- Pimlico Plumbers – payment for worker vaccines.
- Holiday companies – self-declaration, both vaccines, 14 days before travel.

Can I insist my customers are vaccinated?

- No legal basis to force people to have the vaccine
- Green Book ([Immunisation against infectious disease - GOV.UK \(www.gov.uk\)](#)) provides guidance for public health professionals on immunisation.
- Government's position remains that the vaccination is not mandatory.



Can I insist my customers are vaccinated?

- Who are you aiming to protect?
- Would other means be a more proportionate way of protecting your staff/other customers?
- There is not universal acceptance of the vaccination programme.
- Discrimination issues?
- Risk assessments – reviewed in response to new strains.

Data Protection

Under the GDPR, a business has to have a lawful basis for collecting personal data. It must further be transparent with its customers as to:

- Why it is collecting the data;
- How that data will be used;
- How long the data will be retained;
- How customers can obtain copies of their data held by your business.

A person is walking from left to right, pulling a black rolling suitcase. They are wearing yellow pants and dark blue sneakers. They are also carrying a black shoulder bag and holding a smartphone in their left hand. The background is a plain, light-colored wall and floor.

Vaccine Passports

- Not yet available.
- IT solutions are in the process of being developed, Oracle, Microsoft, Workday.
- Seems inevitable?

A diverse group of people is shown in an audience setting. In the foreground, a woman with dark curly hair, wearing a dark blue sleeveless top, is smiling and raising her right hand. Behind her, several other people are visible, including a woman in a blue top and a man in a white shirt and red tie. The background is a brick wall. A large white arrow-shaped graphic points from the left towards the center of the image.

Questions

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