

**NO JAB, NO JOB?
KEY QUESTIONS ABOUT VACCINES
AND THE WORKPLACE**

22 APRIL 2021

*Thank you for joining
The webinar will begin shortly*



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NO JAB, NO JOB?

KEY QUESTIONS ABOUT VACCINES AND THE WORKPLACE

Short lunchtime webinar • Thursday, 22nd April 2021



With the COVID-19 vaccine rollout well underway, you may have questions about how this affects your workforce and your duties as an employer. In our lunchtime webinar we will consider some of the key issues for employers including:

- Who can and can't be vaccinated?
- Why is vaccination a workplace issue?
- Can you require staff to be vaccinated?
- Can you dismiss staff who don't comply with such a requirement?
- If you don't require vaccination, can you encourage it?
- What should go into a Vaccination Policy?
- What are the issues to consider when staff have the vaccine?
- Can you require staff to disclose their vaccination status?
- How should you deal with unvaccinated staff?

Date: Thursday, 22nd April 2021
Time: 12.00pm – 12.05pm: Welcome
12.05pm – 12.35pm: Webinar
12.35pm – 12.45pm: Questions

RSVP: By email to
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by Friday, 16th April 2021

Instructions for joining the
Zoom webinar will be sent out on
Monday, 19th April 2021

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**What is the vaccination timeline and
can everyone be vaccinated?**

Timeline for the UK's vaccine roll out



12 April 2021
Everyone in Phase 1 had
been offered 1st dose
Phase 2 began

31 July 2021
Everyone in Phase 2
to have been offered
1st dose



8 December 2020
Phase 1 began

5 July 2021
Everyone in Phase 1
should have received
2nd dose

23 October 2021
Everyone in Phase 2
should have received
2nd dose

Can everyone be vaccinated?

Cannot be vaccinated

- Under 18s
- People suffering from “long COVID”

Individuals who should seek medical advice

- Pregnant women
- Breastfeeding women
- Immunosuppressed

Can be vaccinated but only with certain vaccines

- People with allergies to products within certain vaccines
- 18 to 29 year olds

Why is vaccination a workplace issue?

Your obligations under health and safety laws

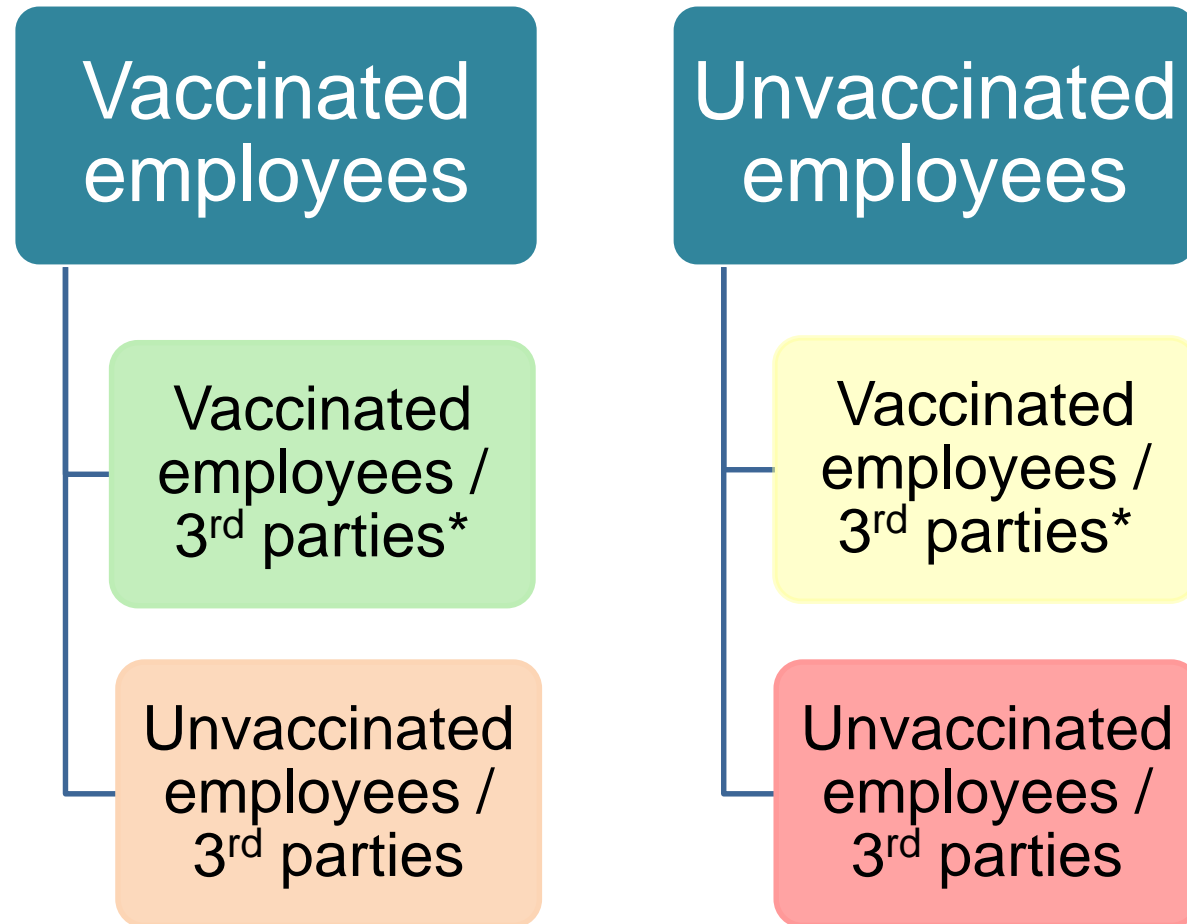
Keep people safe at work

- Duty to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all employees and third parties who are affected by work-related activities

Assess risk and eliminate or control it

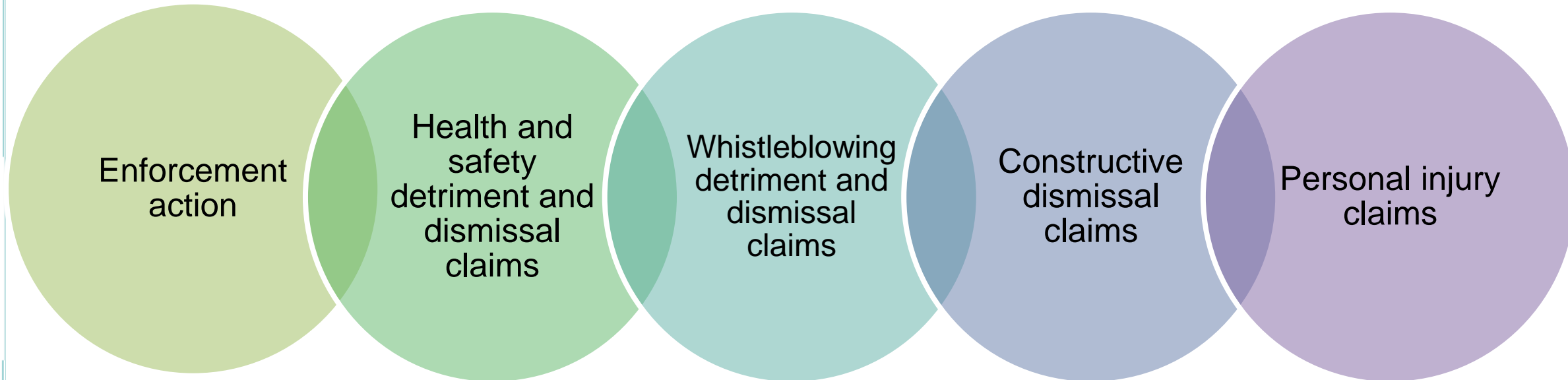
- Identify hazards at work, the risk of harm and how serious it could be
- Eliminate the hazard or, if not possible, take steps to control the risk
- The *COVID-19 Secure Guidelines* provide a framework for how to control risk

The risks of having unvaccinated employees in the workplace



**The risk may be higher for vaccinated individuals who are (i) immunosuppressed; and/or (ii) exposed to new variants of COVID-19.*

The actions or claims you might face if you fail to engage with the issue



Can you require employees to be vaccinated?

Can you require employees to be vaccinated?

Introduce an express contractual term?

- Vaccine refusers are unlikely to agree. Impose unilaterally? Dismiss and offer to re-engage?

Rely on implied duty to comply with reasonable management instructions?

- Is it “reasonable”? Potentially, if you have identified a risk of serious harm or it’s necessary for particular job role (e.g. overseas travel)

Can you dismiss employees who don't comply with a requirement to be vaccinated?

Unfair dismissal

- **Reason?** Misconduct or “some other substantial reason”
- **Have you acted reasonably?** Have you considered alternatives? Have you looked at all the circumstances including why the employee has refused to comply?

Discrimination

- **Indirectly discriminatory?** Potentially, on a number of different grounds e.g. disability, age, race and religion / belief
- **Can it be justified?** The battleground will be whether you have acted proportionately and considered alternatives

**If you don't require vaccination,
can you encourage employees to
be vaccinated? If so, how?**



Consult with staff



Introduce a Vaccination Policy



Q&A session with a GP/OH



Training for line managers



Paid time off to attend apts

What should go into a Vaccination Policy?

Your position and the reasons for it

Balanced information about the vaccine

Approach to paid time off

Approach to vaccine-related sickness

Requirement to disclose vaccination status (if relevant)

Measures in place to manage risks to and from unvaccinated staff

Other COVID-19 secure measures in place

Point of contact

**What are the issues to think about
when employees have the vaccine?**

Paid time off to attend vaccination appointments

- No general right to paid time off
- If you usually permit it then you probably need to allow it (and it may also be a reasonable adjustment for disabled staff)
- Ideally, your approach should align with your approach to having the vaccine

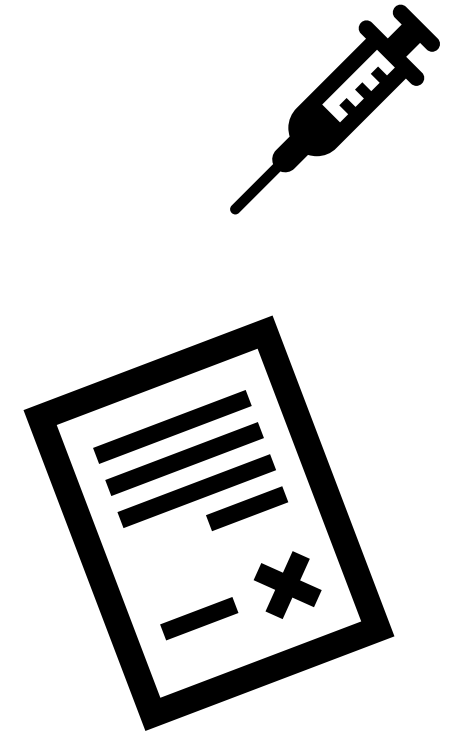
Dealing with vaccination-related sickness

- Vaccination may cause mild illness for up to a week
- Your usual approach to sickness absence and pay will apply
- Consider disregarding for purposes of sickness absence management threshold

**Can you require employees to
disclose their vaccination status?**

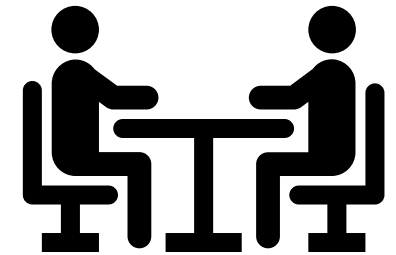
Can you require employees to disclose their vaccination status?

- Probably yes - but health information is “special category data” and higher standards apply to the processing of such data
- You will need a “clear and compelling” reason for recording the information - “just in case” is not enough:
 - Your interest in understanding the vaccination status of the workforce in order to discharge your health and safety duties



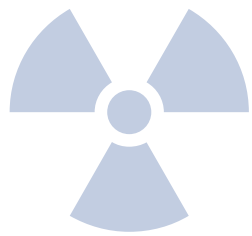
Before collecting the information

- Consider conducting a Data Protection Impact Assessment if the data could have consequences for employees (e.g. denial of employment opportunities)
- Tell employees:
 - ✓ Why you need to collect the information
 - ✓ What it will be used for
 - ✓ Who it will be shared with
 - ✓ How long it will be kept
 - ✓ What decisions may be made based on that data

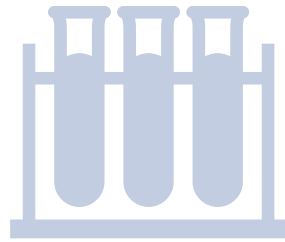


**How should you deal with
unvaccinated employees?**

Risk control measures



Covid-19
Secure
Guideline
measures



Regular
lateral
flow
testing for
all



Face
masks at
work for
all



Changes
to seating
plans / job
roles



Working
from
home

Questions

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