

# Vaccination FAQ

Education (England)

Questions	Advice
<b>General</b>	
<p>Is it a legal requirement to get vaccinated if you are contacted by the government?</p>	<p>No. At present (27/08/2021), it is not a legal requirement to be vaccinated.</p> <p>There are changes to the law that will require care home staff to be double vaccinated from October 2021 but there are no changes to the law envisaged at the moment in respect of education settings.</p>
<p>Should we force employees to be vaccinated?</p>	<p>No, employees should not be forced to receive vaccination. However, if you are considering making vaccination mandatory, you will need to consider on what basis you require this, for example, to minimise the risk of disruption to children’s education due to unvaccinated staff repeatedly having to self-isolate and reducing risks to health and safety. However, you would need to have a clear evidence base to justify why vaccination is mandatory and why alternatives such as social distancing and other measures cannot be used. In addition, existing staff would need to agree to the changes, which means extensive collective consultation if it is likely 20 or more staff will refuse and you want to force through the changes.</p> <p>You also need to consider what you would do if some staff refused to accept the new terms and be vaccinated and the very real risk of claims being brought. Some employees cannot receive the vaccine for health-related reasons; others may have a reason for refusing based on their religious or other belief; some may be reluctant to be vaccinated because of a fear of needles. As these could give rise to discrimination claims if the employee has a protected characteristic, you would need to consider what your legitimate aim is and whether mandatory vaccination as a condition of employment is a proportionate means of achieving that aim.</p> <p>If you decided to dismiss employees for refusing to be vaccinated, this could also give rise to unfair dismissal claims for those over two years’ service and potentially protective awards if 20 or more are dismissed.</p> <p>This is an untested area of law and employers should be aware of the potential risks of making vaccination a mandatory requirement and seek legal advice.</p> <p>It would be prudent to discuss such a proposal with any recognised trade union representatives in schools that have recognition agreements. If you don’t have a recognised trade union, consultation with staff reps will be required if you have 20 or more staff who are likely to refuse.</p>

<p>Can we make it a condition of employment that all new staff are vaccinated?</p>	<p>Potentially yes, as employees with under two years' service don't have unfair dismissal rights. However, there may still be risks from employees who try to bring claims based on their protected characteristic.</p> <p>To mitigate against this, you would need to ensure that you are clear about your legitimate aim and that the requirement for new starters is a proportionate means of achieving that aim. You may want to consider making exceptions for certain types of employees and trying to mitigate the risks in other ways.</p> <p>It would be prudent to discuss such a proposal with any recognised trade union representatives in schools that have recognition agreements or with staff committees or safety reps.</p>
<p>Should we encourage employees to get vaccinated?</p>	<p>Yes. We see this as a key control measure in preventing the spread of the virus and helping to protect everyone within the workplace.</p> <p>If you are requiring employees to be vaccinated as part of your key control measures, then steps should be taken to explain to employees why this is and also try to alleviate any concerns employees may have about the vaccine by, for example, providing official information from relevant health authorities about the vaccine's safety.</p> <p>Information regarding the vaccine can be found on the NHS website, <a href="#">here</a>. Public Health England also has useful information on how to promote vaccination <a href="#">here</a>.</p>
<p>Should we update our current risk assessments to reflect the vaccination programme?</p>	<p>Yes, this is a key control measure in preventing the spread of the virus and needs to be added to existing risk assessments.</p>
<p>If an employer requires employees to be vaccinated, can an employee refuse?</p>	<p>It depends. If the risk assessment identifies vaccination as necessary, and therefore mandatory, requiring an employee to be vaccinated will amount to a reasonable management instruction. Whether an employee can refuse will depend on the employee's reasons, e.g. health, pregnancy, or religion/belief. It will be necessary to consider whether these employees can continue to work without having been vaccinated – this would be done via the risk assessment.</p> <p>If the employee refuses without legitimate reason, then it may be open to the employer to discipline the employee for failing to comply with a reasonable management instruction, which could result in dismissal for gross misconduct in certain circumstances (although this is likely to be rare).</p>

	<p>Also, if the employee cannot continue to undertake their role without being vaccinated, it may be that they can be dismissed fairly for ‘some other substantial reason’ (SOSR). Please see above about mandatory vaccines.</p> <p>It is imperative to properly discuss and consider the reasons for refusal with the employee before taking any such action, as well as whether it is possible for the employee to continue working even though they are not vaccinated – this will depend on what the risk assessment says and the nature of the workplace.</p> <p>You should also consider whether alternative arrangements, such as homeworking, could be put in place.</p> <p>You should seek advice before taking any disciplinary action in these circumstances and note that this area of law is largely untested.</p> <p>More detailed guidance is available in our <a href="#">Vaccination and Testing Guide</a>.</p>
<p>If an employee isn’t double vaccinated and they are required to self-isolate following contact from Test and Trace, can an employer refuse to pay them?</p>	<p>The usual rules around paying SSP (or contractual sick pay if relevant) during a period of self- isolation should still apply: refusing to pay the employee in these circumstances could amount to a breach of contract and unlawful deduction of pay.</p> <p>If support staff are engaged on Green Book terms, then the following will apply:</p> <ul style="list-style-type: none"> <li>• <i>“An employee who is prevented from attending work because of contact with infectious disease shall be entitled to receive normal pay. The period of absence on this account shall not be reckoned against the employee’s entitlements under this scheme.”</i></li> </ul> <p>If teachers’ terms include the Burgundy Book, para 10.3 states that:</p> <ul style="list-style-type: none"> <li>• <i>“When the approved medical practitioner attests that there is evidence to show a reasonable probability that an absence was due to an infectious or contagious illness contracted directly in the course of the teacher’s employment full pay shall be allowed for such period of absence as may be authorised by the approved medical practitioner as being due to the illness, and such absence shall not be reckoned against the teacher’s entitlement to sick leave under paragraph 2 above, though such absences are reckonable for entitlement to Statutory Sick Pay. A teacher residing in a house in which some other person is suffering from an infectious disease shall at once notify the employer and the teacher shall, if required, take such precautions as may be prescribed, provided that if in the opinion of the approved medical practitioner it is considered inadvisable, notwithstanding such precautions, for such teacher to attend duty, full pay shall be allowed during</i></li> </ul>

	<p><i>any enforced absence from duty, such pay being sick pay for the purpose of paragraphs 3 to 7.5 above. This provision will also apply where, in the opinion of an approved medical practitioner, it is inadvisable for a teacher to attend duty for precautionary reasons due to infectious disease in the workplace. The period of the absence under this paragraph shall not be reckoned against the teacher's entitlement to sick leave under paragraph 2 above, though such absences are reckonable for entitlements to Statutory Sick Pay."</i></p> <p>For independent schools and staff not on the Green or Burgundy Books, the contract should determine what they are paid.</p>
<p>If someone is vaccinated, do they still need to follow the workplace control measures?</p>	<p>Yes. <a href="#">NHS guidance</a> states that current control measures should still be followed. They should follow these, including the wearing of face coverings and maintaining social distancing, until further guidance from the government is provided.</p>
<p>If someone is clinically extremely vulnerable (CEV), and has received a COVID vaccine, should they still be classed as this and follow strict social distancing as instructed?</p>	<p>The government's advice is to ensure extra precautions are taken with CEV staff.</p>
<p>Should we give employees time off to receive vaccines?</p>	<p>Yes, the government guidance is to allow staff time off to be vaccinated if necessary during term time.</p>
<p>If an employee needs time off as the feel unwell after receiving a vaccine, are they entitled to SSP?</p>	<p>If the employee is sick and cannot work because of that, they will be entitled to SSP (or contractual sick pay, if applicable).</p>
<p>Should someone still use the NHS Test and Trace app and follow the advice from the NHS if they have been vaccinated?</p>	<p>Yes. Until further guidance is received, we advise that they follow the guidance from the NHS, whether this be through the app or via a telephone conversation.</p>

**This guidance is based on information available as at 27 August 2021. This is an evolving situation. This guidance will be updated as and when there are any developments.**