

# FAQ - Mandatory Vaccination for Health and Social Care Workers



**Our legal experts Napthens answer some of the pressing questions surrounding mandatory vaccination for you.**

## 1. Who falls into scope of the Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) (No.2) 2022 (“Regulations”)?

The requirement to be fully vaccinated and comply with the Regulations will apply to:

- Health and social care workers who are deployed for the purpose of providing CQC regulated activities and have direct face to face contact with people receiving care. This includes those individuals working in general practice and dentistry
- Individuals working in both clinical and non-clinical ancillary roles and regardless of their contracted hours or employment arrangements. As such this also applies to honorary, voluntary, locum, bank and agency workers, independent contractors, students, trainees and other temporary workers, in addition to employed staff

If an individual is unsure if they fall within the scope of the Regulations, they should speak with their line manager as soon as possible.

## **2. What should employers be doing now?**

Employers should be communicating with those individuals that fall within the scope of the Regulations to inform them of the requirement to be fully vaccinated against COVID-19 by the 1st April 2022 deadline and encourage staff to get vaccinated if they have not done so already.

Employers should also inform anyone affected by the Regulations of any key dates, such as the 3rd February 2022, being the date individuals must have received their first dose of the COVID-19 vaccination in order to be fully vaccinated by 1st April 2022 as defined in the Regulations.

## **3. When do individuals need to have had their first dose of the COVID-19 vaccination in order to be fully vaccinated by the 1st April 2022?**

Individuals must have received their first dose of the COVID-19 vaccination by the 3rd February 2022 in order to be fully vaccinated against COVID-19 by the 1st April 2022. The Government guidance currently suggests that there should be a minimum of 8 weeks between first and second doses of the COVID-19 vaccine.

If an individual fails to be fully vaccinated by the 1st April 2022, but intends to become fully vaccinated, then employers will need to consider a common approach of how to deal with these employees e.g. by agreeing a period of unpaid leave for the employee until they become fully vaccinated.

## **4. If an individual is pregnant, do they have a valid exemption?**

Having a short-term medical exemption for short term clinical conditions is a valid exemption to not being fully vaccinated against COVID-19. Pregnancy is considered to be a short-term medical exemption and pregnant women can use a MAT B1 certificate to evidence that they believe they have a short-term medical exemption. However, this exemption will expire 16 weeks after the individual has given birth and the individual should ensure that they have completed the full course of the vaccination by the end of this period.

## **5. How should an employer deal with hesitant individuals?**

If an individual is unsure whether to have the COVID-19 vaccine, employers should take steps to understand the individual's concerns. In addition to this, employers should encourage the individual to speak to their GP or another medical professional for advice on the vaccine.

## 6. Do individuals need to have had a booster dose of the COVID-19 vaccine in order to be fully vaccinated?

Currently, in order for an individual to be considered fully vaccinated, this means they have received two doses of a Medicines and Healthcare products Regulatory Agency approved COVID-19 vaccine. Therefore, an individual does not need to have had a booster dose of the COVID-19 vaccine in order to have had the 'complete' dose of the COVID-19 vaccine.

However, Government guidance is rapidly changing and therefore going forwards, the booster dose of the COVID-19 vaccine may also become mandatory. Currently employers should encourage members of staff to have the booster dose of the COVID-19 vaccine given the scientific research shows it can have a significant positive impact in reducing the severity of symptoms of current COVID variants.

## 7. How can an individual evidence their vaccination status?

Individuals can provide proof of their vaccination status by using:

- The NHS App
- The NHS website – NHS.UK
- The NHS COVID Pass Letter

An NHS appointment card cannot be used as proof of vaccination status.

## 8. How should employers handle vaccination status data?

Collecting an employee's "vaccination status" is considered to be "special category personal data" under the General Data Protection Regulations. Therefore, employers should ensure that any data collected is collected in accordance with their Data Protection Policy and is treated with the utmost care and security.

### 9. If a member of staff does not intend to get vaccinated against COVID-19 and does not have a valid exemption, what should their employer do?

If a member of staff does not wish to be fully vaccinated against COVID-19 and does not have a valid exemption, then employers should arrange to formally meet with that individual to discuss their reasons for why they feel they way. The individual should also be reminded of the mandatory requirements under the Regulations and the potential implications for their ongoing employment.

During the meeting, the employer should explore alternative options potentially available to the individual, including:

- Any possible adjustments to their current role to take them out of the scope of the Regulations
- Restrictions to duties; or
- Redeployment opportunities available

Individuals should be aware that where no suitable alternative options can be facilitated, then a possible outcome may be that the individual may be dismissed from their employment if they remain unvaccinated or have not disclosed their vaccination status. Any dismissal will be on the grounds of contravention of a statutory restriction imposed under the Regulations.

Individuals should be given the opportunity to be accompanied to any meeting which takes place during the formal review process by a trade union representative or work-based colleague.

### 10. What if an individual has recently had COVID-19 and is prevented from having the first dose of the COVID-19 vaccine by the 3rd February 2022?

If an individual has recently been infected by COVID-19, guidance currently recommends that that individual should wait 28 days before getting a dose of any vaccine. Therefore, the individual will be temporarily exempt from the date of their positive test result on the basis that there are clinical reasons of why they should not be vaccinated.

This temporary exemption will last for 42 days from the date of their positive test result (28 days based on clinical advice and a 14 day grace period in order to allow the individual to receive the COVID-19 vaccine).

Employers should ask to see evidence of this individual's positive test result and date.

*If you have any queries in relation to the mandatory COVID-19 requirements, then please do not hesitate to contact a member of Napthens' Employment team.*