

# Vaccination in the workplace at a glance

## A guide for employers



### Start from the position that there is no right to ask employees to confirm their vaccination status

Except in limited circumstances, employers generally do not have a legal basis to process vaccination data. Based on current guidance from the Data Protection Commissioner, the processing of vaccine-related personal data is likely to represent unnecessary and excessive data collection for which no clear legal basis exists.



### Frontline healthcare work may provide a basis on which to seek information for health and safety reasons

There may be situations, such as involving frontline healthcare workers, where vaccination can be considered a necessary safety measure. In these situations, it is likely that an employer will be in a position to lawfully process vaccine-related personal data on the basis of necessity. However, each situation will need to be evaluated on its own merits.



### Consider other measures to ensure safe place of work before looking at vaccination status

The guidance from the Data Protection Commissioner indicates that, in the absence of Public Health guidance indicating otherwise, there are other measures that employers should adopt in the workplace to ensure a safe place of work before considering whether knowledge of vaccination status is a necessary measure.



### Measures such as physical distancing and handwashing are required regardless of vaccine roll-out

The Work Safely Protocol currently states that, irrespective of the vaccination roll-out, Public Health infection prevention and control measures (such as physical distancing, hand hygiene, face coverings and adequate ventilation) and working from home, unless an employee's physical presence in the workplace is necessary, will all need to remain in place until otherwise advised by Public Health bodies.



### Note the voluntary nature of the vaccination programme

The significance of the voluntary nature of the vaccination programme (from the Data Protection Commissioner's perspective) is that it further suggests that a vaccine should not, in general, be considered a workplace safety measure.



### Employees volunteering their vaccination status is still no basis for processing of data

The Data Protection Commissioner has warned

that given the nature of the employer / employee relationship, employees cannot freely consent to the processing of their vaccine status by their employers. Therefore employees should not be asked to give this consent and the fact that an employee's vaccination status may have been volunteered in conversation with that employee does not create a legal basis for the processing of the data. If employers cannot justify the processing of vaccine data on other grounds, the consent ground will not be appropriate.



### Travel abroad and processing of vaccine-related personal data

The fact that employees may be travelling abroad and having to undergo periods of self-isolation on their return should not be used as a method of requiring them to provide data relating to their vaccine status. Instead, the employees should only be asked to indicate a date on which they will be able to return to work.



### Be mindful of employment equality issues which may arise

Employees may have specific reasons for not availing of a vaccine. These could include underlying health conditions, pregnancy or religious grounds. Employers are reminded to alert staff to their Dignity at Work policies and caution against any behaviour or the use of language in the workplace (whether related to vaccination or COVID-19 generally) which may constitute harassment, particularly on the grounds of age, race, religion, disability or gender. Remember that protection from discrimination extends to an employee's connections with others e.g. family members who may be covered by the grounds protected by equality law (known as "discrimination by association").



### Varying duties of unvaccinated employees

There may, in certain limited contexts, be a basis on which to redeploy or otherwise vary the duties of an unvaccinated employee. These contexts are likely to be rare and limited to scenarios where there is a safety risk posed by the employee's continuing to work in the usual way. Employers will be required to justify such measures, which will require evaluation on a case by case basis.



### Keep up to date with latest public health advice

The Data Protection Commissioner notes that her guidance is subject to review if the Public Health advice and laws relating to the nature of the virus, the pandemic and the interplay with vaccination change. Employers are encouraged to keep up to date with latest developments and guidance from relevant State agencies.