

Question:

Can I insist that my PA takes the Coronavirus vaccine?

Answer:

ILG Support recognise that this is a highly contentious issue that must be approached with caution. Employing a PA often involves levels of intimacy not experienced in any other job, even within the health and social care sector.

We understand that perceptions of risk vary greatly which must be taken into account when advising individual employers trying to balance their employment responsibilities with the need to keep themselves and their loved ones safe. Achieving this balance is not an easy task.

We know that employment law does not yield or make concession to individual employers and understand we must be careful to interpret the law proportionately and with compassion.

In the case of PA vaccinations, many individual employers are fearful that their PAs are putting them and often their family at risk by refusing to take the vaccine. Some individual employers are considering disciplinary action or even dismissal.

- **ILG Support take the view that in many cases simply dismissing a PA who is refusing to take the vaccine will be unfair.**
- **Individual employers should enter into a dialogue with their PAs about the vaccine and seek further advice in the event of a difference of opinion.**
- **In some cases, a mandated vaccination programme might be fair if it can be demonstrated that the vaccine is one of a range of measures being implemented to protect somebody who is clinically extremely vulnerable.**

Employers who dismiss an employee for failure to follow an instruction are required to show that the instruction was both reasonable and proportionate. Whilst most employees will be happy to be vaccinated, there are some who will worry about the possible side effects. In all cases it is essential that you discuss your PAs concerns with them. If a PA holds the belief that their health could be at risk by vaccination it should not be ignored or disregarded. An instruction to vaccinate may not be seen as reasonable and proportionate if a PA genuinely holds the belief that their health is at risk. This must be balanced against the risk posed to the employer if the PA refuses to be vaccinated.

According to the governments Covid-19 vaccination [guide for social care staff](#), while vaccinated health and social care staff will be less likely to pass on the infection it is not yet clear how much of an impact this will have. Some vaccinated people could get a mild or asymptomatic infection and therefore still be able to pass the virus on. The Joint Committee on Vaccination and Immunisation (JCVI) [report](#) on priority groups suggests that the vaccine efficacy and any potential impacts on

transmission are being monitored by public health England and data will be considered at the earliest opportunity. It is therefore still too early to draw any firm conclusions beyond a potential reduction in transmission.

For most employers this reduction is not enough to warrant introducing a mandatory vaccination programme or blanket dismissal for refusing to be vaccinated. Particularly where infection control measures and safe working practices are in place to prevent infection.

In our view, based on the current guidance, the application of a mandated vaccination for PAs may be reasonable in cases where the vaccine is one of a range of measures being implemented to protect somebody who is clinically extremely vulnerable. Furthermore, this should only be applied with extreme caution and should not be implemented without seeking advice from ILG Support (or equivalent) to support you in the event of a potential dispute with your PA;

- For example, employers must ensure that their workers do not suffer a detriment on the grounds of a protected characteristic, such as disability or religious belief. Employers must be mindful of the reasons why a PA is unwilling to be vaccinated and seek advice to avoid discriminating unlawfully.
- Individuals also have the right to refuse any kind of medical treatment and cannot be forced to undertake a medical treatment. The Human Rights Act protects an individual's right to personal autonomy and their mental and physical integrity. In short, we can do (or refuse to do) with our bodies as we wish in most cases. A right that must be respected and handled with care.

In summary vaccination is an emotive issue for individual employers and their PAs. Attempting to force an employee to take the vaccination should be seen as a last resort and is a risky position to take. Employers should be encouraged to communicate thoroughly and calmly with their PA(s). Explain why it is sensible for the whole household, including PA's, to have the vaccination and be ready to have an open conversation about its benefits and their concerns. We recommend following government guidance and ensuring sound health and safety measures remain in place while individuals build up their resistance to the virus.

We will continue to monitor government guidance and review and amend this advice note accordingly.

Please note that our answer to this question reflects the law only and it is not in any way an opinion on whether it is sensible to have the vaccine or how effective it is.

DISCLAIMER

The content of this guide is offered for general information purposes only and should not be considered legal advice for any specific matter. For legal advice on a specific issue relating to an individual employer you must ensure to take legal advice on the particular facts of the case. Please call ILG Support on 01476 512 192.