

## Employees & Covid-19 Vaccine – What can employers do to ensure a safe workplace?

The Minister for Health, Stephen Donnelly TD, recently indicated that four million people will be vaccinated by the end of September. Minister Donnelly stated that based on the current plan 700,000 will have received the vaccine by the end of March but he has said that the projected timelines are evolving.

Based on this information, and on the prioritisation of those receiving the vaccine, we expect to see the vast majority of healthy adults receiving the vaccine over late summer and early autumn. Thus, providing some optimism for employers within the Community and Voluntary sector who can start planning a return to the workplace.

### **But what about ensuring employees' health and safety when they return to the workplace? Can employers mandate that all employees be vaccinated?**

Under the Safety, Health and Welfare at Work Act, it is the responsibility of the employer to provide a safe working environment for employees, so it is not unreasonable that an employer would want their workforce vaccinated. The Work Safely Protocol was introduced in November 2020 (an enhanced version of the original Return to Work Protocols launched in May 2020) and it is essential that all employers ensure they are fully implemented if they intend to have employees returning to the workplace, subject to the restriction levels in force. However, while it is highly recommended that everyone receives the Covid-19 vaccine, it is not mandatory in Ireland and a person's fundamental right to bodily integrity is covered under the Irish Constitution.

This leaves employers in a difficult situation; while seeking to ensure a safe workplace, they cannot force employees to get vaccinated and it is highly unlikely that the Government will introduce any laws stating employees are obliged to take the vaccine. So, what are the main considerations for employers?

### **Assess the risk**

Under the Safety, Health and Welfare at Work Act, an employer must carry out a risk assessment of the workplace and any potential risks that have been identified must be addressed, The Work Safely Protocol should be adhered to in all workplaces. It is important to note that scientists are still not clear on whether or not the vaccine prevents the spread of Covid-19, so it is important for employers to insist that all employees follow the safety protocols that are put in place, whether they have been vaccinated or not.

Equally, employees have responsibilities under the Act to work with their employer to protect themselves and their colleagues from potential risks; this could reasonably include the risk of Covid-19 infection. Employees must adhere to all guidelines and protocols implemented by their employers.

Communication is key; while employers cannot force their employees to get vaccinated, they can emphasise the importance that employees would receive it to help return to normal as well as providing as much information from the appropriate sources to educate and inform them. An employer may also highlight legitimate circumstances where vaccination is not recommended.

### **Avoid potential discrimination**

Employees have protections under the Employment Equality Acts 1998 – 2015 from discrimination on nine grounds, including religion, age and disability. An employee may decide not to get the vaccine for a number of reasons that would come under these specific grounds, such as a medical condition or their religious beliefs. Any mandate by an employer that employees need to take the vaccine could constitute discrimination under the Act.

### **Managing employees who refuse vaccination**

There is little an employer can do if an employee refuses to get the vaccine. However, understanding their concerns is important and finding solutions that meet the organisational needs without infringing on their rights is crucial in managing their integration into the workplace. Extending the term of remote working may be an option but this may not be feasible for all organisations within the Community and Voluntary sectors. In any case, employers need to think carefully about any action they take, and the potential legal consequences associated with these actions.

### **Data protection concerns**

As part of assessing the risks, employers will naturally want to know who has or has not been vaccinated before getting people back to the workplace. In order to process personal data, there must be a legal basis to do so, the grounds for which are set out in Article 6 of the General Data Protection Regulations. While employees are not obliged to provide personal medical information in the main, employers may seek vaccination information on the basis that they are meeting their legal obligations under the Safety, Health and Welfare at Work Acts. Realistically it will be up to individual employees to volunteer this type of information to their employer.

If employees volunteer information about whether or not they have been vaccinated, employers should take care not to disclose to other employees who has or has not been vaccinated. In the event that an employee volunteers the fact that they have not nor intend to avail of the vaccine, it should be highlighted, that there may be legitimate medical reasons why someone may not receive the vaccine.

### **Conclusion**

Given the vast majority of the working population won't be returning to the workplace until much later in the year, it is hoped that the majority will have taken up the offer of vaccination. However, planning and communication are key to ensuring a smooth transition when the time comes.

Ensuring health and safety policies and procedures are updated, robust risks assessments are carried out and adhering to the Work Safely Protocol are key to getting people back to the workplace.

Be mindful and respectful of an individual's right not to get vaccinated and plan accordingly by offering other working arrangements where appropriate. And avoid a situation that may constitute discrimination, leading to legal issues.

And, finally, keep a watching brief on the national vaccination programme and public health advice that impacts employers and employees which will help in proceeding safely with a return to the workplace.

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