

Data Protection and Vaccinations

FAQⁱ

Can an employer require their staff to be fully vaccinated before they return to work?

No, the covid-19 vaccination is a voluntary system. From the Data Protection Commission's point of view and the fact that a voluntary system is in place suggests that a vaccine should not in general be considered a workplace safety measure. Irrespective of the vaccination roll-out, Public Health infection prevention and control measures (such as physical distancing, hand hygiene, face coverings, adequate ventilation) and working from home unless an employee's physical presence in the workplace is necessary, will all need to remain in place.

Are there any circumstances in which an employer can apply mandatory vaccinations?

The Data Protection Commission has outlined that there may certain specific situations, such as for frontline healthcare workers, where vaccination can be considered a necessary safety measure. For example, the Medical Council's Guide to Professional Conduct and Ethics for Registered Medical Practitioners states that practitioners *"should be vaccinated against common communicable diseases"*. Reference is also made by the Commission to the vaccination section of the Work Safety Protocol which suggests that there are a limited set of circumstances in which vaccination should actually be offered to employees as a workplace health and safety measure (as provided for under the Safety, Health and Welfare at Work (Biological Agents) Regulations 2013 and 2020). In these situations, it is likely that an employer will be able to lawfully process vaccine-related personal data based on necessity.

Can an employer ask employees for proof of vaccinations?

The Data Protection Commission has outlined that the processing of vaccine data is likely to represent unnecessary and excessive data collection for which no clear legal basis exists and in the absence of public health advice as to what the purpose of such data collection would be.

Information about a person's vaccination status is special category personal data for the purposes of the GDPR. It represents part of their personal health record and is afforded additional protections under data protection law. Thus, employers should implement all such measures that avoid processing the personal data of employees.

Can employers lawfully collect and process information about the status of COVID-19 vaccinations of their employees?

The Data Protection Commission have outlined, in the absence of clear advice from public health authorities in Ireland that it is necessary for all employers to establish vaccination status of employees and workers, the processing of vaccine data is likely to represent unnecessary and excessive data collection for which no clear legal basis exists. This is particularly the case when there is no public health advice pertaining to what the purpose of such data collection would be.

What if an employer receives vaccination information?

The vaccination status of an individual is health data and therefore special category data under Article 9 of the General Data Protection Regulation, and it may only be processed on limited grounds. The Data Protection Commission have outlined that it is not clear that processing vaccination status can be considered a necessary or proportionate measure in most employment situations.

In addition, the long-term efficacy of vaccination in terms of immunity is not yet clear i.e., where new variants may arise, or vaccine top-ups may be required. For these reasons, there does not appear to be a sufficiently evidence-based justification to consider that knowledge and processing of vaccination status can be considered necessary in employment at this time. The processing of personal data in the context of employment takes place in a situation where there is an imbalance between the data subject (employee) and data controller (employer). Therefore, employees should not be asked to consent to the processing of vaccine data as this consent is not likely to be freely given.

For some employees travel is a part of their job. Can the employer require them to advise of their vaccine status?

Where a situation arises that involves an employee travelling abroad, an employer may legitimately need to know when an employee will be available for work following a period of self-isolation. This does not require an employer to be aware of an employee's vaccine status rather the employee should only be asked to indicate a date on which they will be in a position to return to work.

¹ Processing COVID-19 Vaccination Data in the context of Employment, https://www.dataprotection.ie/sites/default/files/uploads/2021-06/Processing%20COVID-19%20Vaccination%20Data%20in%20the%20context%20of%20Employment_0.pdf