



BDA advice

Compulsory COVID vaccination

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From 1 April 2022, people working in the NHS in England will need to be vaccinated against COVID-19. This regulatory change is being made by amending the regulations that are enforced by the CQC. Anyone involved in providing regulated activity, as defined for CQC purposes, will need to be vaccinated from 1 April 2022.

In this advice note, we explain:

- who needs to be vaccinated
- how they need to be vaccinated
- when they need to be vaccinated
- what you should do if people working at your practice refuse to comply with the new rules.

What is the timeframe for the legislation coming into force?

The regulations have been passed into law on 6 January 2022 and come in to force on 1 April 2022.

Those that are currently working in dentistry will need to have had their first COVID-19 vaccine dose by 3 February 2022.

Who will be required to have the vaccine?

The new regulations will require workers who have direct, face to face contact with patients to be vaccinated, subject to limited exceptions.

This will include all clinical staff, as well as non-clinical workers not directly involved in patient care but who nevertheless may have direct, face to-face contact with patients.

Government guidance says that this will include receptionists, practice managers and other administration or cleaning staff. They will also apply where a regulated activity is delivered through self-employed dental professionals, other health professionals, agency workers, trainees and volunteers.

In this guidance, we refer to employees of the practice and to dental professionals. This guidance applies just as much to other health professionals engaged by the practice.

People who do not need to have the vaccine

Some individuals will be exempt from the regulations on medical grounds which would be in line with the Green Book on Immunisation against infectious disease (COVID-19: the green book, [chapter 14a](#)):

- those who are under the age of 18
- those who are clinically exempt from COVID vaccination (see below)
- those who are taking part, or have previously taken part, in a clinical trial for a COVID vaccine
- those who do not have direct, face to face contact with a patient, for example, those providing care remotely, such as through triage or telephone consultations or managerial staff working in sites away from patient areas.

There will be no exemption for those who refuse vaccination due to religious beliefs.

What is covered under medical exemption?

Some individuals are unable to be vaccinated for medical reasons. In these situations, staff can apply for a permanent medical exemption. This includes:

- people receiving end of life care where vaccination is not in the person's best interests
- people with learning disabilities or autistic individuals, or people with a combination of impairments where vaccination cannot be provided through reasonable adjustments
- a person with severe allergies to all currently available vaccines
- those who have had an adverse reaction to the first dose (for example, myocarditis).

These medical exemptions would be in line with the Green Book on Immunisation against infectious disease (COVID-19: the green book, [chapter 14a](#)) and the clinical advice from the Joint Committee of Vaccination and Immunisation (JCVI).

Short-term exemptions will be available for those with short-term medical conditions, for example, people receiving treatment or medication which may interact with the vaccine, or those who contracted Covid so had to wait 28 days before getting the vaccine.

Evidence for a medical exemption

To apply for a permanent medical exemption, staff should phone the NHS Covid Pass service on 119 and ask for an application form.

They will need to give:

1. their name
2. date of birth
3. NHS number (if known) and 4. the name of their GP/clinician.

If they are eligible, they will receive an application form by post. This form should be completed by the staff member and submitted to their GP or relevant clinician for review.

Individuals will automatically be sent the results of their application by post 2-3 weeks after applying.

The decision is final and cannot be appealed. For qualifying staff, they can then use the domestic NHS COVID pass to show their exemption.

The NHS COVID Pass will not show their medical condition.

Pregnant members of staff

Government guidance states that short-term exemptions from compulsory vaccination will also be available as an option for some pregnant women.

JCVI updated their advice on 19 April, which now indicates that women who are pregnant should be offered vaccination at the same time as non-pregnant women, based on their age and clinical risk group.

Pregnant women who choose to use the medical exemption can use their MATB1 form as evidence of their exemption. They do not need to phone the NHS COVID Pass Service. Any mothers returning to work from maternity leave will need to produce evidence that they are fully vaccinated or medically exempt.

It is important to remember that the Royal College of Obstetricians, the Royal College of Midwives, and the UK Tetralogy Service all consider COVID vaccination to be safe, and they all recommend that pregnant women are vaccinated against COVID.

See government advice: [COVID-19 vaccination: women of childbearing age, currently pregnant or breastfeeding](#)

Evidence of contracting Covid before 3 February 2022

UKHSA advice states “that where an individual aged 18 years old and over has recently been infected with COVID-19, they should wait for 28 days (4 weeks) before getting a dose of any vaccine.

For the purposes of the Regulations, individuals will be considered temporarily exempt from the date of their positive test result on the basis that there are clinical reasons why they should not be vaccinated.

Their temporary exemption:

- Will start from the date of their positive test,
- Continues for 42 days from the date of their positive test result,
- The 42 days comprises a 28-day grace period based on clinical advice, and 14 days in which to receive their first dose of COVID-19 vaccine”.

Employees and dental professionals must provide evidence of their positive test and date. This could include a text message after using a rapid lateral flow test kit, or the NHS App for proof of prior infection. They should also provide evidence of their vaccination appointment after the 28-day period.

Where an individual has received their first dose of the vaccine (before the expiry of their temporary exemption of 42 days) and provided evidence, they can continue working beyond 1 April 2022. However, they must receive their second dose within 10 weeks of the first dose. If they fail to get their second dose in this 10- week window they cannot carry on working. Employers should seek advice.

Evidence of vaccination status

Healthcare workers will need to have received a complete course of an authorised COVID vaccination in line with the UK Health Security Agency (UKHSA) guidance, in order to continue to work in a patient facing role. An authorised vaccine is two doses of either the Oxford/AstraZeneca, Pfizer BioNTech, or Moderna.

At present the regulations do not include boosters in what is considered a complete course of vaccination.

Employers need proof of vaccination status to allow their staff and dental professionals to continue in their role.

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

Vaccination status can be evidenced by an NHS Letter and downloaded as a PDF through the NHS COVID App, NHS website (using a personal login).

If an individual has been vaccinated in the EU, they may be able to produce an EU Digital COVID Certificate or a certificate issued by their Member State Health Authority.

Information about the [EU digital COVID-19 certificate](#).

New starters vaccine evidence

All new employees and dental professionals must be vaccinated against COVID-19 unless an exemption applies.

There is a temporary exemption period to allow those joining the practice to start their role without being fully vaccinated, although they must be able to provide the following evidence:

1. Those who join the practice from the date the regulations are passed into law (which is likely to be 1 January 2022) must have had at least one dose of the vaccine by the date they start work and have their second dose no later than 10 weeks from the first dose.
2. Those who join for the first time on or after the 1 April 2022 must have had one dose at least 21 days before their first day of employment and their second dose no later than 10 weeks from the date of the first dose.

Employers must make sure they are aware of the above dates and date of full vaccination and that they ensure they have evidence of this.

Working with existing staff

Recording vaccination or exemption status

The registered person must keep a record of the vaccination or exemption status of staff and dental professionals and the date that the status was last checked.

There is no requirement to keep the medical reason behind the exemption on file. It is sufficient to record whether a person is medically exempt or not.

Employers can process this health (special category data) information provided by a person wanting to prove their vaccination status, in accordance with the Data Protection Act 2018 and the General Data Protection Regulation (GDPR) in the same way the practice can record Hepatitis B vaccination.

Employers cannot accept a photograph identification exemption card downloaded from the internet through various sites such as The Vaccine Control Group or PROMIC. Exemptions must be applied for through the [NHS Pass services](#).

Communicating and consulting the new requirements

You need to plan communications with staff and dental professionals as early as possible about the legal requirement and that they are required to be vaccinated unless any of the exemptions apply. It is important, even at this early stage to collect information on vaccine status.

You should ask for the following from staff members, either:

- evidence that they are fully vaccinated
- evidence that they have received the first dose and have the second dose booked
- evidence that they have the first dose and/or second booked, or
- evidence that they are eligible for an exemption.

These communications should include those who are temporarily away from work on:

- long term sick leave
- family leave
- sabbatical.

You should plan to have meetings with those who have not been able to evidence their vaccines status.

The meeting should support and encourage individuals to take the vaccine unless exempt. You can set your own deadline for when employees and dental professionals need to provide evidence by, so that you can keep an element of control over the situation, however, note clearly that the regulations do not take effect until 1 April 2022.

Do discuss and make notes of:

- the new requirement and how it effects the practice
- why they have not evidenced their vaccination status
- if they are exempt and waiting for confirmation to confirm
- if they have temporary exemption and waiting for information to confirm
- if they are experiencing any difficulties accessing vaccination appointment
- if they do not intend on getting the vaccine and recording the reasons why.

Do consider:

- arranging meetings during working time
- offering paid time off for employed staff to encourage uptake
- sharing government vaccine health information with staff.

There are a range of published resources with information about the vaccine that can be used to support those conversations, all of which are available in 19 different languages:

- [COVID-19 vaccination: guide for adults](#)
- [COVID-19 vaccination: what to expect after vaccination](#)
- [COVID-19 vaccination and blood clotting](#)
- [COVID-19 vaccination: women of childbearing age, currently pregnant or breastfeeding](#)
- [COVID-19 vaccination: easy-read leaflets](#)
- [COVID-19 vaccination: The spectrum of vaccine acceptance](#)
- [NHS England and NHS Improvement London: COVID-19 vaccine communication materials](#) (videos in different languages)

Formal meetings

If an employee does not provide evidence by your deadline, you should invite them to a formal meeting. The purpose of the meeting is to find out why they have failed to provide this evidence and to discuss the risks of dismissal for continued failure to provide the required evidence. The following actions will depend on the employee's response and reasons behind their failure. A further formal meeting will be required to explore redeployment, a further opportunity to provide evidence and lastly dismissal.

Considering redeployment

You need to consider the redeployment of unvaccinated staff in this process. A failure to fully consider and explore alternative employment is likely to make any subsequent dismissal unfair and you could be at risk of an employment claim.

That does not mean you have to redeploy unvaccinated staff. You do need to consider it sensibly.

You need to consider whether there is a role at the practice the member of staff could do which does not have any face to face patient contact. You should take into consideration, the employee's skills, experience, qualifications and whether they could perform the role with some training.

When considering the specific role, it is for the employee to decide whether or not they wish to accept the alternative role. Therefore, we recommend communicating the full details of the alternative role in writing. This will allow the employee to make an informed decision.

Where there is more than one employee that may be suitable for an alternative role, you should invite employees to apply or a least confirm their interest in the position in writing. Where you

receive more than one application or written interest for the vacancies, a fair selection process will need to be implemented.

There is no requirement that the alternative role must be the same status or pay as the previous role.

Failure to obtain the seconded dose by 31 March 2022

This consideration is for those staff who have had the first dose and confirm they are willing to complete the vaccine dose of 2 vaccines, but they are not in a position to have the second until after April 2022, due to unforeseen or reasonable circumstances.

In this situation you should discuss the following acceptable options:

- for your employee to be temporarily redeployed to an alternative non-contact facing position, if one is available
- a period of annual leave
- enforce a period of annual leave, provided the correct period of notice is given, or
- agree a period of unpaid leave.

Dental practices ought to consider the length of time that an employee is likely to be unable to work and the ability of the practice to cope with a short period of absence.

Where it is likely that an employee will secure a second vaccination or medical exemption within a reasonable time-period, and the employer chooses to dismiss without considering the above options, they may risk an unfair dismissal claim.

Dismissing staff who do not comply with the regulations

If you dismiss an employee and the employee brings a claim of unfair dismissal, you must demonstrate that it was fair. A claim of unfair dismissal can be brought by employees with two or more years' continuous service up to the date when the dismissal takes effect (expiry of the notice period).

Self-employed dental and other health professionals are unlikely to be able to claim unfair dismissal; they would first need to show that they are - in reality - employed.

If you follow a fair process, you are likely to be able to defend a claim of unfair dismissal brought by an employee you have dismissed because they refused to have a COVID-19 vaccine.

Workers and employees under two years' service do not have the same unfair dismissal protection, but both workers and employees are protected under the Equality Act 2010.

The process of a fair dismissal

The first step is to inform employees about the legal requirement to have the COVID vaccination and that they have been identified as falling within its scope. It is important, even at this early stage, that employees are made aware that their failure to provide necessary evidence is likely to result in their redeployment or their dismissal.

Where a practice has reason and is contemplating dismissal, they must follow a fair procedure and be able to demonstrate they have acted fairly.

The steps to consider taking before dismissing an employee include:

- communicating the new requirements to an employee. Here is a template [letter to staff](#).
- consulting and inviting an employee to a meeting to allow the employee to explain their circumstances, and to warn the employee of the risk of dismissal if they do not provide evidence they are vaccinated or exempt within specified timescales. We have provided a template [invitation to meeting letter to employed staff](#).
- deciding on an outcome such as waiting for evidence of medical exemption, temporary exemption, encouraging the employees that are hesitant and communicating timescales to the employee. We have provided the following template letters [Outcome of first meeting with employed staff](#) and [No Further Action](#).
- inviting an employee to a second meeting to allow the employee to explain their circumstances and any reasons they believe they should not be dismissed. Within this meeting you should explore any redeployment options and timescales if they wish to get vaccinated. The employee has the right to be accompanied to this meeting. We have provided [a template letter invitation to second formal meeting](#) letter to employed staff.
- deciding on an outcome and [communicating the outcome to the employee by letter](#).
- providing a right of appeal against dismissal.

You need to consider whether to reinstate a dismissed employee on appeal, where they complete a vaccination course or obtain a medical exemption after dismissal. In these circumstances, agreeing periods of leave may be an appropriate alternative to dismissal.

Notice of termination and pay

For employed staff whose contracts are terminated because they do not comply with the regulations, you must give notice of termination in line with their contractual entitlement.

An employee's contract of employment should include the right to receive notice of termination of employment. The minimum notice period is laid down by legislation:

- at least one week after one month's service
- at least two weeks after two years' service
- thereafter an additional week's notice for each additional year of service up to a maximum of 12 weeks' notice.

Where the contractual notice is greater than the statutory notice, you must provide the contractual notice. If your contract of employment allows, you can pay your staff in lieu of notice. Even if your contract of employment does not contain a clause entitling you to pay staff in lieu of notice, you may have to if their notice period ends after 1 April 2022.

Generally, in these cases you should make all attempts to issue the notice correctly adhering to all of the correct timescales and processes.

Notice of termination for self-employed dental professionals

You should engage with self-employed dental and other health professionals to discuss the requirement to be vaccinated. We have provided a template [letter](#).

For self-employed dental professionals who do not comply with the regulations, you must provide the correct contractual notice. We have provided a template [letter](#).

Associate dentists should be engaged under a written associate agreement. That associate agreement will provide for notice of termination. Often either party can terminate the agreement for any reason by giving three months' notice of termination. Sometimes the length of notice is longer than three months. Contracts often also have clauses allowing the practice to terminate the associate agreement immediately under certain circumstances.

If the BDA model associate agreement, one of the conditions allowing the practice owner to terminate immediately is if the associate puts the practice owner's CQC registration at risk. Allowing an unvaccinated associate to work after 1 April 2022 is likely to put the practice owner's CQC registration at risk.

The parties should also consider whether there is a locum provision that would allow the associate to engage a vaccinated locum to work in their place.

You should seek advice before terminating without notice.

The parties should try to work together to avoid a dispute and in doing so may wish to mutually agree an earlier termination date in writing.

We are currently working on further advice to members in relation to mandatory vaccinations and contracts with self-employed dental and other health professionals.

Discrimination

Employees and workers may also try to claim you have unlawfully discriminated against them by dismissing them or ending their contracts. An associate dentist could claim they are a worker of the practice and therefore entitled to protection against discrimination; although it is far from certain that such a claim would succeed.

At present, we believe it would be easy to defend such a claim of discrimination because the practice is simply doing what it needs to do to comply with the law. However, it is important that the practice does work with all members of the dental team to understand concerns and try to address them.

CQC enforcement

It will be the role of the Quality Care Commission (CQC) to monitor and take enforcement action in appropriate cases.

There for when a practice is inspected, the registered person has to provide evidence that all clinical staff, as well as non-clinical workers not directly involved in patient care but who nevertheless may have direct, face to-face contact with patients have been vaccinated (unless exempt).

At the time of writing, the regulations have not yet come into force and the CQC is waiting before it gives further guidance.

Further information on [CQC's enforcement policy](#)

Other resources

NHS England publications:

Vaccination as a condition of deployment (VCOD) for healthcare workers:

- [Phase 1 – Planning and preparation](#)
- [FAQs](#)