

Fact sheet for employees who are facing employer action regarding mandatory vaccination refusal

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This fact sheet has been independently collated to provide information primarily to health workers who are facing action from their employer regarding the recent government decision to mandate vaccines for care staff and NHS workers.

Due to this change in direction from the government there is today limited public information available to support those workers who exercise their right to freedom by refusing the job.

The author is a non-clinical HR professional who offers practical tips and guidance, this document in no way covers all aspects of employment law inside or outside of a clinical environment; it does however seek to provide information and guidance for those that need it.

For employees who work in a clinical setting it may be useful to review the following information which makes reference to risk assessment, duty of care and the Green book. This link is not pro-freedom of choice however it does state the legal facts as we know them today:

<https://bmalaw.co.uk/can-employers-force-the-vaccine/>

The purpose of this fact sheet is to provide high level guidance should your employer act against your decision to refuse the job. It is important to note that there is not a one size fits all approach here, and that employment contracts and workplace situations will vary between organisation to organisation as do individual sets of circumstances and therefore the information contained within this document should be applied where the situation allows.

Ultimately the legal system is very complex, and as a result this document has been split into two sections. Section 1 covers practical tips for you, and section 2 covers more detailed content, it's advisable to read both if you can, so that you have a broad understanding of your rights.

Section 1: Practical advice

1, I'm being asked at work if I want the job, what do I say?

Simply thank your employer for their offer, however state that it is against your beliefs and that you trust that they will respect your decision. You can follow up in writing and confirm that you do not wish to be contacted again regarding this matter, and in doing so you thank them for respecting your right of free belief.

It is not necessary for you to substantiate your beliefs, and it is advisable that you do not enter into a dialogue which may be judged as implicitly being an "anti-vaxxer" The outcome here is to remove yourself from any further dialogues regarding mandatory jobs.

Later on, should you feel that you are being harassed or discriminated against based on your decision not to accept the mandatory job then you can take action as per the policy that applies to bullying, harassment or discrimination. Please note that this factsheet focuses on employees who

are facing disciplinary action because of their decision not to accept the job and not on aspects of bullying or harassment. Further information on bullying and harassment in the workplace can be found here:

[Discrimination, bullying and harassment | Acas](#)

2, I'm being asked to complete a survey or form to state my intention about taking the job, or if I have already had it, what do I do, I don't want to be labelled as an "anti-vaxxer"

The collection and use of your personal data changed a couple of years ago under the new GDPR act <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/>

This act changes the way that employers handle, process and store your information. You are not obliged to complete the forms, answer any survey, or comply with the request for information. You absolutely should not sign any documentation stating your vaccination status, or your intentions toward the job.

Failure to provide this information is not in any way a breach of contract. Should your manager or HR representative claim that the form or survey completion is "reasonable management request" it is not. If pushed, you can email your line manager to state that you are declining the job and use the supporting information in the (1) above to help you in doing this.

3, If you find yourself in a position whereby your employer is proposing to take disciplinary action because of your decision to not receive the job, then please take the following steps:

Importantly if you have less than two years continuous service then you have somewhat less employment rights and your employer may follow a different process, please read section 2 below in this scenario if this applies to you.

If you have already refused the job and if you have more than 2 years continuous service your employer may invite you to a meeting, write to you, or call you. In each of these circumstances it is very important to ask for a written confirmation of their request, as getting the request in writing will form the basis of your response during and after the meeting together with providing the necessary paper trail should legal proceedings be required.

Before any disciplinary proceedings take place, it would be proper to expect you to formally or informally be requested to take the job, and your refusal to do so should have been noted and confirmed back to you. A leaflet in the canteen or a pre-booked appointment requesting you take the job is not enough.

4, I have refused the job and HR have invited me to a disciplinary meeting, what should I do?

Should you decide not to comply with the request to take the job, it must be made clear to you what impact this will have on your employment. Essentially you want to know on what grounds is the disciplinary action is being taken as you are upholding your beliefs for not taking the job.

It's very important that you take the following steps:

- make sure you have a copy of your employee handbook, your contract of employment and any policy documents that relate to dismissal, grievance procedure and you read these in full. Highlight relevant sections that apply.

- it's highly unlikely that your contract of employment will spell out the job as mandatory, although vaccinations may be cited, so you will need to check for your personal eligibility to this point. Never ever re-sign a contract of employment that introduces a mandatory job clause. Your current contract of employment must always be honoured, and you cannot be dismissed for refusing to sign an updated contract.
- gather any internal information that is available that states the requirement for taking the job.
- don't enter into debate or argument with your employer about being called forwards for the disciplinary hearing, read through this fact sheet to support you with the next steps that will take place
- remain as calm and as collected as possible, you'll need to present yourself as rationale and credible throughout the process and most likely your resolve will be tested to the limits; which doesn't necessarily mean that you can't achieve the outcome that you are seeking to achieve
- In order to successfully challenge the decision to be jabbed, it is extremely important to present that you are being directly discriminated against, and that you do not fall into the category of an "anit-vaxxer" your decision not to jab is based on your beliefs, which in an employment setting are not open to being challenged.

If your employer explains that they will take disciplinary action towards you will be invited to a series of disciplinary meetings, or hearings. These meetings must:

- be arranged in good time e.g. with advance notice, and in writing
- you must legally be advised of your right to be accompanied by a colleague, representative or trade union rep (they cannot answer questions on your behalf, however you are allowed to confer with them during the meeting, and you can call for a break in the meeting to do so, but don't overdue this)
- follow the internal policy and guidelines – hence why it's important to have a copy of your employee handbook and any relevant policies so you know what to expect

5, What happens in the disciplinary meeting?

The first meeting will usually be with HR and your manager or person nominated to run the meeting. If you have chosen to be accompanied by a colleague, then they can also take notes. Prepare your questions in advance and tick them off as you go, you can take your own notes if you wish. You can also ask for a break if you need one.

During the first meeting HR or your employer will explain the basis for the disciplinary action, the meeting must have minutes, and you have the right to copies of these minutes following the meeting. After the meeting send an email to request copies and keep all written correspondence in a file as you may need to refer to it later.

During the meeting stay cool calm and collected throughout, this is easier said than done, but try your best. You will most likely be provided with information to argue the case for accepting the job during the meeting, or asked why you are refusing it, and it's likely that pre-prepared statements will be put to you. Resist the urge to argue against these statements, as there are also pre-prepared

counter arguments that will be communicated back to you and the conversation risks spiralling into a circular debate.

Try and stick to the below points and compliment these with input that you see relevant to your personal scenario.

For now, the following may be reasonable counter proposals:

- Firstly, the jab is against my beliefs, and I believe that I am being directly discriminated against based on my beliefs. Can you please explain how this is not the case for the action being brought against me under this process?
- The mandate to take the jab is an infringement of my Human rights. Everyone has human rights under the Human Rights Act. Can you please explain how this is not the case for the action being brought against me under this process?
- Your life is as important as the lives of people that you are trying to protect, this is covered in article 2 of the Human Rights Act. Can you please explain how this is not the case for the action being brought against me under this process?
- Article 9 of the Human Rights Act states that Everyone is allowed to have their own opinions. Staff in public services can't force you to change what you think or believe in. Can you please explain how this is not the case for the action being brought against me under this process?
- Every one of us still has the right to autonomy (Article 8, Human Rights Act), to have a say over our body and life. We also all have the right to freedom of thought, conscience, and religion (Article 9, Human Rights Act), to hold and express our own opinions and beliefs. Can you please explain how this is not the case for the action being brought against me under this process?
- Currently there are no statutory provisions which would allow any UK government to force individuals to become vaccinated. The Public Health (Control of Disease) Act 1984 actually provides for the opposite, it specifically states that members of the public should not be compelled to undergo any mandatory medical treatment, including vaccinations. Why am I being directly discriminated against, based on my beliefs?
- Article 8 of the European Convention on Human Rights protects people from being interfered with physically or psychologically, which includes mandatory vaccinations. Any legislation compelling vaccination would therefore likely be deemed incompatible with Article 8. Why am I being directly discriminated against, based on my beliefs?

Once the meeting attendees have responded to your points, its fine to move on. The meeting is not about debating fact or logic, it's about moving a process along to an end conclusion.

It's likely that you will be heavily challenged during the meeting, and it's advisable not to cite external reference points available unless they form part of law or policy. Whilst external sources such as social media and other reports are absolutely important, they may not have legal standing and they may install the opinion that you are an "anit-vaxxer".

The above points that are being suggested to raise are not exhaustive, and those working in a clinical setting may have further points. The basis for raising these points is to ensure that you are being heard and responded to, and that you are being treated fairly and equally to others. You should

expect full and clear responses. If you do not receive fair and clear responses please request in writing, a response to your request for information.

It's important that the reasons for action being taken against you by your employer are clear and your reasons for not agreeing with these actions are based on your beliefs and your rights. The meeting with your employer is not about convincing them to change their minds about the current Covid19 situation, it's about understanding the case against you and challenging this case by stating your rights, namely your rights as an employee, and your rights as a human.

The meeting will most likely be closed without an outcome being reached at that point. You can expect a timely follow up which includes the meeting notes and next meeting date.

If a conclusion is reached during the first meeting i.e. you are going to be dismissed because you refuse the job and that's the policy, then the process would seem to have been rushed. You will need to refer to your internal policy to see if this is the case however and raise a complaint or follow the appeals procedure.

6, What happens after the initial disciplinary meeting?

Simply, your employer and HR will be trying to find a way to respond to your points, and work within their policy to take the disciplinary proceedings further i.e. termination of contract or redeployment.

It's likely that a series of meetings will be held, and that the later meetings (usually 2 or 3 in total) will attempt to come back to provide justification as to why your employer can terminate your contract. It's important that your employer responds to all the points you raise in relation to your rights. Again, as employment contracts and policies vary greatly, before the second meeting it's advisable to try and get some legal support and to share the meeting minutes, and the points being raised against you so that you have proper legal guidance. If you can't get legal support, check back against your contract of employment and employment policies to check that everything is being followed correctly. Ask the following questions, and have them noted:

- Can you explain the steps in the disciplinary process?
- Is this matter being brought against me in line with that process?
- Can you run me through where it states in my contract of employment that the job is mandatory?
- Can you run me through the policy on discrimination, as I believe that I am being directly discriminated against due to my beliefs?
- Where are we now in the process, what are the next steps?
- What is the appeal process, please explain my right to appeal?
- What is my right to make reasonable adjustments?

Reasonable adjustments are an obligation to make workplace adjustments based on your specific personal needs. These adjustments do differ vastly based on the employment setting. If the NHS are mandating the job and saying that you cannot perform your role as a front-line nurse, for example you may wish to request to be redeployed to a desk job. It's acknowledged that this may absolutely not ideal, but if you have a mortgage to pay this may be your only option and your employer has a duty to explore this and to provide justification as to why, or why not your requested reasonable adjustments cannot be accommodated.

The disciplinary meetings may be repetitious and tough going for you, essentially you want to keep the meetings going for as long as they are required to ensure that you are satisfied that your beliefs are being upheld and that you are being treated equally and fairly, and in line with policy. The outcome of the process for you is that the disciplinary process is cancelled due to the evidence that you provide.

7, What do I do if I am served notice of termination?

If you haven't already sought legal support, and want to fight the termination decision, then this is the time to do so, follow the link below and try your best to get some free legal representation.

If through the course of the disciplinary proceedings (as this is most likely the process that your employer will decide to take) your employer gives you notice of termination then as unfortunate as this is you still have the right to appeal and you should invoke this right, again in writing and expect that your appeal should be heard in accordance with the appeal policy.

This is most likely going to mean that you will be asked to put your appeal in writing and that your appeal will be heard by someone who is independent to the disciplinary process. You may or may not be invited to a hearing meeting, you may only get a written response to your appeal.

You will need to gather evidence to support your appeal:

- state how you do not agree with the decision first and foremost, and on what basis. This is where you will need to refer to the minutes from the disciplinary process, together with the policy and contractual information that you have.
- were all your questions answered in full regarding the basis for your termination? You need to know what exactly the grounds for the decision that has been reached.
- has policy been breached, is there a breach of contract i.e. you have been asked to do something that is not in your contract of employment?
- have others who are also being terminated being treated the same way, is equity in place if challenged at a later date?
- have you been directly discriminated against - you believe that you have been due to your beliefs not being respected or heard?

Finally, if your employer offers you a settlement agreement or a buyout please be aware that by paying you off, they are also requiring that you sign up to a set of specific legally binding terms. If this option is presented to you it's vitally important that you instruct a legal advisor to inform you on exactly what you are agreeing to by entering into a settlement agreement with your employer.

Ultimately the processes described above are emotionally charged, time consuming and challenging. It's advisable to focus on your own personal set of circumstances and the outcome that you want to achieve. The more people that resist the mandatory job, the greater the legal precedence grows, and this makes it harder for employers to force the job onto others. By taking the first tough, bold steps now, and by being at the front line of exercising your rights you are in fact paving the way for others to follow. Hence why it's absolutely crucial to maintain that your beliefs are your beliefs, and that your beliefs are supported by the Human Rights and Equality Acts and that you are being directly discriminated against because of your beliefs.

As more and more people are being pushed to accept the job it's important that we share experiences and knowledge so that we can use these cases to build stronger arguments and share what works well. We encourage you to share your experiences and learnings so that we can develop more robust supporting information that can be more widely distributed.

Good luck everyone, you can do it.

Section 2 further information

I need legal advice, but I can't afford it, what do I do?

There is a range of free legal advice out there. Citizens Advice are obliged to provide contacts for your specific needs, it may be in your favour to state that you have been unfairly dismissed, or are being called to a disciplinary hearing and keep the reasons for dismissal between yourself and your legal advisor, as per legal privilege

[Getting free legal advice | The Law Society](#)

I want to take legal action, where to I start?

This recent article outlines how health care professionals have taken legal action, and it may be worthwhile seeing if the author of the article can refer you to the legal advisor involved.

[More Than 100 Health Care Professionals and Staff Sue Hospital Over Vaccine Mandate, Warn Employees Are Not Human 'Guinea Pigs' – Unity News Network](#)

What about my Human Rights?

This document outlines Human Rights, it not absolutely supporting the freedom of your decision to refuse the job, however it may be useful to read through as a summary of your Human Rights.

[The Covid-19 Vaccine and Human Rights: A short guide | British Institute of Human Rights \(bihr.org.uk\)](#)

What are my employment rights should my employer take disciplinary action towards me for choosing not to receive the job?

This will vary from situation to situation, broadly speaking if you have been under contract for less than 2 years you will have less employment rights, and it may be easier to be dismissed. In all cases, if you find yourself dismissed you should seek legal advice, the following is a brief summary however your legal advisor will provide much more information as part of their service to you.

Generally speaking, employees need two years' continuous employment before they can complain to an Employment Tribunal that their dismissal was unfair; being either procedurally unfair (e.g. lacked proper process) or substantively unfair (e.g. too severe a sanction) or both.

It is however vital that employers realise there are still claims that can be made in that first two-year period. Colloquially, these are referred to as 'day one claims'.

Automatically Unfair Dismissal

Claims for most types of automatically unfair dismissal can be made without two years' service including where a dismissal is:

- in connection with an application for flexible working;
- for a health and safety reason e.g. refusing to take the job
- related to the National Minimum Wage;
- for a reason connected with rights under the Working Time Regulations; and / or
- in connection with exercising the right to be accompanied to a disciplinary or grievance hearing.

Discrimination

If you have less than 2 years of continuous service, your biggest ally will be the Equality Act 2010 as this act protects employees with protected characteristics against discrimination regardless of their length of service. More information on exactly how the mandatory vaccine programme is a direct breach of the Equality Act 2010 follows.

Whistleblowing

Dismissing an employee for making a protected disclosure (commonly known as ‘blowing the whistle’) is unlawful.

An employer who responds to a whistle-blower by dismissing them, or even just treating them detrimentally, could all too easily find themselves on the wrong end of a whistleblowing claim irrespective of the whistle-blower’s length of service. As such, that employee with less than two years’ service, making their employer tear their hair out with their constant complaints about perceived health and safety risks, might not be the risk-free dismissal they seem to be at first glance.

For discrimination and whistleblowing claims, unlike with unfair dismissal claims (where the compensatory award is capped at the lesser of 52 weeks’ gross pay or £88,519 (at the time of writing), compensation is uncapped.

Breach of contract

Any party to a contract can make a claim in response to a breach of contract from the point in time that the contract is in force.

The other thing to look out for is whether the Staff Handbook forms part of an employee’s contract. If so, policies or procedures relevant to a dismissal, e.g. a disciplinary policy or a redundancy policy, may give rise to a breach of contract claim if not complied with.

If I refuse to allow my employer to mandate the job for me, what might happen to my employment, can I be fired?

This is the most important question for many people, and the outcome will be different based on each case. In some cases, the outcome may be that your employment is terminated. In this case there is of course a personal impact to you as you have lost your job, however as a result of your termination you have the right to appeal the decision and take your case to an employment tribunal, and if successful you can be awarded a compensatory amount through legal proceedings. It is important to remember that should an NHS worker be successful in an employment tribunal then this may create impetus for legal professionals who represent workers who have been dismissed due to their refusal for the job to successfully win future tribunal cases, and as such this might start the wheels turning in the right way for others who face themselves in similar situations. It’s highly

unlikely that employment will be reinstated, as the request from the employer remains the same i.e. take the job, and the refusal from the employee remains the same. You may however keep your employment and be redeployed into another role.

Taking the job is directly discriminating against my beliefs, right?

Discrimination claims are brought based on one of 9 protected characteristics set out in the Equality Act 2010. These characteristics include disability, age, sex, pregnancy/maternity and religion or belief. If you are challenged on your decision not to job, its important to make it clear that it is your belief, and to not feel that you need to justify your beliefs. We wouldn't ask someone of another faith to enter into a debate about their religious beliefs, and you should not also be asked to further justify your beliefs, which may be beliefs that are not shared by others. Try not to get drawn into a discussion or a debate. Despite the array of evidence that we will have seen regarding the jabs, its important again to be seen as strong in your position and not defending your beliefs.

Therefore, the most likely protected characteristics to be relevant when looking at compulsory vaccines would be disability and religion or belief.

What about a disabled employee who argues that having a vaccine is dangerous to them because of their disability? Their refusal to be vaccinated would be for a reason associated with a disability. This is theoretically possible but in practice will arise only very rarely.

Or perhaps somebody claiming a vaccination was against their religion? One example might be a Muslim employee who refuses a vaccine on the grounds that it contains gelatine and therefore isn't Halal. Compulsory workplace vaccination here could be indirectly discriminatory on the grounds of religion.

Vaccine hesitancy may not fall into any protected characteristic under the Equality Act; but there has been some discussion as to whether refusal for the job could come under the protected characteristic of "belief". Hence why the stance that if you refuse the job, its because of your beliefs, again you don't need to justify how you developed your beliefs, they are your beliefs.

In order to be classed as a belief which affords protection under discrimination law, it would need to be shown that you hold a genuine, important, cohesive belief that relates to a weighty and substantial aspect of human life i.e. your freedom of choice and freedom of what you decide to put into your body. There was a recent tribunal case last year which held that ethical veganism was capable of protection. If your case reaches tribunal then you would need to convince a tribunal that your belief was "worthy of respect in a democratic society"

I work in a care home, and I'm being pressured due to the high-risk category of my patients, what can I do?

Under the Health and Safety at Work Act 1974, employers may have a duty to ensure a safe working environment by mandating vaccination of their employees in circumstances where they are engaged with and will have close contact with clinically vulnerable members of the public or other colleagues.

For example, it could be argued that a policy requiring a care home employee to have a vaccination, and disciplining them if they refuse, is reasonable due to the high-risk nature of their work and failure to vaccinate could create a serious and immediate health and safety risk to others, which ultimately justifies dismissal or disciplinary action.

However, it's not quite that simple, and any employer requiring a vaccine would need to balance the proportionality of interfering with an employee's human rights against the risk posed and the amount the risk is reduced by vaccination.

Essentially, does the vaccine reduce transmission or does it simply suppress symptoms in a carrier? It is this information that would inform an employment tribunal as to the reasonableness and proportionality of requiring vaccines in a high-risk workplace.

Given the high level of interference a vaccine policy has on Article 8 rights, a high standard of justification is needed for such action to be proportionate and therefore lawful.