



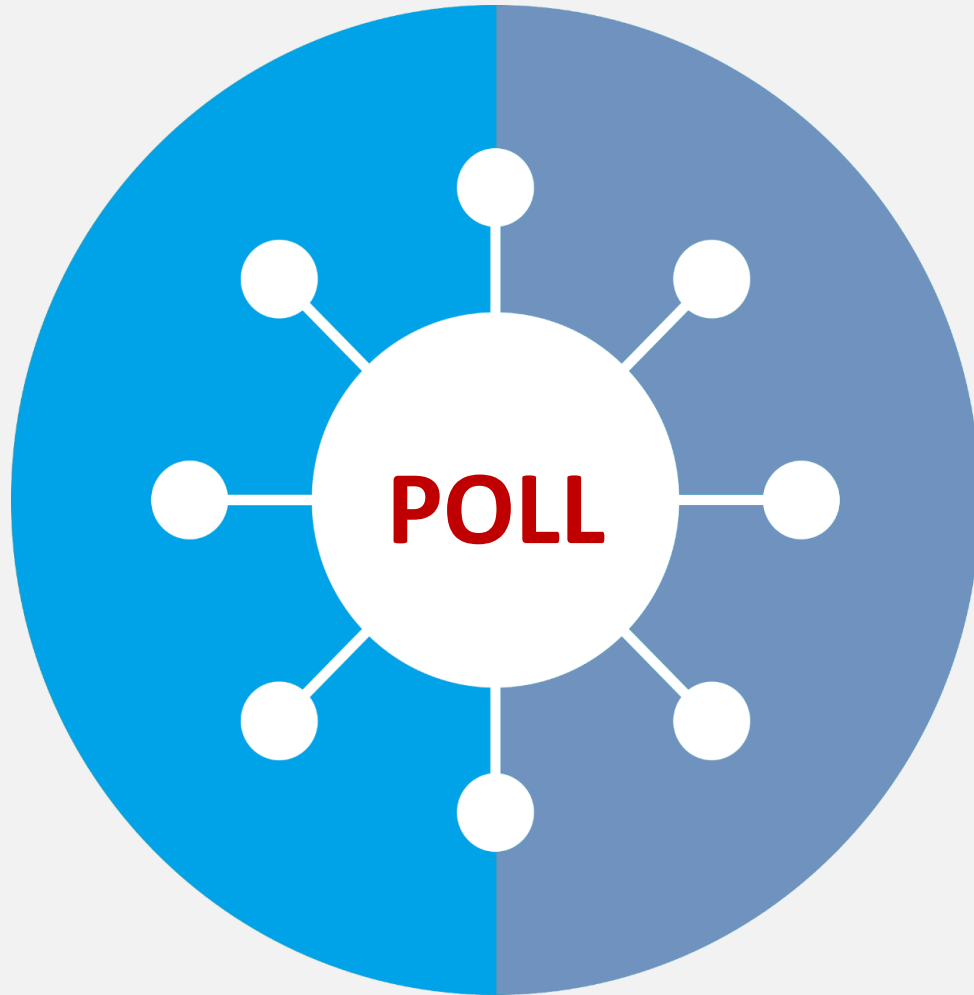
WRIGLEYS
— SOLICITORS —

Can employers insist that staff have the Covid vaccine?

MACC - 15 July 2021

Alacoque Marvin
Solicitor

Can employers require staff to have the Covid vaccine?



Vaccination and your organisation

Compulsory vaccination for care home staff

Response to Government consultation – 16 June

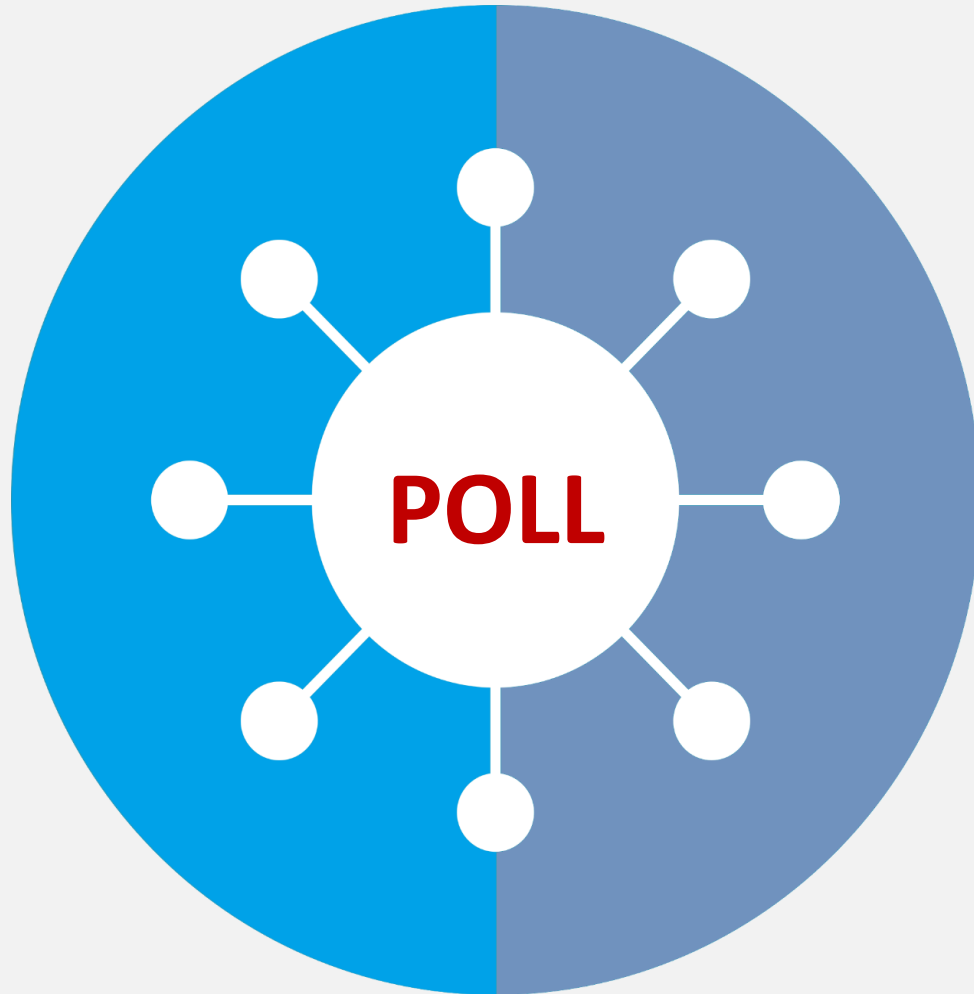
Proposals:

- CQC requirement for all CQC regulated residential care homes
- Applies to all staff, contractors and volunteers who enter the home
- Very limited medical exemptions
- 16 week grace period

Considering similar proposals for NHS/social care settings

Considering extending to other vaccines

Your views on compulsory vaccination for staff



- Compulsory vaccination in health and social care settings
- Your views?
- Other settings?

Could other employers require the vaccine?

Health and safety considerations

Employer has statutory and common law duties to take reasonable steps to reduce any workplace risks

Vaccination is an important part of reducing the risk of COVID-19 transmission in the workplace

Encourage vaccination – or require it if the risks are high?

Importance of risk assessment, consultation, review and revision

Encouraging vaccine take up

Acas guidance – encourage rather than require vaccination

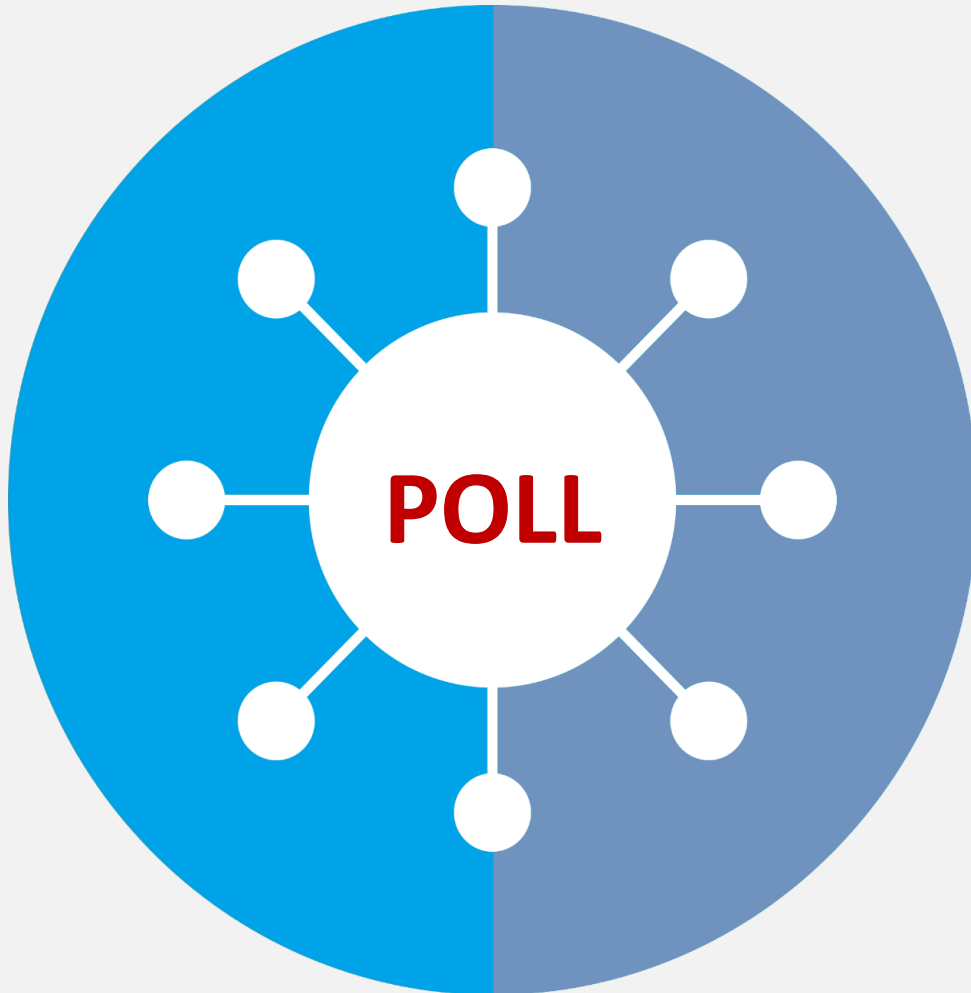
<https://www.acas.org.uk/working-safely-coronavirus/getting-the-coronavirus-vaccine-for-work>

Discuss with employees:

- the government's latest vaccine health information
- paid time off work to get vaccinated
- their concerns about having the vaccine

Manage the consequences of having a “two tier” workforce

Policy and decision-making based on vaccination status



- Do you know the vaccination status of staff, volunteers and service users?
- Will you make decisions based on vaccination status?
- What issues could this cause / has it already caused?

Making vaccination a contractual or policy requirement

New staff

Condition of employment

Discrimination risks on recruitment

Health-related questions in interviews

Existing staff

Reasonable management instruction? / New policy?

Contractual change?

- Consultation and agreement required

Employment Brunch Briefing – 3 August 2021 10am: “Fire and Rehire”: a legal necessity or an abuse of power? www.wrigleys.co.uk/events

Legal risks

Protected characteristics

- Disability
- Age
- Sex/pregnancy and maternity
- Religion and belief

Indirect discrimination
Discrimination arising from
disability
Harassment

Discrimination risks

Can the requirement be justified?

Proportionate means of achieving
a legitimate aim

Legal risks



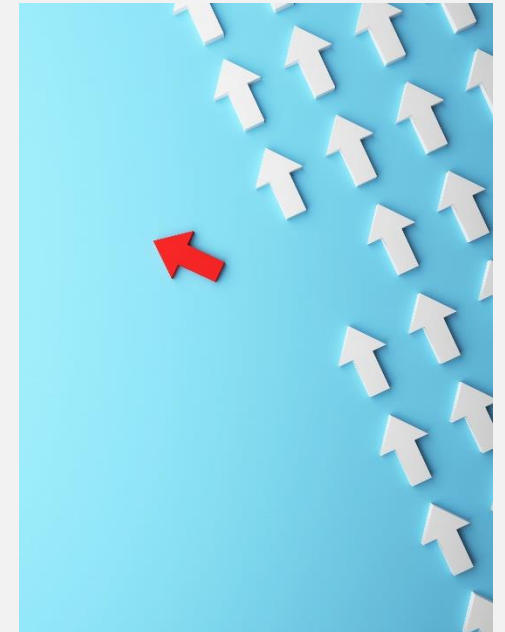
Human rights claims

- Right to respect for private life
- Freedom of thought, conscience and religion
- Is any interference with these rights lawful, necessary and proportionate?

Legal risks

Constructive unfair/wrongful dismissal

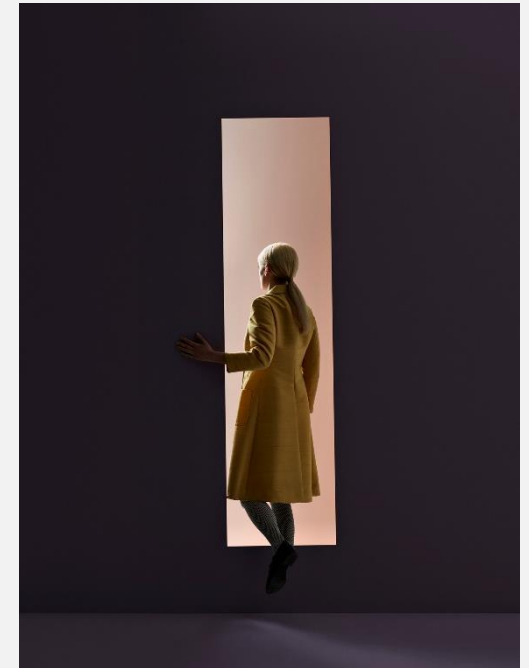
- Employee resigns and brings a constructive dismissal claim
- Was resignation triggered by the requirement?
- Breach of trust and confidence to require vaccination?
 - Did employer act in a way likely to damage trust and confidence; and if so was there...
 - Reasonable and proper cause for employer's conduct?
- Was the employer's process in bringing in the requirement fair?



Legal risks

Unfair dismissal

- Employee dismissed and brings a claim
- Was there a fair reason for dismissal?
 - Was the employer reasonable to require the vaccine?
 - Was employee reasonable to refuse it?
- Was the dismissal fair in all the circumstances?
 - Including the process followed; and
 - The employee's and employer's circumstances



Volunteers

- Health and safety duties will be similar
 - Does risk assessment justify a requirement for volunteers to be vaccinated or another vaccine-related policy or practice?
- Lower risk of claims but could argue:
 - They are employed and not a volunteer;
 - They are receiving a service (volunteering opportunity) and so should not be discriminated against



Legal risks

Data protection

- Vaccination status is special category personal data
- Can it be collected/shared/held on file?
- Only if necessary and
- Where you have a lawful basis to do so
 - Legitimate interests (weighed against the individual's interests)
 - In connection with your rights and obligations as an employer
- Need for security measures to protect this data
- Add to your privacy notice and tell people why you are collecting this data at the time you collect it



Questions to consider before bringing in any policy/practice



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Any
questions?

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