

**Principles to consider in  
Developing a Vaccination Policy and  
Policy on Testing  
for use by Local Authorities / other public sector bodies**

**Table of contents**

<b>1</b>	<b>Introduction</b>	<b>2</b>
<b>2</b>	<b>Work Based Testing</b>	<b>2</b>
<b>3</b>	<b>Vaccination</b>	<b>4</b>
<b>4</b>	<b>Practical issues</b>	<b>5</b>



## **1. Introduction**

- 1.1. Any options adopted from this paper (which has been written in the absence of any national guidance) should be discussed and where possible agreed with Trades Unions, and revisited when and if jointly agreed national guidance is developed and communicated.
- 1.2. The overriding principles of testing and vaccination is to protect the rights of individuals to make choices about medical matters, whilst ensuring that other colleagues and those receiving services are protected.
- 1.3. It is recognised that the situation for Council employees may vary dependent upon the role they hold and their exposure to risk. Councils should continue to keep risk assessments under review and amend as necessary in light of changing evidence and circumstances around exposure, infection and recommended control measures, and that vaccination is not to be seen as a trigger to remove current arrangements.

## **2 Work Based Testing**

- 2.1 For some roles in Local Government / public sector, (primarily in personal care) work-based testing (lateral flow testing) is being offered on a regular basis to ensure staff and service users are made aware at the earliest opportunity of anyone who has Covid 19 allowing them to isolate immediately and mitigate the risk of spreading infection.
- 2.2 There are a number of considerations which employers will need to work through before settling on a Testing Policy.

### **2.3 Is testing necessary and proportionate?**

- 2.4 Offering voluntary Covid-19 testing to staff, where it is available, in conjunction with other safety measures, is likely to reassure employees that the workplace is safe. Test results are, however, classed as 'special category data', so employers must use and store this sensitive data in accordance with the General Data Protection Regulation (GDPR). The Information Commissioner's Office published guidance on testing and surveillance during the pandemic, which explains that, in order to be compliant with data protection law, employers must show their approach to testing is "reasonable, fair and proportionate to the circumstances". To ascertain if this is the case, employers should consider:

- their organisation's specific circumstances (including type of work undertaken and nature of their premises).
- the extent to which testing will contribute to a safe working environment (for example, the timing and accuracy of the test results); and
- whether alternative measures could be as effective in limiting transmission of Covid-19 (such as strict social distancing or working from home).

- 2.5 If there is good reason for testing, given the sensitive nature of the data collected, employers must process the data in accordance with the GDPR and inform staff on why and how they intend to use it.



## 2.6 Is individual consent required?

The swab testing process for Covid-19 can be invasive and uncomfortable, requiring a swab to be taken from inside the nose and back of the throat. Many employees may willingly undertake testing to limit the risk of an outbreak in their workplace, but individual consent is required to conduct each test. Lateral flow testing, although quicker in results, requires the same self-swab of the nose and throat.

## 2.7 Can you make testing mandatory?

**Government guidance** requires anyone with Covid-19 symptoms to arrange a test. As employers have a duty to protect the health and safety of their employees, it is likely that they can reasonably instruct an employee exhibiting symptoms to be tested. If the employee tests positive, the employer will be alerted to the risk of transmission at the workplace and can take action to mitigate that risk. If the employee fails to follow the employer's instruction to arrange a test, the employer may be justified in taking disciplinary action against them. Testing (type, frequency and arrangements) should be in line with Public Health England Guidance and kept under review.

2.8 However, it may not be reasonable for the employer to require an employee to be tested if they are not exhibiting symptoms (for example, as part of a routine testing programme to identify possible asymptomatic cases). Whether testing is reasonable in these circumstances will depend on the extent to which the risk of Covid-19 cannot be managed in the workplace by other measures, such as social distancing and remote working.

2.9 Where testing is considered necessary and proportionate, and there is a clear case for this routine testing supported by advice from Public Health England (for example in Care Homes and in the wider employment settings as part of increased lateral flow testing regimes) employers may seek to make testing a contractual obligation. If the obligation to be tested is validly incorporated into the employee's contract, failure to comply would be a breach, which may entitle the employer to take disciplinary action. This is a significant move however and should not be considered unless all other avenues for compliance have been exhausted AND testing is still seen as an overriding requirement.

## Can an employer sanction an employee for refusing?

2.10 This would be a significant step and one which employers should avoid as much as possible. If an employer feels it has no option but to take disciplinary action for refusal to consent to testing, an employer must consider the employee's individual circumstances and any mitigating factors, as individuals may have valid reasons for refusing to be tested. The requirement to be tested could also disproportionately affect some protected groups, such as those with certain disabilities.

## How to encourage voluntary testing

2.11 Ideally, employers wishing to implement routine testing of their workforce will do so with the consent of their staff. Employees are more likely to consent if they have



confidence that their employer will handle personal data sensitively and securely, and if they believe they will not suffer financially if they test positive. To address this, employers should ensure they are complying with approaches to providing full pay for employees who are self-isolating particularly where employees cannot work from home.

- 2.12 Employers should also ensure there is protection for workers who do not volunteer for testing from harassment and bullying from other members of the workforce, particularly immediate colleagues who may attempt to ostracise or pressure a colleague into submitting to a test against their will.
- 2.13 Ultimately, to ensure employee testing is handled correctly, communication is key. By emphasising that testing is a necessary and proportionate means of limiting a Covid-19 outbreak in the workplace or client location, which could result in its closure and threaten jobs and livelihoods, employers should be able to garner support for a testing programme.

### **3 Approaches to nationwide Covid 19 vaccination.**

- 3.1 Whilst the rollout of vaccination programmes initially may have limited impact on the general working age population as it will be focussed on the older population and NHS healthcare workers, as the programme rolls out more of the workforce will be within the vaccination target group, whether by age profile, underlying health conditions or being in a role providing front line care.
- 3.2 Employers will need to consider how they manage employee relations around a number of key issues.
  - Medical data protection and the request to declare whether staff have been vaccinated.
  - Protection from harassment for employees who are not vaccinated (whether from service users or clients)
  - Requesting vaccination of those shielding to enable them to work.
  - How to manage the ongoing risk assessment
- 3.3 Some employees are already required to have vaccinations as part of a risk assessment which advocates that there is a risk of exposure to biological agents and there is an effective vaccine which protects against the risk (refuse collectors for example who are vaccinated against blood borne diseases such as Hepatitis). In the Health and Safety Executive COSSH hierarchy vaccination is the “last line of defence” and all other protective measures should be put in place.

#### **Requesting information on vaccination**

- 3.4 Employers may want to know if an employee has been vaccinated, for statistical and risk management purposes, and in certain circumstances where it may support changes to risk management protocols (for example close contact with an individual service user). Employers should note again that such data is sensitive and should only be collected and used for legitimate purposes which are communicated to the employee, and should be destroyed when no longer in use. Employees can also decline to provide this information to the employer without sanction.



- 3.5 In the absence of information on vaccination all risk protocols should be maintained (as if the vaccine did not exist).
- 3.6 For some employees who are unable to work because of shielding, (those in the Critically Extremely Vulnerable category) they may be offered a vaccine in advance of other employees depending upon the phasing. Whilst it is viewed that for most in this group the vaccination would, after a period of immunity build up, allow them to return to a more normal way of life which may include returning to work, it should be noted that for some conditions the vaccine is not suitable and so not all will be able to have the vaccine.
- 3.7 Where an employee is shielding and unable to work, but then refuses the vaccine without medical grounds and so continues to be off work and paid, the employer should undertake an occupational health referral to understand the barriers to vaccination and facilitate a discussion about the impact of this on the individual and their contract of employment.

Whilst it would be hoped that most people in this situation would wish to have the vaccination for personal reasons, where this is not the case and there is no medical case to support the person not being vaccinated, the employer may, after all the necessary steps have been taken, need to consider a capability case. This should only be undertaken however once all other avenues have been explored, and with the consideration that, being in the CEV category the employee is likely to be considered disabled under the Equality Act 2010, and so this will need to be factored into any decision-making process.

#### **4 Practical management of vaccination issues**

Once the wider programme of vaccinations is beginning to impact on the community, employers will need to consider how to manage some of the practicalities.

Time off to attend vaccination clinics and managing side effects.

- 4.1 As vaccination clinics are likely to be in main hubs, rather than issued locally at GP practices, employers will need to consider how they manage the time needed away from work to attend for a vaccination. As we wish to encourage as many employees as possible to take up the offer of vaccination once it is available, it may be useful to use the current policy for “time off for hospital appointments” as a framework to allow staff paid time off to attend for a vaccination. It is unlikely staff will have choice over where and when the vaccination takes place and therefore employers will need to consider a fair approach to this which does not penalise employees for taking part in the vaccination programme. Employers can also then record time off for vaccinations as a method of recording penetration into the workforce.
- 4.2 In some (hopefully limited cases) those having the vaccination may suffer side effects and be unable to work for a short time. Some receiving the vaccine can have side effects similar to having flu and may be unable to work, particularly those employees who cannot work from home and have to attend a workplace.

As the period of sickness illness is as a direct result of the vaccine it should be treated as a period of Covid sickness and the rule you have applied for such periods of absence used. The NJC guidance for Covid sickness absence can be found [here](#), which recommend “discounting” or suspension of triggers for periods of



Covid sickness and this should equally apply to vaccination reaction.

