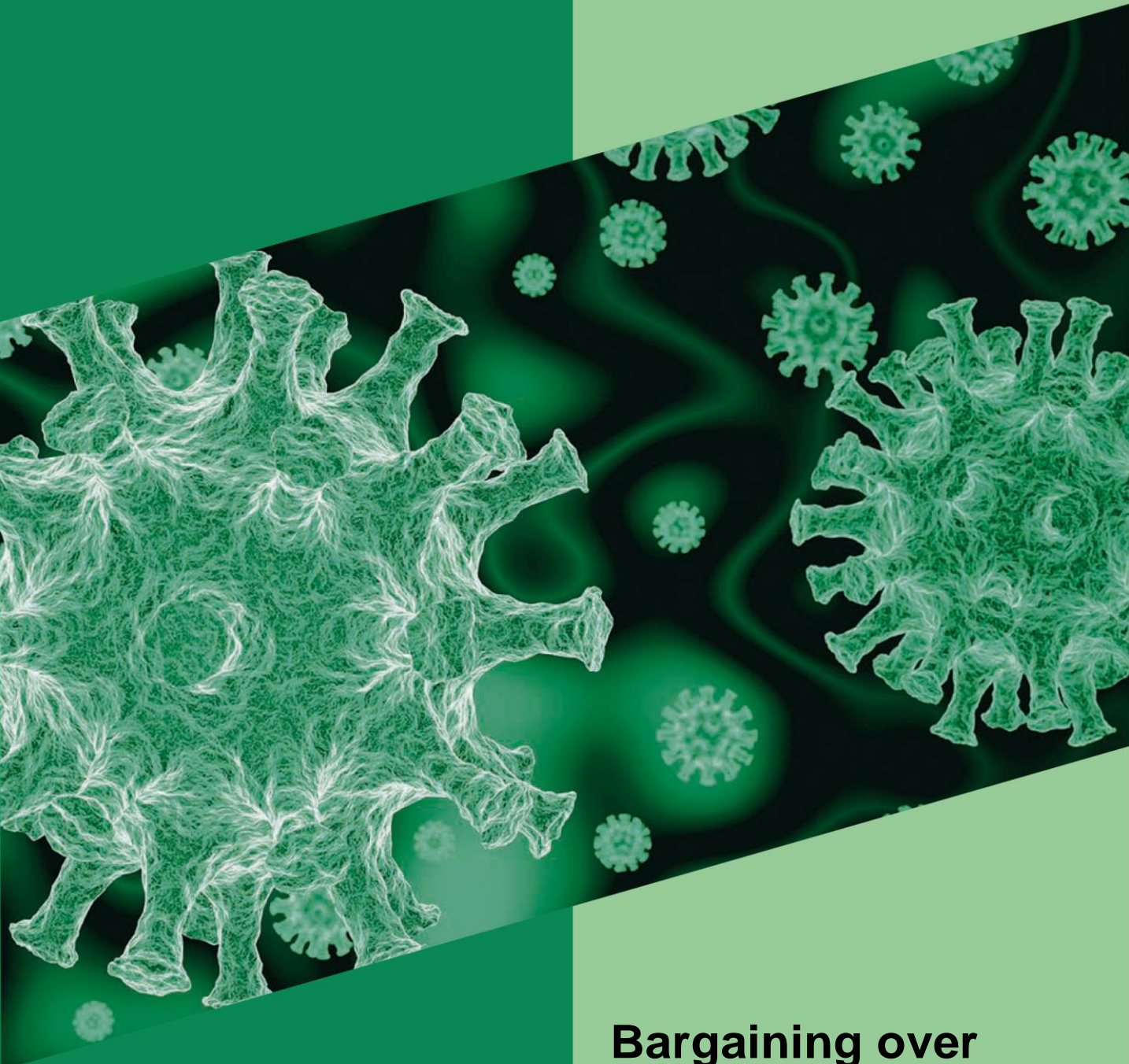


Bargaining Support Group



**Bargaining over
COVID-19
vaccination status
requirements in
the workplace**

UNISON
the public service union

Vaccination in the workplace

UNISON supports the COVID-19 vaccination programme. The different COVID-19 vaccines are safe, having met the Medicines and Healthcare Products Regulatory Agency strict standards of safety, quality and effectiveness.

The management of the vaccination programme for staff is handled separately by each administration in England, Scotland, Cymru/Wales and Northern Ireland.

UNISON reps and branches should **not** advise any member to be vaccinated against their will.

UNISON reps and branches should **not** advise members to refuse a vaccination.

This is an individual decision for the staff member alone to make.

[Acas guidance](#) states: “**To encourage staff** to get the vaccine, employers might consider:

- paid time off to attend vaccination appointments
- paying staff their usual rate of pay if they're off sick with vaccine side effects, instead of Statutory Sick Pay (SSP)
- not counting vaccine-related absences in absence records or towards HR 'trigger' points...

In most circumstances, it's best to support staff to get the vaccine without making it a requirement.

If an employer feels it's important for staff to be vaccinated, they should work with staff or the organisation's recognised trade union to discuss what steps to take.

Any decision after that discussion should be put in writing, for example in a workplace policy. It must also be in line with the organisation's existing disciplinary and grievance policy.”

[Acas guidance on getting the coronavirus vaccine for work](#)

www.acas.org.uk/working-safely-coronavirus/getting-the-coronavirus-vaccine-for-work

[Acas guidance on vaccination in care homes in England](#)

www.acas.org.uk/working-safely-coronavirus/getting-the-coronavirus-vaccine-for-work/vaccination-in-care-homes-in-england

[Acas guidance on supporting staff to get vaccinated](#)

www.acas.org.uk/working-safely-coronavirus/getting-the-coronavirus-vaccine-for-work

UNISON's view on mandatory vaccinations

UNISON has opposed the introduction of mandatory vaccination believing it to be a

counterproductive measure.

We have repeatedly told the UK government that persuasion and not coercion is the best way to roll out the vaccination programme. We believe that it is the government's central responsibility to boost trust and confidence in the vaccine, so that vaccination levels reach the same rates seen in the NHS and in Scotland, Wales and Northern Ireland.

However, regulations were passed by Parliament in late July 2021 making it a requirement for workers to have completed their vaccination course before entering care homes.

The UK government has also launched a further consultation on whether to make COVID-19 vaccination a condition of deployment in other health and other social care settings. This would include NHS workers and domiciliary carers, and examines whether flu vaccination should be made mandatory for health and social care workers.

In Scotland, Wales and Northern Ireland the governments and executive have stated that staff in those nations will not be legally required to have the vaccine.

Vaccination and care homes

The new legislation – the Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) Regulations 2021 – means that everyone who enters the premises of a **CQC-registered care home in England** for residents requiring nursing or personal care, must have completed a course of authorised COVID-19 vaccine doses unless they have an exemption. A complete course may refer to one or two doses of the vaccine, depending on the type of vaccine. It does not cover booster doses.

“Anyone who enters a care home as part of their professional responsibilities will need to show proof of vaccination unless they are exempt.”

This means that all CQC-regulated care home workers (including agency staff) and all other professionals such as social workers, occupational therapists and CQC inspectors, NHS workers who treat patients in care homes (except members of the emergency services, see below), and those delivering non-care-related services, such as hairdressing, maintenance or leisure activities, as well as volunteers who enter these settings, will need to show proof of vaccination unless exempt.

People who live in Scotland or Wales and work in England must also show proof of vaccination or exemption in English care homes.

UNISON staff and activists who visit care homes for recruitment purposes or to meet with members or management will also be required to demonstrate proof of

vaccination.

Full details on the policy, exemptions and requirements can be found in the UK government guidance on vaccination of people working or deployed in care homes www.gov.uk/government/publications/vaccination-of-people-working-or-deployed-in-care-homes-operational-guidance/coronavirus-covid-19-vaccination-of-people-working-or-deployed-in-care-homes-operational-guidance

Key dates for the Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) Regulations 2021

16 September (last date for workers who enter these settings to get their first dose so they are fully vaccinated by the time the regulations come into force)

11 November (regulations come into force)

Who doesn't need to show proof of vaccination?

In summary, the requirement is not necessary for:

- the person who resides in the care home
- if it is reasonably necessary for the person to provide emergency assistance in the care home (e.g. members of the public assisting in the event of a fire or flood, or social workers responding to immediate safeguarding concerns)
- if it is reasonably necessary for the person to provide urgent maintenance assistance to the care home (e.g. in the event of a failure or breakdown of the gas, electricity or water supply, a dangerous electrical fault or a gas leak)
- if the person is a member of the emergency services in execution of their duties (e.g. members of the health service deployed for emergency response)
- if the person is a friend or relative of the resident visiting the resident
- if the person is visiting a resident who is dying
- if it is reasonably necessary for the person to provide comfort or support to a resident in relation to a resident's bereavement following the death of a relative or friend
- if the person is under the age of 18
- if the person is exempt for medical reasons (further details below).

The vaccination requirement only applies to people who go inside a care setting (the definition of 'care home' does not include any surrounding grounds). As long as

someone is not entering the building, they would not need to show vaccination status.

Proof of vaccination

The regulations require that all ‘registered persons’ must ensure that people do not enter a CQC-registered care home in England unless they have provided satisfactory evidence that proves they are fully vaccinated or they are exempt. A ‘registered person’ is the person registered with the CQC as the manager or service provider.

The regulations do not specify how evidence of vaccination is to be provided. It is for the registered care home to satisfy itself for each individual allowed to enter its premises.

People entering care homes can provide proof of vaccination through:

- NHS COVID Pass on the NHS App www.nhs.uk/conditions/coronavirus-covid-19/covid-pass/
- NHS App online www.nhsapp.service.nhs.uk/login
- an NHS COVID Pass letter www.nhs.uk/conditions/coronavirus-covid-19/covid-pass/get-your-covid-pass-letter/

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

Individuals vaccinated in **Scotland** can find information on how to obtain a record of their COVID-19 vaccination status from www.nhsinform.scot/covid-19-vaccine/after-your-vaccine/get-a-record-of-your-coronavirus-covid-19-vaccination-status .

Individuals vaccinated in **Wales** can find information on how to obtain a record of their COVID-19 vaccination status from <https://gov.wales/get-your-nhs-covid-pass> .

Individuals vaccinated in **Northern Ireland** can find information on how to obtain a record of their COVID-19 vaccination status from www.nidirect.gov.uk/services/coronavirus-covid-19-covid-certificate-ni-residents

The UK government in its guidance warns workers “that the regulations may provide a fair reason for dismissal if you are not vaccinated or medically exempt.” However, the employer should first “take other reasonable steps to avoid dismissing staff (for example, redeployment to a head office, and so on).”

Under the regulations, “it will not be unlawful discrimination in relation to age, disability, religion, or belief for a care home to ensure that a person over 18 who has not been vaccinated and is not medically exempt does not enter the care home... This exception to equal treatment does not extend to race, sex, sexual orientation, pregnancy and maternity, gender reassignment, marriage and civil partnership.”

More information on redeployment is covered in UNISON's bargaining guide on workplace issues during the COVID-19 pandemic.

www.unison.org.uk/covid-19-pandemic-bargaining-over-workplace-issues-during-the-covid-19-pandemic-v1

Medical exemption for clinical reasons

The regulations explicitly accept there are individuals for whom vaccination is inappropriate for clinical reasons, but they do not yet fully specify what this means.

On a temporary basis **until 24 December 2021**, people working or volunteering in care homes who have a medical reason why they are unable to have a COVID-19 vaccine, will be able to [self-certify that they meet the medical exemption criteria](#).

More details from the UK government on self-certification forms for medical exemption www.gov.uk/government/publications/temporary-medical-exemptions-for-covid-19-vaccination-of-people-working-or-deployed-in-care-homes

From 25 December 2021, if someone is unable to get vaccinated, they will have to use the [NHS COVID Pass](#) in the same way that people who are fully vaccinated use it.

To apply for medical exemption, individuals must phone the NHS COVID Pass service on 119 to ask for an NHS COVID Pass medical exemptions application form. All exemptions will be confirmed by an individual's doctor, specialist clinician or midwife. If approved, their NHS COVID Pass can then be used to prove their status.

More information: COVID-19 medical exemptions: proving you are unable to get vaccinated

www.gov.uk/guidance/covid-19-medical-exemptions-proving-you-are-unable-to-get-vaccinated

The possible reasons for exemptions are limited. Examples that might be reasons for a medical exemption are:

- 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).

Other medical conditions could also allow an individual to get a medical exemption.

Short-term exemptions will also be available for those with short-term medical conditions and as an option that some pregnant women may choose to take.

Pregnant women can alternatively use MAT B1 certificates to show their COVID status, if they choose to use a medical exemption. Pregnant women do not need to apply for a medical exemption NHS COVID Pass if they have a MAT B1 certificate. For pregnant women the exemption will expire 16 weeks post-partum. This will allow them to become fully vaccinated after birth.

Therefore, workers who are exempt should be allowed to continue to enter care homes, despite being unvaccinated, as long as a risk assessment has been carried out and additional measures have been put in place, such as PPE.

Data protection

Under both GDPR and the Data Protection Act, processing of personal data concerning health – and this would include making note of who or who hasn't been vaccinated in the workforce – **constitutes a special category**.

Collection of special category data is prohibited, unless “necessary for the purposes of carrying out the obligations and exercising specific rights of the controller or of the data subject in the field of employment” and “providing for appropriate safeguards for the fundamental rights and the interests of the data subject”. Therefore, there must be a good reason for the employer to collect this information.

The employer should have first undertaken a data protection impact assessment. If the employer has confirmed that it is necessary to collect the information, it must still be with the worker's consent and should be held securely, shared only with those specific people who need to access it and kept for no longer than necessary.

Vaccination guidance for employers from the Information Commissioner's Officer <https://ico.org.uk/global/data-protection-and-coronavirus-information-hub/coronavirus-recovery-data-protection-advice-for-organisations/vaccinations/>

For sector-specific advice see:

- [Education workers](#)
- [Healthcare workers](#)
- [Social care workers](#)
- [Local government workers](#)
- [Police staff](#)
- [Energy workers](#)
- [Water Environment and Transport workers](#)

Bargaining checklist

Encouraging staff to get vaccinated

- How can reps and branches best work with employers to encourage workers to be vaccinated voluntarily?
- Does the employer remind staff of any dignity at work or bullying and harassment policy, stressing that any bullying behaviour linked to vaccination status is serious misconduct?
- Has the employer made getting vaccinated easily accessible to all staff who are eligible and provided them with the full information they need to make an informed decision? Is all information on vaccination open and honest and in formats accessible and understandable to all?
- Will the employer continue to pay staff at their normal rate during time spent travelling to the place where the vaccine is delivered and receiving the vaccine, and not require them to make up the time? Not agreeing to this will create a disincentive for workers to be vaccinated.
- Will the employer also reimburse to staff any associated travel expenses when travelling to be vaccinated?
- Sickness absence that is as a direct result of the vaccine (such as due to side effects) should be disregarded (along with all COVID-19 related illness and self-isolation) in sickness absence records that contribute to trigger points within the sickness absence policy.

Wider health and safety requirements

- Employers should not rely solely on the vaccination programme for preventing risk of exposure to COVID-19. It is important that safe working practices and COVID-secure workplaces continue. The employer should not be asking staff to reduce safety measures after being vaccinated.

Considering the requirement for a full vaccination or medical exemption status

- Will the employer support staff in accessing their vaccination status evidence such as by providing information and technical support to use the NHS app, or for those who do not have access to smart phones or the internet by providing with opportunities to contact 119?
- Will the employer accept self-certification of medical exemption and of vaccination abroad whilst valid under [government guidance](#)?
- If evidence of full vaccination or medical exemption is made a requirement of a role, employers should clearly explain why it is necessary to fulfil this requirement i.e. does the specific individual's role involve essential, planned visits to a CQC-

registered care home? Or has the employer made a general assumption that all roles of a certain type will have to fulfil this requirement, regardless of whether visits to a CQC-registered care home is part of an individual's duties or not?

- Will the employer consider the vaccination or medical exemption requirement on a case-by-case basis and based on what the current jobholder is actually doing rather than what they might in theory be required to do?
- Ensure that the employer does not also include full vaccination status as an essential requirement for future recruitment, unless any and all potential post-holders *must* visit CQC-registered care homes and there is no possible scope for undertaking alternative duties.
- Employers will need to clarify what will happen to workers should the registered body at the care home not accept their evidence of vaccination or medical exemption, when it has already been accepted by their employer. Will they be allowed to work from home, be redeployed or medically excluded on full pay?

Medically exempt workers

- Ensure that the employer recognises that medically exempt workers can still undertake duties at a CQC-registered care home, as long as additional health and safety measures are taken including carrying out an individual risk assessment as stated in the [UK government guidance](#). However, the employer should also take into account that workers who are medically exempt from vaccination may also be in the clinically extremely vulnerable category. Alternative duties or redeployment may be identified as the most appropriate way to reduce their risk.

Workers without the full vaccination course and who are not medically exempt

- Will the employer consider allocating alternative duties to those workers who cannot fulfil the vaccination or medical exemption requirement for visiting CQC-registered care homes, and explore the possibility that alternative workers from within the existing team or wider workforce may be able to fulfil these duties in their place?
- If redeployment of any workers who cannot fulfil vaccination requirements is necessary, will the employer follow a fair and consistent process in line with any other redeployment procedure used for redundancy situations, including an adequate notice period, trial period and appeal process?
- Employers will need to clarify what will happen to workers who are unable to fulfil vaccination or medical exemption requirements. Although a failure to produce satisfactory evidence before entering inside the premises of a care home may provide a fair reason for dismissal from employment under the regulations, employers should only consider dismissal as a very last resort, after all other options are found to be unfeasible. They should first fully explore the possibilities of providing more time to the worker to learn about and arrange to have the full course

of vaccinations, and considering alternative duties or redeployment.

- It is important to get the employer's commitment (as UNISON negotiators have with the NHS) that there will be no negative implications for staff who refuse the vaccine, including taking disciplinary action. Not being vaccinated or exempt from vaccination should not in itself amount to misconduct.
- Branches should also seek confirmation from employers that a member's refusal to be vaccinated will not influence decisions made about terms and conditions such as continued provision of work, redeployment, shielding or pay.

Data protection

- Employers should clarify what type of vaccination data will be collected and how long the data will be kept. They should produce a relevant Data Protection Impact Assessment (DPIA). Neither the registered person at the care home nor the individual's employer will need to know the reason for any exemption, only the fact that the individual is exempt for medical reasons.

Regular review of the policy

- Will any vaccination policy introduced by the employer include regular reviews involving trade union representatives, including taking account of updated government guidance?
- A collective agreement covering vaccination status in the workplace and requirements for evidence may not be appropriate, as the circumstances of each individual post-holder will need to be considered by the employer.

If branches have specific questions about the vaccination programme or the way employers are approaching this issue, the branch should contact their regional organiser (www.unison.org.uk/regions).

If individual members are subjected to disciplinary action, detriment or dismissal because they refuse to be vaccinated, the branch and region should represent them. Where necessary, legal advice should be sought from Thompsons for those members.

Members can find information about COVID-19 vaccination on the NHS website with safety information including relating to conception, pregnancy and breastfeeding www.nhs.uk/conditions/coronavirus-covid-19/coronavirus-vaccination/coronavirus-vaccine/

Members can book an appointment for vaccination via the NHS website www.nhs.uk/conditions/coronavirus-covid-19/coronavirus-vaccination/book-coronavirus-vaccination/book-or-manage-a-booster-dose-of-the-coronavirus-covid-19-vaccine/