Vaccination as a Condition of Deployment – Update for the Care Sector

AUTHOR / KEY CONTACT

Edward O'Brien
Partner

Edward.OBrien@LA-Law.com
01202 786148

What has been announced?

On 31 January 2022, Health and Social Care Secretary, Sajid Javid, announced that there will be a u-turn on the legislation requiring COVID-19 vaccination as a condition of deployment in certain sectors. The legislation applies to those:

1. entering a care home as part of their working duties under the Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) Regulations 2021; and

2. undertaking a Care Quality Commission (CQC) – regulated activity under the Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) (No. 2) Regulations 2022

(together: the Regulations).

The rationale for this change of tack is that the Omicron variant of COVID-19, which has replaced Delta as the dominant variant, is intrinsically less severe. The hospital admission rate for Omicron is approximately half that of the Delta variant. In conjunction with the high vaccination rate of the population in general, the government has determined that the lessening risk that COVID-19 now presents allows for changes to the Regulations.

The announcement made headlines when given, but it's important to note that nothing has changed as yet. The Regulations remain in place (with the 12 week grace period for Regulation No.2 still running up to 1 April 2022).

A consultation was launched into the withdrawal of the Regulations and the alternatives. The crux of the government's position is that, whilst vaccination remains the very best line of defence against COVID-19, and all people working in health and social care settings have a professional duty to be vaccinated, it is no longer proportionate to require vaccination as a condition of deployment through statute in health, care homes or

Lester Aldridge LLP is authorised and regulated by the Solicitors Regulation Authority (SRA ID: 463177). It is a limited liability partnership registered in England and Wales under number OC321318. Managing Partner: Tom Alder; Compliance Officer for Finance and Administration: Dan Baker-Mist (Financial Controller); Compliance Officer for Legal Practice: Joanne Clarke (Partner) - See more on the Lester Aldridge Privacy Policy

© 2026 Lester Aldridge

other social care settings. This consultation closed on 16th February 2022.

So what should you be doing whilst we await the outcome of the consultation?

We would advise caution for the time being. It's not clear whether the Regulations will be set aside altogether or simply watered down, the latter potentially giving providers more scope to impose mandatory vaccination policies than the former. Until this has been confirmed it would be sensible for providers to avoid taking any further action, either to remove mandatory vaccination provisions in contracts or to dismiss unvaccinated staff. We should know more very shortly, and so it's going to be a case of wait and see.

What happens to staff re-joining after having been dismissed?

There have been several questions raised about re-employing unvaccinated staff who were dismissed in compliance with the Regulations. Where there has been a break in service of a complete week ending on a Saturday, continuity of employment will have already been broken. This break in the continuity of service means that should you wish to re-employ such individuals they should be treated like a new starter, and their length of service will start from zero for the purposes of unfair dismissal rights (which require two years' service), and for calculating statutory notice and redundancy pay.

If the Regulations are withdrawn, can you still require staff to be vaccinated?

There was an interesting judgment handed down in January in the case of Alette v Scarsdale Grange Nursing Home. It was decided that the provider had dismissed the individual fairly, and had not discriminated against her, following her refusal to be vaccinated against COVID-19. This case was notable because the dismissal took place before the first Regulation (relating to care home premises) was made law, and so the provider was not relying on it when instigating a mandatory vaccination policy for staff. The Tribunal decided that a management instruction for staff to be vaccinated to protect service users was not unreasonable, and the individual was fairly dismissed for not following it. The Tribunal also decided that her scepticism over the vaccine was not sufficient to qualify as a protected characteristic for the purpose of her discrimination claim.

So the answer is yes, you can still require staff to be vaccinated, but it won't be as straightforward as it is with the Regulations in force. Providers will need to justify mandatory vaccination on health and safety grounds. This would be possible in a care setting, particularly where there are elderly or physically vulnerable service users, but maybe more difficult than before, depending on the outcome of the consultation referred to earlier.

For starters, a robust risk assessment should be undertaken to justify mandatory vaccination. Providers will need to demonstrate that they have a legitimate aim in requiring staff to be vaccinated, which in the care setting

Tel: 0344 967 0793 | Email: info@LA-Law.com | www.lesteraldridge.com

Lester Aldridge LLP is authorised and regulated by the Solicitors Regulation Authority (SRA ID: 463177). It is a limited liability partnership registered in England and Wales under number OC321318. Managing Partner: Tom Alder; Compliance Officer for Finance and Administration: Dan Baker-Mist (Financial Controller); Compliance Officer for Legal Practice: Joanne Clarke (Partner) - See more on the Lester Aldridge Privacy Policy

© 2026 Lester Aldridge

could be protecting/reducing the risk to vulnerable service users from COVID-19 infection. Whether requiring staff to be vaccinated is a proportionate means of achieving that aim will be for providers to determine themselves based on the outcome of the risk assessment.

More consideration will also have to be given to cases where an individual refuses vaccination, as mandatory vaccination will no longer automatically be considered not to amount to discrimination by way of age, disability, religion, or belief as specified under the Regulations. Where an individual objects to vaccination on one (or more) of those grounds, careful consideration will need to be given as to whether vaccination can be justified as a proportionate means of achieving the provider's health and safety aims, or whether there are any reasonable alternatives available to the individual, such as different roles or duties that they could undertake.

What to do if the Regulations are withdrawn and you no longer require staff to be vaccinated?

If providers don't wish to maintain mandatory vaccination requirements after a withdrawal of the Regulations, any mandatory vaccination provisions will need to be removed from any employment contracts or vaccination policies.

Letters should be issued to existing staff without a mandatory vaccination clause in their contracts to clarify the new position.

As you will appreciate, there is still a lot of uncertainty over the Regulations and the changes that will be made following the consultation. We will update you further when the outcome of the consultation is announced. In the meantime, if you have any questions about how this might affect your business, our employment law specialists are here to help. You can get in touch by emailing online.enquiries@la-law.com or, if your query is urgent, please call 01202 786135.

Tel: 0344 967 0793 | Email: info@LA-Law.com | www.lesteraldridge.com

Lester Aldridge LLP is authorised and regulated by the Solicitors Regulation Authority (SRA ID: 463177). It is a limited liability partnership registered in England and Wales under number OC321318. Managing Partner: Tom Alder; Compliance Officer for Finance and Administration: Dan Baker-Mist (Financial Controller); Compliance Officer for Legal Practice: Joanne Clarke (Partner) - See more on the Lester Aldridge Privacy Policy

© 2026 Lester Aldridge