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NEWS ANALYSIS

Covid-19: How prepared is England's NHS for mandatory vaccination?

Gareth Iacobucci

How many NHS staff aren't vaccinated and could lose their job?

The new rules for England require all patient facing staff to be fully vaccinated by 1 April 2022 and to have had a first dose by 3 February. Several medical royal colleges and some MPs have urged the government to delay the deadline, amid fears of staff shortages, but as at Monday 24 January the government continued to insist that it had no plans to reverse the policy.

As at 16 January the NHS had 80 092 unvaccinated staff (5.4% of the total). In November the Department of Health and Social Care's impact assessment had suggested that around 5% might remain unvaccinated by 1 April and could therefore lose their jobs as a result of the policy.¹

However, in primary care, data of any description on vaccination rates are hard to come by. Ruth Rankine, director of primary care at the NHS Confederation, the membership body that represents commissioning and provider organisation, said, "We understand from our members that the number of unvaccinated staff in primary care is low. However, given the size of some primary care providers, even low numbers could have a massive impact on delivery of services at a time when it is already severely stretched."

Tracey Vell, chief executive of Manchester Local Medical Committee, the body that represents general practices in the city, said local data gathered through providers and clinical commissioning groups indicated that numbers of unvaccinated staff in primary care were very low but that making vaccination mandatory may pose particular problems for some small or singlehanded practices with unvaccinated staff.

"Anecdotally, it looks like it's small numbers, but it does depend on the question of deployment," she said.

Vell added that although some practices could avoid redundancies by redeploying some unvaccinated staff to remote or digital roles, clarity was needed on how long redeployment could last for.

What does the guidance say about redeploying unvaccinated staff?

NHS England guidance says organisations should "proactively identify roles not in scope of the regulations and, if possible and if it doesn't compromise patient care and services, pause external recruitment processes to allow for internal redeployment."² But it indicates that NHS employers are under no obligation to look to redeployment of unvaccinated staff.

In an FAQ document for staff, NHS England says, "If you choose not to be vaccinated, your line manager will discuss with you any reasonable possibilities for redeployment. However, please be aware that redeployment opportunities will be limited, and this will not be a guaranteed option. Also, redeployment opportunities may not be on the same/similar terms and conditions you currently hold e.g. there may be changes to your band, pay and working arrangements."³

Medical organisations have criticised this position. A BMA spokesperson said, "The staff working in the NHS are its most precious asset and to terminate their employment unnecessarily, when other options like redeployment might be available, is an unnecessary waste of their skills and expertise."

Has vaccination uptake accelerated since it became mandatory?

Analysis of official NHS England data by the *Times* showed that in September, when the government first announced it was to consult on mandatory vaccination, an estimated 110 004 NHS staff (7.6%) were unvaccinated, before falling to the 80 092 (5.4%) of 16 January.^{4 5}

Again, data are harder to come by in primary care. Vell said she had not seen a particular change in Manchester, noting that every local primary care network had been delivering vaccines, and therefore most GPs were likely to have been vaccinated. "Those who have remained unvaccinated probably have really strongly held views that are unlikely to be shaken until it comes to the 11th hour, and we won't know until 3 February if that's likely," she said.

Is there variation among different groups of staff or specialties?

Latest figures from the Office for National Statistics show that as at 31 December 2021 83% of health professionals had received three vaccine doses but that uptake varied between staff groups.⁶ Some 9% of care workers and home carers, 8% of medical practitioners (which includes all generalist and specialist doctors), 7% of nursing auxiliaries and assistants, 7% of pharmacists, 6% of midwives, 5% of nurses, 5% of medical secretaries, and 4% of healthcare practice managers were unvaccinated. Among all professions, "health associate professionals," which includes acupuncturists, homoeopaths, and reflexologists, had the highest rate of unvaccinated staff at 19%.

What have the reactions been to the new rules?

Saffron Cordery, deputy chief executive of NHS Providers, said a survey of members found that while there was a range of views, a “majority backed this policy as a means of protecting colleagues, patients, and visitors from cross infection by unvaccinated staff.”

The BMA has said that although it believed that every healthcare worker should be vaccinated against SARS-CoV-2, it had concerns about “complicated ethical and practical issues” and argued strongly that the NHS must not lose any staff because of the changes.

The Royal College of General Practitioners opposes mandatory vaccination and, along with the Royal College of Midwives and the Royal College of Nursing, has called for a delay to the deadline.⁷ Its chair, Martin Marshall, said, “While we don’t have the data in general practice to understand how many GP staff will be affected by making vaccination a condition of employment, it is a significant concern at a time when we’re working under intense workforce and workload pressures that are being exacerbated by covid, and this is one of the reasons the college opposed this move.”

How will NHS trusts and general practices enforce the policy?

NHS England’s guidance advises employers to “consider an individual’s reasons for declining to be vaccinated and examine options short of dismissal, where appropriate.” But it adds, “If it’s not feasible to implement alternative solutions, staff will be taken through a formal process to dismissal.”

The guidance also emphasises that it is important to note that “this is not a redundancy exercise.” It says, “Employers will not be concerned with finding ‘suitable alternative employment’ and there will be no redundancy entitlements, including payments, whether statutory or contractual, triggered by this process.”

Who will monitor compliance?

The healthcare regulator the Care Quality Commission will monitor and enforce compliance.⁸ In theory, the CQC could withdraw registration from trusts, practices, or other organisations that continue to employ unvaccinated staff from 1 April.

NHS Providers has warned its members, “The consequences of staff not being fully vaccinated by the 1 April deadline are clear. No trust leader remotely relishes the prospect of dismissing their staff but they are obliged to implement the law.”

Could employers face legal action by staff?

The BMA said that, having reviewed existing case law, it “does not believe there is a reasonable prospect of successfully challenging a requirement that doctors/healthcare staff involved in face-to-face treatment of patients are appropriately vaccinated.”⁹

NHS England’s guidance says that employing organisations should follow a “fair and reasonable dismissal process” to protect themselves against unfair dismissal claims from staff and sets out various steps that this process should include.¹⁰

In a separate FAQs for staff NHS England noted that GPs and primary care providers “may wish to seek individual legal advice,” because they are independent employers.

What are employers doing to encourage vaccination?

NHS England has published guidance to help trusts facilitate one-to-one conversations with staff members to encourage them to be vaccinated.

Cordery said that in the coming weeks trusts would be redoubling their efforts to persuade vaccine hesitant colleagues to get vaccinated. “We have seen first hand how initiatives such as education campaigns and individual conversations are driving up vaccination rates,” she said.

Rankine said that primary care employers were “doing all they can to encourage any remaining unvaccinated staff to get jabbed, through carrying out one-to-one conversations and addressing any concerns individuals may have about the vaccine.”

What advice or help are doctors seeking?

Londonwide Local Medical Committees said that most general practices were focused on the practicalities of ensuring enough staff and not wanting to put colleagues out of a job. Some practices have been asking about exemptions, and LMCs are advising some practices to seek legal advice, as queries are often a matter of interpreting and understanding employment law.

Cambridgeshire LMC chief executive Katie Bramall-Stainer said, “Cambs LMC is extremely concerned at the proposals, which feel to be poorly determined, poorly judged, and poorly timed. There is a particular concern for GP employers, who have not received any bespoke HR guidance or support from NHSE/I and who stand to face unlimited liability if an employee is found to have been constructively dismissed,” she said.

Vell said that in Manchester practices were reporting “major problems” with exemption forms that they were being asked to fill in for NHS staff. “GPs are feeling damned if they do fill them in, in case they put that individual or the population at risk, and damned if they don’t because they are the butt of complaints,” she said.

Why are some doctors refusing vaccination?

Reasons for not being vaccinated include religious objections, ethical concerns to do with consent and bodily autonomy, and concerns about potential side effects and long term safety data.¹¹ In a rapid response published in *The BMJ* in December a group of doctors argued, “Coercing people to have a covid vaccine, either through the threat of legal sanctions or, in the case of mandates for occupational groups, by depriving people of their livelihoods and careers, is not justified due to the prevailing uncertainty about the overall benefits of the vaccines, the unfavourable risk-benefit ratio for many groups, and, not least, the lack of data on long-term harms.”¹²

Are vaccine mandates effective?

The Institute for Government think tank noted some evidence that making vaccination against various childhood diseases mandatory had increased take-up in some countries in recent years, including France, Italy, and Germany.¹³ But it noted that Ukraine had to end its mandatory measles and rubella campaign in 2006 after negative media coverage and controversy.

Writing in the *New York Times* last month two Harvard medical school professors, Anupam Jena and Christopher Worsham, argued that compulsion met with less resistance than persuasion, because people were used to simply having to do things they disliked, such as paying taxes, whereas voluntary campaigns required them to revise strongly held views.¹⁴ “Get vaccinated or get fired’ has shown to be an effective message,” they wrote.

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