

Insights

UK COVID-19: WILL ENGLAND FOLLOW OTHER PARTS OF EUROPE AND RE-INTRODUCE FURTHER COVID-19 RESTRICTIONS? IF SO, WHAT DOES THIS MEAN FOR EMPLOYERS?

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SUMMARY

A review of very recent developments on Covid-19 restrictions in the UK, how these developments may have been influenced/reflected by events in Europe and the potential impact on UK employers

WHAT IS THE CURRENT POSITION IN PARTS OF EUROPE?

In recent weeks, there has been an increase of Covid-19 related restrictions throughout Europe in response to a rising number of cases. For example, Austria has been subject to a nationwide lockdown since Monday 22 November and was the first European country to announce that it would be enforcing mandatory vaccinations for the general public.

In addition to the rising case numbers in Europe, the discovery of the new Omicron variant has resulted in restrictions being re-introduced in England, namely mask-wearing and new rules on overseas travel. In the context of what is happening in Europe, this article looks at what the current situation regarding the pandemic means for employers, with a focus on office working and vaccination considerations.

WHAT IS THE CURRENT POSITION IN ENGLAND?

On 27 November, the government re-implemented the legal requirement for people to wear a face covering in certain settings, but has stopped short of implementing “Plan B” in its entirety. Most importantly for employers, this means that the requirement to work from home where possible has not been re-implemented.

WHAT DOES THIS MEAN FOR EMPLOYERS?

Since the lifting of all Covid-19 restrictions in England in July, many employers have implemented 'Back to Work' policies. These policies vary in form but most reflect a hybrid working arrangement where employees are required to spend a certain number of days per week in the office. Although the government hasn't, as of yet, suggested that they will need to implement all aspects of Plan B, the emergence of the Omicron variant may trigger a re-think. Employers therefore need to be alive to the fact that changes may be on the near horizon, particularly regarding the possibility of re-implementation of home working. Employers should closely track government guidance and keep their 'Back to Work' policies under constant review. Any changes to the 'Back to Work' policy should be communicated to all employees. Employers may also wish to re-iterate the importance of abiding by the current health and safety measures in place in the work environment, for example mask-wearing and regular testing.

DOES THE POSITION IN EUROPE AND THEOMICRON VARIANT AFFECT OR CHANGE THE CURRENT POSITION REGARDING COMPULSORY VACCINATION?

As we have covered previously, it is not advisable for employers to require an employee to be vaccinated against Covid-19 (except in certain limited situations). However, this area remains one that employers should continue to monitor, especially as the position regarding mandatory vaccination varies across jurisdictions. Key recent developments in this area are as follows:

- Newly introduced legislation requires people working in care homes to have had two doses of a Covid-19 vaccine to enter the premises (unless they have a medical exemption). In addition to this, the government has announced that from spring 2022, frontline NHS staff will also need to be fully vaccinated against Covid-19 unless an exemption applies.
- A recent study, conducted by British scientists at the University of Oxford, found that people who are vaccinated against Covid-19 are less likely to spread the virus even if they become infected.

Whilst these developments are notable, the position remains that employers, except for those in the care-home and NHS sector, do not have any legal power to compel an employee to be vaccinated. Discrimination issues may arise either as a result of compelling employees to take the vaccine or putting in place measures which are detrimental to those employees who do not wish to be vaccinated.

However, it may be possible (currently in very limited circumstances) to objectively justify requiring employees to be vaccinated. Potential examples include:

- Employers who employ porters and receptionists who work in front-line hospital roles.

- Some employees may be required to travel overseas to successfully carry out their role. With the Omicron variant causing concern, further travel restrictions may be implemented which would make vaccination necessary for the employee to carry out their role.

Another potential argument for requiring mandatory vaccination is on health and safety grounds if it can be demonstrated that it is the best possible option for protecting employees and others around them. At present, it is difficult to envisage a scenario where this argument would be successful, but if the virus mutates further and becomes more contagious and/or harmful, it is not implausible that such an approach could be more widely adopted.

Ultimately, employers should continue to monitor developments, and seek legal advice should they consider implementing mandatory vaccination for employees.

This article was co-written with Trainee Solicitor Jemma Green.

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