UK Government Proposes Withdrawal of Mandatory Vaccinations for Care Home Workers - with What Impact on Other Businesses?

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So you have finally introduced a no-jab, no entry policy in your workplace and now the government seems intent on pulling the rug on the whole thing by agreeing that even workers with some of the UK’s most vulnerable people don’t need to be vaccinated after all. If they don’t need the jab, on what basis can you possibly maintain your own firm stance on the question? I say “agreeing” – this is strictly so far a consultation only so far but since the date on which any new measures are to be introduced is scarcely two weeks hence, it does not seem credible that that decision has not in fact already been made.
If you were looking for something on which to hang a graceful winding-back of your covid precautions, you could certainly use this as your hook. However, if you would prefer to maintain them for the time being, the government’s announcement is far less significant than it sounds.

First, whatever it may say, the government’s announcement is clearly driven far more by political than medical considerations. Medically, the UK is still running at tens of thousands of infections per day, the vast majority of them among the unvaccinated population. The government’s clear advice, even in the very statement announcing this consultation, is still to “do the professional thing” and get yourself vaccinated. Even though Omicron seems to lack the lethality of its forerunners, we are only one Variant of Concern away from March 2020 and having to start the whole ghastly business over again. Today’s news includes reference to a sub-species of Omicron which is apparently even more transmissible. No-one consulted covid on any of this, after all. Politically, however, the government’s current agenda is very simple – try not to make anything worse. The care home sector remains desperately under-staffed, and so any measure which increases the available supply of labour to it must surely be a plus, voters, yes?

Second, the relevant question for you as employer is unchanged. If you drop your no-jab, no-entry policy, are you still complying with your duties to your employees and other visitors to your workplace? Are you, in the dulcet tones of the Health and Safety at Work Act “ensuring so far as is reasonably practicable the health, safety and welfare at work of all your employees“? Of course, you can get into at least 50 shades of grey on this, but there is a simpler way of assessing your degree of comfort on that issue. Beam yourself two years into the future. There you suddenly find yourself under aggressive cross-examination in the High Court because in early 2022 one of your employees contracted covid in your workplace from an unvaccinated colleague and died. First you will be shown and asked to agree with a welter of medical and government guidance from that year about the importance and benefits of encouraging your staff to be vaccinated. You can’t say that you hadn’t read it because that would be negligent, so you are not so much fixed as skewered with that knowledge. Then you may be asked whether in 2022, it was the government which controlled covid or the other way round. And having lured you over the trap-door in that way, opposing Counsel will then pull the lever – what would have been so difficult about maintaining your no-jab, no-entry policy for a little longer? You had already made all the arguments and done all the hard work of bringing it in to start with, so against all that guidance, all those infections, all those deaths, was it not reasonably practicable to keep it in place? Really? And now look what your premature discontinuance of that precaution has done, you heartless fiend (that last bit probably won’t be said in terms but the inference will be unmistakable).

Put bluntly, an employer given the choice should almost always wish to over-protect its workforce than under-do it. The government’s announcement does nothing to alter the risk profile presented by covid as between yesterday and tomorrow, or this week and next. Therefore if you wish to maintain your mandatory vaccination requirements in your workplace for the time being, you have every legal right to do so. After all, you will probably be supported in this by the great majority of your workforce. Even if there were to be some isolated challenge to the reasonableness
of those requirements because the government has now taken a different view in a specific context, that is still likely to cost you far less than the increased staff turnover and resistance to returning to the workplace which dropping them now may cause.

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