**Guidance from the Charity Retail Association: vaccination and testing in charity retail.**

**Introduction**

This note summarises the Charity Retail Association’s current advice around Covid-19 vaccinations and testing, as of the end of March 2021. We would strongly advise using this advice to create a vaccination policy for use within your retail operation, ensuring of course that it aligns with any wider policy your charity might have in this area.

There are important employment, equality and data protection laws that need to be considered when deciding what steps your organisation will take to support the Covid-19 testing and vaccination programme. This note is divided into five sections:

* Encouraging staff and volunteers to have Covid-19 vaccinations
* Staff who refuse to be vaccinated
* Covid-19 testing
* Data protection considerations
* Sample policies

Further information is available from both [ACAS](https://eur01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.acas.org.uk%2Fworking-safely-coronavirus%2Fgetting-the-coronavirus-vaccine-for-work&data=04%7C01%7Clucy.straker%40navca.org.uk%7Ca519be28ea064b43a72108d8ea02824c%7C7245eee40d034ad4937c6d98bc14d4bc%7C1%7C1%7C637516643792340973%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C2000&sdata=Sir5SkENDfRfSM6pbdKMZushCNf63v16NOE%2B1Y4YMD0%3D&reserved=0) and [CIPD](https://eur01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.cipd.co.uk%2Fknowledge%2Ffundamentals%2Femp-law%2Fhealth-safety%2Fpreparing-for-covid-19-vaccination&data=04%7C01%7Clucy.straker%40navca.org.uk%7Ca519be28ea064b43a72108d8ea02824c%7C7245eee40d034ad4937c6d98bc14d4bc%7C1%7C1%7C637516643792340973%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C2000&sdata=9%2BhPZYt2h%2BFlbWRkN8mASUBL5yTQBmCzcH4deBg7mbc%3D&reserved=0).

Until Government policy changes, all Covid-19 secure measures must remain in place. Vaccinations and regular testing are not a substitute for existing safety measures.

**Encouraging staff and volunteers to have Covid-19 vaccinations**

Encouraging as many staff and volunteers to be vaccinated as possible will greatly reduce the risk of Covid-19 transmission in the charity retail workplace. The Health and Safety Act 1975 requires employers to take reasonable steps to reduce workplace risks which is why it is appropriate to encourage staff and volunteers to opt into the Covid-19 vaccination programme.

Some practical ideas to promote the uptake of vaccinations include:

* Communications to staff and volunteers highlighting the importance of the Government’s vaccination programme in keeping shops safe.
* Sharing official sources of information such as this [NHS information page](https://eur01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.nhs.uk%2Fconditions%2Fcoronavirus-covid-19%2Fcoronavirus-vaccination%2Fcoronavirus-vaccine%2F&data=04%7C01%7Clucy.straker%40navca.org.uk%7Ca519be28ea064b43a72108d8ea02824c%7C7245eee40d034ad4937c6d98bc14d4bc%7C1%7C1%7C637516643792350968%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C2000&sdata=BMR2XbnHoBwFLDHE5HJKPqEL6T6q%2FFWrLa7P%2BUAH%2Frg%3D&reserved=0)
* Providing staff with paid time off to attend appointments for both doses of the vaccination, and ensuring volunteers have the flexibility to do the same.
* Empowering managers to have individual conversations with staff who are reluctant to be vaccinated to provide encouragement and reassurance about the vaccine, and to direct them to relevant literature and websites.
* Encouraging those with concerns to discuss them with a medical professional such as their GP.

Some points to bear in mind include:

* Any individual conversations with staff or volunteers need to avoid placing pressure on that person. Clearly, there is a fine line between encouragement and pressure. You must be extremely careful in the language used and the attitudes you display. It might be worth offering some sample wording to staff who are undertaking these conversations.
* There is a significant risk of bullying and harassment where people’s views on vaccinations differ.
* It would be prudent to retain evidence of communications to promote vaccination uptake in case a complaint is received alleging that you have failed to take sufficient action to meet health and safety duties.
* Not everyone is being offered a Covid-19 vaccination at the same time.

**Staff who refuse to be vaccinated**

The Government has decided not to make Covid-19 vaccinations mandatory and this decision is unlikely to change. Most staff and volunteers will be happy to be vaccinated. In the small minority of cases where people refuse to be vaccinated, the best course of action is to listen to their concerns and seek to persuade them to be vaccinated.

Requiring a member of staff to be vaccinated as a condition of employment is an extremely risky approach in terms of employment law and you should seek specialist legal advice before taking this course of action. An employee could potentially bring a claim for one or more of the following: unfair dismissal, constructive dismissal, discrimination or a personal injury claim.

Some staff and volunteers may feel unable to have the vaccine due to religious or philosophical beliefs and others will be unable to have the vaccine due to medical advice.

Whether or not requiring staff to be vaccinated is a reasonable management instruction has yet to be tested in the courts and will likely depend on the individual circumstances of each case. The initial cases brought against employers are likely to be both expensive, time consuming and carry reputational risk.

**Covid-19 Testing**

In England, the Government is offering employers free Covid-19 tests for workplace testing.

The safest legal approach is to make testing voluntary for staff. Whilst it should be possible to make testing mandatory for staff you should seek legal advice as this is unlikely to be straightforward.

Concerns around testing are likely to include any impact on pay, treatment from others if they test positive and whether a positive result will be treated confidentially.

Some practical details to promote participation in testing include:

* Explaining how testing will work and how people will get their results.
* Communicating the impact on pay if someone is required to self-isolate following a test.
* Reassurance that test results will be treated in the strictest of confidence.
* Explaining the benefits of testing in keeping people safe.
* Enabling testing to be done in work time.

As soon as an employer knows that a volunteer or staff member has tested positive it has a legal obligation to ensure that they do not attend work during the self-isolation period.

If an employer is encouraging staff to be tested, then the time spent getting tested should be treated as working time for the purposes of the National Living Wage.

**Data protection**

Information on test results and vaccinations is considered medical information and so must be treated as special category (sensitive) data under data protection legislation. This information can only be collected to the extent that it is both “necessary and proportionate”. There must a specific reason why you need to collect this information for it to be lawful and you should not collect this information if alternative less intrusive means are open to you. It would be advisable to only collect information on testing and vaccines if it is absolutely necessary and even then you should only collect the minimum information required.

Where this information is collected you should have the following documentation in place to demonstrate that you are acting lawfully:

* An appropriate policy document setting out your legal basis for collecting the information. A [template is available here](https://eur01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fico.org.uk%2Fmedia%2Ffor-organisations%2Fdocuments%2F2616286%2Fappropriate-policy-document.docx&data=04%7C01%7Clucy.straker%40navca.org.uk%7Ca519be28ea064b43a72108d8ea02824c%7C7245eee40d034ad4937c6d98bc14d4bc%7C1%7C1%7C637516643792350968%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C2000&sdata=aNxY5%2FmelTaYxrQKU%2Fk9%2BW%2B%2BWr6IgdZhxC5f2bRupB0%3D&reserved=0).
* A [data impact protection impact assessment](https://eur01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fico.org.uk%2Ffor-organisations%2Fguide-to-data-protection%2Fguide-to-the-general-data-protection-regulation-gdpr%2Faccountability-and-governance%2Fdata-protection-impact-assessments%2F&data=04%7C01%7Clucy.straker%40navca.org.uk%7Ca519be28ea064b43a72108d8ea02824c%7C7245eee40d034ad4937c6d98bc14d4bc%7C1%7C1%7C637516643792360961%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C2000&sdata=RjCHeo4K%2B%2BI7gGYSInsGh2CxvUfwmTvoKYNriGwOOpQ%3D&reserved=0).

Further information is available from the [Information Commissioner’s Office](https://eur01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fico.org.uk%2Fglobal%2Fdata-protection-and-coronavirus-information-hub%2Fcoronavirus-recovery-data-protection-advice-for-organisations%2Ftesting%2F&data=04%7C01%7Clucy.straker%40navca.org.uk%7Ca519be28ea064b43a72108d8ea02824c%7C7245eee40d034ad4937c6d98bc14d4bc%7C1%7C1%7C637516643792360961%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C2000&sdata=N9gaIrZ2mfbbdslxfW8pp66lvQdzVQYGnCiQpwmkRZY%3D&reserved=0).

When communicating a potential or suspected Covid-19 case with staff and volunteers it is important to avoid naming the person or providing unnecessary additional information.

**Sample policies**

As mentioned above it would be appropriate to introduce specific policies to cover both vaccinations and testing. The model policies from the Chartered Institute of Personnel and Development reflect a voluntary approach:

* [Model vaccine policy (CIPD)](https://eur01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.hr-inform.co.uk%2Fnode%2F16474&data=04%7C01%7Clucy.straker%40navca.org.uk%7Ca519be28ea064b43a72108d8ea02824c%7C7245eee40d034ad4937c6d98bc14d4bc%7C1%7C1%7C637516643792370954%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C2000&sdata=zfoOxpyYF7MwFOwXFVKIQST5ZGqUFK4l%2F%2B1d5v%2BIFCY%3D&reserved=0)
* [Covid-19 testing policy (CIPD)](https://eur01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.hr-inform.co.uk%2Fnode%2F16506&data=04%7C01%7Clucy.straker%40navca.org.uk%7Ca519be28ea064b43a72108d8ea02824c%7C7245eee40d034ad4937c6d98bc14d4bc%7C1%7C1%7C637516643792370954%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C2000&sdata=ehcK16R21iEOkia3lLr3qOL2PKqJpRmes7LgVuho7IY%3D&reserved=0)