

# THE FACTS ABOUT THE COVID VACS!



As the government's Covid-19 vaccination strategy gathers pace, employers may find themselves facing a new dilemma: what to do about those employees who choose not to be vaccinated against Covid-19. Report by Deirdre O'Flynn.

A recent survey of nearly 1,000 Irish people, conducted by Ipsos MRBI on behalf of the Irish Pharmaceutical Healthcare Association (IHPA), found that people aged 25-34 were least willing to receive the vaccine. Overall, one in ten of the survey respondents were unsure about getting a vaccine – and one in five 18-24-year-olds were still undecided.

However, employers cannot insist that all employees are vaccinated. "People have a Constitutional right not to take the vaccine," said Shane Dunphy, Managing Director of Sensible Safety, a health and safety training company based in Enniscorthy, Co. Wexford.

Dunphy is referring to an individual's Constitutional personal right to bodily integrity. In addition to this, the Employment Equality Acts 1998-2015 provide for protection from discrimination on grounds including disability or religion – so employees can invoke these reasons for choosing not to be vaccinated.

And, given that many younger people will not be eligible for vaccination until later in the year, any change to their work circumstances on the grounds of non-vaccination would constitute discrimination on the grounds of age.

"It's vital for the employer to have a conversation with employees – listen to their concerns, don't give an opinion, and then do an appropriate risk assessment arising from the conversation," said Dunphy.

## RISK ASSESSMENT

That risk assessment should be in line

with the Department of Enterprise, Trade, and Employment's Work Safety Protocol (a revision of May 2020 Return to Work Safely Protocol).

It outlines measures to suppress Covid-19 in the workplace – measures that Dunphy claimed will have to continue to be implemented until December, and possibly into 2022. These measures include "staying two metres apart, wearing masks, social distancing, and employers may require people who are not vaccinated to take a PCR test at the employer's cost", he said.

Such PCR testing would fall under the employer's responsibility under the Safety, Health and Welfare at Work Act (2005) to provide a safe place of work, to carry out risk assessments to identify health and safety risks, and to minimise identified risks. And whilst an employer may know if an employee is vaccinated, that information is not for public consumption – though it may be the subject of canteen talk.

"So, employers will have to have robust policies in place around bullying and isolation," said Dunphy, adding that employers cannot put all the unvaccinated staff on one shift, as that would amount to discrimination.

## EMPLOYERS' DUTY OF CARE

Employers also have a duty of care around employees' mental health and to listen to their concerns and address how to deal with those concerns, noted Dunphy. "Those conversations need to happen pretty quickly – and discreetly – after people return to work – and they may be through questionnaires rather than group talks.



Shane Dunphy is MD of Sensible Safety, based in Enniscorthy, Co. Wexford.

"As well as updating their risk assessments and safety statements, staff will also have to be retrained on Covid protocols on their return to work. We may get to a place where Covid is similar to the normal flu, but it is also likely that we will be in a place where 80 per cent of the population is vaccinated, and 20 per cent is not.

"So, the likes of physical distancing, ventilation, wearing masks while moving around the office, changing the mask during the day, cleaning and hand-washing regimes should be standard. And, if you are coughing, sneezing, or have a high temperature, you need to stay at home.

"Treat everyone as if they are non-vaccinated and follow the lockdown protocols for the foreseeable future – for now, behaviour can't change as the risk is still there."