



Covid-19 The vaccination challenge and returning to work safely

Survey results | Spring 2021



Covid-19: The vaccination challenge and returning to work safely

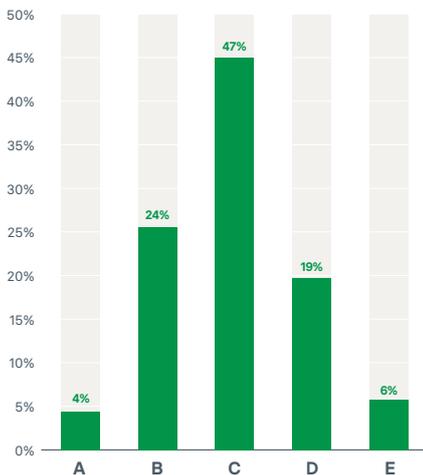
Survey results



Our 'Covid-19: The vaccination challenge and returning to work safely' survey captures the views of senior leaders from over 50 UK businesses and organisations at one of the most critical phases of the pandemic – getting people back to work.

How big a challenge is this for employers?

Q1 Which statement best describes your organisation during periods of lockdown?



- A. We have been unable to operate.
- B. We have been able to operate on a limited basis.
- C. We have operated fully by adapting our workplace procedures/systems.
- D. We have operated fully by our workforce working from home.
- E. Our operations have been unaffected by lockdown.

Impact of lockdown

The introduction of lockdowns in March and November 2020, followed by a third in January 2021 had an unprecedented impact on UK businesses as society struggled to adjust the reality of the pandemic.

We have all read gloomy headlines over recent months and know of businesses which are unfortunately struggling or have failed during the pandemic. However, our survey found that organisations have generally weathered the storm well. More than two-thirds of respondents were able to continue operating fully, because they were unaffected by lockdown (6%), by adapting workplace procedures (45%) or implementing a work-from-home policy (20%). But while this shows impressive adaptability and flexibility, it is worrying that almost one-third of respondents were only able to operate on a limited basis (25%) or not at all (4%).



The fact the vast majority of businesses were able to continue operating at some level is a clear sign of resilience and adaptability.



That so many organisations struggled to operate fully is perhaps not surprising. Even where businesses were allowed to open, such as industrial and manufacturing, safety measures such as social distancing meant they were unable to operate at full capacity.

Nevertheless, the fact the vast majority of businesses were able to continue operating at some level is a clear sign of resilience and adaptability on the part of both organisations and, more importantly perhaps, their staff.

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To be or not to be – the vaccination question

The UK's vaccination programme has, to date, been a huge success, but there are a significant number of people who will not be vaccinated, either due to health grounds or other concerns. This could pose a challenge to employers needing to balance their duty of care to employees, with health and safety responsibilities, GDPR, privacy and the rights of other individuals.

Over half our survey respondents (55%) said they didn't know if they had any employees who were unable to have the vaccination on health grounds. This is not surprising. In some sectors, such as care homes, it may be legitimate to ask if employees have been vaccinated. Operators need to make sure staff have the vaccine and that they're not potentially putting people at risk if they haven't. In other sectors, it is not so clear cut.



As part of a health questionnaire, an organisation might ask an employee if they've had the vaccine or will have it, but it's tricky to ask why they are not having it. An employer would need a good reason to ask this question and it will depend on the sector and nature of the work undertaken.



The employer is likely to have an obligation to staff who are unable to take the vaccine and remain clinically vulnerable, which means you will need to take all reasonably practicable measures to keep them safe. So employers can – and should – ask, but there is no compulsion for employees to respond.

There are also data protection issues to consider, particularly as the Information Commissioner's Office (ICO) has confirmed that an employee's health information is special category personal data. Messaging around this question could be vital in fostering an environment where employees feel confident sharing this information voluntarily as a way of staying safe in the workplace.

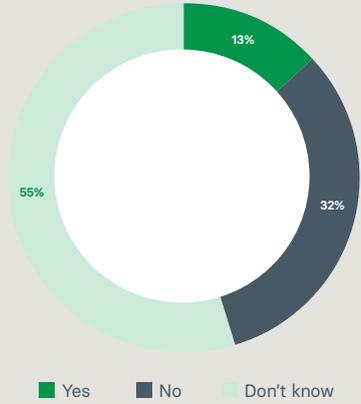
"As part of a health questionnaire, an organisation might ask an employee if they've had the vaccine or will have it, but it's tricky to ask why they are not having it. An employer would need a good reason to ask this question and it will depend on the sector and nature of the work undertaken,"

says Simon Shepherd, partner at Schofield Sweeney.

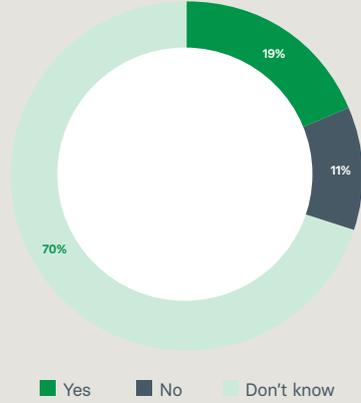
When it comes to employees not being vaccinated on grounds other than health vulnerabilities, the proportion of employers not knowing if they had any employees who planned to decline the vaccine on non-health ground was even higher at 71%.

This is an even trickier question for employers to navigate, so the high proportion of 'don't know' responses is probably to be expected. An employee not wanting to take the vaccine due to health reasons is one thing. But is it different if an employee is declining it because they are an "anti-vaxxer"? And if you don't know why employees are declining the vaccine, how do you know if you are breaking the law by refusing to employ them or treating them in a certain way? There is also the wider issue of the other people in the workforce – what are your responsibilities to the employees who work with an unvaccinated employee or your employee's unvaccinated family members?

Q2 Do you have employees who are unable to have the Covid vaccination on health grounds?

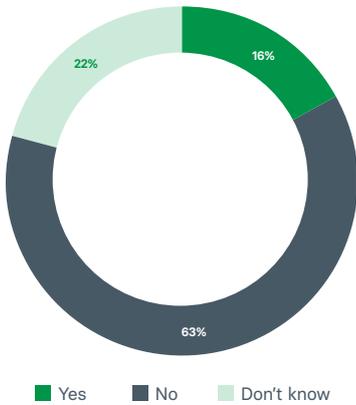


Q3 Do you have employees who plan to decline the Covid vaccination on grounds other than health?



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Q4 Do you expect any of your employees to refuse to return to the workplace?



Returning to the workplace

Almost 1-in-6 respondents (16%) said they expected some of their employees to refuse to return to the workplace. Almost two-thirds (63%) said they didn't and 22% didn't know.

While there is government guidance in place that recommends working from home where possible, it is unlikely an employer can take action against an employee for refusing to return to the workplace if they can do their job remotely.



It won't be until something really terrible has happened that people will look back and ask, "Were all reasonable measures taken?"



If the government guidance changes and people are being encouraged to return to the workplace, but an employee is still refusing to return to work due to general fears about the virus, the employer may be in a stronger position to take action, but should always take legal advice on the specific situation before doing so. An employer would, at the very least, have to show what measures they have taken to allay health concerns by ensuring a safe working environment and minimising the risk of infection.

Over 90% of respondents said they had not developed any policies to deal with this situation. This is probably a sensible approach to take, as every situation will be unique. The return to the workplace

is likely to take place gradually over a number of months, during which time employers will need to be flexible in how they engage with employees and build confidence in a safe return to 'normal' working practices.

When it comes to making adjustments for returning staff, almost two-thirds (65%) of respondents said they hadn't made and didn't intend to make any adjustments for unvaccinated staff or those unwilling to return. Again, employers need to consider the individual circumstances of each employee. Around a further quarter (27%) said they have or will make adjustments for staff who can't have the vaccine on medical grounds.



Survey results



“ The pandemic has put mental health firmly on the corporate agenda like never before. It’s very encouraging to see so many employers are now taking it seriously. ”

Maintaining mental health

Given the unique circumstances many people have found themselves in over the course of the pandemic, with much of the freedoms and activities they took for granted severely curtailed, it is not surprising that almost 7-in-10 respondents (69%) said they expected their employee’s mental health to have become more of an issue as a result of working through the pandemic.

Only 39%, however, said they had amended or introduced new health and safety policies specifically to deal with mental health, which could either suggest they felt confident it was already covered in existing policies, or a lack of awareness around mental health policies.

Under health and safety legislation, employers have a duty to safeguard the mental health of their employees, so an employer who didn’t take it seriously could leave themselves open to the risk of a claim, particularly if the mental health issue is severe enough to be classified as a disability, and therefore a protected characteristic.

It’s about communication and getting the message across that if employees are concerned about mental health issues, their concerns will be taken seriously and there are processes and support in place to support them.

Employee assistance packages (EAPs), including healthcare plans, life assurance, or even death-in-service cover, for example, often

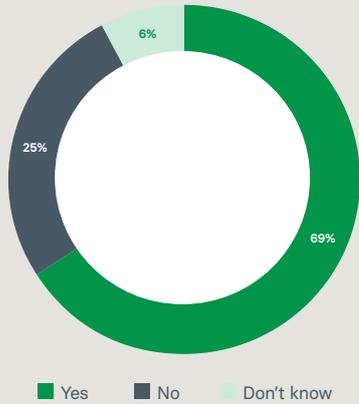
have a mental health element to them. So for employers that have existing EAPs, it is always worth checking if they already include a mental health benefit to which employees can be signposted.

When it came to managing HR and health and safety obligations around Covid-19 in general, an impressive 93% of respondents said they had an effective system in place. The irony, of course, is that virtually every employer that faces a claim or enforcement action thought that what they were doing at the time was effective and compliant. It is normally when things go wrong and with the benefit of hindsight, that they realise their systems were insufficient.

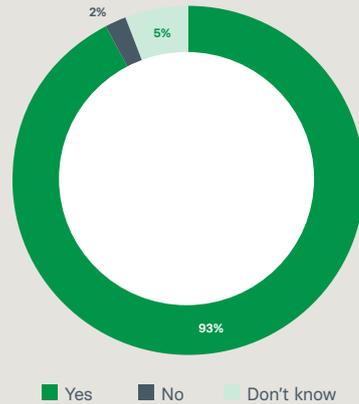
“A health, safety and wellbeing policy sat on a shelf in an office and never looked at is not an effective policy. To protect themselves, employers need to show they have an active, dynamic and visible policy to address these issues – regular training, updates, workshops, for example,” says Craig Burman, partner at Schofield Sweeney.

“ A health, safety and wellbeing policy sat on a shelf in an office and never looked at is not an effective policy. ”

Q7 Has the mental health of your employees become more of an issue as a result of working throughout the pandemic?



Q9 Do you have an effective system of managing your human resources and health and safety obligations around Covid?



Preparing for the future

Despite the challenges of the last 12 months, it is clear from the survey that there are some positives that have helped businesses to survive and thrive. New ways of working that not only benefit the workforce, but also productivity and performance in general.



Some of the positives cited by survey respondents include environmental benefits, such as a reduction in carbon footprint; benefits to processes, driven by tighter working practices, a more agile culture, better use of technology and increased focus on staff training and development; performance benefits like better management and increased productivity; HR benefits, such as improved work/life balance, less

commuting, more flexibility and greater focus on wellbeing; and better communication, trust and transparency.

As our survey indicates, organisations have already shown themselves to be agile and flexible enough to respond with resilience, and there is every opportunity for organisations to emerge from this crisis even stronger than they were before.

Top strategies for managing the return to work

- Encourage an open culture where employees feel comfortable sharing their intentions regarding vaccines
- Develop a voluntary health questionnaire to obtain information on employees health and health-related concerns
- Maintain an up-to-date record of vulnerable employees (and their immediate family members) and implement any adjustments to ensure their working environment is safe
- Ensure you have the systems and procedures in place to allay any reasonable fears about a 'safe workplace'
- Find out sooner rather than later if certain employees are concerned about returning to work
- Be flexible with your return to work programme and follow government guidelines
- Make sure mental health is taken seriously as a wellbeing issue
- Check your existing employee assistance programme for mental health support
- Implement regular staff training on HR policies and programmes
- Learn from the positive changes and embed them into your practices going forward
- Regular testing is a critical part of the government's roadmap in easing restrictions. Free workplace testing is now available to all businesses, including those with fewer than 50 employees. Businesses are encouraged to register their interest via the government's online portal by 31 March 2021 to access the free workplace testing.

We're here to help

Simon Shepherd

Partner, Employment



Simon heads the employment team and advises employers on the full range of employment law matters.

He provides strategic and commercial advice to employers on issues such as disciplinary proceedings, grievances, restructures, poor performance, sickness absence and TUPE. Simon is also an experienced advocate in employment tribunals.

T: 0113 849 4062 M: 07887 562 144
simonshepherd@schofieldsweney.co.uk

Craig Burman

Partner, Environmental and regulatory



Craig deals with both contentious and non-contentious environmental and regulatory matters.

His experience includes advising on health and safety accidents, incidents and investigations, workplace compliance matters, fatalities and coroner's inquests, environmental incidents, fire safety, asbestos, drainage and flooding issues, contaminated land and local authority matters.

T: 0113 849 4072 M: 07483 171 864
craigburman@schofieldsweney.co.uk

HR Health Check and health & safety compliance review

For additional reassurance, we are now offering a 'HR Health Check' to help employers identify potential deficiencies in their employment contracts and policies. Please get in touch to find out more.

Meanwhile, Crisp, our partners providing health and safety compliance support have also put together a free review of your Covid-19 protocols, to ensure your systems and procedures are in place for the safe and compliant re-opening of workplaces.

If you are interested in this, please email Stuart Harlow or Pete Mills at info@crisp.co.uk



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When it comes to legal advice we do things differently

We place huge value on personal relationships and allow plenty of time to get to know you and your business.

With offices in Bradford, Leeds and Huddersfield, our team of over 160 staff can support you with corporate, commercial, commercial property, employment, dispute resolution, environmental & regulatory, restructuring & insolvency, planning and tax law.



Bradford Office
Church Bank House, Church Bank,
Bradford, West Yorkshire, BD1 4DY

Phone 01274 350 800
Fax 01274 306 111

Huddersfield Office
30 Market Street, Huddersfield,
West Yorkshire, HD1 2HG

Phone 01484 915 000
Fax 01484 5915 053

Leeds Office
76 Wellington Street, Leeds,
West Yorkshire, LS1 2AY

Phone 0113 849 4000
Fax 0113 243 9326

For more information: schofieldsweeney.co.uk

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