**Mandatory Covid 19 testing for staff in Prisons and Approved Premises – Policy Statement**

General

HMPPS has introduced mandatory, asymptomatic, daily Covid 19 testing for staff as a proportionate and reasonable measure to reduce the risk of spread of Covid 19 in the workplace, amongst staff, partners and those in our care. This is a temporary and time bound measure, which is considered crucial mitigation against the incursion of Covid in prisons and approved premises and is especially important given the emergence of the highly transmissible Omicron variant.

It has been introduced on the basis that in the exceptional circumstances of the current risks associated with the Omicron variant, mandating staff testing is a proportionate, temporary measure in order to achieve the level of testing assessed as effective by the UK Health Security Agency. Every member of staff is obliged by the terms of their employment to follow reasonable management instructions, and the requirement to undertake testing is judged to be a reasonable management instruction in the current, exceptional situation. There has been consultation with the trade unions, but this is not a change in terms and conditions that requires union agreement, and such agreement has not been sought.

It is anticipated that most staff will be fully co-operative and understand the value of this testing. If, however, staff do not wish to be tested, it’s important first to understand why this is and to provide the necessary support, explanation and encouragement. As a part of this dialogue, any medical concerns regarding reasons for non-testing and appropriate medical evidence should be provided, as well as any other personal concerns explored. The potential for workplace adjustment and/or taking some time off as annual leave or unpaid special leave may also be considered. Managers have discretion to agree this.

Staff may be concerned about a positive result and the effect that this may have on their sick record and/or pay if they need to self-isolate. Managers can reassure staff that such absences will not impact on pay or sick records –<https://intranet.noms.gsi.gov.uk/covid-19-coronavirus>.

Should a member of staff be reticent about testing, managers should listen to their concerns and seek to resolve the issue, informally at first. Staff do, however, have an obligation under their terms of employment to follow a reasonable management instruction – which applies to this requirement at this time. Staff also have a statutory duty to:

* Take reasonable care for their health and safety and that of anyone who may be affected by their acts or omissions while at work.
* Co-operate with their employer so far as is necessary to enable compliance with any statutory duty or requirement relating to health and safety i.e., supporting our employer duty to protect the health, safety and welfare of our employees, and those in our care, and controlling any risks to injury or health that arise in the workplace.

Failing to take care and putting others at risk, including refusing a reasonable request to undertake Covid 19 testing at a time of increased risk in the working environment, could be deemed misconduct. This applies in relation to COVID-19 related regulations and requirements and where an employee refuses to test, a decision will be made during this exceptional period as to escalation of the refusal under the Conduct and Disciplinary Policy [PSI 2010-06 - HMPPS Intranet (gsi.gov.uk)](https://intranet.noms.gsi.gov.uk/policies-and-subjects/hr/working-here/standards-of-behaviour/psi-2010-06)

for prison staff and <https://intranet.noms.gsi.gov.uk/policies-and-subjects/probation/probation-instructions/probation-ins-2014/pi-2014-35> for probation staff.

Managers must take into account that, as set out in the policy, not every breach of the required standards will lead to formal disciplinary action. *A manager’s primary objective must be to encourage improvement in an individual rather than impose a disciplinary sanction* and managers will look to understand and address any concerns the employee may have that is an apparent barrier to them taking a Covid-19 test*.* Whilst aiming to avoid a more formal route, ultimately, however, failure to obey a lawful and reasonable order, is grounds for disciplinary action.

HR guidance

Where a member of staff refuses to test, managers should engage with the staff member to ensure that they understand the reason for that reticence, and that the member of staff is fully briefed about the reasons for the requirement, and on the benefits to their colleagues and those they care for and themselves. The implied risks of non-testing and their statutory duty under Health and safety legislation, to co-operate with us as the employer in fulfilling that duty to Health and Safety, should also be highlighted. Managers should consider whether the member of staff has any exceptional reasons for refusal which are reasonable. If someone cannot take a test for medical reasons, they will need to provide written evidence from a medical professional.

The mandatory testing does not require a test before every shift – it is a screening testing programme and will apply to the staff member’s designated testing days each week. If a staff member does not have any exceptional, reasonable grounds to refuse the test but continues to do so, despite discussion with a manager to explain and make clear the requirement, they must be allowed to work as normal and asked to reflect on the situation, be informed that further discussion and advice remains available to them, and that the requirement to undertake tests remains in place.

Managers will wish to follow up such cases a few days later when the staff member is next scheduled to have a test, to establish whether the staff member has begun complying with the policy.

Managers have discretion to decide how long they will maintain efforts to persuade the member of staff to follow the legitimate management instruction to undertake the required testing, in light of the nature of the discussions with the staff member.

Where the refusal is maintained, this apparent misconduct must be addressed under the relevant Conduct and Discipline Policy above.

Other Covid-related requirements

In addition to requirements set out in the Conduct policy, more generally employees must be aware of:

* the need to notify the employer when required to self-isolate in accordance with the regulations;
* taking responsibility for their own health and safety in relation to COVID-19;
* helping to ensure the safety of colleagues by complying at all times with the measures implemented at work to minimise the risk of infection; and
* complying with reasonable instructions intended to maintain COVID-secure work-spaces, such as those set out in legislation, guidance and local risk assessments.

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