HR guidance concerning mandatory testing

Mandatory testing has been introduced on the basis that in the exceptional circumstances of the current risks, 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.

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.

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. 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.