



FAQ - THE UNIVERSITY OF JOHANNESBURG'S MANDATORY VACCINATION POLICY


1. How and why was the UJ Mandatory Vaccination Policy ("the Policy") implemented by the University of Johannesburg ("UJ/University")?

As communicated to the UJ community, UJ has been declared a mandatory COVID-19 vaccination site. This seeks to enable the return of employees and students to campuses and facilities whilst protecting the health and safety of our University community.

The UJ Mandatory Vaccination Policy ("**the Policy**") was adopted by the UJ Council, acting in terms of its powers under the Statute of the University of Johannesburg 2019, on 25 November 2021. The decision to adopt the Policy was taken pursuant to: (i) consultations with affected persons; and (ii) the undertaking of a risk assessment as required in terms of the Occupational Health and Safety Act, 1993. Importantly, in November 2021, prior to taking a decision, UJ also sought and obtained expert legal advice on the constitutionality of adopting a policy that rendered access to UJ premises by staff and students conditional upon proof of full or partial vaccination against SARS-CoV-2.

2. What is UJ aiming to achieve with its implementation of the Policy?

We note that the decision to adopt the Policy was taken having careful regard to all relevant factors. These included consideration of the severity of the adverse impacts caused by the pandemic over the past two years, which cannot be overstated. COVID-19 has disrupted all areas of life, including the provision of higher education through safe, in-person academic instruction that has been demonstrated to further effective learning. The adoption of the Policy reflects our informed understanding that widespread vaccination on campus will enable UJ to safely return to the normal mode of teaching.



The University is committed to a safe return of its staff and students and looks forward to being able to resume contact face-to-face delivery of the academic programme to ensure optimal access to learning, research, laboratories and clinical workspaces within a safe environment.

3. **What is the factual basis on which the Policy was adopted?**

SARS-COV-2 poses a serious risk to health and life when persons become infected by it and contract the disease COVID-19. The approximate mortality rate for COVID-19, based on reported cases only, is approximately 3%, with the majority of deaths at the time of the Policy's adoption having occurred in Gauteng, where UJ is situated.

South Africa faces a particular challenge in relation to infectious diseases, in that it has a large, vulnerable, immunocompromised population living in over-crowded conditions. The risk of transmission of COVID-19 has also been found to be exacerbated in the university context, where young adults necessarily gather indoors for physical classes and viral transmission pathways proliferate. The university context also creates a social aspect, where persons gather to socialise between classes. A number of studies conducted in the United States have associated a dramatically increased COVID-19 mortality rate with counties with a large college population.

Vaccines are safe and any side effects resulting from vaccination are typically mild and short-lived. Small numbers of adverse events have been reported following vaccination against COVID-19. However, the incidence of post-vaccination adverse events is extremely rare and vaccines remain the best available strategy to combat COVID-19. According to the World Health Organisation, there exists a much higher risk of adverse events reported following infection with COVID-19 than from having taken the vaccination.

Vaccines are highly effective in protecting against death and hospitalisation as a result of COVID-19, as well as in reducing the transmission of COVID-19. While they are not 100% effective, vaccines are the most effective defence against COVID-19.

The continuation of online-only, remote education is impracticable and unsustainable for all or most of the academic programmes offered by the University and undermines the University's desire to optimise teaching outcomes and its obligation to maintain academic standards across the various programmes it offers.

4. **Which law of general application in South Africa allows UJ to infringe on my constitutional rights?**

Section 8(1)(d) of the Statute of the University of Johannesburg, 2019 provides that the functions of the Council include assumption of responsibility for the wellbeing of the university's staff and students.

Section 8(1) and 9 of the Occupational Health and Safety obliges employers to maintain a safe and healthy work environment for both employees and persons other than employees that may be affected by the undertaking of the employer.

UJ sought and obtained legal advice, prior to the adoption of the Mandatory Vaccination Policy, regarding the constitutionality of the proposed policy. Expert legal advice was accordingly sought in relation to implicated constitutional rights and the contents of the Policy reflect the position that affected persons may apply for an exemption from the application of the Policy on the constitutional grounds referred to.

5. **Does the Policy limit my Constitutional rights?**

Any complaint alleging that the Policy is unconstitutional in that it limits the rights of students and prospective students as well as the rights of staff members is noted. We record, first, that it is trite that these rights are not absolute and that, accordingly, the question whether or not a right is infringed is not determinative of the constitutionality of the infringement. Section 36 of the Constitution imposes a two-stage test to assess constitutionality: the first stage asks whether the impugned measure limits the implicated rights. If the answer is affirmative, the second question is whether the limitation can be justified with reference to the factors specified in section 36. The two-stage analysis is set out below.

5.1. *The right to bodily integrity*

5.1.1. Section 12(2)(b) of the Constitution provides that everyone has the right to bodily and psychological integrity, which includes the right to security in and control over their body.

5.1.2. In relation to the question whether this right is infringed as a result of the Policy, recent foreign jurisprudence supports a conclusion that it is not, because staff and students are free to elect not to receive a vaccine. However, prior to adopting the Policy, UJ satisfied itself (guided by constitutional experts) that, even if, on more stringent

reasoning, the right *is* limited, that limitation is justifiable under section 36.

- 5.1.3. The extent of the limitation of the right to bodily integrity as a result of vaccination, while not trivial, is certainly less incursive than other limitations that have been deemed justifiable in our jurisprudence (e.g. forcibly removing a deeply-lodged bullet, for purposes of obtaining evidence in the interests of protecting society).¹ The importance of the purpose of the limitation cannot be gainsaid in the context of vaccination against SARS-CoV-2. As the Supreme Court of Appeal noted in 2021:

*"The seriousness and the magnitude of the threat to life brought about by the pandemic cannot be exaggerated. It is not melodramatic to say that it posed, and continues to pose, the biggest threat to this country since the Spanish influenza pandemic of the immediate post-World War I years a century ago."*²

- 5.1.4. Our courts have, on a number of occasions, considered the countervailing rights of other persons, or the broader public, in the context of the limitations analysis. While the rights of those not wishing to be vaccinated are important considerations, a balance must be struck between these, and the rights of other staff and students accessing university premises have the rights to a safe and healthy environment, to bodily integrity and to education. The adverse effects of severe illness from COVID-19 are not limited to the physical effects of the virus itself: where unvaccinated staff or students are incapacitated, or hospitalised, this adversely affects, for example, the teaching available to well students and risks creating a scenario where a university place is given to a student that is subsequently unable to perform as they otherwise would.
- 5.1.5. As noted above, factual evidence from foreign jurisdictions indicates that mandatory vaccination policies increase vaccination rates amongst those that are subject to them, supporting the conclusion that any rights limitation is related to the dual purposes of: (i) increasing vaccination uptake; and (ii) reducing transmission of and serious

¹ *Minister of Safety and Security and Another v Gaqa* 2002 (1) SACR 654 (C).

² *Esau and Others v Minister of Co-Operative Governance and Traditional Affairs and Others* 2021 (3) SA 593 (SCA) para 140.

illness and death as a result of COVID-19. Finally, in relation to whether an alternative means exists that is as, or more effective at achieving the same purpose, it has been demonstrated as a matter of scientific fact that vaccines are the best possible line of defence against COVID-19.

5.2. The right to further education

- 5.2.1. Section 29(1)(b) of the Constitution provides that everyone has the right to further education, to be made progressively available by the state through reasonable measures.
- 5.2.2. As is the case in relation to the right to bodily integrity, the right to further education is not limited at all in circumstances where persons elect whether or not to comply with the Policy. However, to the extent that a more conservative stance is taken and it is assumed that the right is limited by the Policy, that limitation is justifiable under section 36.
- 5.2.3. In relation to the nature and extent of the limitation, this varies to some extent based on the particular field of study implicated. In some instances, the extent of the limitation may be mitigated, because it is open to affected students to consider pursuing their education at alternative institutions, or at institutions that facilitate studying via correspondence or online.
- 5.2.4. However, even in the event that it is assumed, on a conservative approach, that a student is only able to study at UJ and the right to further education is wholly limited, this limitation is justified on the bases set out in paragraphs 7.3 to 7.5 above. Moreover, as noted, UJ is obliged to consider, not only those persons that wish to attend UJ without being vaccinated, but also the rights of those persons who wish to enjoy their right to further education without having their rights to bodily integrity threatened by a large unvaccinated cohort on UJ premises.

Accordingly, the University maintains its view that it is acting fully within the prescripts of the Constitution and any opposition thereto will be appropriately defended.

6. **What options are available to an individual who do not wish to comply with the Policy?**

UJ wishes to emphasise that the Policy clearly provides for a process by which exemptions may be applied for by affected persons that do not wish to comply with the prescripts of the Policy. All exemption applications will be comprehensively considered by a specially-formed Exemptions Committee, comprising of various experts. Where exemptions are obtained, UJ intends to impose risk-mitigation measures in respect of exempted persons. To the extent that an exemption application is unsuccessful, the Policy makes provision for an appeals mechanism, in order to allow affected persons a further opportunity to ensure that their position is fully ventilated and considered.

7. Where can I find further information surrounding the Policy and the exemptions process?

1. For further information on the mandatory vaccination implementation protocols and applications for exemption, you are referred to the UJ Mandatory Vaccination Policy: Implementation Protocol which can be found at. <https://www.uj.ac.za/wp-content/uploads/2021/09/mandatory-vaccination-implementation-protocol-03-february-2022.pdf>.

8. What is the medical and scientific basis on which the University has implemented the Policy?

With regards to medical/scientific statements surrounding the vaccine, we note that consistent information is publicly available on reliable sources. For further reliable information, we advise that you visit the websites of the National Department of Health (“**NDOH**”), the South African Health Products Regulatory Authority (“**SAHPRA**”) and the World Health Organisation (“**WHO**”).

9. Can you please provide details and assurances that the vaccine has been fully, independently and rigorously tested against control groups and the subsequent outcomes of those tests? / Can you please advise the approved legal status of the vaccine and if it is experimental?

In the context of the COVID-19 pandemic, the South African Health Products Authority (SAHPRA), like comparable bodies in other countries around the world, has approved products on an emergency use basis with product specific requirements for ongoing monitoring. The following statement from SAHPRA regarding the vaccine registration bears reference:

"The medicines' approval process entails a rigorous process of assessment, where all information provided by the applicant is carefully evaluated by

experts in their respective fields. While SAHPRA has drastically reduced our usual time frames for the registration of COVID-19 vaccines, it has not cut back on the regulatory requirements to ensure that all these health products are safe and effective. SAHPRA will not compromise on the safety of South Africans and will not endanger South African lives. In addition, SAHPRA must take into account the local epidemiology in making decisions. Specifically, when it pertains to COVID-19, efficacy of vaccines against the SARS-CoV-2 variants of concern circulating in the country is critical. Applicants have to provide data wherein they demonstrate vaccine efficacy against the variants of concern to SAHPRA. Thus, a key contributor to the time frame is whether this data is readily available from the applicants or not. The calls for SAHPRA to approve vaccines without adherence to the critical components of safety, quality and efficacy could compromise public safety and these calls run contrary to the SAHPRA mandate."

SAHPRA initially approved the use of Pfizer's Comirnaty vaccine and the COVID-19 Vaccine Janssen in March 2021, with conditions, in terms of section 21 of the Medicines and Related Substances Act, 1965.³ In December 2021, following a review of safety and efficacy data, SAHPRA approved applications from Pfizer to amend the schedule for the Comirnaty vaccine, to allow for a third (booster) dose,⁴ and from Janssen to allow for administration of: (i) a second dose at least two months after primary vaccination; and (ii) a booster dose.⁵ The Janssen vaccine is approved by the FDA for emergency use and the Comirnaty (Pfizer) vaccine is fully approved by the FDA.⁶

10. Can you please confirm that the vaccine you are advocating is NOT experimental mRNA gene altering therapy?

See the response above in relation to the status of COVID-19 vaccines in South Africa. mRNA COVID-19 vaccines (Pfizer, Moderna) use a piece of genetic code from SARS-CoV-2 to prompt an immune response. However, they do not alter genes, enter the cell's nucleus, or affect a patient's DNA genome and do not constitute gene therapy.⁷ Our cells break down mRNA and get rid of it within a few days of vaccination.

³ Source: <https://www.sahpra.org.za/press-releases/sahpra-and-the-pfizer-biontech-comirnaty-vaccinesahpra-and-the-pfizer-biontech-comirnaty-vaccine/>; <https://www.sahpra.org.za/press-releases/sahpra-approval-of-second-booster-dose-of-the-covid-19-vaccine-janssen/>

⁴ Source: <https://www.sahpra.org.za/press-releases/sahpra-approval-of-booster-dosing-with-the-pfizer-comirnaty-covid-19-vaccine2/>

⁵ Source: <https://www.sahpra.org.za/press-releases/sahpra-approval-of-second-booster-dose-of-the-covid-19-vaccine-janssen/>

⁶ Source: <https://www.fda.gov/emergency-preparedness-and-response/coronavirus-disease-2019-covid-19/comirnaty-and-pfizer-biontech-covid-19-vaccine>.

⁷ Source: <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/different-vaccines/mrna.html>.

11. Can you please advise the entire list of contents of the vaccine I am to receive and if any are toxic to the body?

SAHPRA is an independent, science-based entity that follows strict guidelines and processes when approving health products. SAHPRA concerns itself with safety, quality and efficacy of health products. These essential requirements are consistently applied to all COVID-19 vaccines and therapeutics that SAHPRA has considered for use in the country. SAHPRA has accordingly registered the various vaccine following due care in investigating and testing the composition and potential adverse effects the vaccines might have. Further information in this regard may be obtained from SAHPRA.

Please see the response to Question 9 above for further information.

12. Can you please fully advise of all the adverse reactions associated with this vaccine since its introduction?

This information is publicly available and available from the NDOH and SAHPRA. Detailed information on adverse reactions can be sourced at: <http://aefi-reporting.sahpra.org.za/reactions.html>. The adverse reactions reflected on this platform have, however, not been assessed for causality (in other words, it is not clear that they are causally related to being vaccinated against COVID-19). SAHPRA has stated that, of the reported adverse events, the majority were mild, non-serious and already listed in the internationally-approved product information. As of July 2021, the reported adverse events accounted for a 0.02% reporting rate of the almost 7.1 million vaccines administered at that time.⁸

13. Can you please advise me of the likely risk of fatality, should I contract COVID-19, and the likelihood of recovery?

As of 31 January 2022, there have been 95 022 reported deaths from COVID-19 in South Africa. Based on the total number of reported cases in South Africa at the same date, this equates to a 3% mortality rate.⁹

⁸ Source: <https://www.sahpra.org.za/press-releases/sahpra-statement-on-adverse-events-following-immunisation-aefis-with-covid-19-vaccines/>

⁹ Source: <https://ewn.co.za/2022/01/31/sa-s-covid-death-toll-passes-95-000-2-226-new-infections-recorded>

14. Can you please confirm that I will not be under any duress from yourselves as my employers, in compliance with the Nuremberg Code?

The Nuremberg Code has no relevance to COVID-19 vaccines, which are not experimental and have been the subject of clinical trials. The Nuremberg Code is an international code of medical ethics, which is, in any event, not binding in South Africa.

Further, in an employment context, mandatory vaccination against covid-19 is legally permitted where the requirements in terms of the OHS Covid Directive are met. An employer has a legal duty to implement reasonable measures to safeguard the health of employees and other persons, this policy is part of the employers compliance with that legal duty.

15. Can you please advise me what will happen if I experience any adverse reactions, is the manufacturer of the vaccine liable? If the manufacturer isn't liable, will the company I'm currently employed with be responsible and liable, as it is their request that I have the vaccine in order to carry on my employment?

A COVID-19 Vaccine Injury No-Fault Compensation Scheme has been established in terms of section 27(2)(c), (m) and (n) of the Disaster Management Act, 2002 to facilitate expeditious access to compensation for persons who suffer vaccine injury (severe injuries resulting in permanent or significant injury, serious harm to a person's health, other damage or death). Funds will be paid from the associated COVID-19 Compensation Fund, which is administered by the National Department of Health, to eligible persons that are determined to have suffered vaccine injuries causally related to SAHPRA-approved COVID-19 vaccines.¹⁰

The Compensation Fund will cover employees for injuries, illness or death as a result of receiving a COVID-19 vaccine where an employee is required by the employer to receive vaccination as an inherent requirement of employment or where vaccination is required based on the occupational health and safety risk assessment conducted by the employer.¹¹

¹⁰ Source: "Amendments to Regulations Issued in terms of section 27(2) of the Disaster Management Act, 2002", published under Government Notice 376 in *Government Gazette* 44485 on 22 April 2021.

¹¹ Source: "Notice on Compensation for COVID-19 Vaccination Side-Effects published in terms of section 6A(b) of Compensation for Occupational Injuries and Diseases Act 130 of 1993", published under Government Notice 629 of 2021 in *Government Gazette* 45356 of 22 October 2021.

16. **Which details or information pertaining to less intrusive alternatives were considered by yourself and that will achieve the same objectives than those contained in the Covid-19 vaccination policy (sic)?**

Reputable studies from, among others, the Centre for Communicable Diseases, confirm that vaccination is the most effective defence against severe illness, transmission and death from COVID-19. Vaccination offers superior protection compared to that provided by K-95 masks, daily health screening, PCR testing, disinfection and social distancing, all of which were considered by UJ in formulating the Policy.¹²

17. **If I refuse to take the vaccine, what are the next steps and implications for me in terms of reasonable accommodation and/or potential disciplinary action?**

If an employee/student refuses to take the vaccine, the reasons for the refusal will be considered. If the reason is acceptable in terms of the policy, UJ, will engage with the employee/student to seek accommodation on a case-by-case basis, where possible and in line with its operational requirements. If an employee/student cannot be accommodated, the UJ would then assess the matter in terms of its existing medical incapacity or operational requirement processes and/or student disciplinary processes. For the sake of clarity, an employee/student will have to make use of the formal exemptions process as this is the only route that may be taken in terms of the Policy.

18. **If I do take the vaccine, can it be formally placed on record in my personnel file that I am forced to do so against my will and that I am doing it under duress so that I can keep my job and provide for my family?**

No, UJ does not place any employee under duress to be vaccinated, If an employee has concerns about the vaccine and needs more information to make an informed decision, UJ will arrange counselling and access to information for that employee. If any employee still does not give voluntary consent to be vaccine, that employee must refuse and be dealt with in terms of the policy.

¹² Source: <https://www.cdc.gov/vaccines/covid-19/effectiveness-research/protocols.html>.

19. **Will UJ confirm in writing that the employee/student will suffer no harm if they are vaccinated?**

No. UJ will provide access to medical information and counselling to assist an employee/student who may have concerns regarding possible harm associated with vaccination.

20. **Will refusal of vaccination compromise the employee's position, or result in prejudice and discrimination to the employee?**

If a refusal is deemed acceptable under the policy, the employee will be accommodated as far as reasonably practicable and in line with the UJs operational requirements. The accommodation process will seek, as far as possible, to place the employee in a similar position to that had the employee been vaccinated – however, the operational requirements of UJ, an employee's job and the effect of additional measures that may need to be taken to safeguard that employee's health in the workplace may reasonably impact the position of the employee. UJ will seek to agree the accommodations necessary with the employee and if accommodations cannot reasonably be agreed, existing HR processes may be followed.

21. **Will a doctor take legal responsibility for any injuries occurring to myself as a result of vaccination?**

No. Healthcare providers simply administer the vaccine and there is no basis on which, in the extremely unlikely event of a vaccine injury, liability should be imputed to them.