

The position of the UCT executive on mandatory vaccinations for UCT staff and students

Context

The University of Cape Town (UCT) executive is supportive of a policy requiring mandatory vaccinations for UCT staff and students. The UCT executive wishes to meet staff and students to share our position and the reasoning for it, give the context to that position and engage and receive input from staff and students. The executive will, after taking into consideration the views of staff and students, form a position on the matter that will then be tabled at Council at its meeting on 16 October.

The Executive position

The UCT Executive proposes a UCT policy that supports mandatory vaccinations.

The current environment

The first cases of COVID-19 were discovered in late 2019 and since then there has been a global pandemic. Virtually no country in the world has been spared. The pandemic has had a negative impact on our economy and employment and placed a heavy burden on our health services, limiting access to services for persons with other conditions.

The lockdowns and measures to curb the spread of the virus, such as prohibiting the movement of people and limiting gatherings, have for the past 18 months, severely disrupted the university's teaching and learning, and research endeavours as well as its social responsiveness programme. These measures have had a negative impact on the mental health of our staff and students. The university now has an ethical obligation to re-open safely as far as possible.

Whilst various measures were imposed to protect citizens in different countries, a concerted and collaborative effort by governments and scientists led to the development of a number of vaccines against COVID-19. These vaccines have been tested through scientific experiments and in the field. International studies on vaccine effectiveness show that vaccination prevents transmission of the corona virus (40 to 50% decrease), severe disease (80% decrease) and death (almost 100% decrease).

The university is a higher education institution, with teaching and learning, research, and social responsiveness at its core mandate. In order to deliver on its mandate, the university intends returning to a model where face-to-face teaching and learning remains a core component. The evidence shows that if a large proportion are vaccinated at the university, vaccination will protect staff and students and will allow a return to a more "normalised" situation, as it is very unlikely, at this stage of the pandemic, that other protective measures will achieve this.

Every effort will be made together with unions and student representatives, the Departments of Higher Education and Health, and Higher Health to encourage voluntary vaccination through meaningful and respectful engagement, public information, advocacy role-modelling and peer support. Near universal vaccination will reduce the frequency and severity of infections and prevent COVID-19 related deaths. It will also promote vaccine roll out at the population level

and promote safety in our communities. The evidence suggests that the rapid roll-out of vaccination may help to prevent new variants emerging and taking hold.

In terms of Section 36 of the South African Constitution, the limitation of rights to freedom of conscience, religion, belief and opinion (amongst others) in terms of the South African Constitution is governed by two principles: first, that the entrenched rights are not absolute but that they may be limited after the commencement of the Constitution, and second, that those who limit rights must comply with the requirements set out in the Constitution. It states that these individual rights may be limited only in terms of law of general application "to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom". It also requires that the restriction be proportional to the purpose of the limitation.

The National Health Act contains regulations overseeing COVID-19 as a statutory notifiable medical condition. The Disaster Management Act regulates that any person "who intentionally exposes another person to COVID- 19 may be prosecuted for an offence". The Regulations state that "any person who publishes any statement, through any medium, including social media, with the intention to deceive any other person about COVID-19; the infection status of any person; or any measure taken by the Government to address COVID-19, commits an offence". These regulations restrict individual rights and civil liberties for public good in terms of limiting the general impact of COVID-19

Restrictions on individual rights imposed via vaccination are not discriminatory nor unreasonable but are based on a legitimate objective, namely preventing serious disease and death from COVID-19 and are strictly necessary for the achievement of the policy objective. Such a policy will provide for medical exceptions for individuals whose religious beliefs prohibit any such medical intervention. This is unambiguously in the public interest.

Such restrictions must be based on scientific evidence. Billions of COVID-19 vaccine doses have been administered globally, and there is clear evidence of good protection from severe disease and death. Serious side-effects are extremely rare. The majority of hospitalisations and deaths in South Africa are now occurring among the unvaccinated. Given this data, mandatory vaccination satisfies the requirement for being reasonable.

Based on this legal framework, researchers in South Africa claim that a mandatory vaccination policy can be legitimately introduced for specific occupational and congregate settings.

This is an opinion and the degree to which each of these individual rights, namely the right to equality, the right to freedom of conscience, religion, belief, and opinion, may be limited by mandatory vaccination policy is not absolutely clear and may still be tested in a court of law.

Relevant legislative framework applicable to staff

On 11 June 2021, the Minister of Employment and Labour released the amended Consolidated Direction on Occupational Health and Safety Measures in certain Workplaces. The document allows employers to apply mandatory vaccination policies in the workplace. Firstly, the directive states that an employer must conduct a risk assessment to identify for whom

mandatory vaccination should apply and, secondly it states conditions if a mandatory vaccination policy is to be applied. The directive states that employers who choose to apply a mandatory vaccination policy must:

- Make sure that the policy is fair, transparent, and accessible
- Ensure the opportunity to vaccinate is easy and accessible
- Make sure that they have a reasonable and justifiable reason for implementing the policy
- Balance their staff members' constitutional rights when they implement the policy.

Relevant legislative framework applicable to students

The university has an obligation to the current generation of students to re-open safely as far as possible. All undergraduate students residing in South Africa are expected to be in Cape Town to attend campus as from the start of the 2022 academic year and to remain for the duration of the academic year unless national prescripts and directives (as per lockdown levels) require otherwise. All courses with large classes (more than 50 students) need to be offered in a blended mode, that is in a combination of online and face-to-face experiences that will be decided by the departments and the faculties.

While the 2021 approach to postgraduate studies was presented as a flexible, versatile system, aimed to be readily tailored to suit our very diverse postgraduate programmes, in reality very few programmes that did not require labs, studios or workshops made use of access to campus. Study spaces were used by a small number of postgraduate students, as was library access when available. It is planned that in 2022, contact and face-to-face sessions and access to campuses should be enhanced in the postgraduate sector and guidelines will be in place with consultation with faculties and research units.

Universities are able under the Higher Education Act (HEA) to make a rule requiring vaccination to access campuses and/or for in-person activities. Such rules may limit constitutional rights, such as in the Bill of Rights in Chapter 2, as stated above, namely the right to equality, the right to freedom of conscience, religion, belief, and opinion.

Section 27 (1) of HEA provides that the council of a public education institution must govern the institution, subject to HEA and the institutional statute. Section 32(1) empowers the council to pass institutional statutes to give effect to any matter not expressly prescribed by HEA, and then institutional rules giving effect to the statute. Health and safety are not matters expressly prescribed by HEA. It is the university's duty to ensure that students living in residences or coming onto campuses are protected against COVID-19 infection.

As stated in the framework above, in terms of the Bill of Rights in the Constitution, any mandatory rule on vaccination may limit the right to bodily and psychological integrity, to freedom of conscience, religion, thought, belief and opinion, to equality, to further education, to further health care services and to privacy, but the Constitution allows individual rights to be limited, if it is for public good.

UCT Executive