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EMPLOYMENT NEW ZEALAND

Vaccines and the workplace

Guidance for employees and employers on COVID-19 vaccination requirements in the workplace.

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(Employment New Zealand, 2022)

Note: The pages in this section use the terms 'businesses', 'workers', 'employees' and 'employers'. This is because vaccination issues at work involve health and safety law, privacy and employment law. Health and safety law applies to PCBUs (Persons Conducting a Business or Undertaking, referred to as 'businesses' below) and workers (including employees and independent contractors). Employment law applies to employees and employers.

Work requiring COVID-19 vaccination

Government vaccination requirements for work

The Government has updated the sectors where it is mandated that work be done by vaccinated people.

Government vaccination mandates are in force for:

- Health and disability sector workers (which includes aged care workers)
- Prison staff
- Border and MIQ workers

To find out more see the Unite Against COVID-19 website.

Mandatory vaccinations for workers – Unite against COVID-19

Government vaccination mandates are no longer in force for:

- New Zealand Police workers (sworn members, recruits and authorised officers) unless working in an environment where a mandate is required
- New Zealand Defence Force workers (Armed Forces and civilian staff) unless working in an environment where a mandate is required
- Early childhood and schooling education workers
- Workers at food and drink services, events, close proximity services and indoor exercise facilities like gyms
- Work at tertiary education premises (which only applied at the Red level of the COVID-19 Protection Framework).

Employer vaccination requirements for work

If a business or workplace isn't covered by a government vaccination mandate, an employer can determine what controls can be supported by a work health and safety risk assessment or in relation to third party access requirements. This may include requiring work be done only by vaccinated workers.

Employers must engage with workers and their representatives in good faith. This includes when they are developing, implementing or reviewing an employer vaccination requirement or other COVID-19 controls.

[Read more: COVID-19 controls for work health and safety reasons, including employer vaccination requirements and the latest public health advice](#)

Frequently asked questions

The following questions have been raised following recent changes to government vaccination mandates. The answers reflect updated public health advice from the Ministry of Health.

What should an employer do if a government vaccination mandate no longer applies to their workplace?

These employers can no longer use a government vaccine mandate as a reason for taking employment actions against unvaccinated employees.

Employers who wish to consider the role of vaccination in managing risk, should complete a work health and safety risk assessment. This should reflect updated public health information and advice from the Ministry of Health. The risk assessment will enable the employer to determine what controls are appropriate in their workplaces.

[Read more: COVID-19 controls for work health and safety reasons, including employer vaccination requirements and the latest public health advice](#)

Employers may also maintain employer vaccination requirements, where they need one to ensure that their employees can access third party sites.

[Read more: Other reasons for requiring vaccination of workers](#)

What should an employer do if they have an employer vaccination requirement already in place?

Employers should review their work health and safety risk assessment to take into account the current public health advice and any other changes in the workplace.

Employers should also communicate with their employees and any relevant unions and let them know when and how the review will take place. This should happen as soon as practicable.

[Read more: COVID-19 controls for work health and safety reasons, including employer vaccination requirements and the latest public health advice](#)

Employers may also maintain employer vaccination requirements, where they need one to ensure that their employees can access third party sites.

[Read more: Other reasons for requiring vaccination of workers](#)

What should an employer do if they have created an employer-vaccination requirement, but it hasn't come into force yet?

It is recommended that an employer take a cautious approach and immediately pauses any employment processes that they may have underway such as consultation over implementing an employer-vaccination requirement, including redeployment, leave or termination of the employment of unvaccinated workers.

The employer should then review their work health and safety risk assessment to take in to account the current public health advice.

[Read more: COVID-19 controls for work health and safety reasons, including employer vaccination requirements and the latest public health advice](#)

Employers may continue with employer vaccination requirements, where they need one to ensure that their employees can access third party sites.

[Read more: Other reasons for requiring vaccination of workers](#)

What should an employer do when hiring staff in the future?

Employers should be clear when hiring new staff whether vaccination requirements apply (either under a government vaccination mandate or employer-vaccination requirement) or might apply in the future (particularly if the employer is still considering this).

Employers can ask whether a potential employee is vaccinated and can specify vaccination is required to commence employment, subject to some conditions

[Read more: Making vaccination a condition of new employment](#)

If there is no longer a vaccination requirement in place, employers are under no obligation to contact staff who have left work or had their employment terminated to see if they are interested in returning to work. Employers may, however, choose to do this.

What should an employer do if they are changing or removing vaccination requirements in their workplace?

All employers who are making changes to their vaccination requirements should have a clear transition process.

Employers should:

- Ensure there is as limited window as possible for transition before the new approach comes in
- Be clear on what arrangements will be in place if they intend to stand-down unvaccinated workers from performing certain work during that window (for example whether the workers will be paid or expected to perform different work or work in a different way)
- Be clear how they will deal with different views amongst workers (for example those hesitant to work with unvaccinated colleagues)
- **Positive conversations and reaching agreement**
- Be clear how they will reintegrate unvaccinated workers into the workplace (particularly those currently stood-down and potentially those who had their employment terminated).

Can someone who lost their job due to a previous vaccination requirement get their job back?

If someone's employment was terminated and this took effect while a government vaccination mandate or employer vaccination requirement was in place, that decision still stands. A former employee does not have a right to get their old job back, or any other role with their previous employer.

It's also important to note that while government vaccination mandate have been lifted for some sectors, employers may choose to implement an employer vaccination requirement.

In the current tight labour market, we expect that some employers, who no longer maintain a vaccination requirement, may want workers to return if they still have suitable vacancies. However, there is no requirement for an employer to offer a former employee their job back or for a former employee to accept.

Employees will still be able to bring a personal grievance if they feel they have been unjustifiably dismissed or disadvantaged as a result of a decision their employer has made about vaccination.

Personal grievance process

Can someone on leave because of a requirement that they be vaccinated go back to work?

There is no barrier to a worker returning to work if they are on leave because their work was covered by a government vaccination mandate or an employer vaccination requirement, and that now no longer applies.

For situations that were covered by a government vaccination mandate, this will, depend on whether an employer chooses to implement an employer vaccination requirement after doing a work health and safety risk assessment.

Employer should tell their employees what process they are following to decide whether the employee can return to work and when a decision will be made.

Employees are still able to bring a personal grievance if they feel they have been unjustifiably disadvantaged as a result of a decision their employer has made about vaccination.

Personal grievance process

Can an employee still lose their job if they are unvaccinated, and the employer requires vaccination for their job?

Where an employment process is underway because an employee is not vaccinated, it is recommended that the employer take a cautious approach and pause that process (including redeployment, leave or termination of the employment of unvaccinated workers).

Public health advice on when a business could reasonably require vaccination to perform work has been updated. Employers should undertake an updated work health and safety risk assessment before making any decisions.

Read more: COVID-19 controls for work health and safety reasons, including employer vaccination requirements and the latest public health advice

The law says before giving a termination notice, the employer must ensure that all other reasonable alternatives that would not lead to termination of the employee's employment agreement have been exhausted.

Examples of alternatives include agreeing to pause a process to review updated guidance and public health advice and consider whether public health controls other than vaccination are appropriate.

Employers may have employer vaccination requirements, where they need one to ensure that their employees can access third party sites.

Read more: Other reasons for requiring vaccination of workers

COVID-19 controls for work health and safety reasons, including employer vaccination requirements

Where a government vaccination mandate does not apply, employers can complete a work health and safety risk assessment. This will allow them to determine what COVID-19 controls are appropriate, which could include implementing an employer vaccination requirement.

Assessments should reflect the latest public health information and advice to determine what controls are appropriate in their workplaces. Any previously completed assessments should be reviewed to reflect the latest guidance.

Guidance on undertaking a work health and safety assessment is available from WorkSafe New Zealand (including the updated public health advice):

COVID-19 controls at work: Employer vaccination requirements and other measures – WorkSafe

An employer could conclude that:

- Alternative controls are more appropriate than requiring vaccination to perform specified work. In this case the employer should implement the alternative controls. If a vaccination requirement was in place, it should be rescinded.
- There is a basis for an employer-vaccination requirement. In this case the employer could implement an employer-vaccination requirement (alongside any other controls that are appropriate to reduce the risk and transmission).

Managing risks in the workplace – WorkSafe

Employers must engage with employees in good faith. This includes when reviewing a work health and safety risk assessment. If there are any changes as a result of the assessment employers must be clear what their transition process will be.

Read more: What should an employer do if they are changing or removing vaccination requirements in their workplace?

Usual employment law and processes continue to apply to any employment processes arising from a risk assessment. Employers should take care to follow a fair and reasonable process before making any decisions and work in good faith with employees and unions before deciding on any employment outcomes.

Employees will be able to bring a personal grievance if they feel they have been unjustifiably dismissed or disadvantaged as a result of a decision their employer has made about vaccination.

Personal grievance process

Other reasons for requiring vaccination of workers

There may be situations where a third party imposes a condition on an employer, for example only allowing vaccinated workers onto its premises. This may arise where an employer's workers provide services to a third party, for example onsite security or catering services.

As long as these vaccination conditions are not unlawful, or in breach of any agreements between the parties, the employer will need to ensure its workers are vaccinated to keep doing business with the third party.

Where this situation applies, we recommend that employers engage with the third party to ensure that in imposing this requirement they are meeting their work health and safety duties to so far as is reasonably practicable, consult, co-operate with, and co-ordinate activities.

This means that an employer may need to consider which of its workers engage with the third party based on their vaccination status. An employer may also rearrange their business to ensure that only its vaccinated workers engage with the third party.

Supporting employees to get vaccinated

High rates of vaccination remain critical to prevent severe disease and death, especially in vulnerable people. In addition, it affords some individual protection against infection and transmission of the virus and broad population protection with high vaccination uptake.

While two doses are likely to provide a good degree of protection against severe disease from Delta and Omicron COVID-19 variants for some time, a booster or third dose is likely to offer greater protection.

Communicate early and openly and in good faith

Employers, employees and their representatives should communicate early and openly about workplace vaccination requirements.

The duty of good faith in employment relationships apply to employees. Consultation requirements under the Health and Safety at Work Act also apply to conversations with all workers, not just employees.

Employer and employee must do's

Talking to employees about the COVID-19 vaccination

If there are any practical barriers to accessing vaccination, employers should help address these. Some employees may have individual health concerns or other reasons for needing support.

How to get a vaccination – Unite against COVID-19

The Unite Against COVID-19 website has a toolkit with information and resources to help workplaces support COVID-19 vaccinations.

COVID-19 Vaccine: Business and workplace toolkit [PDF, 540KB]

They also have posters, flyers and other promotional material.

COVID-19 vaccine posters, videos and flyers – Unite against COVID-19

Employees may have questions about the vaccine. Employers can help them by directing them to official sources for accurate information.

- **Vaccine information – Unite against COVID-19**
- **Ministry of Health**
- **Karawhiua – information for whānau, hapū, iwi and Māori communities**

Before any vaccine is approved for use in New Zealand, it must meet international standards and local requirements for quality, safety and efficacy.

This means employers do not need to debate or provide detailed answers to questions about the vaccination, its safety, and/or its effectiveness as a control against infection/transmission/severe illness.

Where detailed medical questions are raised, an employer can rely upon expert public health advice for those matters and can point employees who are concerned to that information.

Employers should consider providing an employee with access to someone who can deliver this advice in a way that is readily understood, if that was reasonable and practicable in the circumstances. This could include a medical practitioner.

Don't share vaccine disinformation in the workplace

Sharing vaccine disinformation could, in some circumstances and in some workplaces, potentially amount to misconduct in the workplace. Employers should seek legal advice before taking any action for such conduct.

Vaccine safety and approval – Unite against COVID-19**Requirement to provide paid time off to get vaccinated**

Employees are entitled to reasonable paid time away from work during their normal working hours to receive a dose of a COVID-19 vaccine, including a vaccine booster, as long as providing the time off does not unreasonably disrupt:

- their employer's business; or
- the employee's performance of their employment duties.

Before attending a vaccination appointment during work hours, an employee must let their employer know:

- the date and time they intend to receive a vaccination, and
- the amount of time that they expect to take as paid time off in order to receive that dose, including travel time.

If the proposed date or time would be unreasonably disruptive, the employer and employee should seek to agree on a different date or time.

In agreeing on what time off is reasonable, employers and employees should consider things like:

- the location of the nearest vaccination centre
- the availability of appointment times
- transport options and travel time, and
- the 15-minute monitoring time after a person has received a vaccination.

Employers may opt to develop a workplace policy that indicates when they will consider it reasonable to take time off to be vaccinated, so that they do not need to consider employees' notifications on a case-by-case basis.

Employers do not need to record this leave in their payroll system, but it's a good idea to record that the employee took this leave in case there is a dispute.

An employer must pay their employee for the time in question at the rate of pay that the employee would otherwise have received if the employee was performing their ordinary employment duties during that time. If an employee arranges vaccination outside of their ordinary working hours, they are not entitled to paid time off.

Paid time off to receive a COVID-19 vaccination is a separate entitlement to what employees get under the Holidays Act 2003. That is, employers cannot ask employees to use annual or sick leave to get vaccinated. If an employee suffers side effects because of the vaccination, any time they take off to recover can be taken as sick leave.

Employees are not entitled to paid time off to take their child or children for their COVID-19 vaccination. If there is a particular reason an employee needs to take their child or children to be vaccinated during work hours, employees are encouraged to discuss this with their employer. Employers must be open and communicative and respond to workers in good faith where issues are raised by workers, including matters relating to vaccination.

Asking employees for vaccination information**Employers can collect information about their employees' vaccination status for a lawful purpose**

Employers may ask employees whether they have been vaccinated and to provide proof of vaccination so long as they consider there is a lawful purpose to collect this information. This could be where work can only be done by a vaccinated worker under a Government mandate, for health and safety reasons, or to meet a vaccination requirement imposed by a third party.

Employees do not have to disclose their personal vaccination status. If they choose not to disclose their vaccination status, employers may assume they are unvaccinated, but must inform workers that they will make this assumption, and what it may mean for their employment, in advance.

Employees cannot be redeployed or disadvantaged for refusing to disclose their vaccination status, unless the work they are doing cannot be done by unvaccinated employees.

Making vaccination a condition of new employment

An employer who wishes to may make vaccination a condition of employment for a new employee or an existing employee moving to a new role may do so. This should be a genuine requirement for a role and the employer should clear what the basis for the condition is (for example, where such a condition is based on a work health and safety risk assessment or reflects third party requirements). Employers should also consider whether there are alternatives to requiring vaccination as a condition of employment.

Such a condition must not breach any legal requirements, including the Human Rights Act.

Where an employer is considering introducing this requirement, we strongly recommend they get specialist advice first.

Collecting, storing and sharing information about an employee's vaccination status

Information will need to be collected and handled according to the Privacy Act.

Businesses must take reasonable steps to make sure information about an employee's vaccination status is collected, used and stored lawfully.

The obligations under the Privacy Act include making sure:

- that workers are aware of how this information will be used
- any intended recipients of the information
- that workers know why it is being collected
- that it is stored securely
- that reasonable steps are taken to ensure the information is accurate and up to date before it is used.

Privacy and COVID-19 – Office of the Privacy Commissioner**Retention of Personal Information – Office of the Privacy Commissioner****Employment actions if an employee is unvaccinated and there is a requirement that they are**

Employers should take care to be fair and reasonable in their engagement with employees regarding vaccination, and work through processes with employees in good faith before deciding on any outcome.

Employers cannot require any individual person to be vaccinated. Being unvaccinated however may have implications for an employee's job.

If certain work can only be done by vaccinated workers under a Government mandate or an employer vaccination requirement, employers should set a reasonable timeframe for employees to decide if they will be vaccinated.

Special paid leave should be considered, especially in the short term, when employers and employees are discussing whether an employee will be vaccinated and what will happen if the employee is not vaccinated.

Changing work arrangements or duties

Employers must consider whether there are any other reasonable alternatives that would allow the employee to keep working while unvaccinated. Employees and employers may be able to agree on changes to work arrangements (e.g. location or hours of work) or duties (e.g. job content), which could mean that vaccination is no longer required. This outcome should be mutually agreed and independent advice may be needed if this is not possible.

Employers should also consider whether the tasks that require vaccination can be deferred. For example, if an employee has a particular reason for not being vaccinated (e.g. certain medical conditions, or existing medication regimes). This might mean alternative arrangements can be agreed for the short term, with vaccination planned for a later date.

The Ministry of Health has established a process for Temporary Medical Exemption from Government-required vaccination on certain grounds, such as recovery from illness. This process does not apply to employer-required vaccination, but employers and employees may find the grounds to be useful when developing or reviewing their own policies. They are set out here:

Modifying employment agreements during COVID-19 response and recovery

Taking leave

Employers and employees can together agree on a form of paid leave, either special paid leave or annual leave. Special paid leave should be considered, especially in the short term, when employers and employees are discussing whether an employee will be vaccinated and what will happen if the employee is not vaccinated.

If an employer and employee cannot agree, the employer may direct the employee to take annual leave (if the employee has leave entitlements available) with at least 14 days' notice.

Taking annual holidays

An employer cannot make their employee take unpaid leave without their consent. If an employer has directed their employee to take unpaid leave, this could be seen as the employer unlawfully suspending the employee.

Suspension**Restructuring work**

Employers may also consider restructuring, including redundancies, for example if they need to meet vaccination requirements imposed by a client. If so, employers should take care to comply with employment law, including acting in good faith and being consistent with any provisions in employment agreements.

Redundancy must be the last option, after all other reasonable alternatives (e.g. redeployment where possible or rearranging work) have been exhausted. An employer and employee may agree to a negotiated end of employment.

Workplace change**If an employee's agreement is terminated because they are not vaccinated**

If all other reasonable alternatives that would allow the employee to keep working have been exhausted, the Employment Relations Act requires employers to provide employees with at least four weeks' paid written notice of termination.

It is highly unlikely to be a good faith action for an employer to direct that a worker use annual leave (if the employee has leave entitlements available), or any other entitlements that the employee has, during this paid written notice period.

This change will only apply to employees who do not have a notice period, or whose notice periods are shorter than four weeks. If an employee has a notice period longer than four weeks in their employment agreement, that longer notice period will continue to apply.

If employees get vaccinated or are otherwise permitted to perform work under a COVID-19 order, during this four week notice period, the termination notice is cancelled, unless this would unreasonably disrupt the employer's business. For example, where a business has hired a replacement employee and there is no other work available in the business.

If an employee loses their job because they decide not to get the COVID-19 vaccination, there may also be support available from Work and Income.

Lost job because of COVID-19 vaccination requirement – Work and Income**Support to help resolve employment disputes**

Normal employment law and processes continue to apply. Employers should take care to be fair and reasonable in their employment decisions and work in good faith with employees and unions before deciding on any employment outcomes.

Employees will be able to bring a personal grievance if they feel they have been unjustifiably dismissed or disadvantaged as a result of a decision their employer has made about vaccination.

Personal grievances

Employers and employees can access support from MBIE's mediation service to resolve employment problems.

Should mediation not resolve the dispute, the Employment Relations Authority or Employment Court can determine the issue.

Steps to resolve

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Please note that this content will change over time and may be out of date.

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