

## BUSINESS

# Covid-19 outbreak: Unvaccinated workers don't have right to get their job back - govt advice

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Chris Hipkins announced a new initiative aimed at improving access to rapid-antigen testing to people in rural areas. Video / Mark Mitchell / Dean Purcell / Michael Craig

NZ Herald

Employees who lost their jobs due to a requirement to get vaccinated will not have a right to get them back under advice provided by the Government today on vaccine mandates.

Last week Prime Minister Jacinda Ardern announced the end of controversial vaccine mandates for education, police and Defence Force workers from 11.59pm on April 4.

Today the Government has released guidance for businesses on how to handle vaccine mandates in the workplace.

That guidance includes a frequently asked question and answer section on its employment advice website.

It states that 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.

"There is no requirement for an employer to offer a former employee their job back or for a former employee to accept."

But 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.

Likewise if a government vaccine mandate no longer applies to a workplace the employer can not use that as a reason for taking employment action against unvaccinated workers.

"Employers who wish to consider the role of vaccination in managing risk, should complete a work health and safety risk assessment."

Last year many companies also brought in mandates to require workers and customers visiting their offices to be vaccinated even though this wasn't a government requirement.

Those companies are now being advised to 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."

Michael Wood, Minister for Workplace Relations and Safety, said its guidance was centred on public health advice which suggested that requiring vaccination in the workplace should only be permitted if it was deemed an employee was at higher risk of catching and spreading Covid-19 while at work, than they would otherwise be in the community.

"Employers may still be able to maintain vaccination requirements where they continue to be supported by a workplace health and safety risk assessment, but the reason will need to be specific to their role and set of circumstances."

Wood anticipated this would significantly reduce the use of vaccine requirements in most settings and the circumstances were likely to be more limited than they have in the past now that Omicron has entered the community.

"Employers should regularly review their workplace health and safety risk assessments and there are a number of public health factors outlined in the guidance that is recommended they consider as part of this process."

He said employers should keep in mind that normal employment law and processes continued to apply.

"Employers should be fair and reasonable in their employment decisions and work in good faith with employees and unions before taking any employment actions in relation to unvaccinated employees."

Wood said vaccination continued to be strongly recommended as one of the key public health measures and provides significant benefits.

"I recommend that employers undertake an updated work health and safety risk assessment before proceeding with any employment processes they may have already in place.

"It is also important to remember that the majority of New Zealand workplaces have not had a vaccination requirement in place and have managed well over this period.

"Throughout the pandemic, employers have shown their ability to adapt and respond to our changing environment while supporting employees."

Advice on the Government's WorkSafe website said employer vaccination requirements should be used carefully and were not a suitable first response for managing Covid-19 in most workplaces.

"Employers should undertake a risk assessment to determine their level of risk and consider the extent to which other controls can manage that risk."

It states that the public health justification for requiring vaccination is stronger when the risk of contracting Covid-19 at work is higher than it is in the community.

Employers should assess if there was a greater risk of the worker being exposed to new variants at work than in the community, whether the worker interacts with people who are at a greater risk of severe illness should they contract Covid-19 and if the worker regularly interacted with people who were less likely to be vaccinated.

Employers should also consider if the person works in a confined indoor space which involved close and sustained interactions with others.

WorkSafe said employers should consider using other controls first such as supporting workers to stay home when sick, requiring mask use in some indoor settings, improved ventilation, physical distancing, testing and basic hygiene practices.

"WorkSafe considers that few workplaces will be able to justify an employer vaccination requirement for health and safety or public health reasons. For those who can, this would likely be only for specific roles."

Last week Prime Minister Jacinda Ardern said businesses needed to undertake their own health and safety checks to decide whether they needed to keep vaccine mandates in place.

Last year in the midst of the Delta outbreak many businesses put in place policies so that only vaccinated people could come into their offices or places of work.

In October last year law firm Russell McVeagh and accounting company PwC introduced compulsory Covid-19 vaccination policies for all staff and visitors to their offices, affecting thousands of people.

PwC, which employs more than 1600 people across New Zealand, announced its vaccination policy would require staff and contractors to be fully vaccinated against Covid-19 if they wish to work from a PwC office or client site.

The policy came into effect from December 1 and applied to visitors at any PwC office.

Russell McVeagh brought in its mandate on November 1 which meant only people who had received both doses of the Covid-19 vaccine were able to enter the firm's Auckland and Wellington offices.