**Relevant Covid-19 vaccination information for workplaces**

**For Community Organisations operating under the Covid-19 Public health Response (Vaccination) Orders (Mandated)**

*The following information has been compiled from Worksafe, Employment NZ; MOH, MSD and the* [*Covid.govt.nz*](http://covid.govt.nz/) *websites as well as informal legal guidance. This is up-to-date as of 2 December 2021. This does not constitute legal advice. Organisations, employers and staff/workers are encouraged to use these websites for updated information as the Covid-19 environment evolves and Government response, statutes, case law and guidance changes (see list of links/resources at end of document).While we have made every attempt to ensure the information has been obtained from reliable sources, Socialink is not responsible for any errors or omissions or the results obtained from the use of this information.*

***Note:* Use of terms**

The terms 'businesses', 'workers', 'employees' and 'employers' are used because vaccination issues at work involve health and safety law 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. The use of the term ‘business’ in this document covers not for profit organisations employing staff or using volunteers. The term ‘worker’ includes both paid and unpaid (volunteer) workers with regard to vaccinations, according to Volunteering NZ. Worksafe states its guidance on employees may also be useful for contracting or volunteer arrangements.

**NEW GUIDE For Social Service Providers released 1st December:**

***COVID-19 Protection Framework (traffic lights) – Guidance for Social Service Providers to be read in conjunction with general CPF Guidance***

This document has been released by the Ministry of Social Development and is available at the link below. It will be updated to reflect any changes in the COVID-19 Protection Framework Order. It provides advice for social service providers on operating under each traffic light (Red, Orange, Green); requirements on vaccine passes and staff vaccination and what providers should take into account when making decisions about operating. The guide states settings differ depending on the services you provide.

<https://msd.govt.nz/documents/about-msd-and-our-work/covid-19/guidance-for-providers/1-dec-2021-social-service-providers-covid-protection-framework-guidance.pdf>

**Mandatory Vaccination in the Workplace–**

**Critical Points – Employers/Businesses need to:**

* **comply with employment law,**
* **follow best practice procedure**
* **act in good faith at all times*.***

Certain work may only be carried out by vaccinated workers. The COVID-19 Public Health Response (Vaccinations) Order 2021 specifies who those workers are. This is a public health requirement. If a worker works remotely and is under the Order they may be an affected person but because they work remotely they don’t fit the ‘certain work’ criteria so don’t necessarily need to be vaccinated.

Please click on link below to the COVID-19 Public Health Response (Vaccinations) Order 2021 for details.

<https://www.legislation.govt.nz/regulation/public/2021/0094/latest/LMS487853.html>

Businesses, workers and their representatives should communicate early and openly. The duty of good faith in employment relationships and consultation requirements under the Health and Safety at Work Act also apply to conversations about workplace vaccination issues. Businesses and workers can access support from MBIE’s Early Resolution Service to resolve employment problems early and informally.

**Exemptions to vaccinations**

* Exemptions are outlined for particular groups (see the Order’s Schedule 2, Part 7 for groups in relation to health and disability sector) and are only for 6 months (Clause 9b(8)) but further applications can be made. Exemptions are applied for by a suitably qualified medical/nurse practitioner on behalf of a person who belongs to a group specified in Schedule 2. Exemptions will be for a specified time reflecting recovery from clinical conditions eg heart issues or pre-existing cardiac conditions or from serious side effects i.e. hospitalised after first dose – with new vaccines, exemptions will be lifted.
* An exemption doesn’t safeguard an affected person’s employment and an employer still has the responsibility for safety of all staff.

**Volunteers and Contractors**

Volunteers and contractors are also covered under the Order, as are casuals, students and temps. (See pg 17 MOH’s Health & Disability Worker Vaccinations Order:

[Vaccination Order Guidance document for PCBUs and workers](https://www.health.govt.nz/system/files/documents/pages/health-worker-vaccination-guidance-document-for-pcbus-and-workers-11nov21.docx)

**Asking employees about their vaccination status and protecting personal information**

Collecting, storing and sharing information about people’s vaccination status must be done in accordance with the Privacy Act.

Generally, a worker does not need to disclose (or prove) their vaccination status to a business/employer.

If certain work cannot be done by an unvaccinated worker, a business can ask a worker about the worker’s vaccination status. If the worker does not disclose (or provide evidence about) their vaccination status, the business may assume the worker has not been vaccinated for the purposes of managing health and safety risks. However, businesses should first inform workers of this assumption, and what will happen if the worker is not vaccinated or does not disclose their vaccination status.

Businesses cannot require any individual person to be vaccinated. Employees cannot be redeployed or disadvantaged for refusing to disclose their vaccination status, unless particular work cannot be done by unvaccinated employees.

**Asking candidates whether they are vaccinated during a job interview**

Businesses can only ask candidates if they are vaccinated when this is justified by the requirements of the role. For example, if a business decides, following a COVID-19 exposure risk assessment, that certain work cannot be performed by an unvaccinated worker, it may be reasonable to ask about an applicant’s vaccination status. This information will need to be collected and handled according to the Privacy Act.

**Protecting personal information**

Businesses must take reasonable steps to ensure information about vaccination status is collected lawfully, including that workers are aware of how this information will be used, and why it is being collected. Businesses must not pass on information about a worker’s vaccination status to others without the worker’s consent, or otherwise allowed by the Privacy Act.

**Employment law continues to apply if work cannot be done by unvaccinated employees**

Law changes will clarify the process for situations where a worker chooses not to be vaccinated, but vaccination is required for the work they do.

**New requirement for paid notice period when employment is terminated because of vaccination status**

The Government has passed legislation to provide a minimum four-week paid notice period when people have their employment agreements terminated because they are not vaccinated, and their work requires vaccination.

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 will continue to apply.

Keep an eye on updates at<https://www.employment.govt.nz/>

Other aspects of employment law will not change, including that:

* Employees and employers must continue to deal in good faith.
* Employers must still consider all reasonable alternatives, such as finding other work within the business that does not require vaccination.
* Employees will also be able to challenge any decisions they think are unfair, for example by raising a personal grievance.
* Current employment law continues to apply.

Particular laws apply for employees and employers. The information in this section is for employment relationships where an employee does work that can only be done by a vaccinated worker, either:

* For health and safety reasons, justified by a COVID-19 exposure risk assessment, or
* Because their work is covered by the COVID-19 Public Health Response (Vaccinations) Order 2021.
* If employees are doing work that can only be done by a vaccinated worker, but are not vaccinated, employers will need to address any practical barriers to accessing vaccination (eg if travel or time off work is needed). Employers should do this before considering any of the options below.

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

**Changing work arrangements or duties**

Employers should consider how much of an employee’s work poses a high risk of exposure to COVID-19. Employees and employers can both agree to change work arrangements (eg location or hours of work) or duties (eg job content), which could mean a role no longer poses a high risk. This outcome should be mutually agreed.

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 (eg certain medical conditions, or existing medication regimes) then this might mean certain alternative arrangements can be agreed for the short term, with vaccination planned for a later date.

**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.

*Unpaid leave*

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.

*Restructuring work*

Employers may also consider restructuring, including redundancies, if most (or all) of a role carries an established high risk of exposure to and transmission of COVID-19. This could mean that the introduction of COVID-19 vaccines has changed the role to the extent that it can only be done by vaccinated employees. Employers may need fewer unvaccinated employees as a consequence. If so, employers should take care to act in good faith and consistent with any provisions in employment agreements. Employers are strongly encouraged to seek legal advice about this.

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

**Amending employment agreements and workplace policies**

Employers and employees (or their unions, for a collective agreement) can negotiate variations to existing conditions. This could include adding COVID-19 vaccination as a term of employment, if it is reasonable for the role (for example, required for health and safety reasons).

Businesses must engage with workers, unions and other representatives when creating or varying policies and use established processes where possible. Changes to workplaces policies must not result in inconsistency with employment agreements.

*Requiring vaccination for new employees*

Employers can require vaccination as a term of new employment agreements, but this must be reasonable for the role (for example, required for health and safety reasons). Once the law has changed, employers that find work should only be done by vaccinated people, using the prescribed assessment process, can include this term in new employment agreements. This must not be unlawful discrimination under the Human Rights Act.

The New Zealand Bill of Rights Act may also apply. Under this Act, everyone has the right to refuse medical treatment, including vaccination, though this right can be subject to justified limits.

*Right to stop unsafe work*

Workers have the right to stop work or refuse to carry out work if they believe that doing the work would expose them, or anyone else, to a serious risk to health or safety from an immediate or upcoming hazard.

In general, unless vaccination is needed for health and safety reasons, work is unlikely to be unsafe solely because it is done around unvaccinated workers.

*Flexible work arrangements*

Employees have the right to request a change to their work arrangements, which includes their place of work.

**Questions about health issues related to the vaccine**

Employers must be open and communicative and respond to workers in good faith where issues are raised by workers, including related to vaccination.

However, this does not mean employers/PCBUs 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/PCBU is able to rely upon expert public health advice for those matters (eg information on COVID-19 vaccines from the Ministry of Health NZ) and MedSafe approvals of vaccines, and should direct workers who are concerned to that information.

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

An employer/PCBU can then focus any good faith conversation on whether a worker will be vaccinated to do work covered by the Vaccinations Order, or where the PCBU has required that specified work is only done by vaccinated workers for health and safety reasons, following a health and safety risk assessment.

**Sharing vaccine misinformation in the workplace**

Before any vaccine is approved for use in New Zealand, it must meet international standards and local requirements for quality, safety and efficacy. We should all play our part, by relying on trustworthy information about vaccines.

Sharing vaccine misinformation could, in some circumstances and in some workplaces, potentially amount to misconduct in the workplace. Such instances are likely to be rare. Employers should seek legal advice before taking any action for such conduct.

**Employer liability**

If an employee is injured from having a vaccination some have questioned if the employer is liable. This requires specific litigation advice as it is complex and no legal cases have arisen to date. It is possible ACC would cover in this scenario.

**Working with clients with unknown vaccination status**

If a worker doesn’t want to work with clients because they do not know if they are vaccinated, if it is an essential service they are required to provide services whether clients are vaccinated or not.

See the MSD’s guidance on social service sector and use of vaccine passes at this link:

<https://msd.govt.nz/documents/about-msd-and-our-work/covid-19/guidance-for-providers/1-dec-2021-social-service-providers-covid-protection-framework-guidance.pdf>

The Ministry of Health has guides on minimising the risk of transmission of infection to the health and disability care workforce to help protect workers and patients/clients.

All workers have a right to work within a safe environment and be safe in their workplace in accordance with the Health and Safety at Work Act 2015. Employers have a duty to ensure that their staff are able to work in a safe environment, in accordance with the Act. Employees have a responsibility to follow reasonable guidelines set by their employers to ensure safety.

**Continuing with other public health measures**

Vaccines play a critical role in reducing risks of COVID-19 infection and transmission. They are something all businesses should consider as part of their health and safety activities and assessments. Vaccination supports, and does not replace, other infection prevention and control measures. Workers, representatives and unions should be involved in this process.

Businesses must take steps to eliminate or otherwise minimise risks, including the use of personal protective equipment and cleaning, where recommended under public health guidance.

Businesses and other organisations should continue to encourage use of the NZ COVID Tracer app by clearly displaying QR codes, and must follow the COVID-19 Protection Framework (traffic lights) from the 3rd December.

**Useful Links and sources of information**

**Ministry of Health**

Information on vaccines:

https://www.health.govt.nz/our-work/diseases-and-conditions/covid-19-novel-coronavirus/covid-19-vaccines

Guidance for workplaces that have a case of COVID-19

<https://www.health.govt.nz/our-work/diseases-and-conditions/covid-19-novel-coronavirus/covid-19-health-advice-public/contact-tracing-covid-19/guidance-workplaces-have-case-covid-19>

Unite against COVID-19 has general information and specific information for businesses and services

<https://covid19.govt.nz/business-and-money/>

**Ministry of Social Development**

Has up to date information and answers to common questions from its social service providers

<https://www.msd.govt.nz/about-msd-and-our-work/newsroom/2020/covid-19/guidance-and-information-for-all-social-services.html>

Guide for social service providers:

<https://msd.govt.nz/documents/about-msd-and-our-work/covid-19/guidance-for-providers/1-dec-2021-social-service-providers-covid-protection-framework-guidance.pdf>

**Employment New Zealand (**It is the employment regulator within MBIE).

<https://www.employment.govt.nz/leave-and-holidays/other-types-of-leave/coronavirus-workplace/employment-nz-approach-to-covid-19/>

**Worksafe**

<https://www.worksafe.govt.nz/managing-health-and-safety/novel-coronavirus-covid/>

**Human Rights Commission**

Background to and FAQ on human rights and government obligations in relation to Covid-19, including employment, vaccines;

<https://www.hrc.co.nz/resources/human-rights-relation-covid-19/>