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**Zoom Session with Shima Grice – Employment Issues under the current Mandate – Monday 13 December 2021**

**Facilitated by Liz Davies – GM SociaLink**

**Disclaimer**: Please note: the advice given during this zoom is not intended to be specific legal advice, but rather a generic overall discussion with some informal guidance. You are encouraged to use the tools already developed via Ministry of Health, Worksafe and Business.govt.nz

Please note: these are only very brief notes. For the full info and discussion please listen to the recording or watch the zoom.

**How do we support people if they will not get vaccinated and there is no more work that can be done without a vaccination?** Redundancy does not apply in this situation. Set up a special meeting (similar to a disciplinary meeting) Explain the situation; that there is no longer work to do while unvaccinated, do not pre determine an end position but give opportunity to discuss and talk about alternatives e.g. alternative duties, p/t work, take leave of absence, another job in the organisation etc. If there are no other suitable options then termination will need to be considered.

**Completing the risk assessment**; the employer must undertake risk assessments for each role in consultation with staff and identify mitigation measures e.g. social distancing, working remotely, PPE etc. Then consider what is the residual risk – is vaccination the only mitigation? This process should be consulted on with staff and invite comments and discussion.

**How can risk be measured?** – Worksafe have released guidelines which identifies 7 risks , but that is very minimal, and there is no guidance around how one defines high, medium and low risk. Risk is subjective, everyone has different perceptions of risk so employers will do it differently. There are other risks that are not covered. If an employee is anxious and has personal issues - I don’t feel safe coming into the workplace-, causing anxiety – employer has to manage this risk.

**A 2 stage approach** to dealing with the risk – use PPE, social distancing etc so vaccination is not the first or only mitigation. But must look at the residual risk.

1. Assess risk with no control measures in place – add control measures eg PPE, social distancing etc

2. Residual risk – is vaccination required to address any residual risk or is it able to be managed with identified mitigation measures?

**Business continuity issues.** You could be shut down for up to 14 days with everyone having to isolate, loss of trust from communities engaging with the organisation i.e. reputational risk– a huge risk. Imagine a kiwifruit packhouse having to shut down due to staff having to isolate, recover from Covid etc. The effects of COVID in the organisation must be considered. Could even mean that everyone is out of a job.

**Consequence of not undertaking risk assessment process** - if the process is not followed in good faith and in consultation with staff an employer could be liable to a Personal Grievance. An employer must be able to show that you’ve followed process. – there is always a risk if you are terminating a persons employment - a reality check.

**What are** **leave requirements** **for isolation, and other absences.** If someone is actually sick – sick leave which has been increased to 10 days this year. Where awaiting testing results and told to isolate – not clear. Assuming they cant work remotely – indications are that the employer should pay them. Now available to employers via MSD – COVID 19 Absence payment a one off payment of $359, employer can only apply for once a month.

**Are staff allowed to ask if clients are vaccinated?** – Yes, but you need to tell the client that they don’t have to answer the question, but tell them that if they don’t answer you will assume they are not vaccinated.

If clients don’t’ answer Covid screening questions, staff have the right to offer another type of support. You do have the right to ask in order to be able to keep staff safe.

**Can we work in places where they don’t enforce vaccination?** Maybe use PPE, social distancing etc so not denying services.

Must inform staff that if client is refusing to declare their status or is showing symptoms then the staff may need to take other measures eg by zoom, phone,

People may not tell the truth as they don’t want to have a COVID test. But we have a duty of care to keep our staff protected.

**Staff who want to be paid when resigning?** We know there are a lot of people leaving their resignation to the last day when vaccination is required. When an employee resigns they still owe their employer their service for the notice period. If the employee is not actually able to work their notice period due to vaccination status, the employer is **not** obliged to pay – simply state: “thank you for your resignation but as you are not able to work due to the mandate, you will be unpaid for that period”.

If an employer terminates an employee, the employee gets 4 weeks pay or whatever is in the employment agreement – has to go both ways.

**Impact on clients if they can no longer see their worker.**

Our key focus so far, is concern about safety of clients but what about the relationship of client and social worker. This puts an added risk on both parties as social connection is a key part of the therapeutic journey, we have some very highly experienced workers plus some of our clients are often at higher risk of such other dangers as suicide. Clients in a bad psychological place may not care if the social worker is vaccinated or not? In the current situation, this is actually irrelevant if the staff are covered by mandate. Client choice is not considered. This is a big gap. Where is the opportunity to have a say?

We understanding that some people have made the choice to be unvaccinated – but there is anger that families have put our babies (under 5) in danger. This causes disruption to families – when people are living in intergenerational family situations, the effect that COVID causes is major.

**Practical suggestion:** Maybe SociaLink could look at some research to document the impact on both sides of the vaccination story; those who agree with the mandate and those who don’t. Hear from clients, social workers and employers about the impact has from all angles. This could also be done on a national scale and sent on to MOH, Parliament etc.

There is huge anger in the community, on social media in shops and on the street. It means we have to be very mindful of how we talk to people. We cant afford to lose a lot of passionate, skilled people. Need to look at both sides so everyone is included and no one is marginalised.

But need to wait until the current scenario has been in place a while. Any change is disruptive. We need to let it settle down.

**Rapid antigen testing** **(RAT) and Covid workplace policies** – this is not an option for those workers/organisations that are mandated. You also need to factor in accuracy of RAT which is estimated to be 80% accuracy, there is also a cost factor. The use of RAT is something that can be considered in policies for those organsiations not mandated.

World is changing rapidly which makes advising people difficult. Need to keep revisiting our Covid policies. Knowledge and tools we have are changing all the time.

**Organisational Updates**

Whaioranga Trust received funding for a COVID facilitator so they have a committee in place, policies, reps from each team who meet weekly to keep informed with the latest info. They have looked at the marae – have created a policy to separate out one part of the marae to enable them to have tangihanga. They are focusing on the need to keep their own generation safe, especially babies. Their kaumatua who come to a day prog all turn up with vaccination passes. They are being great role models showing if they can get vaccination and passes then good enough for all whanau. Their iwi are now sharing stories of their kaumatua.

Be aware that Māoridom have grave concerns - all whanau are feeling discriminated against beacause govt has mandated marae which is the last bastion of safety. Whaioranga Trust’s plan above seems like a good solution.

**Contingency planning over Xmas-New Year**

Have organisations planned for a possible rapid increase of cases during the Xmas break? – is there any contingency planning? The budget advisory service is closing over Christmas and New Year but will have skeleton staff available while they are closed. Papamoa Family services is closed for 3 weeks from 23 Dec to 17 Jan. Whaioranga Trust is closed over Christmas and will have skeleton staff available and have welfare packages.

**Other comments**

A comment was made that our relationships with volunteers are just as important and need to maintain that relationship.

The Law is a very blunt instrument. By the time you go down the legal path, you’ve lost it. Need to try to handle situations thru conversation and good relationships.

Others expressed their thanks to Shima and SociaLink for the opportunity to discuss this issue.