



Vaccine Pass use in workplaces and business settings, and employment matters under the new COVID-19 Protection Framework

Workplace requirements

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Shane Kinley





Recap: Guidance on position to date

Vaccination has been able to be required for work where:

- This is covered by a vaccination mandate under the [COVID-19 Public Health Response \(Vaccinations\) Order 2021](#)
- A business has conducted a health and safety risk assessment.
 - <https://www.employment.govt.nz/leave-and-holidays/other-types-of-leave/coronavirus-workplace/covid-19-vaccination-and-employment>
 - [How to decide what work requires a vaccinated employee | WorkSafe](#)
 - [Guidelines for businesses and services | Ministry of Health NZ](#)
 - [Office of the Privacy Commissioner | Privacy and Covid-19](#)
 - [Vaccine information for businesses | Unite against COVID-19 \(covid19.govt.nz\)](#)



Approach announced 26 October 2021

- **KEY POINT: Vaccination will be required for all workers at businesses where customers need to show COVID-19 Vaccination Certificates, such as hospitality and close-contact businesses.**
- New law to introduce a clearer and simplified “vaccination assessment tool” process for employers to follow when deciding whether they can require vaccination for different types of work.
- Non-vaccinated workers in roles requiring vaccination will be given a new four-week notice period to get vaccinated before employment can be terminated.
- Employers to be required to provide paid time off for workers to get vaccinated and will need to keep records about workers’ vaccination status.

[Press release: Govt backs business to vaccinate workforces | Beehive.govt.nz](#)



Implementing this new approach

- A mix of legislation, regulations and Orders are required. These will be completed with urgency.

CVC mandates

- CVC-required employers / PCBUs and workers should be preparing for vaccination as a requirement for when the COVID-19 Protection Framework comes into effect.
- Orders will specify the dates for vaccinations.

Paid time-off and paid notice of termination

- Legislation will specify how this will work shortly.



Implementing this new approach (2)

Non-mandated work

- “Vaccination assessment tool” will be empowered in legislation and provided for under regulations.
- “Vaccination assessment tool” will not over-ride existing risk-assessment processes or decisions that have been made.
- Business decision on which process to do and when:
 - Can either:
 - wait for regulations
 - progress under current WorkSafe guidance for Health and Safety at Work Act process.
 - Good faith engagement and consultation is required under either option.



General employment law considerations (1)

Employment consequences if not vaccinated when this is mandated or required to perform work

- Advise that consider cannot perform role without vaccination and basis for that view
- Specify the dates by which vaccination is required
- Seek information on whether vaccinated or not, and if not whether will become vaccinated
- Consult over options (with affected workers and representatives eg unions):
 - Is the work covered by mandate or requirement
 - Can the work be reorganised so vaccination would not be required
 - Are any other controls possible so vaccination would not be required (for PCBU requirements – not an option for mandates)
 - Can time be given to consider options (will that be paid or not)
 - Can the worker be redeployed to a role that doesn't require vaccination
 - Are exemptions available (limited grounds under mandates)



General employment law considerations (2)

Employment consequences if not vaccinated when this is mandated or required to perform work (2)

- Consider worker and representative feedback
- Determine if worker can continue to perform role if not vaccinated
- If not, give notice – for employees:
 - Minimum of four weeks paid notice under new legislation
 - Can be cancelled if worker becomes vaccinated and this will not unreasonably disrupt employers business

How do I know if someone is vaccinated when this is mandated or required to perform work?

- Cannot demand private information unless lawful reason to do so eg cannot demand proof of vaccination or test results.
- Can ask vaccination status but employees are not compelled to answer.
- Can treat as unvaccinated if do not answer.
 - Must explain consequences that will follow if not vaccinated or do not disclose.