

Vaccinations in the Workplace

October 2021

Introduction

With an increasing focus on infection control in the workplace, it is important that employers are aware of their employment and health and safety responsibilities in relation to vaccinations.

Workplace vaccination obligations

Employers have a health and safety duty, as far as reasonably practicable, to reduce the risk of a hazard occurring in the workplace. Therefore, employers must consider what control measures can be implemented to reduce the likelihood of the spread of infectious diseases in the workplace (eg COVID-19, Influenza, Hepatitis). This may include implementing an immunisation program encouraging, or in some circumstance requiring, employees to get vaccinated.

The Government may require certain work in specific industries and workplaces to be undertaken by employees who have received up-to-date vaccinations.

Check the below websites for information on infection control and vaccinations:

- Ministry of Health:
<https://www.health.govt.nz/our-work/diseases-and-conditions/covid-19-novel-coronavirus/covid-19-vaccines>
- Unite against COVID-19:
<https://covid19.govt.nz/health-and-wellbeing/covid-19-vaccines/>
<https://covid19.govt.nz/covid-19-vaccines/how-to-get-a-covid-19-vaccination/vaccinations-and-work/>
- WorkSafe's general guidance on COVID-19:
<https://www.worksafe.govt.nz/managing-health-and-safety/novel-coronavirus-covid/>

Risk assessments and meeting your obligations

Conduct a risk assessment in consultation with your workers to identify whether there is a risk of infection in the workplace and the likelihood of it occurring. Consider your business' operations and industry, public health advice and if there are legislative or regulatory guidance on control measures.

Controls measures can include:

- An immunisation program, whether encouraged or mandated. This may be an effective control measure to reduce the likelihood of infection and its spread throughout the workplace, depending on the outcomes of your risk assessment. However, other control measures are still required to adequately meet your health and safety obligations.
- Control measures such as providing Personal Protective Equipment (PPE), practicing hand hygiene, etc. may be enough to meet your obligations without requiring employees to get a vaccination, depending on the outcome of your risk assessment.
- Consider implementing a detailed infection control policy which addresses vaccinations and an immunisation program.
- Where your risk assessment identifies vaccination as a reasonable control measure but it cannot be implemented for whatever reason, additional control measures will need to be developed and implemented.
- Keep confidential records of those who have been vaccinated against particular diseases and other control measures implemented to reduce the risk of infection spread, subject to privacy obligations.

Directing an employee to get vaccinated

The ability to direct an employee to get vaccinated will be situational, fact-dependent, and require a case-by-case assessment of all factors concerning the workplace, employees' circumstances, and the nature of the work performed.

Generally, there are three circumstances where it is likely that the employer can require an employee to be vaccinated:

- there is legislation requiring the employee to be vaccinated against a particular disease in order to work in a specific field
- there is a term in an applicable individual employment agreement or collective

agreement that requires the employee to be vaccinated against a particular disease AND that there is a sufficient justification based on reasonable grounds to require the employee to be vaccinated

- if no legal requirement exists, where the direction to vaccinate is considered lawful and reasonable in all of the circumstances (including on health and safety grounds).

Information and rules regarding workplace vaccinations are subject to change and evolving government guidance and cases in this area.

Legal requirement to be vaccinated

If a public health direction requires a particular employee to be vaccinated, then it is reasonable for a business to enforce this. Notify employees of vaccination requirements under government law or public health order and follow the relevant guidelines.

Vaccination exemptions may exist for some employees, such as on medical grounds. If an employee is exempt, obtain evidence of their circumstances and put in place measures to mitigate the risk of infection transmission. If it is still unsafe for the employee to perform their duties, call the Advice Team to discuss your options.

No legal requirement to be vaccinated

In the absence of a legal requirement to be vaccinated, you can only require an employee to be vaccinated if the direction is considered lawful and reasonable.

A direction may be considered lawful if it is not contrary to an individual employment agreement or collective agreement, or Government law that applies.

To establish whether a direction to vaccinate is reasonable, consider:

- the nature of the workplace (is there a possibility that employees can come into contact with the disease, for example interacting with members of the public or working in close proximity to other employees?)
- the employee's circumstances, including the nature and risks of the duties they perform in an environment which may be prone to infection spread or where close contact with vulnerable people is required
- the effectiveness of other measures to successfully mitigate the risk of infection spread, and
- whether the employee has a valid medical reason or genuine religious grounds for refusing the vaccine

To establish the reasonableness of a direction to get vaccinated, undertake a risk assessment and consult with employees. If you cannot direct an employee to be vaccinated, consider encouraging employees to receive a particular vaccination.

If an employee refuses to get vaccinated for any reason, contact the Advice Team on 0800 675 697 for specific advice on your circumstances.

Cost of the vaccination

Requiring vaccinations or providing immunisation program

If any, you must pay the cost of the vaccination. If the vaccination is supplied to the public free of charge (eg the COVID-19 vaccination), then ensure that the employee receives the vaccine during paid work hours (or paid as appropriate if it needs to be done outside work hours) while covering any practitioner fees and associated costs.

Recommending or encouraging vaccination

You do not need to cover the cost of the vaccination or provide paid time off for the employee to receive it. You may, at your discretion, consider other ways to support the employee being vaccinated such as:

- agreements to access paid annual leave
- flexibility in work hours or location, and
- paid time off.

Making vaccinations a condition of employment

Making vaccinations a condition of employment may be reasonable but can carry high risk of a discrimination claim and depends highly on the circumstances. Consider whether:

- there is a legal requirement for employees to get vaccinated in your business or industry
- it is an inherent requirement of the role that a prospective employee will perform, or
- if unvaccinated, will the employee present a risk to the health and safety of themselves or others.

You could be exposed to a successful discrimination claim if you do not engage a prospective employee because they have not been vaccinated on medical or religious grounds.

BrightHR VaccTrack

Employsure clients with access to BrightHR can now access the VaccTrak feature which allows employers to record when employees have received their COVID-19 vaccine and provide staff with information on the vaccination process through COVID-19 e-learning courses.

If you would like further information, please contact our Bright team on 0800 675 707.

More questions?

Call the Advice Team on 0800 675 697 or email advice@employsure.co.nz for specific advice on your employment and health and safety responsibilities in relation to vaccinations in the workplace.