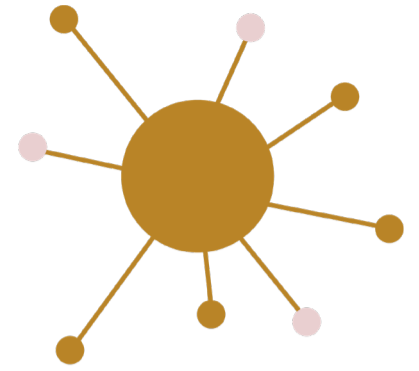


Workplace COVID-19 vaccination guidelines

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To assist employers with navigating the legal landscape for implementing mandatory vaccinations for COVID-19, we have distilled it into the following flowchart.

Does a Public Health Order made under the COVID-19 Public Health Response Act 2020 (Order) require your employees to be vaccinated against COVID-19?

Yes

Notice

Employers have a duty to ensure that their employees who are covered by the Order are vaccinated. Notice of the vaccination requirement must be given to the relevant employees as soon as possible, including the dates that the employees are required to be vaccinated by under the Order, their right to obtain an exemption (if available) and the possible consequences of not doing so (eg termination).

Time off for vaccination

Employers must allow those employees covered by the Order to get vaccinated during their working hours.

Record keeping obligations

Employers subject to the Order must keep and maintain a record of:

- The contact details of the relevant employees;
- Their vaccination status and the COVID-19 vaccine received;
- The date(s) on which they received the vaccine; and
- Whether an employee relies on an exemption or an authorisation to remain unvaccinated, and a copy of the relevant exemption or authorisation.

No

Health and safety risk assessment

Employers of employees who are not subject to an Order can require their employees to be vaccinated if a risk assessment identifies COVID-19 as posing a high risk to health and safety, and receiving the vaccine is a reasonably practicable step (ie control measure) that can be taken to meet their primary duty of care under the Health and Safety at Work Act 2015.

Employers may (but are not required to) use the Government's Vaccination Assessment Tool to carry out the risk assessment. The Tool considers four factors: environment, proximity, time and vulnerability. If the answer is 'yes' for at least three of the four factors, it is reasonable for the employer to mandate vaccinations.

Employers should consult with employees on the risk assessment, in good faith.

Third party requirements

The employer can also mandate vaccinations if a third party (eg a customer) requires this for workers coming on their sites. The mandate should be based on the third party's health and safety risk assessment, and employees should be consulted on the requirement, in good faith.

Mandating vaccinations

If the employer determines that some or all of its employees must be vaccinated, then this must be communicated to them, usually in a draft vaccination policy. The employer must specify the date(s) by which the employees must be vaccinated. Employers should consult with affected employees on its draft determination or policy, in good faith.

Employees are entitled to request paid time off to receive the vaccine during normal working hours. This can only be refused if it would unreasonably disrupt business activities or the employee's duties.

Exploring alternatives

If an employee does not get vaccinated, termination cannot be considered until all other reasonable alternatives, which would not lead to termination of their employment, have been exhausted.

Accordingly, the employer must consider all such alternatives, including whether changes can be made to the employer's operations or the employee's role to allow them to work unvaccinated, whether there are any redeployment opportunities in the business, or (if relevant) whether the third party could accommodate the unvaccinated employee.

In considering any reasonable alternatives, employers must continue to act fairly and reasonably in all the circumstances, and in good faith. Therefore, the employer should consult with the employee as they explore such alternatives and advise them of the possible termination of their employment. They should also be told of their right to involve a support person or representative in the process.

Termination

If all reasonable alternatives have been exhausted, then the employer may terminate the employee's employment for failing to comply with the requirement to be vaccinated.

The employer must give the employee the greater of 4 weeks' paid written notice of termination or their contractual notice period.

Any termination notice is cancelled and of no effect if, in the meantime, the employee changes their mind and becomes vaccinated (or is otherwise permitted to perform the work), unless cancelling the notice would unreasonably disrupt the employer's business.