

Covid-19 Vaccination Questions

1: Can I require certain roles to be carried out by vaccinated workers?

POTENTIALLY – do risk assessment now

Some roles are covered by government Orders, which make it mandatory for particular roles to only be carried out by vaccinated people. New Zealand can expect more industries to be covered by mandatory Orders in the future.

For all other employers, you should undertake health and safety risk assessments of particular roles **now** to determine:

- The likelihood of the employee/colleagues/members of the public being exposed to a risk, and how is the risk determined between a vaccinated worker and an unvaccinated worker, while performing a role and the potential consequences of that risk on others (e.g., community spread).

To decide that work is high risk and therefore needs vaccination for health and safety reasons, businesses must first assess their COVID-19 exposure risk. This applies to work done by all workers, whether employees or independent contractors.

Businesses must involve workers, unions and other representatives in the risk assessment process, and when deciding how to eliminate/minimise risks. Businesses should consider whether other public health measures (eg physical distancing, PPE usage) can minimise the risk of exposure and transmission of COVID-19.

If certain work can only be done by vaccinated workers, businesses should set a reasonable timeframe for workers to decide if they will be vaccinated. If an employee cannot work during this time, special paid leave should be considered, especially in the short term while employers and employees discuss what happens next. Options that can be considered are finding alternative duties or locations for the employee.

If your health and safety risk assessment has determined that employees need to be vaccinated - Employers or PCBUs are responsible for making sure your employees meet vaccination requirements, including preventing employees from carrying out certain tasks if they have not been vaccinated. Under a proposed government Order, workers may have to give their employer/PCBU certain information so that their employer/PCBU can meet its vaccination requirements.

Privacy, Human Rights and Health and Safety obligations will need to be balanced – so get legal advice first. Cases in this area are currently before the court.

[How to decide what work requires a vaccinated employee – WorkSafe\(external link\)](#)

[Public health guidelines for businesses and services – Ministry of Health\(external link\)](#)

2: Can I ask my staff if they are vaccinated?

Some businesses may be able to request staff for information on their vaccination status.

There may be religious or medical reasons why a person cannot be vaccinated. You cannot ask your worker to get vaccinated, unless they need to be vaccinated to perform a specific role in your business for health and safety reasons or they are covered by a government Order.

You can ask employees if they have been vaccinated but they do not have to tell you if they have, or why they chose not to. You cannot discriminate against employees who choose not to get the vaccination.

If your employees choose to tell you about their vaccination status, you cannot share this information with anyone without their permission and you comply with the Privacy Act principles in relation to collecting, storing and sharing this information.

[A person's vaccination status is personal information | employment.govt.nz](https://www.employment.govt.nz/your-employees/your-employees-privacy/your-employees-privacy-act-compliance/a-persons-vaccination-status-is-personal-information)

3: Should we introduce a Vaccination/Pandemic Policy?

Most businesses should have a Vaccination/Pandemic Policy in place which covers:

- Health and safety obligations
- PPE requirements
- Mask requirements
- Sickness expectations
- Privacy Act compliance
- Customer expectations / behaviour

A Vaccination/Pandemic Policy and a robust Health and Safety Policy will go a long way to ensuring the employer is properly complying with the Health and Safety at Work Act 2015 and is communicating its expectations and rules properly with its workers.

Points to consider:

- If a high performing employee refuses to be vaccinated are you prepared to see them leave the business?
- If a highly valued contractor or client (or just a regular supplier) doesn't agree with your Policy are you prepared to lose that working relationship?
- If the employer is introducing the Policy it is their responsibility to provide the information requested by the employee. Not that of the employee to have to find it themselves.

4: Can I require new staff to be vaccinated?

You will need to assess whether the requirement for the role to be carried out by a fully vaccinated worker is justified, and then:

- Update Employment Agreements; and
- Ensure other recent changes to employment law (e.g., bereavement leave, sick leave, privacy laws) are also incorporated into the updated Employment Agreements at the same time

You must ensure you understand your obligations around non-discrimination.

5: How can I support my employees to get vaccinated

A fully vaccinated workforce may help keep your workplace safe from COVID-19. You can help workers make an informed decision and encourage them and their whānau to get the COVID-19 vaccine by:

- allowing them time off to get the vaccine
- talking to them about their leave and pay entitlements if they need time off to go to their appointment or if they feel unwell after getting the vaccine
- respecting their privacy
- listening to their concerns.

[Information from Employment.govt.nz on vaccines and the workplace \(external link\)](https://www.employment.govt.nz/your-employees/your-employees-privacy/your-employees-privacy-act-compliance/a-persons-vaccination-status-is-personal-information)

Your workers may have questions about the vaccine. You can help them find out more by:

- directing them to official sources for accurate and up-to-date information, including:
 - [vaccine information on this website](#)
 - [the Ministry of Health website\(external link\)](#)
 - [Karawhiua — information for whānau, hapū, iwi and Māori communities\(external link\)](#)
- checking everyone can access the information if they need it.

6: Employees may pose the following situations, the Government to date (14/10/21) have not provided an answer or guidelines for these.

1. In circumstances where the Employee agrees to being vaccinated due to work requirements and they suffer an adverse effect, whether short, medium or long term, will this be recorded as a work related accident and reported to Worksafe (or other relevant authority), the Accident Compensation Corporation and/or any associated insurance policies.
2. If the Employee requires further and necessary support to manage and cope with any adverse consequences will the Employer provide such support.
3. If you provide support and paid time off for an Employee to get vaccinated what is their understanding if they then have an adverse effect; paid special leave, sick leave, LWOP?
4. Which vaccine is recognised by the Company?
5. Will a booster be required? What does support look like for each booster injection?
6. Is the intent of a vaccine mandate to protect others who may come in contact with the worker?
7. If someone with a medical exemption is not required to be vaccinated, yet still allowed in the workplace, why will an unvaccinated worker with similar PPE not be allowed in the same workplace?
8. Can the demand for the vaccine be accompanied with all of the details that the employee might ask for? Efficacy, long term side effects, contents, adverse reactions, etc
9. What if the Employee is able to provide proof that there is no evidence that the vaccine has no effect on the transmission of the virus, what are the public Health measures that are to be considered?

The information contained in this article is general advice and should not be relied upon or taken to be legal advice for specific situations. We strongly recommend you seek legal advice in order to understand the obligations of your business (including in relation to the roles within your business / the industry you are in / the risks your business may be facing).