

Health and disability sectors in New Zealand must engage with unvaccinated workers now

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On 11 October 2021 the New Zealand Government announced its intention to extend the COVID-19 Public Health Response (Vaccinations) Order 2021 (**vaccination order**) to require high risk workers in the health and disability sectors to receive their first vaccination dose by 30 October 2021 and to be fully vaccinated by 1 December 2021.

Despite the announcement, the vaccination order has yet to be amended to provide for the changes. But that does not mean health and disability sector employers can afford to wait to prepare for unvaccinated workers.

There are a number of steps employers should take now to ensure their approach is fair, justifiable and in good faith. This will also protect employers, so far as is possible, from future personal grievances made by unvaccinated workers.

1. ASK YOUR EMPLOYERS ABOUT THEIR VACCINATION STATUS

Currently the COVID-19 vaccination register doesn't apply to health and disability workers, although it will once the order is amended. This means employers can't yet access the register to find the information they need about their employees.

However, employers can ask employees about their vaccination status if they are likely to fall within the order. For example, you can ask an employee if they intend to have a first vaccination dose by 30 October 2021. If employees refuse to provide that information, you can assume that they are unvaccinated. This will help inform you about who may no longer be able to work after 30 October 2021.

2. PROVIDE INFORMATION

Although there isn't an amended order yet, the New Zealand Government has set out details of who is likely to be subject to the vaccination order on the [Unite against COVID-19](#) webpage. The definition is wide and will include support staff as well as frontline healthcare professionals. Currently, people undertaking the following work are likely to require a first dose of vaccination by 30 October 2021:

- regulated professions currently registered under the Health Practitioner Competence Assurance (HPCA) regulations
 - non-regulated healthcare work, such as
 - aged residential care
 - home and community support services
 - kaupapa Māori health providers
 - Pacific Health providers
 - non-government organisations who provide health services
 - roles undertaken by people who
 - are in frequent contact, face-to-face contact, or are in close proximity to healthcare workers providing a health service
 - work where a health service is being provided, or
 - do not necessarily provide a health service, but their role requires frequent contact/engagement with those providing health services and is considered tied to a role within a healthcare setting.
- All employees who are unvaccinated or who will not be first dose vaccinated by 30 October 2021 (and second dose vaccinated by 1 December 2021) need to know that their continued employment may be at risk. Employers should consider advising them:
- their role appears to fall within the vaccination order (when it is amended), based on current information

- there is a risk to their continuing employment if the vaccination order is amended as expected, and if they don't receive a first vaccine dose by 30 October 2021
- whether there are any alternatives or modifications that have been considered so that their role falls outside the order, and
- whether they will receive paid notice in the event that they cannot work after 30 October 2021, and their role terminates.

This information could be provided alongside a discussion about their vaccination status and intentions. It can also be updated as more information becomes available.

3. BEGIN CONSULTING

The information you provide should be given in the context of consulting with, and obtaining feedback from, the affected employees. Consultation should include seeking and considering their responses to the above points, and particularly whether:

- their role falls within the vaccination order (if this is not obviously the case)
- there are any alternatives
- their employment can continue following 30 October 2021, and
- they will be paid notice in the event that it won't.

4. DON'T WAIT – START NOW

We don't know when the New Zealand Government will update the vaccination order. However, there is sufficient information available now to suggest many unvaccinated people in the health and disability sectors may be unable to continue working after 30 October 2021. This risk engages the good faith requirements in the Employment Relations Act 2000, which requires information to be provided and consultation.

Employers who wait until the order is amended, or wait until 30 October 2021, are likely to leave it too late to take timely and appropriate action, which may expose them to a claim

5. SEEK ADVICE

Mandatory vaccination for the healthcare and disability sectors raises a number of unique questions and issues. We suggest employers seek employment legal advice at the earliest opportunity to help them navigate this minefield.

Need to know more?

If you have any questions about vaccinations and the workplace, contact one of Wotton + Kearney's employment lawyers.



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