

Vaccinations

Key considerations

- Consider individual circumstances.
- Ensure that actions as an employer are not discriminatory.
- Employers should follow a fair and reasonable process and have substantive justification for any vaccination linked action or step affecting employees.

New employees

- 1**
- Consider making it a condition of the offer of employment or a clause within new employment agreements

- There is greater freedom to impose a requirement to vaccinate on new recruits

2

Potential issues?

- Care must be taken to ensure employers are not pursuing a discriminatory approach
- Potential for an age discrimination claim for people under 65 as they are unlikely to have access to the vaccination until later
- Potentially discriminatory against individuals with certain health conditions (such as autoimmune conditions)
- Unwillingness to vaccinate not likely to be a protected religious belief or political opinion

Key contacts



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Current employees

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- The lawfulness of directing an employee to be vaccinated will largely depend on the nature of the role and the safety considerations

- Blanket rules are unlikely to be reasonable

2

High risk roles

- Border workers must have 2 doses of the COVID-19 vaccination before 5 June 2021

- Likely to be a lawful and reasonable instruction for other certain high risk roles

Non front-line workers/lower risk roles

- Can encourage, but unlikely to have a lawful basis to instruct employees to submit to vaccination

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Third-party/client demand

- If an employer's client requires anyone working on their site or project to be vaccinated, and they cannot be persuaded to change that demand, then it may be a reasonable instruction to insist that staff do not work for that client unless vaccinated

5

What if employees refuse?

- Is there is a contractual right to require vaccination? If so, more likely to be a failure to comply with a lawful and reasonable instruction
- High risk roles—likely to be a lawful and reasonable instruction that an employee has refused to comply with
- Lower risk roles/non front-line workers and no contractual right to require vaccination—unlikely to amount to a lawful and reasonable instruction (unless the risk profile around Covid-19 changes in NZ once the borders open)
- Before terminating employment, employers need to consider the reasons for refusal (e.g. a protected ground of discrimination), and whether there are other options, such as using less invasive health & safety measures like PPE or social distancing. Employers must also examine the possibility of redeployment as part of following a fair and reasonable formal process