



Compulsory Vaccinations

In the past few days, the government announced a “no jab, no job” policy for frontline health and disability workers, some working in border jobs and for school and early-learning staff and support workers.

This has been done by way of a Public Order issued under the Health Act 1956, namely the COVID-19 Public Health Response (Vaccinations) Order 2021.

We have received a number of queries around whether other businesses in the private sector can do the same thing. Also being asked is the question whether employers can ask employees to produce evidence of a vaccination before allowing them to return to work.

As usual, in matters of human resources, the questions are not simple and **we strongly urge anyone considering implementing such measures to seek legal advice from a specialist employment lawyer before taking any such action.**

An employer is able to make vaccinations mandatory if the role of the employee meets the requirements of the COVID-19 Public Health Response (Vaccinations) Order 2021. You can obtain more information in this regard [here](#) and to establish what roles may fall within that order.

For any role that does not fall within the order, a requirement that the employee is vaccinated is likely to be a breach of their rights under the Bill of Rights Act. Any employer who wishes to impose a “no jab, no job” policy is urged to move with extreme caution.

The overriding criterion is that if there is such a policy being considered it must be entirely justifiable. Such justification is likely to exist only in roles that can be shown to have such a heightened risk of exposure to COVID-19 that other practicable safety measures are unlikely to adequately protect the worker and, where the consequences of the worker catching COVID-19 at work, are likely to be severe.

If any employer believes that they have such roles within their organisation, they will best be advised to:

- a) Carry out an extensive, robust and transparent assessment of the roles considered to warrant mandatory vaccinations;
- b) Seek legal advice from a specialist employment lawyer; and
- c) Discuss the matter with the Ministry of Health.

If such a role does exist and there is sufficient justification to mandate a vaccination for existing employees, there are rigid processes that must be followed in doing so, including communication with the entire workforce setting out reasons why the role is considered to merit such a requirement and why alternative measures such as the wearing of PPE cannot be implemented instead.

They will also have to give all employees a reasonable deadline by which to be vaccinated and is always the case in human resources matters, there is a need to act reasonably and fairly and to communicate in good faith, before making any decision that may affect an employee's personal rights and employment.

While we recognise that many employers may feel that mandating vaccinations will be the responsible thing to do to protect all their employees, their families and customers, we advise that they should only proceed with extreme caution and only after seeking proper advice as recommended above.

On the matter of requesting proof of a vaccine, this is also something where employers should tread very carefully. This amounts to the seeking out of personal information and that falls within the ambit of the Privacy Act 2020.

Employers mandating such disclosure must, again, have justifiable grounds. However, there is nothing immediately evident to stop an employer from asking the question, but we urge extreme caution in sanctioning employees who refuse to make a voluntary disclosure.

Interactions with the Public

What is even less clear is whether businesses can refuse entry into their premises by anyone who is not vaccinated. In the absence of a reliable vaccine certificate, we submit that such a policy would be very difficult to implement.

On the one hand, business owners should be able to enforce a right of restricting someone entry to their premises but, on the other, would this constitute a breach under the Bill of Rights Act?

There is no clear answer to this matter, but we strongly recommend very careful consideration before implementing such a policy and suggest that there should be a clear justification for it. Also, there should be an awareness around how customers of the business may react.

COVID-19 Financial Support

Just a reminder that the Wage Subsidy, Resurgence Support and other financial assistance measures are still available.

Wage Subsidy: This is paid in fortnightly lump-sums.

- \$359 under the Short Term Absence Payment (while awaiting COVID test results), and
- \$600 a week for full time workers and \$359 for part-timers (while self-isolating).

Whilst not all of New Zealand remains in lockdown, the Government has clarified that whilst Auckland remains in Alert Level 4 or Level 3, employers throughout New Zealand can continue to seek the wage subsidy if the revenue reduction requirements (and other criteria) are met. Applications for the fourth August 2021 Wage Subsidy are now open.

Resurgence Support Payment: This helps to cover wages and fixed costs for businesses who have been directly affected when there is an increase to Alert Level 2 or higher for a week or more.

- You can receive \$1,500 per business plus \$400 per full-time employee (FTE), up to 50 FTE.
- The maximum payment is \$21,500.
- If you're a sole trader, you can receive a payment of up to \$1,900

Small Business Cash Flow Loan: Businesses that employ 50 or fewer staff are eligible to apply. This is a one-off 5-year loan to a maximum of \$10,000 plus \$1,800 per full-time-equivalent employee within the business. The applicant must be able to declare that the business is viable. Loans will be interest free if they are paid back within 2 years; if not repaid in that time frame the interest rate is 3% for a maximum term of 5 years. Applications are open until 31 December 2023 through myIR.

At Ecovis KGA we have a dedicated team to help you through these times and are well placed to assist in exploring what options are available and other measures to help protect your business.