

Managing employees and their vaccination status

If you haven't read our introduction to Covid-19 and vaccines in the workplace, you can view it [here](#). We discussed the government's elimination strategy, considering your employees' vaccination status, and if you have the right to ask them if they are vaccinated.

What if my employee is not vaccinated but it's required for their work?

You're in a tough spot. You can't force them to get vaccinated, because vaccination is a personal health choice. You should try to accommodate them as best possible. This might include giving them time to consider their options including compliance or you could redeploy them to a different department while waiting for their decision.

Whilst nobody wants to terminate an employee, a legal precedent has been set.

The Employment Relations Authority upheld the termination of a border related worker who refused to get vaccinated. (GF v New Zealand Customs Service [2021] NZERA 382, 1 September 2021.) Before you consider litigation, consider your options first. Outside of redeployment you could offer other changes to working arrangements (such as working remotely if possible), or taking leave (paid or unpaid).

We recommend getting legal advice when considering any of these options, as the usual employment obligations continue to apply. This means it's as important as ever to act in good faith and follow appropriate procedures.

What if my employee will not tell me their vaccination status?

An employee has a right not to disclose whether or not they've had any vaccinations. However, you may assume the individual is unvaccinated for health and safety purposes. If you propose making any changes to their employment contract based on this assumption, you need to warn your employee what you plan to do and give them reasonable time to consider their options.

You cannot discriminate against an employee for this reason alone. So we recommend getting legal advice first.

Can I make vaccinations a requirement of employment for new hires?

If you consider vaccination is required for the work, whether by the 2021 Order or for health and safety reasons, you can make that a term of the contract. However, this

condition can only be imposed if it is reasonable and necessary, so seek legal advice first.

What if my employees or customers want to know they're working with vaccinated people?

It's understandable that employers want to assure their stakeholders that doing business with them is safe. If your employees are happy to freely share their vaccination status, there is no issue with this.

However, as previously stated, an employee has the right to refuse to disclose their vaccination status and cannot be discriminated against for that reason alone.

Even if your employee has shared their vaccination status with you, you cannot share it with anyone else. Your employee needs to consent to any disclosure – whether that is a specific consent in each instance or a general consent for a particular purpose or purposes.

Can my employees refuse to work with others based on vaccination status?

Yes, they have that right. Employees can stop working in what they perceive to be unsafe conditions, and request flexible working arrangements. If they consider the vaccination status of the people they work with or the customers they serve is relevant to this, you will need to consider that. The usual obligations of good faith in the employment relationship continue to apply in a pandemic.

What if I do not want my employees vaccinated?

You can't discriminate against employees just because they're vaccinated or not. You need to assess whether vaccination is required (or prohibited) by the 2021 Order or on health and safety grounds. Outside of these reasons, the employee must be treated the same whether vaccinated or not.

Employment Law has always been tricky territory for employers, and lockdowns have made this even more difficult to traverse. If you have any questions, speak to our Employment team.