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Can I fire someone or not hire them for not getting a COVID 19 Vaccination?

No, you can't make this compulsory. Under the NZ Bill of rights act 1990 everyone has the right to refuse to undergo medical treatment.

https://www.legislation.govt.nz/act/public/1990/0109/latest/DLM225509.html?search=sw_096be8ed80b62589_medical_25_se&p=1&sr=2

However, and this is where it gets more complicated, The Health and Safety at work act 2015 you have a legal obligation to take all reasonably practicable steps to provide a safe working environment <https://www.legislation.govt.nz/act/public/2015/0070/latest/DLM5976667.html>

So, what do I need to do?

Even though you can't force someone to get the Vaccination, you do, as an employer need to take "reasonably practicable" steps to provide a safe working environment for everyone.

I have a friend who is currently undergoing treatment for cancer. She has been advised, that due to her condition, she is at greater risk if she contracts COVID 19. BUT, in order for her to get the vaccination she would have to come off her cancer medication for about 3 months. Obviously, she is understandably not going to get the vaccine at this stage, and personally I will ensure I get the vaccination in order to protect her.

So, in a work environment you need to consider the risks if you have Ms A not able to get the vaccine, but at high risk if she contracts the disease, and Ms B not wanting to get the vaccine simply on the basis that she doesn't want to. How do you fulfil your H&S obligations to Ms A?

Step 1 - Assess the risk for your workers and business.

On some (probably fairly limited cases) there may be an argument to say that the requirement to get the COVID vaccination is a significant health and safety risk and the only way to manage the risk is to make the Vaccination compulsory. However, simply saying that "because they interact with people there is a risk" this will not be sufficient to override the Bill of Rights. Even frontline workers at Airports are not being required to be vaccinated on health and safety grounds, but they are being redeployed to roles where there is less risk.

What is the risk for my business?

I confess that I would probably think twice about seeing a medical professional who had NOT been vaccinated. And I defiantly wouldn't want to see a business being closed for 14 days due to a COVID outbreak in the team. So there are risks from a public perception perspective, and from a fiscal perspective. As such, supporting the vaccination programme makes business sense.

Can you recruit based on whether they have been vaccinated?

Unless you have assessed a specific risk, I would suggest that basing a decision to recruit, or not, based on a person's legally correct refusal to undergo medical treatment would be considered discriminatory, and therefore not allowed.

Step 2 – so what can I do?

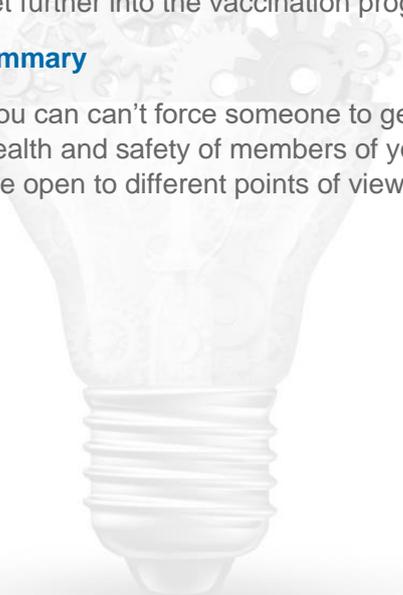
Obviously, the goal is to get everyone vaccinated, and, as an employer, you do have a health and safety obligation to take "reasonably practicable steps". These may include:

1. **Education** – ensuring your team have access to the right information (there is lots available on the government websites)
2. **Team talks** – proactively discuss the topic with the whole team to understand where everyone's thinking is
3. **Time off for the vaccinations** – exactly how the roll out will work when it starts for the general population is yet to be seen. However, ensuring that everyone has the opportunity to go and get their vaccination when their "name is called" will definitely help. Though you can certainly talk with your team to ensure this is done in a way to minimise disruption to the business.
4. **Understanding why people are reluctant to get the vaccination** – Talk with anyone who is unsure about getting the vaccination. They may have concerns like my friend, or it may simply be uncertainty about the realities of the vaccination. So, understand their concerns, and point them towards resources which may help them understand the situation better (Medical professionals, government websites etc).
5. **Adjust their role if you can** – obviously this is difficult for many small businesses but look at the potential options for your situation.
6. **Give me a call** – I'm certainly no expert on COVID vaccinations, but I may well be able to help you work through solutions for your situation. As you can imagine, I am talking to quite a few people about this topic.

Whatever your personal views on the vaccination, there is already a huge amount of information in the public forum both for and against. And if your "news source" is facebook then the amount of misinformation, conspiracy theories etc is overwhelming. And no doubt that will get worse as we get further into the vaccination programme.

In summary

No, you can't force someone to get the vaccine, but you do need to be proactive in ensuring the health and safety of members of your team. So, keep the communication channels open, and be open to different points of view!



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Free Webinar Programme

I will be hosting monthly webinars on a range of topics, and the plan for the next 6 months is:

1. February 25th 10am – Preparing for the minimum wage increase- how to incentivise people when you can't give them all the same amount as minimum wage increase.
2. [March 25th 10am – Managing sick leave – being prepared for the proposed increase in sick leave to 10 days](#)
3. [April 29th 10am – Bonus Schemes – how to ensure they drive the right behaviour](#)
4. [May 27th 10am – Recruitment – how to significantly increase your chances of finding the right person for the job](#)
5. [June 24th 10am – Types of employment engagement – Casuals, Contractors, low-guaranteed hours agreements – what the risks are, and how to ensure you have the right agreement in place](#)
6. [July 29th 10am – Induction – getting the first impression right and ensuring that new employee is up to speed ASAP.](#)

If you would like to know more or require assistance please contact [Lisa Mackay](#)

Resource supplied by The Engine's provider:



HR toolkit

The logo for HR toolkit is displayed in a blue rectangular box. The text 'HR' is in white and 'toolkit' is in yellow. The background of the entire page features a large, faint lightbulb with gears inside it, symbolizing ideas and machinery.