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## Can I mandate to make vaccinations compulsory?

Back in April, I sent a newsletter advising that you can't make it compulsory for someone to have a COVID Vaccination. This advice has NOT changed. However, the acceptance that the requirement for vaccination is reasonable Health and Safety requirements is certainly increasing.

### Government-mandated vaccinations

The government has mandated that certain roles must be performed by people who are vaccinated. It is quite important language as they say that the role "must be performed by a person who is vaccinated" (making it a genuine occupational requirement of the role) rather than "the person currently performing the role must get the vaccination". Therefore, anyone who is not vaccinated is no longer eligible to do the role.

To put this into another context, it would be a genuine occupational requirement to have a drivers licence if employed as a driver, so, if they lost their drivers licence they would no longer fulfil the requirements of the role, or if they refused to get your drivers licence/didn't have a drivers licence they would not be qualified for the role.

### Can I or my main contractor mandate that vaccination and/or wearing a face mask is required?

If you believe there is a high risk for your role which means that vaccination/mask-wearing is a genuine occupational requirement then yes, you can mandate this in your workforce. And a client to whom you contract can pretty much put in place whatever rules they like, you just have to find a way to abide by them.

Some examples of jobs where it is likely that this would be a genuine occupational requirement include:

1. Front line workers – Boarder staff, medical professionals, supermarket workers etc
2. Aged care facility workers – due to the high-risk level for aged care residents if they contract Covid
3. People working with children who are below the vaccination age

Some roles which would be more borderline as to whether it was a genuine occupational requirement would be:

1. Hospitality/café workers who are front facing with clients, but not necessarily in a high-risk environment such as the airport
2. Back of house roles (e.g. administration) who work in higher-risk companies, but not actually in the high-risk area themselves
3. Customer-facing roles, particularly in high traffic areas such as Malls
4. Construction sites where there are high numbers of personnel in a confined area

So, you need to assess the risk for each of the roles and decide if you can justify this as a genuine occupational requirement.

### **What can I do if people refuse vaccination or wearing a face mask?**

Since the latest lockdown, there has been a huge shift in public opinion about the need to get vaccinated, and acceptance that face masks are required. However, this is obviously still not universal.

If you assess that mask-wearing and Vaccination is a genuine occupational requirement for the role then the first thing that you need to look at is whether you can redeploy the person to another role. In a large organisation such as Air New Zealand, this is relatively easy. However, for most small businesses, this is simply not an option and, ultimately, you make have to terminate someone's employment if they no longer meet the requirements of the job (Please call me before doing this)

### **But I can't discriminate?**

The main reasons I have heard over the last couple of weeks for refusal to wear a mask or be vaccinated are related to:

1. Religious grounds
2. Health reasons

These are valid reasons, which the employer needs to take into account. However, under the Human Rights Act, an employer has the right to enforce the rules where the risk level is unreasonable for the employer to accommodate. ([See sections 24 to 35 of the Human Rights Act](#))

### **What about people who are vaccinated, but don't want to work with someone who isn't?**

Personally, I would be fairly concerned about working in close proximity with someone who was not vaccinated (however valid the reason) because they are putting my safety at risk if they contract the virus and pass it on to me. And, as an employer, you are responsible for providing a safe working environment for everyone. So, you do need to take into account the welfare and viewpoints of all staff.

### **What can I do as an employer?**

At this stage I would recommend surveying your staff to find out where their thinking is in respect of vaccinations and mask-wearing:

1. If 100% say "yup, I want it to be compulsory" then you can mandate for your company that everyone in the company abides by that, and any new recruits need to abide by that ruling
2. If you get 90% saying "yup I want it to be compulsory", but a few outliers saying no (for whatever reason) then work through with the outliers what the reasons are and see if you can come up with a solution

3. If the feeling is that the majority don't want it to be compulsory then review if you really need to make it compulsory, or if there is another solution available

NB I would recommend that you get onto this sooner rather than later. It is only in the last few days that everyone over the age of 12 has been eligible to get a vaccination, therefore, within 6 to 8 weeks it will have been possible for everyone over the age of 12 to have had 2 doses. As such, I anticipate that compulsory vaccination requirements will become far more common in about 8 weeks time.

### **What if we can't find a solution?**

Ideally, yes, you will find a mutually agreeable solution, but that is not always possible and you may need to consider termination of their employment agreement. However, I strongly recommend you give me a call before going down that route as we are navigating unknown territory in respect of Employment Law.

### **We are here to help...**

We are all navigating some very interesting times at the moment, but we are here to help so give me a call on 021 741 544 if you need to talk over your situation.

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

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