



# **Public Sector Workforce Guidance for the Post-Winter COVID-19 Response**



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## 1. Introduction

New Zealand's Public Service has played a critical role in leading the Government's COVID-19 response and recovery effort. The Public Service continues to deliver on that mission, while continuing to serve New Zealand and New Zealanders, providing the services and support they rely on, as the country moves away from the COVID-19 Protection Framework (CPF).

This means we need our policies and settings in all Public Service agencies to continue to meet the needs of the New Zealanders we engage with, as the course of the COVID-19 pandemic changes.

We have evolved from an elimination strategy early on in the pandemic, which utilised alert levels, to one of minimisation and protection. Following the Government's announcement on 12 September, with widespread uptake of vaccines and antivirals, we are now able to manage the spread of the virus without imposing extraordinary restrictions on individuals.

COVID-19 will be in the community on an ongoing basis and the Post-Winter COVID-19 response will be the strategy for dealing with the virus. The waning of the Omicron wave does not signal the end of the pandemic. It is very likely there will be future waves and new variants of unknown severity and transmissibility. We need to plan for a range of scenarios and have systems ready in place to be able to be agile in response to developments.

Complying with all required public health and social measures remains the bottom line for all agencies while continuing to provide public services for all of New Zealand, including our most vulnerable. As we move back to normal working systems, we will look to embed some policies as part of business as usual. However, it is important that we retain the ability to reactivate the mitigations that supported our response, to ensure we can quickly respond to a new wave or variant. Agencies will need to keep their health and safety risk assessments and policies under regular review as the situation develops.

Agencies should continue to engage with workers and unions on how they comply with the public health and social measures of the COVID-19 response.



## Overview of the guidance

This guidance is issued by the Public Service Commissioner under s95(a) of the Public Service Act 2020 and applies to Public Service agencies<sup>1</sup>. It replaces our COVID-19 Vaccination Rollout Guidance and COVID-19 Public Sector Workforce Guidelines.

Agency chief executives are responsible for deciding how to apply this guidance in the particular context of their agency.

This guidance is based on the current and immediately foreseeable COVID-19 context and will be reviewed and updated as changes to circumstances require.

The guidance provides for a consistent approach to dealing with COVID-19 in the community and its impact, implementing policies, health and safety risk assessments, and processes across Public Service agencies and their workforces.

The Post-Winter COVID-19 response guidance supports the expectation that all public servants who can be vaccinated are vaccinated, and those eligible for boosters receive them in a timely manner.

This consistency and alignment will support continuity of public services for New Zealanders, including those that are public facing. It will also support us to maintain the trust and confidence New Zealanders have in government and the Public Service.

Above all else, the guidance aims to protect the communities public servants engage with, and the health and safety of public servants themselves, while ensuring New Zealanders can access the services they need.

The guidance also supports agencies to normalise the management of leave while operating under the Post-Winter COVID-19 response settings.

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<sup>1</sup> **Public Service agencies are described as:** Public Service departments; departmental agencies; New Zealand Police; the New Zealand Defence Force; the Parliamentary Counsel Office; Crown agents; Autonomous and Independent Crown entities; other Crown entities; organisations listed in Schedule 4, and companies listed in Schedule 4A, of the Public Finance Act 1989; and the Reserve Bank of New Zealand.



### *Operating services under the Post-Winter COVID-19 response*

The Post-Winter COVID-19 response provides a system to manage COVID-19 in the community and sets out general settings and restrictions in certain environments.

**Refer to the [Unite Against COVID-19 website](#) for the latest information on what settings apply and where.**

As we move through the COVID-19 response from the CPF to the Post-Winter COVID-19 response, we expect agencies to tailor their protective measures to reflect their particular circumstances, taking into account their operating environment, workforce, and the people they serve. The broad differences between the CPF and Post-Winter COVID-19 response are:

	Post-Winter response	CPF – Orange setting	CPF - Red setting
Health and Safety Workplace Risk Assessment & Business Continuity Plans (BCP)	Agencies to review health and safety risk assessments and BCP considering various planning scenarios	Agencies were asked to review health and safety risk assessments and BCP against emerging context	Agencies were asked to review health and safety risk assessments and BCP against emerging context
Infection risk mitigation strategies	Continue to work within the response settings, supporting mask wearing for those that wish to, and requiring mask usage where identified as necessary by health and safety risk assessments. Agencies to encourage good workplace hygiene	Agencies continued to work within CPF, including, encouraging face masks and good workplace hygiene	Agencies continued to work within CPF, including the use of face masks, good workplace hygiene and physical distancing, increased use of infection risk reduction for those staff in the workplace
Working practices	Workplaces are open	Workplaces were open. Alternative working practices were used as the exception rather than the standard. Working from home may have been appropriate for some people - i.e. their particular circumstances warrant it	Workplaces were open. Alternative working practices were used as the exception rather than the standard. Working from home may have been appropriate for some people - i.e. their particular circumstances warrant it



## 1.1. Operating guidance

The Post-Winter COVID-19 response is the country's "new normal". Most Government mandated restrictions are removed.

### 1.1.1. Contact tracing

- Completed by the individual when they contract COVID-19
- Agencies may choose to undertake contact tracing of potential close contacts in the workplace, if they consider it is useful, for example, to maintain business continuity. However, this is not a requirement, and does not need to be reported to health officials. Also, agencies need to establish a process for collecting this information and how they will store the information in a way that meets privacy and confidentiality requirements.

### 1.1.2. Access and record keeping

- There is no requirement to continue to display QR codes on the premises
- Agencies that wish to continue to use My Vaccine Passes as a condition of entry for visitors can do so – but they will need to be able to justify doing so, such as it being identified as a necessary mitigation by health and safety risk assessment, taking into account current public health advice, and should consider their limitations, given they are only evidence of the holder having had three doses or a medical exemption

### 1.1.3. Health and safety infection mitigations

#### 1.1.3.1. Physical distancing

- No requirement for physical distancing in the workplace
- Agencies may continue to require or recommend physical distancing, as informed by their health and safety risk assessment
- No limit on meeting room occupancy

#### 1.1.3.2. Mask Wearing

- Agencies may continue to require or recommend mask wearing, as informed by their health and safety risk assessment
- Requirement to wear masks in the workplace for household contacts of an active case in isolation
- The requirement to wear masks continues for visitors to Healthcare facilities

#### 1.1.3.3. Hygiene

- Encourage healthy habits in the workplace – including reviewing and updating hygiene, cleaning and ventilation practices, and ensure they are being followed.



Advice around good ventilation practices in relation to COVID-19 can be found at the Ministry of Health [website](#)

#### **1.1.3.4. Travel for business**

- No restrictions on travelling to offsite meetings or overseas travel although agencies may wish to examine their use of travel and consider where virtual meetings can be used

## **2. Leave Guidance**

The Ministry of Health provides information on [caring for those who have](#), or may have, COVID-19 at home and requirements for anyone who is a household or high risk contact of a COVID-19 case.

This section outlines the recommended approach to leave and pay for the following situations:

- **Being a household contact of a case who is self-isolating on public health advice**

The current advice is that **household contacts are not required to isolate** but should self-test with rapid antigen test (RAT) daily for 5 days and wear a mask outside of the home for the duration of the household case's isolation.

- **Sick with COVID-19 or caring for a dependant who is sick with COVID-19**

Sick leave or domestic/dependant leave should be provided in line with the employment agreement. If the employee has insufficient sick leave, agencies' usual policies relating to discretionary sick leave apply. Where the employee cannot work whilst caring for their dependant, then dependant leave (sick leave) in line with the employment agreement should be provided.

- **Dependant requires additional care**

There may be COVID-related occasions where an employee is required to provide care for a dependant whose usual care is unavailable.

In this situation, employees should work from home as much as possible. Where the employee cannot work whilst caring for their dependant, then leave in line with the employment agreement should be provided. Agencies' current arrangements for staff where schools or early learning centres are closed for operational reasons other than COVID-19 may apply.



### 3. Working with staff from vulnerable communities

There may be some staff from vulnerable communities, such as disabled people, Māori, Pacific people and older workers, who feel unsafe in the workplace now the CPF has been removed and many of the Government's restrictions have been revoked or replaced. Their needs, and the agency's responsibilities to keep them safe, should be considered when reviewing any of the settings discussed in Section 1 Operating Guidance and as part of the employer's health and safety risk assessment. Note that such assessment should allow for staff and union consultation.

Agencies should:

- Remind the individual that their colleagues in the workplace are encouraged to practice good health behaviours
- Note that the Public Service has high vaccination rates, and this has now been combined with natural immunity through prior infection
- Note health advice that vulnerable people are encouraged to keep up to date with their vaccination and booster shots, that they should talk to their healthcare provider to see if they are eligible for antivirals, and that medical grade (P2/N95) masks continue to be free and available via healthcare providers
- Discuss the health and safety risk assessment with the employee, including the controls that are in place for their safety
- Discuss if there are any other reasonable controls or actions the employee or the employer could take to help the employee feel safer within the workplace
- Determine an appropriate response in line with employer and employee duties under the Health and Safety at Work Act 2015 and public health advice from the Ministry of Health.
- If the employee remains concerned about being present in the workplace consider whether alternatives, such as reduced time in the office or working from home, could be accommodated, in accordance with the appropriate policies.



#### 4. Vaccination Guidance

The Public Service has created a strong foundation for our response to COVID-19, through workplace vaccination policies, and where necessary, mandates for some public service agencies. While the Government has signalled New Zealand is moving through the Omicron wave and the need for mandates has reduced, health risks remain for our workforce and the New Zealanders we serve.

Agencies should continue to refresh their health and safety risk assessments in line with current health advice, and to review their workplace vaccination policies accordingly. In doing so, agencies are encouraged to consult with staff and union(s) about those changes, and, if the agency chooses to relax its policy for the meantime, to agree what circumstances may cause a return to tighter settings in future, to allow a rapid escalation if required.

Advice on health and safety risk assessments can be found in Appendix One, and previous advice on vaccination policies can be found in Appendix Two.

##### *Re-hiring someone dismissed due to a previous vaccination requirement*

If someone's employment was terminated and this took effect while a government vaccination mandate or employer vaccination requirement was in place, that decision still stands. A former employee does not have a right to get their old job back, or any other role with their previous employer.

It's also important to note that while government vaccination mandates have been lifted, employers may choose to implement an employer vaccination requirement, where this is supported by an updated health and safety risk assessment.

Some employers, who no longer maintain a vaccination requirement, may want workers to return if they still have suitable vacancies. However, there is no requirement for an employer to offer a former employee their job back or for a former employee to accept.

##### *Vaccination requirement for new employees for work covered by a vaccination policy*

New appointees to the Public Service, and existing public servants taking up a role with another agency, will also be covered by their agency's vaccination policy and should be made aware of its contents when starting employment. If a role does not currently require vaccination but may do so if a future variant or wave was to occur, this possibility should be drawn to a potential employee's attention prior to them accepting the role. Likewise, if the role does require vaccination, the potential employee should be informed of that in writing, prior to accepting the role. The Ministry of Business, Innovation and Employment (MBIE) has provided further guidance on vaccination policies [in the workplace](#) when hiring new employees.



## ***5. Legislative vaccination mandates***

### ***Employees in a role where the legislative mandate is scheduled to be removed***

From 4 April 2022 vaccination mandates no longer apply to the New Zealand Police, New Zealand Defence Force and education sector. From 2 July 2022 vaccination mandates no longer apply to certain border workers and most workers at Corrections prisons as per the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 5) 2022. From 26 September 2022 vaccination mandates no longer apply for workers in the health and disability sector.

Whilst vaccination mandates have been removed, some agencies may still consider vaccination requirements are necessary to comply with their obligations under the Health & Safety Act 2015. Those agencies are strongly advised to complete a health and safety risk assessment regarding the possible continuing requirement for vaccination in these workforces. This should be completed prior to the mandate's removal. Please refer to Section 4 Vaccination Guidance and Appendix One for further details on this.



## Appendix One – Reviewing vaccination requirements in a Public Service Workplace

- *Stage one – Conduct a health and safety risk assessment*

Each public service agency must conduct a systematic health and safety risk assessment to determine whether, and to what level, vaccination is required to work in the workplace. This includes reviewing an existing policy as part of the regular review cycle, in light of new health advice or some other substantive reason.

Agencies are advised to consider the use of boosters when determining whether a vaccination policy is required, or when reviewing their existing vaccination policy.

This assessment must be consistent with the Health and Safety at Work Act 2015.

The assessment process can use agencies' usual health and safety risk assessment framework. It can be a high-level desktop analysis of the work undertaken in the agency. [WorkSafe](#) have provided further guidance on undertaking and reviewing risk assessments.

The risk assessment should be developed in consultation with workers, unions, and health and safety representatives. Agencies also need to ensure they meet the overlapping duties to consult, cooperate, and coordinate with other Persons Conducting a Business or Undertaking (PCBUs). [MBIE](#) has provided further guidance and FAQs to help organisations through the review process.

The outcome of this process will determine whether vaccination is required to work in the workplace and inform the development, and review, of a vaccination policy (see stage two).

### 1 Identify work tasks and situations

Agency risk assessments must consider risks of both agency workers transmitting COVID-19 to others during work, and agency workers becoming infected with COVID-19 at work. Assessments should be based on an assumption of community transmission of a highly transmissible variant.

The first stage of the risk assessment process is to identify where the infection of COVID-19 is most likely to occur for each role, based on the way work tasks are done in the agency. **The most likely source of infection in the workplace is where workers interact with others.** Consider:

- Work tasks that involve contact with others
- The nature of that contact (frequency of exposure and duration), vaccination status being known or unknown, whether the work is undertaken indoors or outdoors, physical distancing, whether vulnerable community members are present in the workplace.



- What factors the agency has influence and control over (environment, people, and processes)

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## Assess inherent risk

With the work tasks and likely transmission situations identified, the consequences and likelihood of infection occurring should be considered and mapped against the agency's risk assessment matrix/definitions. These should be defined as if there were no controls currently in place.

Consider:

- The consequence of the most credible worst-case scenario associated with the risk of infection with COVID-19
  - The likelihood of transmitted infection occurring and it leading to that consequence
- Information on the [Ministry of Health website](#) may provide support with this assessment.

3

## Assess risks and mitigations to determine residual risk

For each work type identified, the following questions must be considered:

- What is the **inherent** risk to the community and to agency workers (as assessed in the previous step)?
- What is the residual risk with current proactive controls (such as barriers, masks, handwashing, social distancing, remote working and rapid antigen tests)?
- Does being vaccinated materially reduce residual risk after current proactive controls are taken into account?
- If all workers who work in that area were vaccinated, what would the effect be on the risk rating?

Further reading: COVID controls for work health and safety reasons, including employer vaccination requirements ([Link](#))

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## Determine what is reasonably practical

The level of residual risk and what is reasonably practical in terms of managing the risk can then be considered, in discussion with workers and their representatives.



- *Stage two – Determine if unvaccinated workers can continue to be present in the agency’s workplaces and develop a draft vaccination policy*

Based on the risk assessment, agencies should determine if there is any work that must only be done by vaccinated workers, what work can be done by unvaccinated workers, with or without other reasonably practicable risk mitigations, and from this, develop a draft vaccination policy. The policy should include a timeframe and implementation plan for bringing the policy, or any changes to an existing policy, into effect.

Further reading: Other reasons for requiring vaccination of workers ([Link](#))

### **Aligning vaccination policy and business continuity planning**

If the draft policy or policy review includes that some or all work must be done by vaccinated workers, this may support the agency’s business continuity plan. Take this into account when considering reasonable timeframes for the implementation of the policy.

- *Stage three – Consult workers and unions on draft vaccination policy*

As set out in the Health and Safety at Work Act, workers, unions, and health and safety representatives should be engaged throughout the health and safety risk assessment process and the development of a draft policy (stages one and two). At stage three, the agency must consult formally with workers.

- *Stage four – Finalise and implement vaccination policy*

To support implementation of the vaccination policy, agencies must determine if they need to understand the vaccination status of their employees to meet their health and safety obligations to employees and people who come onto their premises.

### **Understanding vaccination status of workers**

Agencies may need to require employees to disclose their vaccination status. For example, this could be if the vaccination policy, informed by the risk assessment process, determines that some or all work in the agency requires vaccination, or where the information is material to a Health & Safety plan. In line with the [Privacy Commissioner’s advice](#), agencies can then ask employees for this information.

When collecting information on vaccination status, agencies must advise employees of the purpose for which it is being collected and how it will be stored. Employees do not have to provide the information, but they must be advised that not providing the information will result in the agency presuming them to be unvaccinated and the consequences of this (if any).



## **Collecting and storing information on vaccination status**

Be aware that vaccination status is personal information and collecting, storing, and sharing information about vaccination status must be done in accordance with advice from the [Privacy Commissioner](#). This includes how requests from workers to know the vaccination status of other workers are handled. Agencies need to be mindful of privacy requirements when implementing the outcome of individual discussions with unvaccinated workers.

Agencies need to establish a process for collecting information on vaccination status and how they will store the information in a way that meets privacy and confidentiality requirements.

## **Evidence of vaccination**

Agencies should run educative sessions for workers who are required to be vaccinated on how to obtain evidence of their vaccination status – work through the process provided on the [My Covid Record website](#). They will need an email address or RealMe account.

Where the assessment results in a decision that workers must be vaccinated to work in the workplace, agencies should turn their minds to what evidence of vaccination they require.

My COVID Record is the strongest level of evidence but does require agencies to have robust privacy systems in place to collect, store and process the proof of vaccination.

Employees may raise other objections to vaccination, which may lead to exemptions from the vaccination policy.

## **Implementing the vaccination policy – options and outcomes for employees who are not vaccinated**

Once the agency has information on the vaccination status of employees in roles where the policy requires vaccination, agencies should engage directly with unvaccinated employees.

Agencies should arrange an individual conversation with each employee who is not vaccinated or boosted (if applicable) or has not provided their vaccination status. These conversations should be handled sensitively and should identify and acknowledge the personal circumstances of the individual including any objections that the individual may have due to their religious beliefs or other grounds under the Human Rights Act. It is important that the conversation is initiated in sufficient time that the employee has the opportunity to meet the vaccination requirement by the implementation date.

Remind employees of their right to be supported by a union representative or support person of their choice for this conversation.

The purpose of the conversation is to:

- Discuss in good faith the assessment that shows the employee's role includes work that the vaccination policy has determined needs to be done only by vaccinated (or vaccinated and boosted) workers



- Outline the timeframe by which the work will only be undertaken by vaccinated (and boosted) employees
- Offer an opportunity for the employee to provide feedback on the assessment and timeframe
- Offer further support to be vaccinated or boosted including assurance that any time required to get the vaccine and deal with after-effects will be paid time
- Outline the consequences if they do not meet the deadline for a second dose of the vaccine (or booster, as applicable)
- Explore alternative options, some of which may have been considered at stage two of the assessment, such as:
  - Any reasonably practicable risk mitigations, other than vaccination, that reduce the risk to the health and safety of other people
  - Changes to how the employee carries out the work, including working from home, or other altered working arrangements
  - Changes to the employee's role (including location at which work is performed) to ensure it does not include work that could put others at risk
  - Leave without pay
  - Agreed redeployment to suitable alternative duties

Ensure the employee has the opportunity to respond to any proposed changes. Agencies must take any feedback into consideration and look for solutions that address the employee's concerns.

If an employee does not meet the deadline for receiving the vaccine as specified in the policy, consider options such as working from home or a form of agreed leave (such as annual leave or leave without pay) as you work through options to resolve the situation.

Allow sufficient time to explore reasonable options in good faith. Termination should only be considered as a last resort. Where this is necessary, ensure the employee receives four weeks' (or the notice period of their employment agreement if more than four weeks) paid notice of termination.

- *Stage five – Review risk assessment and vaccination policy*

As the environment and circumstances are dynamic, the risk assessment should be reviewed in light of any changes in public health advice, availability of vaccination types and boosters, changes to the workforces covered by mandatory orders and the use of testing and other measures.

A review of the risk assessment and vaccination policy no later than three months after implementation would be prudent.



## *Appendix Two - Previous advice on vaccination policy (effective 8 July-12 September 2022)*

The Public Service has created a strong foundation for our response to COVID-19, through workplace vaccination policies, and where necessary, mandates for some public service agencies.

We now have good vaccination coverage and that has contributed to the success we have had in responding to Omicron. But we need to maintain a strong foundation of protection so we can continue to safely deliver services and keep our people safe.

While the Government has signalled New Zealand is moving through the Omicron wave and the need for mandates, health risks remain for our workforce and the New Zealanders we serve. Current [health advice](#) is that vaccination and boosters help to reduce infection and the symptoms of the virus, and we will need to maintain high vaccination levels (including increasing the uptake of boosters) into the foreseeable future.

Accordingly, our guidance to agencies continues to be:

- Agencies should keep vaccination policies under regular review to maintain their currency and applicability to their workforces and operations
- Agencies should update their health and safety risk assessment and vaccination policies in light of updated public health advice, or changing circumstances, and to meet the specific needs of their workforce and workplaces. WorkSafe have provided [guidance](#) on reviewing risk assessments for managing COVID-19 in the workplace:
  - At the very least, agencies should continue to engage with workers and their unions to support and encourage vaccinations including boosters
  - Some situations may mean that a vaccine policy that requires some or all of a workforce to be fully vaccinated (with booster) is still appropriate. Agencies are encouraged to get legal advice in this situation. The Ministry of Business, Innovation and Employment (MBIE) have also provided [information](#) on other reasons for requiring vaccination of workers
- Agencies should retain the ability to move quickly in response to emerging waves, new variants or updated health advice

Agencies should continue to refresh their workplace assessments in line with current health advice, and to review their workplace vaccination policies accordingly. In doing so, agencies are encouraged to consult with staff and union(s) about those changes, and, if the agency chooses to relax its policy for the meantime, to agree what circumstances may cause a return to tighter settings in future, to allow a rapid escalation if required.

Every workplace and workforce is different and it is expected that agencies tailor their responses to address their workplace and workforce context. It is therefore anticipated that the public sector will start to see a lot more variation in our vaccine policies. However, at the very least, it is expected that



every agency will continue to have a vaccine policy that educates, expects, and supports workers to be vaccinated (see below for ideas on how to do this).

For other agencies, or parts of an agency's workforce, the health and safety assessment may mean that stronger measures are required. This may include retaining a requirement to be vaccinated (with boosters) to do part of, or all, of a role.

There may be other options or contexts that sit between a policy built on "educate, expect and support" and a requirement for the workforce to be vaccinated to enter the workplace. For instance:

- An agency may consider that a particular population group it serves is more vulnerable, and that only vaccinated and boosted staff could engage directly with that group. However, this may be achieved through seeking volunteers who are vaccinated, for example
- A worksite that is occasionally visited may require vaccinations (e.g., an aged residential care site) – again, that may be achievable through seeking volunteers who are vaccinated (with boosters)
- Additional protection or actions may be required to keep staff safe as an alternative to full vaccination – for instance, more mask wearing or other actions to stop the spread of COVID-19

### *'Educate, Expect, Support'*

At the same time as undertaking a health and safety risk assessment, agencies should continue to educate, expect, and support workers to be vaccinated. The COVID-19 Protection Framework (CPF) Workforce guidance supports the expectation that all public servants who can be vaccinated are vaccinated, and those eligible for boosters receive them in a timely manner. This guidance is unchanged.

## **Educate**

### **Agencies should:**

- Reinforce that vaccination (and boosters) is the primary way we protect ourselves, our whānau, and the community from severe illness from COVID-19. Everyone over five years of age in New Zealand is eligible to be vaccinated. Boosters are the best form of protection against the Omicron variant
- Provide the most up to date, accurate, and reliable information on the benefits of vaccination to individuals and the community from trusted sources – [health.govt.nz](https://www.health.govt.nz), [covid19.govt.nz](https://www.covid19.govt.nz), and [karawhiua.nz](https://www.karawhiua.nz)
- Be alert to scams and misinformation. Be aware of incorrect information on social media and other places and get accurate and [trusted information](#). More information on recognising misinformation and scams can also be found on the [COVID-19 website](#) and [CERTNZ](#)



- Assure workers and unions that if agencies require personal information to support the vaccine rollout, correct privacy and consent protocols will be followed and all information will be treated as confidential and only accessed by appropriate personnel
- Advise employees that if information is required, but not provided, non-vaccination will be assumed and what that means for them (if anything)
- Consider holding information meetings or using bulletins to update workers when important messaging is required
- Use managers, union officials, health and safety representatives, and other key workers to lead and support the vaccination conversation

### Expect

Agencies need to communicate an expectation that all workers who can be vaccinated will be vaccinated and have boosters when eligible, noting that absent a mandatory vaccination policy justified on the basis of a risk assessment, this “expectation” will not be a disciplinary matter. Senior leaders should role model and strongly encourage workers to be vaccinated.

### Support

#### Agencies must:

- Ensure employees are paid for time required to get a vaccine or booster. Any time off required to deal with immediate or delayed side effects from a vaccination should be treated as paid special leave
- Ensure employees are given enough time to complete their vaccination and, if off-site, include travel time

#### Agencies should:

- Acknowledge and support employees who may require more information and time to make an informed decision on getting the vaccine
- Support employees’ choice of vaccination provider, such as their own doctor
- Encourage employees to ask questions that enable them to make an informed decision on being vaccinated

If an employee needs to support a child or other dependant to get vaccinated in work hours, this should be treated as paid special leave.

If the employee needs to support a child or other dependant to deal with immediate or delayed side effects, sick or dependant leave should be used. Payment should be in line with usual agency practice. If the employee has insufficient sick/dependant leave, they may receive additional discretionary paid leave.



### **Vaccination and pregnant or breastfeeding staff**

The Ministry of Health has provided extensive [guidance](#) on vaccine safety which can be used to support discussions with staff who are pregnant, or who are breastfeeding, and who have concerns over the vaccine.

For those who remain vaccine hesitant, agencies should follow good practice in reviewing each case on its individual circumstances, considering alternative working practices with reference to their own agency's health and safety risk assessment, the business continuity plans and their obligation to continue to deliver public services and the COVID-19 response. Agencies are encouraged to engage with the staff member, and any union representatives, prior to a decision being made.

### **The use of boosters within vaccination policies**

[Health advice](#) is clear that three doses of vaccine, or four doses for those aged 50 years or over or those staff who are immunocompromised, reduces the chances of hospitalisation and lowers the transmissibility of Omicron. Put simply, if you don't get the virus you can't give it to someone else.

Boosters are required for My Vaccine Passes for people aged 18 years or older (or two doses for 12-17 years). Agencies that use the MVP method as a proxy for vaccination status should consider their limitations as MVPs are currently only evidence of the holder having had three doses or a medical exemption.

### **Alternatives to dismissal**

If a vaccination policy requires vaccination for a particular role, dismissal should only occur after all reasonable alternatives have been exhausted, taking into account the relevant health and safety risk assessment and individual circumstances considered. Agencies will need to take into consideration the rapidly changing nature of the environment when considering if any alternative is reasonable.

Potential alternatives to dismissal to be explored may include:

- Revision to an individual's role
- Opportunities to redeploy the staff member
- Opportunities to work from home or altered working arrangements
- Leave without pay
- Use of daily rapid antigen tests (RATs) prior to commencing work (noting RATs are not a substitute for vaccination and having regard to the current health advice)

Note that some of these alternatives may have also been considered during the health and safety risk assessment when evaluating whether vaccination is required for the role.

In considering what are reasonable alternatives to dismissal, agencies need to consider their workforce and workplace situation and needs, in both the short and long term.



## **Re-hiring someone dismissed due to a previous vaccination requirement**

If someone's employment was terminated and this took effect while a government vaccination mandate or employer vaccination requirement was in place, that decision still stands. A former employee does not have a right to get their old job back, or any other role with their previous employer.

It's also important to note that while government vaccination mandates have been lifted for some sectors, employers may choose to implement an employer vaccination requirement, where this is supported by an updated HSWA risk assessment.

Some employers, who no longer maintain a vaccination requirement, may want workers to return if they still have suitable vacancies. However, there is no requirement for an employer to offer a former employee their job back or for a former employee to accept.

### *Vaccination requirement for new employees for work covered by a vaccination policy*

New appointees to the Public Service, and existing public servants taking up a role with another agency, will also be covered by their agency's vaccination policy and should be made aware of its contents when starting employment. If a role does not currently require vaccination but may do so if a future variant or wave was to occur, this possibility should be drawn to a potential employee's attention prior to them accepting the role. Likewise, if the role does require vaccination, the potential employee should be informed of that in writing, prior to accepting the role. MBIE have provided further guidance on vaccination policies [in the workplace](#) when hiring new employees.

## **Where an employee does not consider they can work safely in the workplace**

Agencies should:

- Consider the risk to the employee, those in their household, and other people in the workplace, taking into account the agency's health and safety risk assessment and vaccination policy, if in place
- Discuss the risk assessment with the employee, including the controls that are in place for their safety
- Discuss if there are any other reasonable controls or actions by the employee that could help them to feel safer within the workplace
- Determine an appropriate response in line with employer and employee duties under the Health and Safety at Work Act 2015 and public health advice from the Ministry of Health
- If the parties cannot agree, treat the situation as a work from home request and apply the employer's usual policy

Where it is not possible for an employee to work remotely, try to address the employee's concerns as far as possible and ask the employee to attend work, noting that high vaccination rates plus the booster, combined with other COVID-19 precautions such as physical distancing, face masks, the



use of RATs, staying home if sick, and hand hygiene will provide greater protection against both the spread of COVID-19 and severe illness.

If the employee is still refusing to attend the workplace, and working from home is not sustainable, the agency may wish to consider redeployment of the employee as a part of exhausting all reasonable alternatives prior to dismissing staff on the basis of their refusal.