



# **PUBLIC SERVICE WORKFORCE GUIDANCE FOR THE COVID-19 PROTECTION FRAMEWORK**

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## 1. Introduction

Over the past 21 months, the COVID-19 pandemic has tested the way organisations operate, including the provision of public services to New Zealanders. New Zealand is now at a critical point in our response and recovery effort as we shift from an elimination strategy to one of minimisation and protection.

New Zealand's Public Service has a critical role to play in leading the Government's COVID-19 response and recovery effort. We need to ensure that the Public Service can deliver on that mission, while continuing to serve New Zealand and New Zealanders, providing the services and support they rely on.

This means we need the right policies and settings in place in all Public Service agencies to meet the needs of the New Zealanders we engage with, even in the context of COVID-19 circulating in the community.

In this environment, high vaccination rates are the best way to protect the community from COVID-19 and the Public Service must play its part. Our Workforce Vaccination Guidance published in March 2021 set an expectation that all public servants who can be vaccinated are vaccinated. We now need to set a stronger expectation that reflects the change in our operating context brought about by the shift to a minimisation and protection strategy.

The Government has announced a new [COVID-19 Protection Framework \(CPF\)](#) to replace the Alert Level system from 11:59pm on 2 December 2021. The new CPF envisages COVID-19 will be in the community on an ongoing basis.

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.

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.

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 sits alongside the [COVID-19 Public Sector Workforce Guidelines](#) for the Alert Levels until the COVID-19 Protection Framework comes into effect.

The guidance is based on the current and immediately foreseeable COVID-19 context, it will be reviewed any time changes in the context warrant it.

### **Overview of the guidance:**

The guidance provides for a consistent approach to implementing vaccination mandates, health and safety assessments in accordance with legislation, and evidential requirements and processes for requiring vaccination across Public Service agencies, while supporting the expectation that all public servants who can be vaccinated are vaccinated.

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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 agent Crown entities; Autonomous and Independent 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.

The guidance also provides a basis for requiring visitors, contractors, and other third parties to meet vaccination certification standards to enter Public Service workplaces and supports close engagement with unions and workers in applying the guidance.

This consistency and alignment will support continuity of public services for New Zealanders, both public facing and those that maintain the trust and confidence New Zealanders have in government and the Public Service.

Above all else, the guidance protects the communities that public servants interact with, and the health and safety of public servants themselves, while ensuring New Zealanders can access the services they need, in line with the COVID-19 Protection Framework.

The guidance also supports agencies to normalise the management of leave and pay issues in operating under the CPF.

## 2. Operating public services under the COVID-19 Protection Framework

The [COVID-19 Protection Framework](#) (CPF) introduces a new traffic light system to manage COVID-19 in the community with Green, Orange and Red settings. The CPF sets out general settings and restrictions in a range of environments depending on whether a Vaccine Pass is required.

The CPF also provides for localised protections to be put in place. **Always refer to the [Unite Against COVID-19 website](#) for the latest information on what settings apply and where.**

### 2.1 Health, safety and wellbeing in the workplace

The requirements for workplace operation under the CPF are determined according to the activity in the workplace. Guidance will be available for the following categories of activity:

- Accommodation
- Entertainment, recreation, and exercise
- Events and gatherings
- Food and drink services
- Manufacturing, supply or processing of good and packaging
- Primary industries
- Public facilities
- Retail
- Close contact services
- Services
- Transport, freight and logistics.

Most public service activities are considered Services. Agencies need to examine their activities to determine if restrictions of any other category apply.

Unless undertaking activities that are otherwise restricted, the following settings of the COVID-19 Protection Framework apply. Restrictions are the same if Vaccine Passes are required or not.

Red	Orange	Green
Workplaces open Working from home may be appropriate for some workers	Workplaces open	Workplaces open
Display QR tracing codes.	Display QR tracing codes.	Display QR tracing codes.
Workers regularly in the workplace do not need to scan, all other people must scan or use other record keeping	Workers regularly in the workplace do not need to scan, all other people must scan or use other record keeping	Workers regularly in the workplace do not need to scan, all other people must scan or use other record keeping
Face coverings are encouraged	Face coverings are encouraged	
Mandatory vaccinations for workers may apply	Mandatory vaccinations for workers may apply	Mandatory vaccinations for workers may apply

At Red, workplaces can be open. Agencies should ensure adequate measures are in place to operate safely as determined by a health and safety risk assessment. This may include greater use of working from home for some workers where the risk assessment indicates that may be necessary.

At every setting of the COVID-19 Protection Framework, agencies should continue to promote the relevant [public health advice](#) from the Ministry of Health. General advice includes:

- Get vaccinated
- Wear a face covering – the CPF sets out where these are mandatory
- Keep track of where you have been, turn on Bluetooth in the COVID-19 tracer app and scan QR codes
- Wash and dry hands, cough into elbow, avoid touching your face
- Regularly disinfect surfaces
- Stay home if you're sick, call Healthline or your doctor, get a COVID-19 test if you have symptoms.

Agencies should continue to be mindful that where employees are working from home, their home is considered a workplace and agencies have a responsibility to eliminate or minimise the risks as much as reasonably practicable. More information about working from home during COVID-19 has been developed by the [Government Health and Safety Lead](#).

Continue good engagement with workers, unions and health and safety representatives on monitoring of health and safety practices.

For further information refer to [WorkSafe NZ guidance](#), the Government Health and Safety Lead's [guidance to agencies](#) and its [employee resource on reducing the spread of COVID-19](#).

## 2.2 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 contact of a COVID-19 case](#).**

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

- **Self-isolating or caring for a dependant who is self-isolating on public health advice**

Employees should be supported to comply with public health requirements if they are a contact of a COVID-19 case. If required to self-isolate on public health advice, employees should not come into the workplace and should work from home wherever possible.

Where it is not possible for an employee to work from home, or to cover periods of unavailability for work, employees should receive paid special leave, paid at normal rates.

The duration of this special leave should be capped at the duration of self-isolation required of a vaccinated person.

If an employee is required to self-isolate after the period of special leave has been exhausted, annual leave or leave without pay applies for the remainder of the self-isolation.

This period of special leave may be extended at the agency's discretion if the employee's individual circumstances warrant it.

- **Sick with COVID-19 or caring for 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.

- **Vulnerable 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 or agree to a leave arrangement such as annual leave or unpaid special leave.

- **Dependant requires additional care**

There may be occasions where an employee is required to provide care for a dependant whose usual care is unavailable, for example the temporary closure of a dependant's school or early learning centre.

**In this situation, employees should work from home as much as possible. Where the employee cannot work from home, or is only partially available for work, dependant leave in line with the employment agreement should be provided. Agencies can consider special paid leave instead or where dependant leave has been exhausted if warranted in the circumstances.**

### 3. Vaccine Passes and access to public services

**As a general principle, agencies should require the use of a Vaccine Pass as a condition of entry for visitors, (other than recipients of a service) including for contractors to the workplace.**

Under the COVID-19 Protection Framework, there are certain settings where denying entry on the basis of vaccination status is prohibited. These include basic needs services (such as health care, supermarkets), publicly funded and emergency housing services, education and care. A public health order will provide a full list of exempt premises.

Where requiring a Vaccine Pass is prohibited, a place/service/Person Conducting a Business or Undertaking (PCBU) cannot limit the kind of service provided to patrons based on their vaccination status (e.g. making unvaccinated customers use the self-checkout counters only).

Where a prohibition does not apply, agencies can consider requiring members of the public, who are accessing premises where public services are provided, to have a Vaccine Pass. Agencies' consideration needs to include these factors:

- the need to ensure accessibility of services to the public
- the nature of the services provided
- the agency's health and safety risk assessment and vaccination policy
- any considerations under the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993
- tikanga that emphasises physical presence.

**Where agencies decide to require a Vaccine Pass, agencies must:**

- ensure alternative methods of access to services other than face to face for members of the public that do not have a Vaccine Pass
- consider if workers in those premises should also be vaccinated.

## 4. Vaccination of public servants

Agencies should continue to engage with workers and their unions to support and encourage them to be vaccinated. In parallel, agencies must ensure compliance with any legislative mandates, carry out a health and safety assessment and develop a vaccination policy where there is no legislative mandate, as set out in this guidance. Collectively, these steps will support agencies to give effect to the expectation that all public servants who can be vaccinated are vaccinated.

### 4.1 '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.

#### **Educate**

##### **Agencies should:**

- reinforce for workers that vaccination is the primary way we protect ourselves and the community from the spread of COVID-19
- 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](https://www.covid-19.govt.nz) 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
- 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. Senior leaders should role model and strongly encourage workers to be vaccinated.

#### **Support**

##### **Agencies should:**

- ensure employees are paid for time required to get the vaccine and any time off required to deal with immediate or delayed side effects from the vaccine should be treated as paid special leave
- ensure employees are given enough time to complete vaccination and, if off-site, include travel time

- 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 dependant to get vaccinated in work hours, this should be treated as paid special leave.

If the employee needs to support the 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.

## 4.2 Legislative vaccination mandates

[Legislative vaccination mandates](#) are in place affecting public sector workforces including:

- [Border workers](#)
- [Health and Disability sector](#)
- [Corrections sector](#)
- [Education sector](#)
- [NZ Police](#)
- [NZ Defence Force](#)

[Schedule 2](#) of the COVID-19 Public Health Response (Vaccinations) Order 2021 lists the specific work covered by a legislative vaccination mandate.

### 4.2.1 Unvaccinated employees in a role where vaccination is required by legislative mandate

If the role of an employee who is not vaccinated, or has not provided their vaccination status, includes work that is covered by a mandate (affected work), agencies should arrange an individual conversation with the employee. Ensure the employee has access to their union representative or other support person throughout this process. The purpose of the conversation is to:

- discuss in good faith the assessment that shows the employee's role includes affected work
- outline the timeframe by which the work will only be undertaken by vaccinated employees
- offer an opportunity for the employee to provide feedback on the assessment and timeframe
- offer further support to be vaccinated
- explore alternative options such as:
  - changes to the employee's role (including location at which work is performed) to ensure it does not include affected work
  - redeployment to suitable alternative duties within the agency that do not include affected work
  - temporary redeployment to suitable alternative duties in a different agency
  - four weeks' paid notice of termination (or the notice period of their employment agreement if more than four weeks) if no suitable alternatives are available.

### 4.3 Determining if vaccination is required in a Public Service workplace

Where there is no legislative mandate, employers may determine whether vaccination is required. To achieve broad consistency across public service agencies, they should follow the five-stage process below to determine if vaccination is required to work in their workplaces, and implement a vaccination policy.

#### 4.3.1 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 assessment must either be consistent with the Health and Safety at Work Act 2015 or use the vaccination assessment tool that will be provided for by regulations under the COVID-19 Public Health Response Act 2020, when that tool becomes available.

The assessment process outlined below is consistent with the Health and Safety at Work Act and provides a robust health and safety assessment which agencies can apply now to inform decisions on whether vaccination is required.

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.

The risk assessment should be developed in consultation with workers, unions and health and safety representatives. Agencies also need to ensure that they meet the overlapping duties to consult, cooperate and coordinate with other PCBUs.

The outcome of this process will determine whether vaccination is required to work in the workplace and inform the development 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 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;
- what factors the agency has influence and control over (environment, people and processes).

2

## 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.

An example risk assessment tool is shown below.

Information on the [Ministry of Health website](#) may provide support with this assessment.

		Consequence				
		Insignificant	Minor	Moderate	Major	Severe
Likelihood	Almost certain	Medium	High	High	Extreme	Extreme
	Likely	Medium	Medium	High	High	Extreme
	Possible	Low	Medium	Medium	High	High
	Unlikely	Low	Low	Medium	High	High
	Rare	Low	Low	Medium	Medium	High

### 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, and remote working)?
- If all workers who work in that area were vaccinated, what would the effect be on the risk rating? It should be noted that vaccination is the only control currently known to reduce both likelihood of infection, and the consequence of a person being infected.

The residual consequence and risk for vaccinated and unvaccinated workers can then be determined, mapped and discussed.

Each situation as set out below should be considered – for the purposes of this assessment, a ‘person’ is any other person a worker comes into contact with during work activities (note that a ‘person’ could also be another worker).

- A) The residual risk of transmission during work **from** workers:
- an unvaccinated worker transmitting to an unvaccinated person;
  - an unvaccinated worker transmitting to a vaccinated person;
  - a vaccinated worker transmitting to an unvaccinated person;
  - a vaccinated worker transmitting to a vaccinated person.
- B) The residual risk of transmission during work **to** workers:
- an unvaccinated person transmitting infection during work to an unvaccinated worker;
  - an unvaccinated person transmitting infection during work to a vaccinated worker;
  - a vaccinated person transmitting infection during work to an unvaccinated worker;
  - a vaccinated person transmitting infection during work to a vaccinated worker.

		Consequence				
		Insignificant	Minor	Moderate	Major	Severe
Likelihood	Almost certain	Medium	High	High	Extreme	Extreme
	Likely	Medium	Medium	High	High	Extreme
	Possible	Low	Medium	Medium	High	High
	Unlikely	Low	Low	Medium	High	High
	Rare	Low	Low	Medium	Medium	High

Unvaccinated worker/person transmitting to unvaccinated worker/person

Vaccinated worker/person transmitting to unvaccinated worker

Unvaccinated worker/person transmitting to vaccinated worker

Vaccinated worker/person transmitting to vaccinated worker/person

An example of a risk assessment is set out above. In this example:

- an unvaccinated person or worker transmitting to an unvaccinated worker or person is rated as 'Extreme' risk;
- a vaccinated person or worker transmitting to an unvaccinated worker is rated as 'High' risk;
- an unvaccinated person or worker transmitting to a vaccinated worker is rated as 'High' risk;
- a vaccinated person or worker transmitting to a vaccinated person or worker is rated as 'Medium' risk.

#### 4 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.

##### 4.3.2 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 what work must be done by vaccinated workers and from this, develop a draft vaccination policy. The policy should include a timeframe and implementation plan for bringing it into effect.

##### 4.3.3 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.

##### 4.3.4 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**

**If the vaccination policy, informed by the risk assessment process, determines that some or all work in the agency requires vaccination, agencies have a legitimate need to know the vaccination status of employees. 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.

## **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 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 login.

Where the assessment results in a decision that workers must be vaccinated to work in the workplace, a Vaccine Pass should be accepted as evidence of meeting this requirement.

**My Health Record is acceptable alternative evidence. A vaccination card is not sufficient.**

**No exemption to the vaccination requirement will be considered other than one provided by the [Director-General of Health](#).**

## **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 has not provided their vaccination status. These conversations should be handled sensitively and should identify and acknowledge the personal circumstances of the individual. 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 workers
- outline the timeframe by which the work will only be undertaken by vaccinated employees
- offer an opportunity for the employee to provide feedback on the assessment and timeframe
- offer further support to be vaccinated 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
- explore alternative options 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
  - 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
  - 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 a first dose of the vaccine, 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.

#### 4.3.5 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 the use of testing and other measures.

A review of the risk assessment and vaccination policy by the end of the first quarter of 2022 would be prudent.

## 5 Vaccination requirement for new employees

The default position is that all new appointees to the Public Service, and existing public servants taking up a role with another agency, must have a clause in their letter of offer or employment agreement that requires them to be vaccinated. Agencies may deviate from the default if a health and safety risk assessment has determined that the work can be done safely by an unvaccinated employee.