

## Parliamentary clarification on mandatory vaccinations in the workplace

### **In response to concerns from both employers and employees alike, the New Zealand Government has provided guidance on how vaccination certificates operate in the workplace.**

On 26 October 2021 Minister Woods provided welcome clarification in respect of mandatory vaccinations, announcing a range of measures to help protect businesses from COVID-19. The announcement comes at a time where employers are grappling with what to do in this previously untested area of employment law.

#### **If your business requires a COVID-19 Vaccination Certificate to enter, your employees must also be vaccinated**

Vaccination against COVID-19 will be mandatory for all workers at businesses where customers are required to show COVID-19 Vaccination Certificates under the government's traffic light system. This will include businesses such as hospitality, gyms, hairdressers and other close-contact businesses.

Employers affected by this mandate will be required to provide paid time off for their employees to get vaccinated.

For employees that are not vaccinated, they will be provided with a four week notice period within which they can get vaccinated. However, if the employee does not get vaccinated within this period, it appears that this will provide sufficient grounds for their employment to be terminated. This does not mean the usual obligations of good faith will not apply.

The timing for mandatory vaccinations has not yet been announced, and will depend on when New Zealand can move into the new COVID-19 Protection Framework.

#### **New law will guide employers to determine whether their business requires vaccinated workers**

Parliament will introduce a new legal framework to provide a straightforward and uncomplicated risk assessment process for employers to follow to determine whether vaccination should be required for their business.

Minister Woods has confirmed that this framework will not override any risk assessments that businesses have already completed under their existing health and safety policies, which will be a relief for those employers who have already undertaken this process.

#### **Vaccination records must be kept by employers**

Employers will be required to keep records about workers' vaccination status, which will need to be maintained in accordance with all relevant Privacy Principles provided for under the Privacy Act 2020.

It is understood MBIE will work with the Privacy Commissioner to provide practical guidance to employers in respect of storing information appropriately.

#### **Our recommendations**

Under this new mandate, a significant proportion of New Zealand's workforce will soon be required to be vaccinated. There are likely many employees who do not wish to be vaccinated, that now face the prospect of losing employment. This will be a challenging time for those employees, and we recommend that employers work closely with employees and provide as much assistance as possible through this transition period.

In addition, if termination is required, employers need to be cognizant of their obligations to act in good faith and follow a fair and reasonable process.

#### **Want to know more?**

If you have any questions about vaccinations in employment, please contact our [specialist team](#).