

The COVID-19 Vaccination Assessment Tool: The updated framework for businesses considering mandatory vaccination for their workers

On 15 December 2021, the COVID-19 Public Health Response (Vaccination Assessment Tool) Regulations 2021 came into force, introducing a simplified framework for employers considering whether they can require their workers to be vaccinated.

The COVID-19 Public Health Response (Vaccination Assessment Tool) Regulations 2021 (**Regulations**) set out a "Vaccination Assessment Tool" (**Tool**) which consists of 4 risk factors related to the contraction and transmission of COVID-19. Each factor has a higher risk indicator and lower risk indicator. If three out of four higher risk indicators are met for a particular role in a business it will be reasonable and lawful for the business to require the role to be performed by a worker who is vaccinated against COVID-19.

The Tool means that businesses with workers not covered by a COVID-19 Vaccination Order can determine with certainty whether it is justifiable to require their workers to be vaccinated against COVID-19. These businesses can also breathe a sigh of relief from a health and safety perspective, as businesses' obligations under the Health and Safety at Work Act 2015 extend to the consideration of whether vaccination of workers (including contractors and volunteers) is required. This provides a simple way to assess that.

Note that if your business has already undertaken a health and safety risk assessment using the previous WorkSafe guidance, you do not need to conduct a new one using the Tool.

The 4 factors

The 4 factors and their accompanying "higher risk" and "lower risk" indicators are set out as follows:

1. Environment factor

What type of environment does the worker work in?

Lower risk: 100m² indoor space or greater, or outside.

Higher risk: less than 100m² indoor space.

2. Proximity factor

How close do workers work to other people?

Lower risk: at least 1 metre apart.

Higher risk: less than 1 metre apart.

3. Time factor

How long are workers in proximity to other people?

Lower risk: for 15 continuous minutes or less, or at least 1 metre apart.

Higher risk: for more than 15 continuous minutes at less than 1 metre apart.

4. Vulnerability factor

Does the worker provide services to people who are considered vulnerable to COVID-19?

Lower risk: no.

Higher risk: yes.

Consultation with workers

If your business chooses to conduct your risk assessment in accordance with the Tool, you are required under the COVID-19 Public Health Response Act 2020, and the Health and Safety at Work Act 2015, to consult the relevant workers as part of your assessment of a particular role. This requirement also stems from your usual obligations to act in good faith towards your workers. Adequate consultation involves

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giving your workers time to consider the outcome of your assessment using the Tool, as well as an opportunity to comment before any final decision is made.

Discretionary considerations

Under the Regulations, a business who finds that at least three of the four factors meet the higher risk indicator for a particular role may still decide not to require a role to be performed by a vaccinated worker, but only if other reasonable measures are available to eliminate or minimise the risk of exposure and transmission of COVID-19. Depending on the nature of your business, other reasonable measures could include creating "bubbles" within your workplace or encouraging staff who can to work from home on certain days.

Note that businesses who choose to exercise this discretion must be prepared to justify their decision not to require vaccination.

Want to know more?

If you have any questions about the Tool, please contact our specialist [Employment Team](#).