

Vaccinations in Your Workplace:

Legal considerations:

- Any collecting, storing, sharing of information must be done in accordance with the Privacy Act.
- A person has the right to refuse medical treatment under the Bill of Rights Act.
- A worker has to disclose their vaccination status where their work is covered by the Covid-19 Public Health Response (Vaccinations) Order 2021. *(ie border protection)*
- If a PCBU decides that work is high risk and therefore needs vaccination for health and safety reasons, it must first assess their Covid-19 exposure risk. This applies to work done by all workers, whether employees or independent contractors.
- The PCBU must involve workers, unions and other representatives in the risk assessment process, and when deciding how to eliminate/minimise risks.
- The PCBU should consider whether other public health measures (eg physical distancing, use of PPE) can minimise the risk of exposure and transmission of Covid-19. The protocols that were introduced in 2020 have worked well in the workplace. Infectious persons have visited a number of businesses throughout the country, with a little of no spread in the community.

Comment From MBIE: *(labour inspectorate national manager Stu Lumsden)*

“Generally, a worker does not have to disclose (or prove) their vaccination status to a business”

The ministry's website states vaccinations would not be needed for most work, but businesses should support workers to access vaccinations.

A PCBU can only ask a worker about their vaccination status but pointed out that workers would only be required to disclose the information as part of a specific risk assessment.

Businesses cannot require any individual to be vaccinated. However, businesses can require that certain work must only be done by vaccinated workers, where there is high risk of contracting and transmitting Covid-19 to others.

“This will be a minority of all work in New Zealand. This could change if there is a significant shift in the Covid-19 situation domestically.”

“If a worker does not disclose (or provide evidence of) their vaccination status, the business may assume the worker has not been vaccinated for the purposes of managing health and safety risks. However, the business should first inform the worker of this assumption and what will happen if the worker is not vaccinated or does not disclose their vaccination status.”

Some workers will have individual health concerns or other reasons for needing support. Businesses should ensure they do not directly or indirectly discriminate against workers based on their vaccination status.

This usually includes two factors: the likelihood of being exposed to a risk while performing a role, and the potential consequences of that risk.

Comment From Brent Rice – Safe Work NZ Ltd

The law and MBIE comments mean that several factors should be considered before a PCBU contemplates vaccination status at work.

There could be several litigious consequences by jumping in too quickly. So what to do?

Saliva testing for worker health status is a simple process that takes up little time and the results are known within 24 hours.

Weekly testing would be a reasonably practicable process to ensure the PCBU is assessing the risk of illness to workers.

Currently it is only applicable to border workers, so I suggest you use your imagination to make a plan - <https://covid19salivatesting.co.nz>