

COVID-19 Vaccine Workplace Guide

This *COVID-19 Vaccine Workplace Guide* has been designed to inform members of the key considerations relevant to the COVID-19 vaccine in the workplace.

Note: The information contained in this guide is current as at 6 October, 2021, and may be subject to change.

For more information and support, please contact the friendly team at
AVA HR Advisory Service

P: 1300 788 977 | Email: hrhotline@ava.com.au | Chat online



Disclaimer

This document does not constitute human resource or legal advice and should not be relied upon as such. It is intended only to provide a summary and general overview on matters of interest and it is not intended to be comprehensive. You should contact the AVA HR Advisory Service or seek professional advice before acting or relying on any of the content.

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If a Public Health Order applies to staff which requires them to be vaccinated

First, speak with your staff covered by the public health order.

Where a Public Health Order (PHO) applies which requires your staff to be vaccinated, first speak with those staff to ascertain whether they already are vaccinated and if not, whether they plan to be vaccinated. Encourage those who are uncertain about the vaccination to speak with their GP. For those who plan to be vaccinated, assist them to do so by providing information about where to be vaccinated in your area (more information about this is provided at the bottom of this guide). Also consider allowing those staff members to use their paid leave (if applicable) to access the vaccination during work hours.

If a staff member wishes to be vaccinated but can't do so until after the "cut off" date.

This will depend on the precise terms of the PHO and what it prevents the staff member from doing after the cut-off date if they are not vaccinated. For example, it may prevent them from entering your workplace OR it may only prevent them from performing certain duties (such as visiting certain clients). If the PHO prevents the staff member from entering your workplace, consider whether they can work from home until they are compliant with the public health order. If they cannot work from home, or the mandate simply prevents them from performing their role in any capacity if they are not vaccinated, they will need to take some form of leave available to them to cover the period between the cut-off date and the date on which they receive their vaccination. Ensure you work together with your staff member to assist them to receive the vaccination as quickly as possible.

If a staff member refuses to comply with the Public Health Order.

Where a staff member refuses to comply with the PHO, it is highly likely that they will be unable to continue performing their role as they were before the PHO came into effect. Generally, these PHOs prevent workers (whom they apply to) from entering their workplace after a certain date if they are not vaccinated (usually this occurs in two stages, i.e., they must receive their first dose by a certain date, and then their second dose by another date shortly thereafter). Other public health orders may prevent the staff member from performing certain functions of their role (e.g. visiting certain clients).

If a staff member can adequately perform their role from home and do not need to enter the main workplace for any reason, you may consider allowing them to do so moving forward. Similarly, if the public health order only prevents them from performing certain duties, and you are able to easily remove those duties from that staff member without greatly affecting their role, then this should be considered as well.

If the above options are not feasible however, and the refusal to comply with the PHO order means a staff member will be unable to continue performing their role, you will need to speak with that staff member to discuss this with them. You will need to clearly explain to the staff member that they will be unable to continue working for your organisation past the date specified in the PHO. Some staff members may elect to resign. For those who do not resign, you may need to consider taking disciplinary action against them. This could possibly be in the form of a written warning initially, followed by termination if they continue to refuse to comply with the Public Health Order. Given there may be risks involved here, we recommend contacting the HR Advisory Service or obtaining independent legal advice in this situation.

Can a staff member be exempt from the Public Health Order?

Exemptions to a public health order usually only apply in very limited circumstances and are generally only granted on valid medical grounds (i.e. a certified medical professional has formally provided the exemption). Check the relevant Public Health Order to see whether any exemptions apply, and if so, the necessary criteria required to certify the exemption.

If no Public Health Order applies, but a workplace wishes to mandate the COVID-19 vaccine for staff

Before placing a requirement on staff to be vaccinated, consult with them.

As a direction for staff to be vaccinated is primarily related to work (occupational), health and safety, it is recommended to consult with staff members about the possibility of putting a requirement to be vaccinated in place. This ensures transparency in your organisation and will alleviate the “shock” of the requirement if/once it is made. It may also be the case that you find many of your staff members actually support the move.

The direction must be lawful and reasonable.

If there is no public health order (or other specific law) which requires your staff members to be vaccinated against COVID-19, then any direction for your staff members to be vaccinated must be lawful and reasonable. Whether a direction is lawful and reasonable will depend on a number of factors, including the type of work the staff member is performing, the rate of ongoing community transmission in the area which the staff member is working, whether other adequate safety measures can be implemented to ensure the staff member’s safety without being vaccinated and whether the staff member has a legitimate reason not to be vaccinated (e.g. a medical exemption). The Fair Work Ombudsman has provided a helpful “Tier” system to help employers understand whether a direction for staff members to be vaccinated might be reasonable based on the type of work they do.

Tier 1 work, where employees are required as part of their duties to interact with people with an increased risk of being infected with coronavirus (for example, employees working in hotel quarantine or border control).

Tier 2 work, where employees are required to have close contact with people who are particularly vulnerable to the health impacts of coronavirus (for example, employees working in health care or aged care).

Tier 3 work, where there is interaction or likely interaction between employees and other people such as customers, other employees or the public in the normal course of employment (for example, stores providing essential goods and services).

Tier 4 work, where employees have minimal face-to-face interaction as part of their normal employment duties (for example, where they are working from home).

(Example, a direction for those in Tier 2 to be vaccinated is more likely to be considered reasonable than a direction for those in Tier 4 to be vaccinated).

It is strongly recommended to seek independent legal advice before firmly deciding to mandate the vaccination in your workplace.

If a decision is made to require staff members to be vaccinated, communicate this decision in writing.

If you decide to proceed with requiring staff members to be vaccinated, ensure you inform staff members affected immediately and in writing. Also ensure you allow those staff members to speak with you about any concerns they have.

If a staff member refuses to comply with the direction to be vaccinated.

If you decide to proceed with requiring staff members to be vaccinated, and a staff member/s refuses to comply, first, speak with them to understand whether they intend to comply with the direction. If the staff member has a valid reason for not being vaccinated, consider other safety measures which can be put in place to ensure their safety and the safety of those around them.

If you believe the direction is lawful and reasonable, and a staff member refuses to be vaccinated without a valid exemption, you may be able to take disciplinary action against them for refusing a lawful and reasonable direction. This could be a written warning in the first instance, followed by termination if they continue to refuse to comply with the direction. Given the potential for risks to arise here, it is recommended to seek independent legal advice.

Other considerations relevant to the COVID-19 vaccine in the workplace

In the absence of a Public Health Order requiring my staff members to be vaccinated, do I have to make the COVID-19 vaccine mandatory for my staff?

If there is no PHO that applies to your organisation and your staff, there is no specific obligation on your business to make the COVID-19 vaccination mandatory for staff. It must be remembered however, that businesses have a legal obligation under work (occupational) health and safety laws to do everything reasonably practicable to ensure the safety of everybody in that workplace, so you will need to assess whether or not making the vaccine mandatory is a necessary step to fulfill those legal obligations. In workplaces where staff are generally considered low risk (or Tiers 3 and 4 using the Fair Work Ombudsman tiering system mentioned on page 5), another option could be to formally encourage staff members to be vaccinated rather than making it mandatory.

What happens if an organisation we supply services to, requires visitors (including our staff) to be vaccinated (and this isn't governed by a PHO)?

In a situation where an organisation you supply to requires visitors (including your staff) to be vaccinated before entering the premises, and there is no PHO governing that requirement, contact the organisation to find out the specific conditions of their vaccine requirement and namely, whether any exemptions apply. Once you have this information, speak with your staff affected by the requirement (i.e. those who visit that organisation as part of their duties) to ascertain whether they plan to be vaccinated. Work with those staff members to assist them to get vaccinated as soon as possible. If a staff member does not wish to be vaccinated, and they do not meet the exemption criteria set out by the organisation who created the vaccine requirement, consider whether the staff member can perform other duties in your organisation that do not involve dealing with that organisation. If, however, the staff member's duties primarily involve dealing with the organisation who has created the vaccine requirement, and you cannot provide alternative duties to them elsewhere in your organisation, you may need to consider other options (including termination of employment). Due to the risks here, it is recommended to contact the HR Advisory Service or seek independent legal advice before taking action in this situation.

Can I request to see a staff member's vaccination status?

Where a public health order applies to a staff member requiring them to be vaccinated OR where a lawful and reasonable direction has been made for that staff member to be vaccinated, a request to view their vaccination status is generally permissible. Collection of that information (i.e. keeping a copy of the employee's vaccination status) can only be done with the employee's consent or if a

public health order specifically requires the employer to keep a copy of the staff member's vaccination status.

Can I stand staff down if they do not comply with a requirement to be vaccinated?

No. A stand down as per section 524 of the *Fair Work Act 2009* only applies when there has been a stoppage of work for reasons which the employer cannot reasonably be held responsible. An individual refusal to be vaccinated (despite a requirement to do so) does not meet the criteria to justify a stand down.

Can an employee take personal/carer's leave (sick leave) to receive the vaccination during work hours?

Getting vaccinated is unlikely to meet the criteria for taking personal/carer's leave. Therefore, it is recommended to allow the employee to take annual leave instead. It may be the case however, that the employee suffers from common side effects after receiving the vaccine. In these circumstances, personal/carer's leave is appropriate if the employee is entitled to such leave.

Does my organisation need a vaccination policy?

A vaccination policy may be appropriate to assist your business to meet its WHS obligations. Legal advice is encouraged to ensure your vaccine policy is adequately tailored to meet the needs of your workplace. Before implementing a vaccination policy, workers must be consulted with adequately.

I want to help my staff members get vaccinated, what can I do?

Allowing your staff member to take time off during work hours is one of the simplest things an employer can do to encourage a staff member to be vaccinated. Some businesses are even choosing to pay their staff members normal wages for the time taken to be vaccinated. Otherwise, allowing the employee to use their annual leave to go and get vaccinated is also fine.

Further, it is important to provide helpful information to your staff members about the vaccination, including where to get it. For information about where to get vaccinated in each state/territory, please see below.

NSW.

<https://www.nsw.gov.au/covid-19/health-and-wellbeing/covid-19-vaccination-nsw>

Victoria.

<https://www.coronavirus.vic.gov.au/vaccine>

Queensland.

<https://www.qld.gov.au/health/conditions/health-alerts/coronavirus-covid-19/protect-yourself-others/covid-19-vaccine/book>

Western Australia.

<https://rollup.wa.gov.au/articles/where-to-get-your-covid-19-vaccination>

South Australia.

<https://www.sahealth.sa.gov.au/wps/wcm/connect/public+content/sa+health+internet/conditions/infectious+diseases/covid-19/vaccine/covid-19+vaccinations>

Tasmania.

<https://www.coronavirus.tas.gov.au/vaccination-information/covid-19-vaccination/vaccine-eligibility>

ACT.

<https://www.covid19.act.gov.au/stay-safe-and-healthy/vaccine>

Northern Territory.

<https://coronavirus.nt.gov.au/stay-safe/booking-your-covid-19-vaccine>