
All District Health Boards

COVID-19 Vaccination Order

GUIDE FOR COMMUNITY PROVIDER MANAGERS

IMPLEMENTATION PROCESS FOR UNVACCINATED STAFF

Introduction

On 11 October 2021 the Government announced that workers in the health and disability sector will be required to be fully vaccinated against COVID-19 before 11.59 pm 1 January 2022, and must have received their first vaccination before 11.59 pm 15 November 2021. The mandatory vaccine requirement has been formally implemented by way of an amendment to the COVID-19 Public Health Response (Vaccinations) Order 2021 (“the Order”), which became effective from 25 October 2021.

The purpose of this document is to provide guidance and support to managers to assist in process to implement the Order, in particular by engaging with employees who have not/will not receive the vaccine.

The Order

The COVID-19 Public Health Response (Vaccinations) Order 2021 provides that affected workers must:

- Have their first COVID-19 vaccination before the close of 15 November 2021; and
- Have their second COVID-19 vaccination before the close of 1 January 2022.

It is a breach of the Order for the DHB to allow employees to perform work after these dates if they do not have the required vaccinations.

Workers covered by the Order

In relation to health sectors workers, the Order applies to:

- Health practitioners
- Workers who carry out work where health services are provided to members of the public by one or more health practitioners and whose role involves being within two metres or less of a health practitioner or a member of the public for a period of 15 minutes or more
- Workers who are employed or engaged by certified providers and carry out work at the premises at which health care services are provided
- Care and support workers

DHBs consider that the Order covers almost all employees, contractors and volunteers working within, or for, the DHBs. However, their employees are entitled to challenge this interpretation if they do not think they are covered. If an employee of a community provider challenges the employer’s interpretation of coverage you will need to ask the employee upon what basis they consider their role does not fall within the definition and assess this on a case by case basis.

Note, however, that these decisions may have a flow-on impact for other workers so please seek advice from the Ministry of Health, before confirming your position.

Process for implementing the Order

The process outlined below should be followed to give effect to the Order. Individual managers will be responsible for engaging with employees who are identified as not having been vaccinated by the required dates, to determine whether they will comply with the Order and if not, what this means for their ongoing employment.

Step 1: Confirm who is fully vaccinated, who has had only one dose, and who has had no doses.

- This may be done in consultation with employees if time permits, or by accessing the Ministry of Health COVID-19 Immunisation Register (CIR) if possible.

Step 2: For employees who have not been vaccinated, managers will be required to meet with them and initiate a formal process, as set out below

Any employee who refuses to or cannot be vaccinated by the required date, for whatever reason, will need to be engaged with on an individual basis. Managers must keep an open mind, genuinely consider their feedback and consider options moving forward. The manager will be required to:

A. Discuss and consider any feedback, if the employee does not believe their role is covered by the Order.

This means that the employer must consider the views of any employee who believes that their role does not fall within coverage:

- The starting point is that the initial view, based on the broad wording of the Order, is that ***all health provider employees as noted above are covered***.
- If an employee disagrees and considers that their role falls outside of coverage, you must ask the employee to explain why, having regard to the specific wording of the Order.
- You must then genuinely consider that explanation, asking for additional information if necessary.
- Before making a final decision on whether or not their role falls within coverage of the Order, you should consult with the Ministry of Health to ensure that a consistent approach is being taken as to the scope of the Order.
- There must be strong evidence or reasons to determine that employees are ***not*** covered by the Order.

Finally, you must inform the employee of your final decision regarding coverage, having considered their feedback. If your decision is that the employee does in fact remain covered by the Order, then you should continue with the process, as outlined below.

B. Discuss the employee's reasons for not being vaccinated, whether they intend to be vaccinated and, if so, when.

Each employer will be required to work with their employees who are not vaccinated on a case by case basis. Employers have a legal obligation to consider any reasons that employees may put forward in a fair and reasonable manner and explore alternative options to dismissal.

The starting point is that employees ***cannot continue to perform work*** after the prescribed dates if they have not been vaccinated. However, alternative options should be considered in good faith and on a case by case basis.

By way of an example:

- An employee is preparing to go on parental leave shortly after the Order comes into effect
- The employee is hesitant to receive a vaccine during pregnancy, but does intend to be vaccinated after the birth of their child. In this situation, the employer may consider placing the employee (by agreement) on early parental leave or paid special leave until the parental leave commences, as an alternative to termination of employment.

See also alternative options in Step 3 below.

C. Consider and deal with any Medical Exemptions

The Order provides for Medical Exemptions in certain circumstances. The employer must work through any applications for a medical exemption by employees who believe they qualify.

First, the employer must ascertain the basis upon which the employee believes they may qualify for a medical exemption. Next, the manager will be required to:

- Identify a suitably qualified medical specialist, who can determine whether or not the employee meets the threshold for being granted an exemption.
- With the authority of the employee involved, request that the specialist undertake an assessment of the employee.
- Request that the specialist produce a report, and make a finding, as to whether in their opinion it would be inappropriate for that individual to be vaccinated.

A template letter can be found here.

Whether the employee can then continue in their role, if they are granted a medical exemption, will depend on whether it is safe and reasonably practicable to implement mitigation strategies so that they can safely perform their work, taking into account the requirements of the Order. A risk assessment to determine whether appropriate risk mitigation controls can be put into place to enable the role to be undertaken safely should be carried out.

Should the employee not qualify for a medical exemption, or if mitigation strategies would not be sufficient or are not reasonably practicable, then you will need to consider whether any other suitable alternatives to termination exist (see below).

D. Explore any suitable alternative options

Each individual must be dealt with on a case-by-case basis, taking into account their personal circumstances. While termination of employment may be the final outcome, an employer must first consider whether there are any reasonable alternatives to termination.

You should also advise the employee of the potential consequences of non-compliance with the Order (including that this could result in termination of their employment), if no suitable alternative arrangements are agreed.

Those reasonable alternatives may include:

- Agreeing that the employee may retire and receive any retirement benefits they are entitled to.
- If an employee is on longer-term leave, agreeing not to terminate their employment provided that they comply with the Order before their return to work.
- Redeployment, although given that most roles are likely to be covered by the Order, there will be few, if any, such opportunities available.

- Agreeing to a period of leave (unpaid, paid or special leave), while the employee takes steps to be vaccinated, if they have confirmed their intention for this to occur imminently. This will only be considered for the period after 15 November and will be on the basis of a reasonable timeframe.

Exploring alternative options must be done **with** the employee. This means that the employee must be invited to provide suggestions for alternative arrangements and these must be considered in good faith.

This is an important step in the process. The manager must be able to establish:

- That they genuinely considered the feedback from the employee; and
- That they responded to any proposals raised by the employee, including providing reasons why the proposal was or was not workable.

Employees should be invited to put these proposals and views forward in writing if they wish. Where these discussions occur verbally, it is important that the manager records an accurate and detailed file note of the conversations.

Step 3: Provide notice of termination of employment, if alternatives not agreed

If after consulting with the employee regarding alternatives, none are identified and agreed, any employee who does not comply with the Order will be given notice of the termination of their employment.

A **template letter** can be found here, but it will need to be tailored to the particular circumstances of the individual.

Standing down employees

The intention is that most consultation processes should be completed by 15 November 2021. Should the process continue beyond that date, employees will be stood down whilst the employer completes the process.

A **template letter** can be found here, to be issued to workers identified as not having been vaccinated by the close of 15 November 2021. These letters must be issued **before the close of** 15 November 2021 and will advise that the employee is to be stood down whilst the remainder of the process is followed.