

COVID-19 Workplace Vaccination Rollout

February 2021

Guidelines for vaccine rollout of workplaces have been released this week by the [Fair Work Ombudsman](#) (FWO) and [Safe Work Australia](#) (SWA).

The FWO and SWA have advised that most employers cannot require employees to be vaccinated. In addition, Employees cannot refuse to attend the workplace on the basis of another employee being unvaccinated. Employers do however have a duty to eliminate or minimise risk of COVID-19 exposure in the workplace and must do so under work health and safety laws in line with the release of the vaccine.

Both State and Territory government can issue public health orders requiring workers to be vaccinated in certain workplaces. Presently, none have been issued. If employers are considering a mandatory vaccination program or operate in a COVID-19 high risk environment, it is recommended by the Government that they obtain legal advice.

Employer Responsibilities

Under work health and safety laws, the employer has a duty to eliminate or minimise the risk of exposure of COVID-19 in the workplace. To reduce risks, employers must undertake a risk assessment of their business and (through consulting health safety representatives) determine control measures in the workplace.

If the workplace is subject to a mandatory vaccination of its workers under public health orders issued from state and territory governments, then it must legally comply.

Workplaces cannot require customers or visitors to prove vaccination on entry however they may require this as a condition of entry.

Mandatory Workplace Vaccine Programs

Mandatory vaccination will not apply for most workplaces however there are three circumstances in which employers can require employees to get vaccination, including:

- 1) If a specific law (state, territory or federal) requires an employee to be vaccinated.
- 2) If an enterprise agreement, other agreement or employment contract includes a provision about requiring vaccination. This must comply with anti-discrimination laws.
- 3) If it is lawful and reasonable for them to direct their employees to be vaccinated.

Employers may direct workers to get a vaccine if it does not violate any laws (such as anti-discrimination laws) and if it is considered reasonable. A lawful direction for an employee to be vaccinated must comply with the commonwealth, state and territory discrimination laws and the protections under the Fair Work Act.



The mandate for an employee to be vaccinated is considered reasonable in certain circumstances. It may be considered reasonable if employees directly interact with people at high risk or if employees are in contact with people who are vulnerable to the impacts of coronavirus. Prospective employees may be directed to get vaccinated in line with general protections and state, territory and commonwealth discrimination laws.

In all cases where employers are directing workers to be vaccinated, it is recommended that independent legal advice is sought.

Vaccination Refusal

If an employee refuses vaccination, the employer may ask for the reason for refusal. If there is a legitimate reason for not being vaccinated (i.e. an existing medical condition) alternative working arrangements such as working from home should be considered.

Employers may ask for evidence of vaccination or evidence of why the employee cannot be vaccinated. However, the employer must do so in a way that is lawful and reasonable. It is recommended that employers seek legal advice in asking for evidence as there may be privacy issues.

An employer may be able to take disciplinary action, including termination of employment, against an employee if the employee's refusal to be vaccinated is in breach of a specific law or if it is in breach of a lawful direction requiring vaccination. Employers do not otherwise have the power to suspend employees without pay unless an enterprise or other registered agreement, award or employment contract permits them to.

Further Information

For more information, please contact your Hawker Britton consultant [Simon Banks](#) on +61 419 638 587.