



DYHRBERG DRAYTON  
EMPLOYMENT LAW

# COVID-19 Related Employment Issues

Mandatory vaccines for employees/volunteers  
Unvaccinated employees/volunteers in the workplace  
Recruitment issues  
Health and safety obligations

Presenters

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# COVID-19 Vaccines

- Not to be made mandatory by the Government.
- Need to keep in mind both health and safety obligations and employment obligations.
- Particularly relevant concern for employers who have customer facing businesses, such as museums.



# Existing employees

- Cannot compel existing employees to be vaccinated.
- Right to refuse to undergo medical treatment – NZBORA, s 11.
- Cannot unilaterally alter an employee's employment agreement.
- Engage and consult with employees to encourage vaccination.



# Unvaccinated employees

- **Undertake a health and safety risk assessment - is it reasonable to require vaccination or are other steps sufficient?**
- **If reasonable to require an employee to be vaccinated, engage in good faith consultation.**
- **Care must be taken when an employee refuses to be vaccinated, can constitute discrimination under the Human Rights Act 1993.**

# Recruitment issues



- Now the vaccine is widely available to all, can require new employees to be vaccinated.
- However this should not be on a blanket basis – prospective employees may have a legitimate reason to be unvaccinated.
- Assess each case on its merits and seek to understand each prospective employee’s reason for not being vaccinated.
- Consider on health and safety grounds if the role requires vaccination.

# Volunteers

- **Volunteers are considered workers – obligation to keep them healthy and safe.**
- **Technically good faith consultation requirements do not apply.**
- **But museums rely heavily on the goodwill of volunteers and the value they bring.**
- **Engage and consult with volunteers too.**



# Health and safety obligations

- **Health and safety obligations must be balanced against employment rights.**
- **Vaccine mandating does not mean you will meet health and safety obligations.**
- **Rather, need to take positive steps and keep records.**



# Positive steps to meet health and safety obligations

- Encouraging and supporting employees to get vaccinated by offering incentives and making it easy for employees to get vaccinated, such ‘vaccination paid leave’;
- Engaging constructively and regularly with employees, unions and health and safety representatives around vaccinations; and



- Fostering a culture in which vaccination becomes an expectation from leaders and be a role model yourself by getting vaccinated.



# Due diligence

- **Stay up to date with the nationwide vaccine roll-out, vaccine concerns and developments;**
- **Collect and maintain employee information about vaccination status (where employees freely provide this) in accordance with the Privacy Act 2020;**
- **Undertake a regular health and safety risk assessment of the workplace, and ensure steps are taken to mitigate remaining risk factors wherever possible (for example, by mandating PPE be worn in customer facing roles);**
- **Foster a supportive environment for staff who need to self-isolate or do not feel safe coming into work;**

# Due diligence...

- **Undertake regular health and safety risk assessments for roles that may require a vaccinated person to perform them eg direct exposure with overseas tourists and where social distancing is not possible;**
- **Ensure existing work from home policies and social distancing protocols up to date;**
- **Require other COVID-19 response measures, such as requiring the use of personal protective equipment and encouraging regular washing of hands; and**
- **Seek legal advice if you are unsure of your obligations and how to meet them.**



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