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COVID-19 Vaccinations.

A Guide For Employers.

We've helped thousands of businesses like yours

Get free initial advice 24/7

1300 207 182

Contents

Introduction

COVID-19 Vaccinations **Page 1**

Part 1

What are my obligations in relation to the COVID-19 Vaccine? **Page 2**

Part 2

What can I do if an Employee refuses to get Vaccinated? **Page 4**

Part 3

What can I do if I can't, or don't think I can, direct my Employees to be Vaccinated? **Page 6**

Part 4

Frequently asked questions **Page 8**

In this guide we will provide information around employment relations and workplace health and safety considerations arising from the incoming COVID-19 vaccination rollout. The information in this guide is of a general nature only and is not a substitute for advice from a workplace relations expert. For further information regarding the vaccine itself, medical advice, or public health law, seek out the advice of a relevant expert.

Introducing VaccTrak by BrightHR

Record COVID-19 Vaccinations with Ease

The Federal Government has begun the COVID-19 vaccine rollout. And while that's a big reason to be optimistic, mass vaccination won't happen overnight.

It's likely some of your staff will get the jab a lot sooner than others. That's why BrightHR has created VaccTrak. It's a new online tool that makes it easy for you to record who's had the COVID-19 vaccine and who's still on the waiting list—helping you to protect your people and your business.

BrightHR allows you to:

- Update your employee profiles to easily record who's had the COVID-19 vaccine
- Download regular reports to see exactly who's been vaccinated, so you can keep your people safe during the vaccine roll-out
- Download professional letter templates to encourage your staff to have the vaccine
- Access our exclusive vaccine awareness courses. Share it with your staff to educate them on the vaccine and answer any complex questions

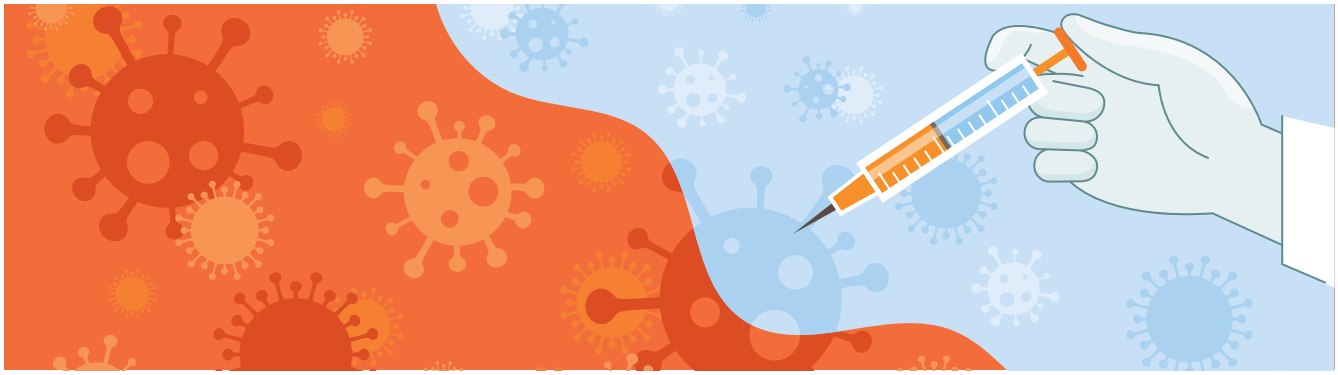
Get More Information

For more information about BrightHR's VaccTrak please call **1300 029 198** or visit **brighthr.com/au/hr-software/vacctrak** to request a demo

Introduction

COVID-19 Vaccinations

An employer must do what is reasonably practicable to reduce the likelihood of infection in the workplace.



COVID brought with it countless unprecedented changes to arguably every facet of our lives, and none more so than work. Whether it's moving your office home or being deemed an 'essential worker,' we all adapted to the everchanging environment. Now, there's a new hill to climb – the COVID-19 vaccination.

Employers have an obligation to take reasonably practicable steps to ensure a safe workplace, and vaccinations could be critical to this.

The Federal Government has stated the vaccine won't be mandatory. Some industries, such as the healthcare industry, may be subject to state-based rules requiring all or some employees to have up-to-date vaccinations for certain diseases.

So, the question remains – what are your options as an employer? Can you direct your staff to take the vaccine? Must your staff be vaccinated, anyway? And what can you do if my employees refuse to follow as instructed?

Have all those questions answered, and more, in Employsure's Employer Guide to COVID-19 Vaccinations.

Note: The instructions from Federal and State Governments seem like they change, and conflict with each other, on a regular basis. In this guide we will seek to give a strong overview of your obligations that should hold despite the everchanging conditions. If there are any significant changes, whether they be health orders, legislation amendments, or any other legal requirement, we will update this guide and supporting materials.

Part 1

What Are My Obligations In Relation To The Covid-19 Vaccine?

An employer must do what is reasonably practicable to reduce the likelihood of infection in the workplace.

Information up to date as of 19 October 2021.

Your workplace health and safety obligations

Every business has a duty under the relevant state or territory health and safety legislation to do what is reasonably practicable to reduce risks to the health and safety of persons at work. Therefore, in relation to COVID-19 an employer must do as much as they reasonably can to reduce the likelihood of infection transmission in the workplace.

Can I request employees to be vaccinated?

The Federal Government has announced that the vaccine will not be made mandatory. However, it is open to each State and Territory to pass health orders mandating the vaccine in respect to particular industries.

Some States and Territories have already mandated vaccinations for workers in certain industries and occupations. If a public health direction requires a particular employee to be vaccinated, then it is reasonable for a business to enforce this (subject to any protections included in the health order, for example for workers who are unable to be vaccinated on medical grounds).

Businesses should check their State or Territory Government's website for information about current public health directions, to determine if they require an employee to be vaccinated.

Where there is no legal requirement to be vaccinated, a business can only require an employee to be vaccinated against COVID-19 where this is a lawful and reasonable direction. The ability to direct an employee to get vaccinated will be situational, fact-dependent, and require a case-by-case assessment of all factors concerning the workplace, employees' circumstances, and the nature of the work performed.

To establish whether the direction is lawful and reasonable, an employer needs to consider:

- Is there a realistic or high risk of infection for a particular disease (in this case, COVID-19) in the workplace?
- What is the extent of community transmission in the workplace's location?
- Is the employee performing duties in an environment which may be prone to infection spread?
- Can the employer implement other measures to successfully mitigate the risk of infection spread?

If you cannot force your employees to be vaccinated, taking no further action to prevent infection in your workplace might not satisfy your health and safety obligations.

You might only be able to make your employees get vaccinated if your industry has been directed to by state or territory-based rules.

- Is the direction consistent with federal, state or territory requirements?
- Does the employee have a valid medical reason or genuine political or religious belief for refusing the vaccine?

To establish whether the direction is reasonable, an employer must take all relevant circumstance into account, including undertaking a risk assessment in consultation with your workers.

If you cannot direct an employee to be vaccinated, consider recommending or encouraging employees to receive a particular vaccination.

Part 2

What Can I Do If An Employee Refuses To Get Vaccinated?

There are some options available to employers if they receive objections from their employees.

An employee may have reasonable grounds to refuse to get vaccinated. There are no hard and fast rules for employers to follow.

As such, consider the below and ask yourself the following example questions, which have been split into tackling the refusal from the perspectives of employment relations and health and safety as these two perspectives are legislated separately. They will help you better understand your options and rights if an employee refuses your request.

If it's an employment relations issue

- What is the reason for refusal? Does the employee have religious or medical grounds which permit refusal?
- Is a vaccination required to perform the inherent requirements of the employee's role safely?
- Can the direction to vaccinate be justified? e.g., is the requirement based on Government advice?

If the employee's refusal is justified, the employer must consider whether the employee could:

- Continue to do their duties safely without being vaccinated
- Perform alternative duties
- Work in a lower risk location, such as from home
- Follow alternative control measures to reduce infection spread

If the employer's refusal is justified, the employer should seek formal advice before proceeding, as it is a complicated and difficult area of the law.

If the employee's refusal is based upon protected characteristics or medical grounds (e.g., personal preference, as opposed to a medical reason), and the work the employee performs, or the location in which they work, is considered to be high risk (e.g., frontline health care worker), the business may consider disciplinary action for failure to comply with a reasonable management direction. Depending on whether the duties of the employee can be safely undertaken without a vaccination and if the vaccination direction is in line with the State or Territory Government government guidelines, you should consider whether it is appropriate to include disciplinary action to be taken against an employee if they do not get a vaccination or are not vaccinated.

If it's a health and safety issue

Consult with the employee/s to understand the reasons for refusal and discuss proposed alternative control measures.

Consider what other control measures can be put in place to reduce infection spread, such as:

- Alternative lower risk duties for the employee to undertake
- Limiting or eliminating face to face interaction with other employees and others
- Working from home if possible
- Administrative controls - social distancing requirements, posters, COVID-19 Safety Plan and vaccination register
- PPE - Face masks and other protective equipment.
- Temperature checks and implementing hygiene practices (e.g., hand sanitiser)
- Share vaccination awareness courses via VaccTrak in BrightHR

What if an employee refuses because they just don't want to be vaccinated?

If an employee's reason for refusal is because they simply wish to not be vaccinated, what action you can take will largely depend on whether the duties of the employee can be safely undertaken without a vaccination and if the direction to be vaccinated is in line with the State or Territory government guidelines. If so, and the direction can be considered lawful and reasonable, then taking action against the employee may be an option.

Part 3

What Can I Do If I Can't, Or Don't Think I Can, Direct My Employees To Be Vaccinated?

Robust workplace policies are an essential step to protecting your business and achieving your business goals.

If this is the case, you should consider taking a stance that limits itself to recommending or encouraging employees to get vaccinated. In fact, whether you can or cannot direct employees to be vaccinated, Employsure urges employers to implement a COVID-19 vaccination policy as part of a broader infection control policy.

Such a stance is well within your rights. Practically, taking this stance means you take the following actions to implement a vaccination policy in your workplace:

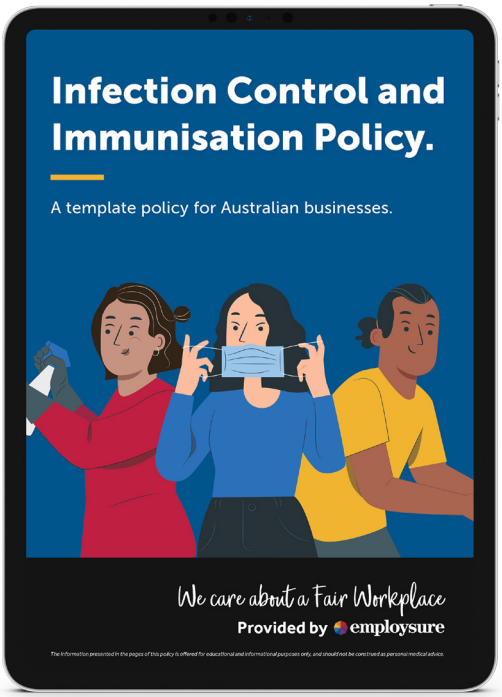
- Invite your employees to a meeting to communicate your wishes to your staff
- Share a draft policy with all your staff via BrightHR's document storage tool, together with the invitation to the meeting
- Allow at least 24 hours between giving the employees the invitation and holding the meeting – allow employees to bring a representative to the meeting if they want to
- In the meeting explain why you want to have a workforce inoculated against COVID-19

You may also consider offering paid leave for employees who need to take leave from work to be inoculated.

In addition, business should keep records of employees who have been vaccinated with VaccTrak by BrightHR. Notes of what other measures have been put in place to reduce the risk of infection should also be kept.

Existing control measures, for example implementing COVID Safe practices like providing Personal Protective Equipment (PPE) or complying with social distancing measures may, depending on your business's circumstances be satisfactory to meet your health and safety obligations, without directing your staff to be vaccinated.

INCLUDE IN YOUR KIT



Your Template Infection Control and Immunisation Policy

Left unchecked, infections – of COVID-19 or any other kind - could result in mass absenteeism, an upheaval to your business process – or worse.

This policy helps you implement measures that might assist in the mitigation of risks in your workplace.

This is useful information that may assist small business owners. However, the information in this guide is of a general nature only and is not a substitute for advice from a qualified medical professional and employment relations / workplace health and safety practitioner.

This policy provides general guidance on how to:

- ✔ Identify, assess and control infection transmission hazards
- ✔ Operate within standard health procedures
- ✔ Handle, use and dispose of sharps safely
- ✔ Perform a thorough environmental cleaning
- ✔ Manage spills of blood, body fluids and other substances
- ✔ Dealing with COVID-19 in your workplace

Part 4

Frequently Asked Questions

If you still have more questions after reading the below, get in touch with Employsure. We're here to help employers navigate the vaccination rollout.

Do I have to pay for vaccinations for my employees?

Generally, if an employer directs an employee to be vaccinated the employer must pay for it.

COVID-19 Vaccinations are free to all, however if the employer is mandating that an employee receive the COVID-19 vaccination, consideration should be taken for this to be obtained during paid work time.

Can I make vaccinations a condition of recruitment?

Yes, but this depends highly on the circumstances (e.g. if it is a legal requirement for the employer's business or industry).

However, care must be taken to avoid indirect discrimination. The employer may be subject to a general protection claim if a prospective employee is not engaged due to a protected characteristic.

Can I reject potential candidates who aren't vaccinated?

As above, you may run the risk of a general protections claim if a prospective employee is not engaged solely due to a protected characteristic.

Can employees take leave when they get vaccinated?

If an employee is required to have a vaccination due to an employer's direction, then the employee should be paid for the time it takes to get the vaccine as if they had worked it.

If the vaccination is as a result of legislation or state-based regulations and the employee is required to get the vaccination during working hours, the employer should pay wages as normal.

If an employee is not required to have a vaccination (either by you or state-based regulations), but needs to take leave from work to receive one, then it is at your discretion to allow them to take leave.

In this case, Employsure recommends you allow employees to take paid annual leave or long service leave (if accrued and/or entitled to take it), in order to encourage your workforce to get vaccinated.

For employees who do not have accrued paid annual leave or long service leave available, consider agreeing with the employee to take unpaid leave.

What other things should I look out for when it comes to vaccinations in the workplace?

Employsure are workplace relations and workplace health and safety experts.

However, there are a few things Employsure unfortunately cannot help you with that may be relevant when it comes to the topic of COVID-19 vaccinations in the workplace:

- Medical or health advice on the vaccinations
- Advice on the different vaccines and their contents
- Advice on public health law or policies
- Privacy legislation
- International human rights laws
- Industry specific rules which are not within the scope of employment relations or health and safety
- Government vaccine incentive rules: e.g. No Jab no play, travel restrictions

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BrightHR VaccTrak

Employsure clients with access to BrightHR can now access the **VaccTrak feature** which allows employers to record when employees have received their COVID-19 vaccine and provide staff with information on the vaccination process through COVID-19 e-learning courses.

If you would like further information, please contact our **Bright Team** on **1300 207 182**.

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Employsure is one of the largest provider of employment relations and workplace health and safety services.

Why Employsure?

At Employsure, we believe all Australian employers, no matter the size, deserve access to comprehensive, quality, honest advice and support that is scalable to the needs of their business.

Since the introduction of the Fair Work Act in 2009, workplace obligations have become more complex and difficult to manage, especially for overstretched small business owners.

Employsure was established in response to these challenges. It is our aim to ensure Australian business owners have access to cost-effective, professional advice on a variety of employment relations and work health and safety matters.

What we offer

Employsure provides customised documentation, unlimited advice, policy and procedure review and protection for small business owners.

Being an Employsure client means no surprises – we keep our clients updated on Award changes, wage updates and essential compliance issues. Our day and night advice line is available 365 days per year to guide employers through any difficulties they may face.

Get free initial advice 24/7

Call our free Employer Helpline now on 1300 207 182.

Employsure has given me the freedom to run my business in a way that I need to. It's given me the time and it's actually taken away a lot of worry that I previously had.

Kieran Syme | **DentFree AutoTree**

Google can only help you so far. Sooner or later you need to actually talk to somebody who is an expert in the field and that's where I found Employsure.

Ursula Zajaczkowski | **The Source Bulk Foods**

Biggest thing from Employsure, it gives us certainty. Where we have guidance and help of what we need in place, how to put it in place, and how to implement the systems for HR.

Jonathon Grealy | **Niche Reform**