



Vaccinations in the Workplace

September 2021



Workplace vaccination obligations

Employers have a health and safety duty to, as far as reasonably practicable, reduce the risk of a hazard occurring in the workplace. Therefore, employers must consider what control measures can be implemented to reduce the likelihood of the spread of infectious diseases (eg COVID-19, influenza, hepatitis) in the workplace. This may include implementing an immunisation program encouraging, or in some circumstances requiring, employees to get vaccinated.

State and Territories may require employees undertaking duties in specific industries and workplaces to receive specific up-to-date vaccinations.

Check the below websites for Federal, State, and Territory information on infection control and vaccinations:

- [Commonwealth](#)
- New South Wales: [NSW Health](#) and [SafeWork](#)
- Victoria: [Vic Health](#) and [WorkSafe](#)
- Queensland: [Qld Health](#) and [WorkSafe](#)
- South Australia: [SA Health](#) and [SafeWork](#)
- Western Australia: [WA Health](#) and [WorkSafe](#)
- Tasmania: [Tas Health](#) and [WorkSafe](#)
- Australian Capital Territory: [ACT Health](#) and [WorkSafe](#)
- Northern Territory: [NT Health](#) and [WorkSafe](#)

Directing an employee to get vaccinated

Generally, there are three circumstances where you can require an employee to get vaccinated:

- where there is a requirement under a State or Territory law or public health order
- there is a term in an applicable employment contract, enterprise agreement, or other registered agreement that requires an employee to get vaccinated against a particular disease, or

- if no legal requirement exists, where the direction to vaccinate is considered lawful and reasonable

Information and rules regarding workplace vaccinations are subject to change with evolving government guidance and Fair Work Commission cases in this area.

Legal requirement to be vaccinated

Notify employees of vaccination requirements under any government law, public health order, contract, or agreement, and follow the relevant guidelines.

Vaccination exemptions may exist for some employees, such as on medical grounds. If an employee is exempt, obtain evidence of their circumstances and put in place measures to mitigate the risk of infection transmission. If it is still unsafe for the employee to perform their duties, call the Advice Team on 1300 651 415 to discuss your options.

No legal requirement to be vaccinated

Without a legal requirement, you can only require an employee to get vaccinated if the direction is considered lawful and reasonable.

A direction may be considered lawful if it is not contrary to an employment contract, enterprise agreement, or award, or a Commonwealth, State, or Territory law that applies.

To establish whether a direction to vaccinate is reasonable, consider:

- the nature of the workplace (is there a possibility that employees can come into contact with the disease, for example interacting with members of the public or working in close proximity to other employees?)
- the employee's circumstances, including the nature and risks of the duties they perform in an environment which may be prone to infection spread or where close contact with vulnerable people is required
- the effectiveness of other measures to successfully mitigate the risk of infection spread, and
- whether the employee has a valid medical reason or genuine religious grounds for refusing the vaccine

To establish the reasonableness of a direction to get vaccinated, undertake a risk assessment and consult with employees. If you cannot direct an employee to be vaccinated, consider encouraging employees to receive a particular vaccination.

If an employee refuses to get vaccinated for any reason, contact the Advice Team on 1300 651 415 for specific advice on your circumstances.

Risk assessments and meeting your obligations

- Conduct a risk assessment in consultation with your workers assessing the risk and likelihood of infection in the workplace in light of your operations, public health advice, and regulatory guidance
- Vaccination, whether encouraged or mandated, may be an effective control measure to address infection transmission risks. However, other controls may still be required to adequately address health risks and meet your health and safety obligations
- Alternative control measures include providing Personal Protective Equipment (**PPE**), practicing hand hygiene, and implementing a detailed Infection Control Policy. These should especially be considered if your risk assessment identifies vaccination as a reasonable control measure but it cannot be implemented for whatever reason
- A further alternative to vaccination could be to require an employee to return a negative pathology test for a particular disease. A direction to take a test still needs to be lawful and reasonable, connected to the employee's employment and nature of their workplace, and necessary for an employer to know the employee's fitness to work
- You may request evidence that an employee has received a vaccination, such as a copy of the employee's Immunisation History Record. An employee may refuse to provide evidence if the request is not related to a mandatory vaccination

Review the Office of the Australian Information Commissioner [website](#) to ensure you are aware of any privacy obligations.

Cost of the vaccination

There may be terms in the applicable award, enterprise agreement or employment contract regarding costs associated with vaccinations which must be met.

Requiring vaccinations or providing immunisation program

You must pay the cost of the vaccination. If the vaccination is supplied to the public free of charge, then ensure that the employee receives the vaccine during

paid work hours (or paid as appropriate if it needs to be done outside work hours) while covering any practitioner fees and associated costs.

Recommending or encouraging vaccination

You do not need to cover the cost of the vaccination or provide paid time off for the employee to receive it. You may, at your discretion, consider other ways to support the employee being vaccinated such as:

- agreements to access paid annual leave
- flexibility in work hours or location, and
- paid time off

Making vaccinations a condition of employment

Making vaccinations a condition of employment may be reasonable but can carry high risk. Consider the following circumstances:

- is there a legal requirement for employees to get vaccinated in your business or industry?
- whether the employee's duties cannot be safely undertaken without a vaccination, and
- if unvaccinated, will the employee present a risk to the health and safety of themselves or others

A prospective employee refused employment because they are unable to be vaccinated on medical or religious grounds could bring a successful general protections or anti-discrimination claim.

BrightHR VaccTrak

Employers 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 651 415.

More questions?

Call the Advice Team on 1300 651 415 or email advice@employsure.com.au for specific advice on your employment and health and safety responsibilities in relation to vaccinations in the workplace.