



Circular 2021/09 – COVID-19 vaccination policies in Australian Government workplaces

Purpose

1. The purpose of this Circular is to provide general information to Australian Government employers who are considering adopting policies that would require employees to be vaccinated against COVID-19.
2. This Circular must be read in conjunction with the detailed information for employers on requiring employees to be vaccinated against COVID-19 in workplaces, as published by the [Fair Work Ombudsman](#). The Fair Work Ombudsman's advice applies equally to Australian Government employers as all others, and should be considered the primary source of advice on this matter.
3. Australian Government employers have similar obligations to other employers and should exercise care when requiring employees to be vaccinated against COVID-19 in workplaces.
4. In some cases, public health orders may specify that certain employees are required to be vaccinated. If a public health order does not apply, a decision to direct employees to be vaccinated must be made carefully and evaluated on a case-by-case basis, subject to legal advice and in consultation with employees and where they choose, their representatives.
5. Neither this Circular nor any other advice can account for every circumstance possible in Australian Government workplaces. Therefore any decision to require employees to be vaccinated against COVID-19 must be tailored to the employees subject to the decision, the applicable work settings, risk analysis and any other relevant factors.

Requiring employees to be vaccinated against COVID-19

6. Australian Government agencies, like private sector employers, may only require employees to have COVID-19 vaccinations if:
 - a. applicable state and territory public health orders are in place requiring persons and employees to be vaccinated against COVID-19 in specific circumstances, such as in high-risk industries and settings;
 - b. an enterprise agreement or other employment contract includes a term requiring employees to be vaccinated against COVID-19; or
 - c. with an employer direction assessed on a case-by-case basis to be both lawful and reasonable.
7. Directing employees be vaccinated in absence of a public health order or an enterprise agreement term is a matter for individual agency heads.

Lawful and reasonable directions

8. Agencies are obliged to ensure any direction requiring employees to be vaccinated against COVID-19 is lawful and reasonable, which has to be assessed on a case-by-case basis.
9. Agencies should account for a range of factors to determine if directions should be made including whether: any medical evidence provided by an employee advising against vaccination; work health and safety obligations; whether requiring employees to be vaccinated is reasonably necessary in the context of the particular workplace setting; the availability of flexible or alternative working arrangements; and the risk profile of work performed (including the opportunity for transmission of COVID-19), including to other employees or clients/customers, or being exposed to COVID-19 positive cases. This is not a comprehensive list of all factors worthy of consideration.
10. To assist employers evaluate particular employees' circumstances, the [Fair Work Ombudsman](#) has published a four tier structure for considering workplace risk of transmission (re-created below). The tiers delineate between work based on the risk of COVID-19 infection or transmission and include:
 - **Tier 1:** Employees who are required as part of their duties to interact with people with an increased risk of being infected with COVID-19;
 - **Tier 2:** Employees who are required to have close contact with people who are particularly vulnerable to the health impacts of COVID-19;
 - **Tier 3:** Employees who, as part of their duties of employment at an Australian Government agency, interact or are likely to interact with other people (including other employees) in their normal course of employment; and
 - **Tier 4:** Employees who, as part of their duties of employment at an Australian Government agency, have minimal or are likely to have minimal interaction with other people in their ordinary duties of employment.
11. This tiered guide is re-created for ease of reference only. A job role's placement in the tiers does not automatically constitute the ability or need to require employees to be vaccinated against COVID-19. Instead, the tiers should be used to help inform a comprehensive and case-by-case judgement with accompanying legal advice.

Developing tailored policy responses

12. After an agency has considered the circumstances specific to a group of employees, including work setting, risk of transmission and other relevant factors – it should develop a tailored internal policy that is suitable to the agency's scale and circumstances. The guidance issued by [Safe Work Australia](#) about risk assessments and controls for COVID 19 risks in the workplace should be referred to.
13. As an example, take an agency which requires specific employees undertake work from within regional and remote communities on occasion. The agency may undertake a risk assessment that concludes assigning unvaccinated employees to these communities to be relatively high-risk.
14. In this example, the agency may draft an internal policy outlining why only vaccinated employees may perform work in remote communities and how this will be enforced. The same policy would also need to

address follow-up employee concerns and questions, such as whether unvaccinated employees get redeployed to other roles that do not require travel to remote communities.

Consulting employees and their representatives

15. Before considering whether to require an employee, employees or groups of employees to be vaccinated against COVID-19, agencies should review the applicable employment arrangement (enterprise agreement, determination or common law contract) to determine their consultation obligations.
16. Under work health and safety legislation the process of requiring employees to be vaccinated against COVID-19 would also include consulting with employees and their health and safety representatives (HSRs). Agencies are obliged to provide HSRs with a reasonable opportunity to express their views and to take those views into account when making a decision.

Refusing a lawful and reasonable direction

17. Agencies should first ask employees who refuse to become vaccinated against COVID-19 after having received a lawful and reasonable direction for the specific reasons why they are refusing the direction.
18. If this reason is evaluated as not being legitimate, the agency should discuss the employee's concerns and reasons to not get vaccinated and determine what other reasonable options exist.
19. Taking disciplinary or other action against the employee would have to be determined on a case-by-case basis after having reviewed the direction, relevant legislation, active public health orders, employment arrangement and the agency's internal policies and procedures.
20. Agencies must act carefully to ensure employee industrial rights are respected and to avoid claims of discrimination, adverse action or unfair dismissal. Seeking legal advice is recommended in these situations.

Legitimate reasons to refuse a vaccination

21. In some circumstances, employees may provide legitimate reasons for refusing to be vaccinated after having received a lawful and reasonable direction to do so, for example, on medical grounds.
22. When responding to employees with legitimate reasons to refuse vaccination, such as an existing medical condition, agencies should consider alternative work arrangements. By making reasonable adjustments, agencies can accommodate an employee's specific needs while ensuring the health and safety of the workplace generally.

Support for employees to obtain a vaccination

23. Agencies seeking to require employees to be vaccinated against COVID-19 in workplaces should provide the greatest support possible to assist employees to get vaccinated, including providing time off work without loss of pay if the appointment is during work hours and reasonable travel costs.

Evidence of vaccination

24. Agencies that have made lawful and reasonable directions to its employees to get vaccinated against COVID-19, are applying a relevant public health order, or enforcing a vaccination term in an enterprise

agreement or other employment contract, may ask employees to provide evidence of vaccination. An employee may obtain proof of vaccination through the [Australian Immunisation Register on myGov](#).

25. An employee's vaccination status is considered sensitive health information protected under the *Privacy Act 1988*. Other than where the collection of this information is required or authorised by an Australian law, which may include under a public health order or direction, an employee must freely consent to the collection of their vaccination status information by their employer. Where employees do not provide evidence of a COVID-19 vaccination, paragraphs 17-20 will apply.
26. Agencies require clear and justifiable reasons for collecting an employee's vaccination status. Collection for the purpose of monitoring only are insufficient grounds. A requirement to collect this information under a State or Territory public health order is an example of a legitimate reason. An anonymous survey on an aggregate basis may be reasonable for risk management of work health and safety and business continuity purposes.
27. Before seeking to request and collect employee vaccination status, Australian Government employers should undertake a threshold assessment as recommended by the [Office of the Australian Information Commissioner](#) to determine whether a privacy assessment is required, and consider the [National COVID-19 Privacy Principles](#).

Labour hire and contractors

28. Agencies must consider labour hire workers and contractors in workplaces where employees are required to be vaccinated against COVID-19. These individuals sharing the same workplace as employees are subject to the same risk of infection and transmission and should be subject to the same vaccination and COVID-safe workplace requirements as the agency's employees.
29. Agencies could make having received a COVID-19 vaccination as a condition of engagement for new labour hire workers and contractors. Existing contractual terms for current labour hire workers and contractors could also be examined, including conditions requiring compliance with work health safety obligations.

Requiring new employees be vaccinated against COVID-19

30. Australian Government employers, like private sector employers, are able to require new prospective employees be vaccinated against COVID-19. In doing so, an agency must be mindful of its obligations under anti-discrimination laws and general protections obligations.
31. Similar to requiring COVID-19 vaccinations for existing employees, agencies should carefully consider whether it is lawful to place this requirement on prospective employees and seek legal advice where appropriate. The same considerations and requirements placed on existing employees should apply to new employees.

COVID-safe workplace practices

32. A safe and effective COVID-19 vaccination is only one part of keeping workplaces and the Australian community safe. Agencies must continue to implement all reasonably practicable control measures in the workplace, such as physical distancing, good hygiene practices, and increased cleaning and maintenance.

33. Additionally, local health, Comcare and Safe Work Australia advice are likely to change over time.

Further information

34. For information on managing vaccinations in workplaces and understanding employee rights and obligations, consider advice published by the [Fair Work Ombudsman](#) and [Safe Work Australia](#).

35. Agencies seeking further information about their obligations under the *Privacy Act 1988* and on the collection, storage and disclosure of sensitive and personal information in the context of the COVID-19 pandemic should consult the [Office of the Australian Information Commissioner](#).

36. General information about COVID-19 vaccinations and the application of federal discrimination legislation is available from the [Australian Human Rights Commission](#).

37. Agencies seeking further information should send enquiries to COVID19@apsc.gov.au.

Last reviewed: 6 October 2021