

# CTU COVID Response policy

1 November 2021

## Introduction

This policy is a living document and has been developed at a time when workplaces are responding to the challenges of operating within an environment where New Zealand is combating the spread of COVID 19. It reflects both the CTU’s intention to proactively support the national vaccination roll-out, while also providing information for Unions on the fundamental legal principles around vaccines.

This policy sits alongside affiliates’ own policies. Given the rapidly evolving situation and understanding that exists about COVID, this policy will be regularly reviewed and updated.

The NZCTU position on the national response to COVID continues to remain consistent with science based public health advice. There is a need for measures to be consulted on, engaged on, and implemented with working people and their unions.

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## Key Underlying Principles

### Engagement with working people and their unions

Workplace engagement plays a pivotal role in ensuring that workplace policies are fair and maximises uptake from the workforce.

The Health and Safety at Work Act requires employers to engage workers and their representatives on any decision that impacts worker health and safety.

In addition, good faith employment obligations to consult with workers on matters that impact their employment apply.

Ensuring a high level of engagement with the workforce and their unions is critically important in ensuring that New Zealand's response efforts are maximised. Workplaces will be critical in minimising the impact of the COVID-19 on our communities and whānau.

### Provision of clear and accessible information

Unions have a central role to play in ensuring that good quality, clear, and accurate official information is readily available. This includes translated<sup>1</sup> information where appropriate. Unions, workplace health and safety reps (HSRs), and employers should work together to support working people (and their whanau) to develop an accurate understanding of COVID public health information, vaccines, and their efficacy, as well as their workplace processes.

We strongly discourage any individual (employer, employee or otherwise) from sharing or spreading 'anti-vax' misinformation. There is a list of links at the end of this document to a variety of reliable sources of vaccine information.

### H&S remains a key focus – all other controls implemented

New Zealand must continue to prioritise the management of COVID and minimising its impact so far as possible. As vaccination rates increase and the response reflects suppression of the virus, it is vital that workplace health and safety remains a key focus to continue to limit the transmission of the virus.

We recognise that the vaccine is the most effective control measure for keeping workplaces safe from COVID-19, but it is not the only one. It is vital that as the vaccine rolls out through workplaces, that proper H&S practices are maintained in the workplace. This includes:

- Meeting all up-to-date infection prevention controls (IPC)
- Complying with all public health requirements and guidance
- Enabling workers who are unwell/ symptomatic to stay away from work and get tested
- Identifying risks and eliminating, or otherwise controlling them as reasonably practicable
- Ongoing engagement with working people and their unions on all matters impacting their H&S
- Ongoing support for mental health needs.

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<sup>1</sup> Both in plain English and other languages

## Vaccination

A workplace policy regarding vaccinations should be aimed at supporting as many people as possible to get vaccinated, as soon as possible.

The CTU proactively supports the national vaccine roll-out and strongly encourages all working people to receive a COVID-19 vaccination who are able to.<sup>2</sup>

Vaccinations are a key control measure against contracting and transmitting COVID-19 and will contribute significantly to keeping working people and their whānau safe. [Vaccination significantly lessens the impact of the virus.](#)

It is fundamental that the vaccine rollout is built on a supportive high-trust model. Unions and employers need to continue to promote the Government's "educate, expect, support" approach to vaccine uptake.

Workplaces create and connect the bubbles of employees, their whānau, and the wider community so are areas where COVID transmission is of concern.<sup>3</sup> Vaccination is a critical control measure and needs to be properly located within a wider suite of risk management and workplace controls.

Vaccination is not a substitute for all other control measures. All workers need their employers to continue to implement all reasonably practicable control measures and to be compliant with all control measures required through public health orders and other Government sources.

## Compulsory vaccination

There are currently 2 ways in which vaccines can be made compulsory for workers:

- **Vaccine mandates**, created through public health orders, requiring defined roles in certain sectors to be vaccinated;<sup>4</sup> and
- Through **workplace policy**, for compulsory vaccination, developed in consultation with the workforce and based upon a robust risk assessment process

The CTU supports both the use of public health order mandates where they are based on public health science, and compulsory workplace policies where their introduction is, likewise based in public health science, engaged and consulted on with workers and their unions, their implementation follows a fair process, and, the policy is based upon a robust risk assessment process.

## Workplace risk assessments

Before a business decides to require that work be undertaken only by a vaccinated worker, the task must be risk assessed. In doing so it must be demonstrated that vaccination for the role is necessary for health and safety reasons.

Where a business has undertaken such a risk assessment with their workforce (and their unions), and the parties agree that the assessment shows there to be a higher risk of workers contracting and/or

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<sup>2</sup> Noting that those who are medically exempt from the vaccine are very few

<sup>3</sup> <https://thespinoff.co.nz/society/31-08-2021/siouxie-wiles-covid-is-different-this-time-our-level-four-lockdown-needs-to-be-too/>

<sup>4</sup> Government mandated CVCs (vaccination certificates) may also come with a requirement for workers in those areas to be vaccinated

transmitting COVID than outside the workplace, it would be acceptable to implement a policy which required certain work tasks to be undertaken by a vaccinated worker.

Note that the risk assessment for whether a compulsory vaccination workplace policy is reasonable is going to be guided by a legislative risk assessment process:

- Compulsory vaccination policies must still be supported with all other reasonably practicable control measures, a full workplace risk assessment will still need to consider all other reasonably practicable controls, whether workers are required to be vaccinated or not.
- Vaccination uptake will also still need to be supported regardless of the outcome of the risk assessment. Voluntary vaccination supported by the expect, educate, support approach is a legitimate control measure.
- Continuous improvement needs to be imbedded into policies.

Requiring vaccination for work should only be considered for work tasks, and never be applied to an employee directly.

### Supporting the vaccine rollout

#### **Vaccination is easy - Supporting working people to get vaccinated**

To best enable a high vaccination uptake, workplaces need to make it as easy as possible to get vaccinated. That means making it easy to access and receive the vaccine during work hours, this includes the time waiting after receiving the vaccine, and time off for side effects.<sup>5</sup> All workers need to be able to get released from work, or be vaccinated at work, or transported to a vaccination centre in paid time and returned to work.

If an employee remains apprehensive about getting the vaccine, their concerns should be heard, and where possible addressed through officially sourced information or a funded opportunity to speak with their health provider. Agreed policies on alternative duties or other work (if possible) for those who cannot receive a vaccine or do not wish to receive the vaccine should be established through workplace engagement, agreed with unions

Inappropriate and over-bearing approaches to vaccination may create resistance and ultimately inhibit the overall aim of increasing the vaccination uptake.

### Rights and obligations regarding vaccinations

#### **Employment Rights are maintained**

Employment rights and protections, and processes remain intact. Workers must be engaged in 'good faith' and all actions taken by the employer must be 'fair and reasonable' these concepts are already well established in law.

If in the extremely unlikely circumstance, an employee cannot be vaccinated due to a health reason,<sup>6</sup> the employer must take all reasonable steps to ensure that the worker is accommodated to continue

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<sup>5</sup> Common side effects are mild, in some cases workers may not be comfortable or able to work for a day or so after receiving the vaccine – this should be covered as paid time (special leave) rather than requiring sick leave.

<sup>6</sup> Noting again that those with medical reasons not to be vaccinated number under 200 nationally.

working. People who do not have a health-related reason not to be vaccinated but choose not to be vaccinated need to be treated fairly and lawfully.

Ending employment due to a vaccine requirement should not be viewed resulting from fault, and disciplinary actions are not appropriate. These processes need to follow a specific process that is fair, reasonable, and conducted in good faith.

### **Customer and co-worker concerns**

Customers/clients, co-workers or other service users cannot demand that an employee disclose their vaccination status. Assurances for these groups that workers are safe for work lie with the employer. Employers must not disclose the vaccination status of workers to other parties without explicit approval from the individual.

Any concerns should be considered and addressed through the PCBU's health and safety obligations. Employers also have the obligation to ensure that workers are protected against harassment.

### **Requirements for new employees**

Some employers may wish to adopt a hiring policy, whereby any job offers made to new employees will be contingent on the applicant's vaccination status.

Having a requirement for new employees to be vaccinated should be supported by a robust risk assessment. Employers have a duty in good faith to consult with existing workers and unions over what work must be carried out by vaccinated workers.<sup>7</sup>

Where the Government has determined specific roles must be vaccinated through the imposition of a Public Health Order. New employees for these roles can be required to show they are vaccinated.

Employers should also consult with workers and unions to ensure that such hiring policies are clear and reflect worker concerns.

### **Privacy**

Vaccination information is health information held securely on the National Immunization Register; therefore, privacy rights and obligations apply. An employer may require that a worker disclose their vaccination status where there is a legal requirement (i.e., public health order) or where there is a valid health and safety reason.

Workers have the right to privacy with respect to their medical record and may choose not to disclose it. In such situations an employer may reasonably treat the worker as if they are unvaccinated. Any actions taken by an employer must follow proper employment processes and employers should seek legal advice to ensure that workers are treated in a fair and reasonable manner.

COVID Vaccination Certificates (CVCs – see below) will be an easy way to prove vaccination status.

Any vaccination information employers hold must be kept confidential and held securely.

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<sup>7</sup> The Health and Safety at Work Act 2015 places a particular duty on employers to consult with workers and their representatives.

## COVID Vaccination Certificates (CVCs)

At the time of drafting, the specific details about the design of CVCs or their implementation has not been finalised. This section of the policy will be updated as necessary as more information is announced.

In general, the CTU supports the introduction of CVCs, as they become part of New Zealand's COVID response, provided the introduction of CVC's is supported and informed by a science-based approach, and they are brought into place in a complimentary fashion with other measures designed to inhibit the spread of COVID.

Much like the introduction of mandatory vaccination for workplaces, the introduction of vaccine certificates needs to be led by the Government, based on public health guidance and in consultation with unions on implementation. The prioritisation of the educate, expect, support approach to the vaccine needs to be maintained.

It is critical that vaccine certification fits alongside current process requirements as a tool to increase vaccination rates and the safety of workers. CVCs will therefore fit into the wider toolbox of response mechanisms.

CVCs do not remove the requirement for PCBUs to control the risk of COVID so far as is reasonably practicable. Vaccine certification will become one of many controls and is not in itself a means for businesses to be meeting their H&S obligations.

Workers and their unions must be engaged on decisions to implement CVCs for the workforce as well as on their implementation.

Individual workplaces should be guided by tripartite sector guidance to provide detail on the relevant risk profiles and circumstances of the industry.

## Compulsory CVCs

Much like compulsory vaccination, compulsory CVCs can be introduced in two ways:

1. A government mandate (i.e. Public Health Order); or
2. Through developed workplace policy – based on a robust risk-based assessment

Unions expect an appropriate level of consultation in the pre and post decision process for the creation of mandates. Where these mandates are based on good science and public health, they will be supported.

Likewise, where workplace policy is developed in consultation and engagement with unions and based on public health guidance and robust risk assessment processes – their implementation will be supported.

## CVCs and compulsory vaccination

At this point we do not know exactly the form of CVCs, nor how they and compulsory vaccination will be integrated. Government mandated CVC's may simply require all people in some industries to visit worksites – whether they are owners, customers, or workers.

However, we should be cautious about expecting workplace policies for the introduction for CVCs for members of the public to visit a workplace simply translating to an automatic compulsory vaccination policy for workers at those sites or not.

In most cases it will probably be appropriate that workplaces requiring the public to hold CVCs should also require staff to be vaccinated, but that should be properly considered and not automatically determined as one and the same thing. The same goes for workplaces that are excluded from CVC's, such as public services and essential services, where again proper consideration is required separate from any CVC mandate covering public access to the workplace.

The CVC itself will be a useful mechanism for proving to an employer where a vaccination mandate is in place, though not necessarily the only option.

Where workplace mandates for vaccinations and/or CVCs are a result of a workplace risk assessment, the usual requirements for employers to engage with staff, and proper process must be followed. This includes questions such as defining the parameters of vaccine certification, what are the processes for workers who do not meet the requirements and what are the processes for the business to undertake CVC scanning (and deny entry).

### Management of new risks arising

At the time of writing, no decision on the enforcement of entry requirements of CVCs have been announced. When they are introduced, PCBUs must protect workers who will be required to enforce CVCs. Experience has shown that staff can be put at danger with mask mandates and trace app scanning in workplaces from disgruntled members of the public.

It is important that workers are assured that their health and safety is protected in the enforcement of CVCs.

### Children under 12

Currently the vaccine has not been approved for children under 12. This is a significant population of the country. Because of this it appears that there will be no barring of under 12s for any event/ workplace that will require vaccine certification. This means a significant virus vector will still be present in these workplaces, regardless of the CVC, and is therefore another reason why workplaces will still need to control the risk of COVID and transmission so far as reasonably practicable.

### Privacy

Ensuring that the CVC process is as simple as possible will also ensure that privacy concerns are mitigated (preferably a binary verified/exempt or not). Workers charged with managing the entry requirements do not themselves need to know the reason for an exemption. This would otherwise risk put those workers in precarious situations both from a health safety and privacy concern viewpoints.

## Resources and References

COVID19.govt: <https://covid19.govt.nz/covid-19-vaccines/>

MBIE official vaccination guidance: <https://www.employment.govt.nz/leave-and-holidays/other-types-of-leave/coronavirus-workplace/covid-19-vaccination-and-employment/>

Ministry of Health – getting the vaccine: <https://www.health.govt.nz/our-work/diseases-and-conditions/covid-19-novel-coronavirus/covid-19-vaccines/covid-19-getting-vaccine>

Karawhiua (Ministry for Māori Development led unifying campaign): <https://karawhiua.nz/>

Public Health Response (Vaccinations) Order:

<https://www.legislation.govt.nz/regulation/public/2021/0094/latest/LMS487853.html>

WorkSafe – assessing whether a specific role needs to be performed by a vaccinated worker: <https://www.worksafe.govt.nz/managing-health-and-safety/novel-coronavirus-covid/assessing-whether-a-specific-role-needs-to-be-performed-by-a-vaccinated-worker/>

Immunisation Advisory Centre – How the Comirnaty vaccine works: <https://covid.immune.org.nz/covid-19-vaccines-nz/comirnaty-mrna-pfizerbiontech-vaccine/how-comirnaty-vaccine-works-and>

Building trust in the vaccine: <https://www.theworkshop.org.nz/publications/how-to-talk-about-covid-19-vaccinations-building-trust-in-vaccination-a-guide-2021>

Public Service – Te Kawa Mataaho: <https://www.publicservice.govt.nz/resources/covid-19-vaccination-roll-out-guidance/>