



Mandatory COVID-19 vaccination policy

Good employment practice guide

Introduction

The Western Australian Government has revised its mandatory COVID-19 vaccination policy which will now apply only to workforces working with the most vulnerable to protect them from severe disease.

Communicating with employees

If your business is impacted by mandatory COVID-19 vaccinations, I encourage you to have a meaningful conversation with your staff about the Directions. It is important to maintain open channels of communication with your employees and it may be a requirement under employment contracts, awards, agreement or employment law, depending on the industrial relations system within which your business operates.

Please read this information and regularly review Government websites including www.smallbusiness.wa.gov.au for further information and resources.

David Eaton
Small Business Commissioner (WA)

Overview

The COVID-19 vaccine is an important measure to keep WA safe and healthy. The vaccines offered in Australia assist in preventing serious illness and death. The vaccines also significantly reduce the rates of infection and subsequent spreading of the virus. Each of the vaccines available in Australia has completed a rigorous safety evaluation prior to registration by the Therapeutic Goods Administration (TGA). In addition, the vaccines have been given around the world, now in hundreds of millions of doses.

Application

This Guidance Note is provided to assist the private sector where the Chief Health Officer has issued a Direction (health Direction) pursuant to the *Public Health Act 2016* (WA) for vaccination to be mandatory for an employee in their capacity as an employee to enter, or remain at a designated workplace for a defined workforce or industry.

Businesses (which include employers) and workers (which includes employees) are required to comply with health Directions when they apply to a designated workplace.



Mandatory COVID-19 vaccination policy

Further information on changes to the mandatory COVID-19 vaccination policy is found at:

- More public health measures phased out following WA's soft landing
- ⊕ <https://www.wa.gov.au/government/announcements/more-public-health-measures-phased-out-following-was-soft-landing>
(www.wa.gov.au)

Employer requirements

Requirements in health Directions

Once the health Direction is issued, an employer should assess whether and how it will apply to a designated workplace and determine their obligations under the health Direction. Advice about the scope and application of a health Direction can be sought from the Department of Health via:

✉ CHO@health.wa.gov.au

Where an employer's designated workplace is covered by a health Direction, the employer will have two main requirements under the health Direction. Generally, an employer will be required to take all reasonable and lawful steps to:

- only roster or otherwise permit to work at a designated workplace an employee who is vaccinated against COVID-19 or is an exempt person, and
- collect and maintain a record of the COVID-19 vaccination status of their employees including any evidence of an employee's approved exemption.

It is an offence for a person to fail, without reasonable excuse, to comply with any of the health Directions. Employers can also choose to issue employer directions and should seek their own legal advice.

Exemptions

Where a health Direction is in place, it will be mandatory for an employee covered by that health Direction to be vaccinated against COVID-19 to enter, or remain at a designated workplace in their capacity as an employee, unless they have a medical or temporary exemption, or in other specified circumstances (an exempt person).

Medical exemptions are recorded on the Australian Immunisation Register and temporary exemptions are approved by the Chief Health Officer. Further information about the exemption process is at:

⊕ [COVID-19 Mandatory vaccination FAQs \(health.wa.gov.au\)](#)

Consultation

Employers should take a proactive approach to implementing compliance with any applicable health Direction. This includes providing information to their employees on the nature of the health Direction as it applies at a designated workplace, and how the employer will implement the health Direction to ensure that employees who enter or remain at a designated workplace in their capacity as an employee comply with the requirement to be vaccinated against COVID-19.

Examples of a proactive approach include, but are not limited to:

- meetings with employees
- information sessions
- consultation forums
- ensuring access to interpreters or translated documents for culturally and linguistically diverse employees.

Employers should consider their workplace and whether they need legal advice about any consultation obligations that may apply.

Employee requirements

Where a health Direction applies to an employee, the employee must:

- not enter, or remain, at a designated workplace in their capacity as an employee if they are not vaccinated against COVID-19, unless they are an exempt person, and
- provide evidence of vaccination status for inspection, recording and retention if required to do so by their employer, including in the case of an exempt person any evidence of their approved exemption.

It is an offence for a person to fail, without reasonable excuse, to comply with any of the health Directions.

Employee not vaccinated

If an employee has not provided evidence of their vaccination status, and they are not an exempt person, the employee will be unable to enter, or remain at a designated workplace in their capacity as an employee where that workplace is covered by a health Direction. If an employee is an exempt person, an employer should consider whether there are any other options available to protect the employee against COVID-19 instead of vaccination. This could include, for example, use of PPE or alternative work arrangements.

If an employee is not an exempt person, and is not vaccinated within the required timeframes, the employee may request to take annual leave, long service leave, or leave without pay in accordance with any applicable industrial instrument/s. Employers may consider it appropriate to approve leave as a 'cooling-off period' to enable an employee a further opportunity to consider their options. Employers should consider how to respond to the request and whether they need legal advice.

If an employee is not vaccinated within the required timeframes employers may be able to consider taking action, including termination of employment. Employers may wish to ask an employee to explain why they have not been vaccinated within the required timeframes. To determine whether and how an employer can take action, employers should consider the terms of any applicable industrial instrument. Whether any action is reasonable will depend on the circumstances. If employers are considering taking action, they should consider whether they need legal advice.

If an employer is covered by the national industrial relations system, further information is provided at:

- 🌐 [COVID-19 vaccinations: workplace rights & obligations - Fair Work Ombudsman](#)

If an employee is covered by the State industrial relations system, further information is available at:

- 🌐 [Employment impacted by the COVID-19 coronavirus | Department of Mines, Industry Regulation and Safety \(commerce.wa.gov.au\)](#)

Future employees

Employees who commence employment after an applicable health Direction takes effect in a designated workplace will need to provide evidence of being vaccinated against COVID-19 (or evidence of having an approved exemption) before commencing at a designated workplace.

In advertising vacant positions, the employer can advertise that a mandatory COVID-19 vaccination is a requirement in that designated workplace. Further, an employer may require prospective employees to be vaccinated against COVID-19 as a condition of employment but should consider their legal obligations and responsibilities before doing so, such as under discrimination laws.

Employee access to vaccinations

An employee seeking to access a COVID-19 vaccination during work hours may seek approval from their employer for reasonable time off to obtain a vaccination. An employer may wish to support their employees in getting vaccinated by considering such options as allowing their employees to take paid or unpaid leave, starting work later or finishing earlier if it is practicable or providing paid time off work to get vaccinated.

Employees who experience an adverse reaction to a COVID-19 vaccination and are unable to attend work can access any entitlement they may have to leave, including personal leave or sick leave.

Where an employee does not have access to paid or unpaid leave and experiences an adverse reaction to a COVID-19 vaccination, the employer could consider other options, for example, making adjustments to the employee's work arrangements by changing their shift day or time. Employers should consider their workplace and whether they need legal advice.

The Commonwealth Government COVID-19 Vaccine Claims Scheme reimburses people who suffer a moderate to significant impact following an adverse reaction to a COVID-19 vaccination. Further information is available at:

- ⊕ <https://www.health.gov.au/initiatives-and-programs/covid-19-vaccine-claims-scheme>.

Privacy and collecting employee vaccination information

Under a health Direction, an employer will need to collect and maintain a record of the vaccination status of each employee.

An employer must not use or disclose a record of the vaccination status of any employee except in certain circumstances and must take reasonable steps to protect any record it holds from misuse and loss, and unauthorised access, modification or disclosure.

If an employer is covered by the Privacy Act, the Office of the Australian Information Commissioner has advice on how to manage privacy in relation to COVID-19 vaccinations at:

- ⊕ [Coronavirus \(COVID-19\): Understanding your privacy obligations to your staff - Home \(oaic.gov.au\)](#).

Work Health and Safety

Employers should consider any obligations under workplace health and safety laws. See information from WorkSafe about

- ⊕ [COVID-19 Vaccination rollout information – Employers | Department of Mines, Industry Regulation and Safety \(commerce.wa.gov.au\)](#).

Further information

Employers should consider providing employees with up-to-date information about vaccinations as well as the health Direction including employer and employee obligations under the Direction. For instance, see:

- ⊕ [COVID-19 vaccine \(healthywa.wa.gov.au\)](#)
- ⊕ [Australian Government Department of Health \(health.gov.au\)](#)
- ⊕ [COVID-19 Coronavirus: Vaccines \(www.wa.gov.au\)](#)

Information is also provided by the Fair Work Ombudsman at:

- ⊕ [COVID-19 vaccinations and the workplace - Fair Work Ombudsman](#)
- and the Department of Mines, Industry Regulation and Safety, Private Sector Labour Relations at
- ⊕ [Employment impacted by the COVID-19 coronavirus | Department of Mines, Industry Regulation and Safety \(commerce.wa.gov.au\)](#).

Disclaimer: This information has been prepared to provide information to the private sector to facilitate implementing a health Direction pursuant to the *Public Health Act 2016 (WA)*. It is provided as a general guide only and is not designed to be comprehensive or to provide legal advice. It is recommended that advice be sought from a relevant employer or employee organisation or that legal advice be sought. No liability is accepted for any claim which may arise from any person acting on, or refraining from acting on, this information.