



Guidance for winegrowers on the new traffic light system

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NEW ZEALAND WINE
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Vaccination and Employment

Key points:

- **Hospitality (excluding businesses operating solely as takeaways) and events** must now be fully vaccinated (with two doses). These businesses do not need to undertake a further risk assessment.
- Vaccination will be required for **all workers (employees and independent contractors) at businesses that are required to use My Vaccine Pass (ie vaccination certificates) to operate, or operate with fewer restrictions, at all traffic light levels.**
- Where vaccination is not required, employers must undertake proper good faith employment processes with workers and determine this through a **risk assessment process**, either with the current process or with a new process that will be available in mid-December.
- A **simplified vaccination risk assessment tool** is now available, to assist employers with their decision to require vaccination for different types of work, if they haven't already undertaken an assessment.
- Non-vaccinated employees doing work that requires vaccination (either mandated or an employer requirement) must be given **at least four weeks' notice** (or the contractual notice period if that is longer), and employers must pay it (even if the employee does not or cannot work).
- Employers are required to provide **paid time off** for employees to get vaccinated.

Vaccine mandates in hospitality

Vaccination is required for all workers (employees and independent contractors) at businesses that are required to use My Vaccine Pass (i.e., vaccination certificates) to operate, or operate with fewer restrictions, at all traffic light levels. This requirement took effect from Friday 3 December 2021.

The Public Health Response (Vaccinations) Order includes hospitality (referred to as food and drink business or service) and events. This includes:

- winery cafes / restaurants;
- large events (indoor/outdoor) e.g., weddings, festivals, Christmas parties; and

Businesses operating solely as takeaways are **not** subject to the My Vaccine Pass mandate.

Further guidance about the My Vaccine Pass mandate can be found [here](#).

Workers covered by the mandate are required to be fully vaccinated to continue doing that work. This mandate for workers applies regardless of whether the business chooses to use vaccine certificates for customers/attendees.

The mandates apply by *business activity*. We understand that businesses often undertake more than one activity on site (e.g., a cellar door attached to a winery). Where this is the case you may be in a situation where you have some workers that are required to be vaccinated by mandate (those in your hospitality business) and others that are not (e.g., vineyard workers). The Order does not enable businesses to apply the Government mandate over its entire business simply because part of its business is subject to a mandate.

If only *part* of your business is covered by a mandate, you should carefully consider where to draw a line for your business. If the mandate will not extend to particular staff, then you should consider how a risk assessment would work for those people. For example, how much interaction would your non-cellar door staff have with members of the public (e.g., in shared spaces/facilities), do your non-mandated staff move through parts of the premises that are mandated to get to their place of work? Are you able to limit interaction between staff (including in shared spaces) in those different parts of the business with different risk profiles?

If workers move between activities (e.g., working in the winery as well as working at the cellar door) then our understanding is those workers will need to be vaccinated in accordance with the hospitality vaccine mandate.

Boosters

On 23 January 2022, the COVID-19 Public Health (Vaccinations) Amendment Order 2022 came into force. This requires certain groups of workers covered by the COVID-19 Public Health Response (Vaccinations) Order 2021 to receive a booster to be considered to be fully vaccinated (eg MIQ workers).

The requirement for a booster does **not** currently apply to events and hospitality. However, this may change in the future as the omicron outbreak progresses. We will keep a close eye on any new developments and update this guidance as necessary.

In the meantime, businesses should encourage their staff to get their boosters as soon as they become eligible.

The Government has recently accelerated the COVID-19 booster roll-out – from 4 February 2022 individuals are now eligible for a booster 3 months after receiving their second primary dose.

Vaccination risk assessment (WorkSafe guidance)

Where vaccinations are not mandated, businesses can still require that certain work must be done by vaccinated workers where a **risk assessment** identifies this is necessary from a health and safety perspective (i.e., there is a high risk of contracting and transmitting COVID-19 to others). This applies to work done by all workers, whether employees or independent contractors.

[WorkSafe](#) has detailed guidance on this risk assessment process. Detailed information about this risk assessment process was also previously set out in the [Bell Gully webinar](#) hosted by NZW (member login required). [Employment New Zealand](#) also has helpful guidance regarding vaccinations in the workplace.

If it is decided that certain work can only be done by vaccinated workers, businesses should set a reasonable timeframe for workers to decide if they will be vaccinated. If an employee cannot work

during this time, special paid leave should be considered, especially in the short term while employers and employees discuss what happens next.

Below are some points you may wish to consider as part of your risk assessment:

1. **Identify risk factors** – think about a typical day/week, as well as seasonal-specific tasks:
 - **How many people does the worker come into contact with? Does this include members of the public?** Business activities that involve wine tours may have increased contact with the public, as will cellar doors that are in close proximity to or within a winery building. The more people the worker comes into contact with, the greater the risk.
 - **How proximate is the worker to other people?** Vineyard work is likely to be spaced out (1-2m or more) and in an outdoor space – this would be lower risk. Close contact in an indoor environment will be higher risk.
 - **How long is the worker in proximity to others for?** If only brief contact this will be lower risk, lengthy contact will be higher.
2. **Identify the risk rating alongside each risk factor** (e.g., higher or lower)
3. **Consider other controls available to minimise risk** (e.g., mask wearing, physical distancing, bubbles, separating out different parts of your premises into defined areas)
4. **Assess the results of your risk factor discussion and the impact of any extra controls you will implement**
 - If your risk ratings tend towards high risk and are not able to be reduced by other controls you and your workers should consider whether vaccination is required.
 - If the risk ratings tend towards low risk, you may decide the role does not require vaccination.

If the risk assessment shows that the role does not require vaccination you can still encourage vaccination in the workplace.

[Simplified vaccination assessment tool \(now in force\)](#)

The new simplified assessment tool businesses can use to decide whether work must be done by vaccinated workers and/or workers that have undergone a medical examination or testing for COVID-19 came into force on 15 December 2021.

This new risk assessment tool is **optional** for businesses to use. Importantly, businesses can still use other health and safety risk assessment processes if they choose, and the new risk assessment tool will not override any risk assessments that have already been undertaken. It is up to the business to decide which risk assessment process it wants to use, and it is our understanding that the **choice** of assessment will not be able to be challenged (although the process/substance of the assessment may be).

Details about the simplified vaccination assessment tool can be found [here](#). Briefly, it consists of four factors (set out below). You will need to answer 'yes' to at least three factors before it is reasonable to require vaccination for workers who carry out that work.

When applying the tool to a particular role, you need to think about all of the tasks involved in that role, including those that aren't performed on a daily basis.

Businesses must engage with workers and their representatives when applying the vaccination assessment tool. The Government has indicated that given how clear and specific the factors in the tool are, businesses who apply the tool in accordance with the regulations should have confidence that their decision is justifiable.

Usual employment law and processes continue to apply. Employers should take care to be fair and reasonable in their employment decisions and work in good faith with employees and unions before deciding on any employment outcomes.

Employees will be able to bring a personal grievance if they feel they have been unjustifiably dismissed or disadvantaged as a result of a decision their employer has made about vaccination.

Factor	Lower Risk	Higher Risk
Does the worker work in an indoor space that is less than 100m ² ?	No	Yes
Is it unreasonable for the worker to maintain 1m physical distancing from other people?	No	Yes
Is the worker in close proximity ¹ to any other person for more than 15 minutes?	No	Yes
Does the worker provide services to people who are vulnerable ² to COVID-19?	No	Yes

Based on the above risk factors, our interpretation is that it may be difficult for some winegrowers to be able to mandate vaccinations using this tool, as it is unlikely that three high risk indicators will be satisfied. For example:

- Workers in vineyards and wineries do not provide services to people vulnerable to COVID-19.
- Vineyard workers typically work outside and are most likely able to physically distance so will fall into the lower risk category for the first and second factors.
- Winery workers may work in large buildings above 100m² indoor space.

However, the situation may be different for each business, and you should follow the risk assessment process regardless.

¹ 'Close proximity' is defined as being within 1m of another person when carrying out work.

² 'Vulnerable people' means people who are: under the minimum age to be vaccinated; medically exempt from being vaccinated; or at higher risk of severe illness from COVID-19. Further information about those who are at higher risk of severe illness from COVID-19 can be found [here](#).

Medical Exemptions

Medical exemptions are rare. The [Ministry of Health](#) has indicated that there are limited situations where vaccination is not recommended for an individual. A person wishing to apply for an exemption can do so through their GP and this is subject to approval by the Ministry. Exemptions may last for up to six months and may be reapplied for if necessary.

If a person is granted an exemption by the Ministry of Health, then that person can continue to work in a role where vaccination has been mandated. They can also obtain a My Vaccine Pass to show that they meet the legal requirements.

Vaccination paid leave requirements

Employees are entitled to reasonable paid time off from work to receive their COVID-19 vaccination. More information can be found [here](#).

Termination rules including paid 4 weeks' notice period

[New legislation](#) sets out rules for the dismissal of staff who do not get vaccinated when required to do so. The new rules came into effect on 26 November 2021 and apply to employees covered by Government vaccination mandates and any other employees who have been told by their employers to vaccinate following a risk assessment process. More information can be found [here](#).

In summary:

- Employees must be given reasonable written notice specifying a date by which they must be vaccinated.
- Before terminating, employers must ensure that all other reasonable alternatives have been exhausted (e.g., finding other work within the business that does not require vaccination).
- Employers must offer at least 4 weeks' paid notice (or the notice period in their contract if this is longer), and they must pay it (even if the employee does not or cannot work).
- If the employee gets vaccinated before the notice expires or becomes authorised to do work without vaccination under a COVID-19 Order (e.g., because they got an exemption) the notice is automatically cancelled, unless that would unreasonably disrupt the employer's business (e.g., where a business has hired a replacement employee and there is no other work available in the business).
- Employees will still be able to bring a personal grievance in relation to termination.
- Parties can also mutually agree to end the employment relationship before the end of the relevant notice period, but they will still need to pay out the employee for the notice period.

Other aspects of employment law continue to apply.

Mandatory vaccination record required for mandated work

Detailed guidance in relation to the record requirements for mandated work can be found [here](#).

Where a COVID-19 Order mandates vaccination for specified work a business **must** keep records of each affected workers vaccination status. Businesses must also update records as soon as practicable if a worker provides updated information (e.g., that they have subsequently been vaccinated, exempted or authorised). Failure to do so is an infringement offence and carries a substantial fine.

For the avoidance of doubt, this does not apply to any roles where you have decided to mandate vaccination following a risk assessment.

For the purposes of developing and maintaining a record, businesses:

- Can ask for information, either electronically or in writing, that confirms the worker has been vaccinated or is exempt.
- Must inspect the documents provided and take such copies or images, or extracts needed to verify compliance.
- A worker who doesn't provide the requested information is treated as unvaccinated and can't be allowed to do 'specified' work (work for which vaccination is required).

A business must keep and maintain a record of the following information for each worker (employees and independent contractors) covered by the mandate:

- Full name and date of birth;
- Contact information (telephone and email address);
- Whether the person is vaccinated and if so, the name of the COVID-19 vaccine or vaccines they have received and the date or dates on which they received a dose of the vaccine or vaccines;
- If the person is not vaccinated because they have received a first, but not second dose, of a COVID-19 vaccine, the latest date by which they must have the second dose of a COVID-19 vaccine to be vaccinated.
- If a person is not vaccinated because they have not received any doses of a COVID-19 vaccine, the latest date by which they must have their first and second doses to be vaccinated.
- If the person is not vaccinated and is relying on an exemption under the legislation – confirmation of that fact; and a copy of the exemption.

The record must be in writing or kept in a form or in a manner that allows the information to be easily accessed and converted into written form.

You shouldn't collect more information than is required and you should make it clear to the worker why the information is being collected and what it is being used for (e.g., to ensure the business is meeting its statutory obligations), and what will happen if the information isn't provided. The information should also be up to date e.g., adding dose dates as they occur.

Each worker must provide the business with (or give access to) the information specified above as soon as practicable and must ensure that the information is updated as soon as practicable after it changes.

Individuals can access information about their COVID-19 vaccination record (including the name of and date they received their vaccinations) from their My Covid Record account on the Ministry of Health website.

A business must not allow workers to do work for which vaccination is required unless satisfied they are vaccinated. Workers must also comply with the requirement not to do work for which they must be vaccinated unless they are vaccinated. For businesses and workers alike, failure to comply with these requirements is an infringement offence.

Vaccination status is personal information

Collecting, storing and sharing information about a person's vaccination status must be done in accordance with the Privacy Act and the COVID-19 Public Health Response Act 2020.

Information about whether an identifiable individual (e.g., a particular worker) is vaccinated or has complied with the COVID-19 Public Health Response Act or a COVID-19 order may be disclosed only to demonstrate compliance, for enforcement or Health Act purposes. Misuse of personal information is an offence and attracts a maximum fine of \$12,000 or a 6 month prison term for an individual, of \$15,000 for anyone else.

We are expecting further guidance to be issued regarding making statements about vaccination rates in unmandated workplaces. It is our current understanding that businesses are still able to share aggregated data about vaccination in the workplace that does not identify particular people. Further, for parts of your business covered by a mandate i.e., hospitality you can promote that your staff are fully vaccinated in compliance with the Act.

Businesses must take reasonable steps to ensure that this information is collected lawfully, that workers understand how this information will be used and why it is being collected.

Detailed guidance as to how information about a person's vaccination status should be treated and the circumstances in which you can ask someone to disclose (or provide evidence of) their status can be found [here](#). Generally:

- If certain work cannot be done by an unvaccinated worker, a business can ask a worker about the worker's vaccination status.
- If a worker does not disclose (or provide evidence) of their status, the business may assume the worker is not vaccinated for the purpose of managing health and safety risks (businesses should inform workers of this assumption).
- Employees cannot be redeployed or disadvantaged for refusing to disclose their status unless particular work cannot be done by unvaccinated employees.
- Businesses can only ask candidates for a job if they are vaccinated when this is justified by the requirements of the role (e.g., if certain work cannot be done by an unvaccinated worker).

In addition to the above requirements, we understand that a number of businesses have also conducted voluntary vaccination surveys of their workers, as part of their health and safety planning (e.g., to get a wider picture of vaccination levels within the workforce). If conducting a voluntary survey, you must still follow the requirements of the Privacy Act.

[Interaction between vaccinations and employment agreements/workplace policies](#)

[Amending existing employment agreements](#): Employers and employees can negotiate variations to existing employment agreements to include COVID-19 vaccination as a term of employment, if it is reasonable for the role (e.g., required for health and safety reasons).

[Requiring vaccination for new employees](#): Vaccination can be required as a term of new employment agreements if it is reasonable for the role.

[Updating workplace policies](#): Normal employment law applies – employers must engage with workers, unions and other representatives when creating or varying policies. Any changes must not result in inconsistency with employment agreements.

[Right to stop unsafe work](#): Workers have the right to stop work or refuse to carry out work if they consider that doing the work would expose them, or anyone else, to a serious risk to health or safety from an immediate or upcoming hazard. Generally, unless vaccination is needed for health and safety reasons, work is unlikely to be unsafe solely because it is done around unvaccinated workers.

When a worker is self-isolating or sick with COVID-19

If a worker is sick with COVID-19 or required to self-isolate under Ministry of Health guidelines, the first consideration for an employer should be to look after their people and protect public health. You should not knowingly allow workers to come to a workplace when they are sick with COVID-19 or required to self-isolate under public health guidelines (unless they are utilising one of the return to work pathways detailed in the Traffic Light guidance). If you do, this is likely a breach of your duties under the Health and Safety at Work Act.

If a worker is sick or self-isolating, you may be able to apply for the COVID-19 Leave Support Scheme to support your employees. More details on the Leave Support Scheme including who may qualify and how to apply can be found [here](#) or on NZW's Business Support webpage [here](#).

You should also think about other ways you can support the wellbeing of your employees if they become sick with COVID-19 or are required to self-isolate. This could be by:

- offering an Employee Assistance Program for affected staff;
- checking in (if appropriate) to make sure they are ok; and
- providing information about what wellbeing support services may be available (e.g., directing them to the COVID Welfare Line 0800 number when it is available).