

NZDSN Webinar: Get answers to your COVID vaccination questions!

Notes from the Chat Room – Ministry of Health time

From	Question	Answer
Laura	We have taken the stance that all roles must be vaccinated (including our contractors), however the definition in the order of who is required to be vaccinated has changed. I have had questions from some people saying "does this now include me" can you please just provide some further guidance on the definition and inclusion	<p>Affected persons include:</p> <ul style="list-style-type: none"> • Health practitioners (as defined by the HPCA) • Workers who carry out work where health services are provided to members of the public by 1 or more health practitioners and whose role involves being within 2 metres or less of a health practitioner or a member of the public for a period of 15 minutes or more • Workers employed or engaged by certified providers who carry out work at the premises at which the health care services are provided • Care and support workers, meaning a <i>person employed or engaged to provide care and support services within a home or place of residence.</i>
Nicola	Can you please clarify whether 'information services' fall under the mandate? Multiple Sclerosis Auckland here. We provide in-home services via our Community Advisor team, but these are classified as 'information services'.	<p>The Mandatory Vaccination Order defines Affected persons as including:</p> <ul style="list-style-type: none"> • Workers who carry out work where health services are provided to members of the public by 1 or more health practitioners and whose role involves being within 2 metres or less of a health practitioner or a member of the public for a period of 15 minutes or more • Workers employed or engaged by certified providers who carry out work at the premises at which the health care services are provided • Care and support workers, meaning a <i>person employed or engaged to provide care and support services within a home or place of residence.</i> <p>The Order thus does not distinguish on the basis of job title. Whether the purpose is hands-on personal support, household domestic support or "information sharing", if the role is face-to-face as defined above, the workers in that role must be vaccinated.</p>
Ian	The mandate covers people on the basis of their job description. However CCS Disability Action is currently providing virtual support, but due to the order, affected workers can't even do this from the 16 th	<p>The Mandatory Vaccination Order defines Affected persons as including:</p> <ul style="list-style-type: none"> • <i>Workers who carry out work where health services are provided to members of the public by 1 or more health practitioners and whose role involves being within 2 metres or less of a health practitioner or a member of the public for a period of 15 minutes or more</i> • <i>Workers employed or engaged by certified providers who carry out work at the premises at which the health care services are provided</i> • <i>Care and support workers, meaning a person employed or engaged to provide</i>

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		<p><i>care and support services within a home or place of residence</i></p> <p>Where disability support workers carry out their duties “virtually” and not in a face-to-face setting with the disabled person, they would not be covered by the Mandatory Vaccination Order.</p>
Sam	<p>Service gaps and disrupted service for our residents and staff - we are going to be short two more staff (out of 11, so this is huge for us). I’m struggling to find staff already. How can we be continuing to provide a safe and quality service without the right staff?</p> <p>Respite - I will not be able to provide this service based on low staff numbers. Then the follow-on effect for existing staff - the stress, pressure and extra hours going to be required to keep our service running is going to be difficult and ultimately we will not be able to look after any of our people to the same quality and level as we are currently doing.</p> <p>What is the Ministry going to do to help small providers get through this without stressing out all concerned???</p>	<p>Providers should undertake their own risk assessment to identify such issues and the reasonable options to mitigate any risks.</p> <p>While we recognise the staff shortage issues that pre-dated COVID, there are options available to help manage stress in staff during this time.</p>
NZ Spinal Trust	<p>Amanda, if an Early Childhood service believes it has a moral obligation to continue to deliver at least some service to children regardless of the vaccination status of their parents AND the parents are a key part of the service (i.e. the therapy involves children and their parents) – is the disability service in breach of its MoH contracts if it arranges a separate service specifically for the unvaccinated parents and their children?</p>	<p>The Ministry of Health and Ministry of Education are working collaboratively to ensure early childhood education (ECE) services operate within the requirements of the mandatory order, health and education regulatory requirements.</p>
Sue	<p>The amendment to the COVID-19 Public Health Response (Vaccinations) Order 2021 was made to provide clarity for paid care and support workers who are whānau. It was noted that the original wording was inconsistent with the Government’s response to the Family Carers litigation. The Family Carers litigation found that the policy of not paying family carers to support disabled people was inconsistent with the Human Rights Act 1993 and could not be justified under the New Zealand Bill of Rights Act 1990. This Government’s general response to the litigation is to treat family members who are paid care and support workers the same as other care and support workers. Requiring all people who are employed or engaged as care and support workers to be vaccinated is consistent with the government’s overall policy of having a workforce that is vaccinated against COVID-19 and is consistent with the Government’s overall response to the Family Carers’ litigation. It also removes the risk of recreating policies that may be found to be inconsistent with the Human Rights Act 1993. Some family members who are paid care and support workers may consider that this means</p>	

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	they are being forced to be vaccinated. This requirement, however, flows from the litigation seeking to be treated the same as other paid carers	
David	Many organisations supplying disability support services are charities. Our Board has incurred considerable costs seeking employment advice and will incur costs relative to notice periods and costs seeking further staff. What funding will the Government provide to organisations that can ill-afford these costs?	We are advised that the MoH are open to a sector-wide approach regarding any extraordinary costs incurred as a result of the implementation of the Mandatory Order. NZDSN is working on this now.
Ian	What if the office provides administration and admin support but not health services	The Mandatory Vaccination Order covers support workers in roles where they have regular face-to-face contact with disabled people; and includes those other staff who have regular face-to-face contact with the first group. This would suggest a number of admin and support staff would be required to vaccinate.
Candice	On our land, we have garden volunteers who garden on land next to residential homes (the land is owned by the disability organisation). Sometimes residents come outside and say hello or help to garden. We're saying the Mandate also applies to these volunteers on our land. Is that correct?	Yes. If these volunteers are having face-to-face contact with disabled people, they are covered by the mandate and need to vaccinate.
Peter	With the announcement yesterday that staff under the mandate can now receive the Astra Zeneca vaccine '. does that push out the dates for those who choose to take up this option?	No. The same dates stand. If as a result of choosing the AstraZeneca vaccine the staff member misses either deadline, they will need to stand down from their roles for the missed periods.
Joanne	We have five residential homes supporting people with complex disabilities - one high complex home with four very vulnerable people, wheelchair users and non-verbal. One person being supported is not vaccinated due to family wishes; there is no EPOA, etc in place. Medically, vaccination is advised for this person. Staff are not feeling safe and question why they have to be vaccinated and not this person. Also staff question the family visiting the home unvaccinated.	<p>There are two parts to your question:</p> <p>What to do about a disabled person who should vaccinate but family oppose this.</p> <p>If the person is not competent to make an informed choice and give informed consent, a person could still be vaccinated despite their family wishes. The provider undertaking vaccination will need to work through right 7(4) of the Code of Health and Disability Services Consumers' Rights first. This might be the person's GP for example.</p> <p>Vaccination would need to be in the person's best interests, and the provider would need to take reasonable steps to ascertain the views of the person (to the extent this is possible).</p> <p>If the person's views can be ascertained, the provider can go ahead with vaccination if it is consistent with the informed choice the person would have made if they were competent.</p> <p>Alternatively, the provider can go ahead with vaccination after consulting with relevant people who are available and interested in the person's welfare (e.g. the family) and considering their views before making a decision to vaccinate. The provider does not</p>

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		<p>necessarily need to agree with the family's views.</p> <p>https://www.health.govt.nz/our-work/diseases-and-conditions/covid-19-novel-coronavirus/covid-19-response-planning/covid-19-mandatory-vaccinations/covid-19-exemptions-mandatory-vaccination</p> <p>The second part is staff not feeling safe around an unvaccinated disabled person. The PCBU is required to take all expressions of health and safety risks seriously. The employer would engage in a risk assessment and explore options available to mitigate any risks, such as vaccinated staff, use of PPE, social distancing where possible. If the employer has taken all reasonably practicable steps to mitigate the risks it may become an employment issue.</p>
David	<p>We supply employment services for people with disabilities and/or health conditions and employ a gardener (who works casually around our premises once a fortnight) and a cleaner who cleans at the weekends. Do they come within our Mandatory requirements for vaccination of staff?</p>	<p>If the gardener or cleaner come into regular face-to-face contact with disabled people, they are included in the Order and must vaccinate.</p>
Linda	<p>Joanne asks a very good question, staff are losing their jobs if they choose not to vaccinate, what about parents who choose not to vaccinate their special adult which continues to put our service at risk.</p>	<p>The Order covers a number of specific roles of workers, not the public. If staff are concerned about providing a support service to an unvaccinated disabled person, the PCBU is required to take all expressions of health and safety risks seriously. The employer would engage in a risk assessment and explore options available to mitigate any risks, such as vaccinated staff, use of PPE, social distancing where possible. If the employer has taken all reasonably practicable steps to mitigate the risks it may become an employment issue.</p>
Sue	<p>We are doing risk assessments for non-vaccinated staff and they will be treated as if they have COVID-19, so appropriate protocols put in place.</p>	<p>They should only be treated as if they are unvaccinated if they do not confirm their vaccination status with you and you've told them you will be making that assumption. The treatment of a person who actually has COVID-19 is quite different</p>
Diana	<p>If a support worker (working in vaccinated client's own home) gains an exemption are we required to continue their employment.</p>	<p>Not necessarily. If the support worker obtains a valid medical exemption, the organisation should undertake a risk assessment and consult with the staff member concerned. It may be that the role is required to be undertaken by a vaccinated person because other measures (e.g. PPE) are insufficient. Alternate duties, if available, should be considered and explored. If there are no alternative options, the organisation may consider termination of employment.</p>
Sue	<p>We also ensure the Support Worker has choice and are not required to deliver supports to non-vaccinated if that is their preference. Creates a</p>	<p>A reasonable position to take, so long as it doesn't leave you with insufficient people to do the job.</p>

From	Question	Answer
	division in the workforce and is horrid to manage but that is the tact we're taking for now	
Fiona	How do we balance our obligations under health and safety as a PCBU versus the health order, ie a staff member submitting an incident form to say we have caused her harm due to stress caused by the mandate and emails we have sent out re the order?	The Order is a matter of law and is not a choice for the employer. However, the organisation should offer and provide support (e.g. EAP) and be available to meet with the person and work through their concerns.
Stewart	Could you clarify, unvaccinated staff is given four weeks paid notice, they then get first dose towards the end of the four weeks, what would the approach be?	If the employee is still within their notice period, they could return to work for the remainder of their notice period. The employer can withdraw the termination notice if they wish, and if the employee agrees. There may be good reasons why the employer cannot do this. If the evidence that a first vaccination (or second for that matter) has been taken after termination or notice has already been paid out in lieu, the employer may wish to consider a re-employment process if they wish.
Ian	The Rest Home indicates risk from vaccinated workers as well so why are unvaccinated people being targeted as the risk when clearly it is COVID that is the risk?	The Order requires that certain workers be vaccinated to do certain jobs. The medical evidence reports that vaccinated people are far less likely to contract COVID and if they do, they are far less likely to suffer the worst effects of the virus. Vaccination has therefore been adopted by the government as the strategy of choice in combatting the spread of COVID-19 in NZ
Wendy	Rest homes have been stating that family whanau need to be vaccinated before they can enter. Do residential providers under MoH not follow this line?	The development of a policy for your organisation on the management of risk in your premises is a matter for each provider.
Sam	When are we going to get information about serious disruption exemptions?	This is available now: https://www.health.govt.nz/our-work/diseases-and-conditions/covid-19-novel-coronavirus/covid-19-response-planning/covid-19-mandatory-vaccinations/covid-19-exemptions-mandatory-vaccination
Laura	But the exemption needs to be applied for in an individual basis and not as a group of workers	Correct. This is to ensure exemptions are sought for reasons specific to the individual and in relation to their individual circumstances preventing them from vaccinating.
Candice	Re: Wendy's question above, yes, we too are thinking of asking that all family/friends from 1 December show evidence of a first dose of the vaccine, and a second dose by 1 January. Only the CEO holds this information so that it's private. Like Wendy, I'm curious whether we can in fact do this? We've consulted with our residents, and they say they feel o.k. with this, to help keep everyone safe.	Providers can do this. We encourage providers to develop and implement a Visitors Policy for their situation, making it clear what the vaccination requirement is for visitors, how this is to be evidenced, limitations on visiting times/durations, whether mask-wearing is mandatory the whole time, whether visits are in specified places, whether only one person can visit at a time, etc.
Eru	Where we have someone who is seeking medical exemption and this won't be available	Only vaccinated people (first dose minimum) can work from the 16 th November 2021 or

From	Question	Answer
	for some time due to the MoH process, what do we do with them in the interim?	people with a valid medical exemption. The employee will need to stand down until they receive a valid medical exemption. Even if the employee receives a valid medical exemption, the organisation should undertake a risk assessment and consult with the staff member concerned. It may be that the role is required to be undertaken by a vaccinated person because other measures (e.g. PPE) are insufficient. Alternate duties, if available, can should be considered and explored. If there are no alternative options, the organisation may consider termination of employment An exemption doesn't necessarily provide a security blanket in respect of their job.
Fiona	Thanks – how long do you expect that process to take on exemptions?	The exemption process will be progressed as quickly as possible, but note it does require Ministerial approval.
Kathy	Staff have been waiting for the COVID vaccination certificate requested as a posted letter rather than email. Email certificates are coming through but not the hard copy letter. Any reason? Or should they reapply?	Only a medical exemption from the Director General of Health is acceptable. They should apply through their doctor.
Laura	Was that under the previous section 7A which has now been revoked	The old medical exemption process has been revoked and replaced. Organisations shouldn't accept any medical exemptions unless they are from the Director General of Health.
NZ Spinal Trust	Is it expected that a medically exempted person will be able to engage with patients/ disabled clients/etc just like a vaccinated person?	Potentially. The organisation should undertake a risk assessment and consult with the staff member concerned. It may be that the role is required to be undertaken by a vaccinated person because other measures (e.g. PPE) are insufficient. Alternate duties, if available, can should be considered and explored. If there are no alternative options, the organisation may consider termination of employment.
Wendy	As a 24/7 residential support service, for individuals who have intellectual and cognitive challenges. Our residents are also employed and are working in our community. We stand to lose up to six staff. We are remotely placed and getting staff in the first place within both the industry and our proximity is extremely difficult. The consequence of losing nearly half of our workforce may mean a reduced service, sending those residents over the ratios back to their home care with their families. What is the advice given for this situation? Do we just 'hand the residents back to families'? Do the residents lose their jobs as a result of this mandate if we have to lose staff? Your thoughts on a solid process would be great.	We recommend that residential support services in circumstances such as you describe complete a risk assessment to confirm the nature of the risk and the options available to mitigate each of the risks identified. In the context of a pandemic, the options may not be perfect to suit each person's circumstances, but they may never-the-less be the best to ensure people are safe and the risk of further transmission of COVID is minimised.
Adam	What rights do the disabled individuals have when they chose a specific Support Worker (parent) in their own home? They are NOT comfortable with any other outsider, who can	Understood, but the Order is a matter of law, not personal choice. If the Support Worker is funded/paid, then they are subject to the Mandatory Vaccination Order. We

From	Question	Answer
	never understand the personal, private, sometimes embarrassing help required. Anxiety alone will not allow this.	recommend discussing this and the consequences of choice with the disabled person. The liability of breaching the Order rests with the employer, not the disabled person.
Barbara	We have 16 staff fully vaccinated, and 1 other staff member having had their first vaccination. We are in a good position and we should have all staff fully vaccinated by January 2022. We are also in the process of assisting our staff to get their booster in early December.	
Karen	We have stood down 21 Support Workers and 1 Group Leader. Around half have indicated that they would have the Astra Zeneca vaccine if offered.	

Notes from the Chat Room – Employment Advice time

From	Question	Answer
Sharon	if a non-vax staffer won't come to a meeting (been off sick since mandate announced) do we just give notice on the 16th? We've been providing all the info etc via email etc but wanted that meeting to do things correctly. All good faith has been on our side.	If the employer can show, step-by-step-every effort has been made to engage with the employee to understand their issues and attempts to discuss options to address these, and still the employee persists in not engaging, the employer is within their rights to progress the termination process. You still need to follow a fair process which will include writing to the employee and explaining you've reached a stage where you need to consider termination of their employment and you'd like to meet with them and hear their response before making a final decision. In your letter you should explain that if they do not meet with you or respond, you will need to make a final decision based on the information you have available. Seek legal advice on this first.
CCAss	What is the recommended notice period?	Assuming this relates to notice for departing staff, the answer rests in your employment agreements. If there is no general termination clause in the employment agreement, you will need to provide reasonable notice. Four weeks is quite standard for most roles.
Eru	Does our organisation have to pay people on stand down? Referring to contracts is of no help as this situation is not something covered in most employment contracts. Also do we have to pay out a notice period? Always being told to seek independent advice really isn't that helpful!	<i>Stand down</i> If the employee is unable to lawfully work as a matter of law (i.e. the Order), they are not entitled to be paid (subject to any obligation to pay in the employment agreement). However, the employer should explore alternative options first (e.g. temporary alternative duties or leave by agreement). If the employer has continued to pay the employee from 16 th November, but would like to stop, they should consult with the employee first before stopping pay.

From	Question	Answer
		<p><i>Notice</i></p> <p>If notice is paid in lieu, this should be paid (i.e. if their employment comes to an end immediately, and the employer pays out notice).</p> <p>If notice is given in the usual way (i.e. with employment ending at the end of the notice period), and the employee is unable to lawfully work during their notice period and no alternative arrangements are available or agreed, we consider that an employee is not entitled to be paid during that period. Again, this is subject to any obligation to pay in the employment agreement.</p> <p>The issue of pay is not always black and white. The right to not pay applies where the employee cannot work due to the Order. The employee is entitled however to be paid if they cannot work due to a decision by the employer. An employee might therefore argue they are entitled to be paid if, for example, they can do half of their job, in which case they should be paid for half of their normal hours.</p> <p>We also note that this is a difficult and sensitive situation, Even if there is no legal obligation to pay, practically paying notice will reduce the risk of challenge, and will no doubt assist the employee particularly at this time of year.</p>
Sue	Good resource to answer questions Eru. COVID-19 Public Health Response (Vaccinations) Amendment Order 2021 - Q&A Ministry of Health NZ - YouTube	
Trish	What about the Minister's announcement it is four weeks paid notice as minimum?	This is not currently law. Apply the notice period in your employment agreements.
David	Our Board proposes to stand our Manager down, but allow him to work from home and be paid until a new manager can be recruited. Is that OK?	If the Manager is working from home, it's not a stand down. You will still need to work through an employment process with the manager and terminate their employment before you make any final decisions to appoint someone new to the role.
Fiona	Can support workers do telehealth under the order? I think I read that health practitioners can	So long as they do not have direct contact with disabled people, this is alternate duties. They need to think about the duration though. It is unlikely COVID is going away anytime soon, so the vaccination requirement is likely to be around for a while.
David	Our Manager is working from home. He will conduct what he does via Zoom. He will have no physical contact with clients that have disabilities once this occurs	Called alternate duties.
doddt	Jess. Are you expecting an amendment to the order in future to deal with boosters?	This has not been indicated at this stage, but this could of course become a requirement in the future.

From	Question	Answer
Diana	If a support worker gains an exemption, are we required to continue their employment? No other role or reassignment available.	<p>Not necessarily. If they have a valid medical exemption, they can continue to work without breaching the Order.</p> <p>The organisation should still undertake a risk assessment and consult with the staff member concerned. It may be that the role is required to be undertaken by a vaccinated person because other measures (e.g. PPE) are insufficient.</p> <p>Alternate duties, if available, can should be considered and explored. If there are no alternative options, the organisation may consider termination of employment</p>
Sam	If a resident we support chooses not to be vaccinated, but my Board has mandated that all people who are on the property are vaccinated, what is the legal status for this? Ie: can we make this mandate that residents are not vaccinated are not allowed to live at our facility?	<p>It's about risk management and being reasonable. What are the risks by having the disabled person on the property and can these be reasonably managed? If they cannot, alternative arrangements may be necessary. Imposing a blanket rule would normally entail a period of consultation with disabled residents and their families.</p> <p>Policies such as this may have privacy, human rights and other legal implications. We recommend further advice is sought.</p>
Lisa	<p>In an audio interview yesterday on Radio NZ yesterday, Minister Hipkins referred to teachers "not be turfed out of the classroom" come 16th November, and that they can continue in their role if they have weekly (negative) testing, until the second dose date of 1st January. (SEE link below)</p> <p>Is it fair to assume if teachers receive this leniency then the health and disability workforce will too?</p>	<p>NZDSN are investigating this. We have asked the Ministry to comment on the exceptions announced by Ministers to the mandatory order rules and await their answer/clarification.</p>
Sharron	We have been asked by staff what are we going to do about clients being vaccinated so that the staff are kept safe.	<p>The Order covers a number of specific roles of workers, not the public. If staff are concerned about providing a support service to an unvaccinated disabled person, the PCBU is required to take all expressions of health and safety risks seriously. The employer would engage in a risk assessment and explore options available to mitigate any risks, such as vaccinated staff, use of PPE, social distancing where possible. If the employer has taken all reasonably practicable steps to mitigate the risks, it may become an employment issue. The vaccination of disabled people in your service is a matter of "encouragement" directed to them and their families (where appropriate).</p>
iPhone	I will need to return to other work. Who will provide a medical trained carer for my adult daughter with complex health issues as I can no longer be paid to. One week is not enough time for this change. She receives 38 hours funded care a week.	<p>We recommend you contact the NASC agency for your region to discuss options.</p>

From	Question	Answer
Sam	I have staff who are talking about striking. What support will my organisation receive if this happens? It will mean no staff at all for 24 hours and nine residents who will have nobody to be there for them. What do I do?	People generally have the right to protest in their own time. However, striking during work time is unlikely to be lawful (generally, striking is only lawful where it relates to collective bargaining and after a very specific process is followed). You should let staff know your expectations, and if they unlawfully strike during work time, this may result in disciplinary action.

Link for Lisa's question: https://www.rnz.co.nz/audio/player?audio_id=2018819898&fbclid=IwAR1DJDIR-m_kS6gJPjZUK40ultCuKAqpZH5x6zjjqw4ckqcrhvymOY1fwtY

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